

Witness Statement

Name	Sister Moya Hanlen
Address	Catholic Diocese of Wollongong, 38 Harbour Street, Wollongong NSW 2500
Occupation	Chancellor of the Catholic Diocese of Wollongong
Date	6 June 2014

- 1 My name is Moya Patricia Hanlen.
- 2 I am the Chancellor of the Catholic Diocese of Wollongong (**Diocese**). I was appointed to this position on 1 August 2006.
- 3 I have been asked to provide this statement in connection with my involvement in the case of John Nestor, a former priest of the Diocese, and in particular my involvement in the Diocese's:
 - (a) investigation and report to the NSW Ombudsman's Office; and
 - (b) assistance with preparation of the case for the Congregation for the Doctrine of the Faith.
- 4 I was not involved with Mr Nestor's case prior to my appointment in February 2005 as canonical consultant to the Diocese and I do not know Mr Nestor personally. I met Mr Nestor in passing on one occasion when he came to the Office of the Bishop (**Diocesan Office**) to inspect some documents.
- 5 In making this statement I have been shown various documents relating to Mr Nestor and pertaining to my time working in the Diocesan Office. Where I refer to a document in this statement I have used the document reference number which appears in the top right-hand corner of the document to which I refer. From time to time, in the course of my work as Chancellor, I have independently reviewed and updated the files held by the Diocese on Mr Nestor and I am generally familiar with the documents held in the Diocese's files relating to him.
- 6 Unless I state otherwise, I have set out in this statement my independent recollection of the events which are the subject of the statement.
- 7 This statement has been prepared with the assistance of Gilbert + Tobin lawyers in response to and in compliance with a Summons or Notice issued by the Royal Commission in connection with a hearing into Case Study 14. It is produced to the Royal Commission on the basis that it will be tendered and received in evidence by the Royal Commission pursuant to that Summons or Notice, and on the basis that the statement will be treated as evidence pursuant to the Commonwealth or State legislation applicable to this Royal Commission case study.

Education and qualifications

- 8 I hold a Teaching Certificate, Our Lady of the Sacred Heart Teacher Training College, Sydney, and a Bachelor of Arts, University of New England, Armidale.
- 9 In the period from approximately September 2002 to September 2004 I studied canon law in Ottawa, Canada. At the conclusion of my studies I was awarded a Licentiate in Canon Law from the University of St Paul, Ottawa, and a Master of Canon Law from the University of Ottawa.
- 10 The Licentiate in Canon Law is recognised by the Holy See and qualifies me to perform certain functions within the Catholic Church including Church Tribunals, e.g. I am a "*Defender of the Bond*" for cases in which persons married according to the rites of the Catholic Church seek a declaration of nullity in relation to their marriage. My role is to study the evidence given in the annulment proceedings and submit an opinion to the judge(s) as to whether the marital bond is intact. I am also qualified to sit as a member of a three or five member tribunal panel to judge various canon law matters. If so appointed, for example, I can be a judge in a case in which a member of the laity brings a grievance about his/her engagement by the parish against the parish priest.

Professional background

- 11 I am a religious sister and have been a member of the Congregation of the Daughters of Our Lady of the Sacred Heart (**OLSH**) for over fifty years. During that time I have been a secondary school teacher at OLSH Colleges at Kensington, NSW (1966-1969, 1975-1978, 1980-1983 - principal); Benteigh, Victoria (1984-1986, also community leader); and Enfield, South Australia (1978-1979, also community leader). I have been a directress of initial formation for young women entering religious life (OLSH Convent, Kensington, NSW, 1970-1972; Hartzler Park Centre, Bowral, NSW, 1973-1974). I have served as a Provincial Councillor (OLSH Provincialate, Kensington, 1987-1995) and as Provincial Leader (OLSH Provincialate, Kensington, 1996-2001). Prior to going to Ottawa to study canon law I was community leader at OLSH Convent Daceyville, NSW (January – August 2002).
- 12 Initial formation is a period of education and formation in which a woman lives in a community of the congregation and participates in a process to assist her to discern her vocation to religious life. As directress of initial formation I was responsible for arranging education and formation opportunities appropriate to each particular woman and for working with her to discern her suitability to commit herself to the lifestyle of the congregation. This presumed that the woman was of sound character, had the human, psychological and spiritual capacity to live religious life and was able, with education, to assume a ministry undertaken by the congregation.
- 13 In January 1996 I was appointed leader of what is known within the Congregation as the Australian Province. The province at that time numbered approximately 350 sisters living and working in all States of Australia with the exception of Western Australia, and including the Northern Territory, and also in Kiribati, Nauru, Fiji, the Philippines and Southern Sudan. At the time sisters from the

- Australian Province were also ministering in Papua New Guinea, South Africa and Japan and visiting these sisters was also part of my role. I held this appointment for the maximum term of six years until December 2001.
- 14 I commenced my studies in canon law in Ottawa in September 2002.
- 15 In September 2004, upon receiving my Licentiate and Master of Canon Law, I went to South Africa for a few months to assist the Diocese of Tzaneen with the preparation of documents relating to tax deductibility for Church owned and/or operated properties and ministries required by the South African government. These documents necessitated an understanding of some aspects of canon law. The documents did not relate to any inquiry being undertaken by the government of South Africa.
- 16 In February 2005 I commenced working for the Wollongong Diocese as a canonical consultant. Initially I provided advice and assistance to the Diocese in matters involving aspects of canon law. With time, the role evolved to include attending to correspondence as requested by the Bishop; providing canonical advice to religious congregations and individual religious within the Diocese, as requested; serving as executive officer for the Council of Priests; assisting the Chancellor, as requested; and assisting agencies of the Diocese, namely the Catholic Education Office and CatholicCare (then Centacare), as requested.
- 17 On 1 August 2006 I replaced Fr Peter A Comensoli as the Chancellor of the Diocese. At that time Bishop Peter Ingham was the Bishop of Wollongong and Fr Patrick Faherty and Fr Bryan Jones were the Vicars General.

Description of role of Chancellor

- 18 Technically in canon law the Chancellor is the "keeper of the records", namely the person responsible for ensuring that official documents are properly drawn up, signed, notarised and sent and that copies are filed in the Diocesan archives. The Chancellor, on appointment, is automatically a notary and secretary of the Diocese (cf canon 482).
- 19 In many Dioceses, however, including the Diocese of Wollongong, the role of Chancellor is considerably broader than this. In addition to attending to the matters mentioned in paragraph 18 above, as Chancellor, I oversee many aspects of the day to day running of the Office of the Bishop such as liaising with members of the clergy, office staff, Directors of Diocesan Agencies, and with various religious congregations. I am often the first point of contact for people seeking the assistance of the Diocese.
- 20 Under the *Diocese of Wollongong Child Protection Head of Agency Charter (Charter)*, I am the Child Protection Delegate of the Head of Agency, namely the Bishop. The Charter sets out the principles, structure, operational procedures and protocols to assist the Bishop of Wollongong to ensure compliance with *Head of Agency* obligations under *Part 3A* of the *Ombudsman Act 1974*. In this

- capacity I work closely with the Bishop, the heads of agencies and the Diocesan Child Protection Adviser.
- 21 Decision making authority on all Diocesan matters rests with the Bishop, however, I am regularly asked by Bishop Ingham to provide advice or to assist with drafting or reviewing correspondence. My usual practice when I have assisted the Bishop by drafting correspondence or other documents is to include a notation of the initials "PWI:mh" at the top of the document, representing the Bishop's initials as well as my own.
- 22 Bishop Ingham and I have a close working relationship and, with the exception of those periods when Bishop Ingham is absent from the Diocese, we typically meet to discuss Diocesan matters on a daily basis. These meetings are usually informal and occur as the need arises rather than by appointment.
- 23 If complaints or allegations against a religious cleric, brother or sister who is or was resident in the Diocese of Wollongong are brought to the attention of the Diocese, they are directed to the appropriate Church Authority for the relevant religious institute. The Diocese assumes responsibility for contacting the relevant religious institute and putting them in contact with the complainant.
- 24 Normally, a complaint or allegation of child sex abuse against a member of the Diocesan clergy is addressed to Bishop Ingham who discusses it with me. If the complainant telephones the Office of the Bishop and the Bishop is unavailable, I take the complaint and discuss it with the Bishop at the earliest opportunity. At times, complainants make initial contact through the Professional Standards Office (NSW & ACT) and the complaint is brought to the attention of Bishop Ingham through that office. Bishop Ingham's usual practice on receiving a complaint is to seek to meet personally with the complainant as soon as possible. The complainant is advised and encouraged to bring a support person with him/her to the meeting with the Bishop. Often Michael Salmon, Director of Professional Standards (NSW & ACT) is present at this meeting, particularly if the complaint has come through the Professional Standards Office. At other times, I attend the meeting with the Bishop.
- 25 After the initial meeting, if a complaint is handled through the Catholic Church's *Towards Healing* process, Bishop Ingham asks me to take responsibility for managing the process. When this happens, I am careful to keep Bishop Ingham informed of all developments so that he may become directly involved from time to time when he judges it is appropriate or desirable for him to do so.
- 26 Although I provide advice to Bishop Ingham on the handling of any complaints of child sex abuse, the decision as to how the Diocese responds to each complaint rests with the Bishop. He also has the power to decide, in accordance with canon law, if and when a member of the clergy who is the subject of a complaint is required to stand aside from ministry. The Bishop is obliged by Church law to refer any credible complaint of child sexual abuse against a cleric to the Congregation for the Doctrine of the Faith, Rome.

Initial Involvement with John Nestor case

27 When I joined the Office of the Bishop in February 2005, the Diocese had been involved for about eight years with canonical processes and other correspondence with Vatican authorities in relation to the then Fr Nestor. These canonical processes included recourse to the Congregation for the Clergy taken by Fr Nestor against the 7 August 1998 Decree of Bishop Philip Wilson which required him to stand aside from ministry. The Congregation of the Clergy upheld Fr Nestor's position and directed Bishop Wilson to restore Fr Nestor to ministry. Bishop Wilson did not do so but appealed the decision of the Congregation for the Clergy to the Apostolic Signatura, the Supreme Tribunal of the Catholic Church.

28 When I arrived in the Diocese, the canonical proceedings were effectively on hold while the Diocese awaited the outcome of its recourse to the Apostolic Signatura. My only involvement in Fr Nestor's case prior to my appointment as Chancellor was in assisting Fr Peter A Comensoli, including obtaining legal advice in relation to a request by Fr Nestor for a copy of his Diocesan file

Tab 244 [CTJH.001.12001.0127]. On 30 March 2006 I sent a facsimile to Mr Bill d'Apice of Mackinson & d'Apice Lawyers requesting advice about providing Fr Nestor with a copy of the Diocese's documents relating to him [CTJH.001.12003.0633, CTJH.001.12003.0635 and **Tab 246**

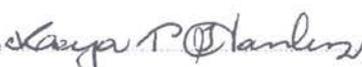
Tab 247 [CTJH.001.12003.0634]. On 10 April 2006 I met with Mr Alex Kohn of Mackinson & d'Apice Lawyers about Fr Nestor's request and later prepared a file note of this meeting [CTJH.001.12003.0327 and CTJH.001.12003.0328]. I also prepared a document titled "*Decrees of the Bishop of Wollongong and the Response of the Apostolic See in relation to Fr John Gerard Nestor*" [CTJH.001.02001.0506] **Tab 249** which lists in chronological order Diocesan decrees in relation to Fr Nestor.

29 On 20 July 2006, immediately prior to my appointment as Chancellor, the Apostolic Signatura issued a final decree upholding the Diocese's recourse against the decrees of the Congregation for Clergy made on 21 December 2000 and 19 May 2001 [CTJH.001.12001.0336]. The Apostolic Signatura **Tab 256** upheld the decree of Bishop Wilson of 7 August 1998 that prohibited Fr Nestor from celebrating the liturgy publicly: the decree was lawful and remained binding. By this time, Bishop Wilson had been appointed Archbishop of Adelaide and hence the definitive response from the Apostolic Signatura was sent to Bishop Ingham who received it on 27 July 2006 [CTJH.001.12003.0326]. **Tab 259**

30 As is usual for decisions of the Apostolic Signatura, the decision of 20 July 2006 was given in Latin. It was therefore necessary to obtain a translation for the Diocese. I have been shown a copy of a letter from Bishop Geoffrey Robinson to Bishop Ingham dated 5 August 2006 enclosing Bishop Robinson's unofficial translation of the decision of the Apostolic Signatura [CTJH.001.12003.0318 and **Tab 260**

Tab 256 [CTJH.001.12001.0350]. It is this unofficial translation that I and others within the Diocese have relied upon.

31 On 23 August 2006 I forwarded a copy of the decree of the Apostolic Signatura to Fr Nestor [CTJH.001.12001.0334]. **Tab 261**

Signature  | Witness 

- 32 In approximately mid-October 2006 I became aware that Fr Nestor had celebrated Mass in an aged care facility in the Archdiocese of Sydney, replacing a Sydney priest who was on leave at the time. This was contrary to Bishop Wilson's decree of 7 August 1998 and the recent ruling of the Apostolic Signatura. I do not recall how I became aware of this.
- 33 Accordingly, I contacted Fr John Usher, Chancellor of the Archdiocese of Sydney, and asked him to make inquiries to determine whether the report about Fr Nestor celebrating Mass was correct. On 6 November 2006 I wrote to Fr Usher requesting information on the outcome of those inquiries [CTJH.001.02001.0299]. **Tab 270**
- 34 On 11 December 2006 Fr Usher responded, advising that he had contacted the parish priest in question, Fr Robert Flaherty, and informed him that Fr Nestor did not have "faculties" of the Archdiocese of Sydney or the Diocese of Wollongong [CTJH.001.12001.0308]. In saying that Fr **Tab 274** Nestor did not have faculties Fr Usher was technically incorrect. Fr Nestor had been forbidden from public ministry in 2006, however, he remained a priest with faculties of the Diocese of Wollongong; he was not permitted to exercise those faculties
- 35 On 15 December 2006 Fr Flaherty telephoned the Diocese and asked to speak to Bishop Ingham. As Bishop Ingham was unavailable I took the call. Fr Flaherty confirmed that he had now been contacted by Fr Usher who informed him that Fr Nestor did not have faculties to exercise any public ministry as a priest. Immediately after the phone call I made a note of the discussion [CTJH.001.12001.0309]. **Tab 276**

Investigation under the NSW Ombudsman Act

- 36 From about July 2006 the Diocese was engaged in dialogue with the Office of the NSW Ombudsman about Fr Nestor. The background to this dialogue was that:
- changes in NSW legislation a few years prior made it necessary to report certain individuals suspected of involvement in child sexual abuse to the Ombudsman Office;
 - earlier the Diocese had received advice that it was under no obligation to report Fr Nestor while he was resident overseas;
 - by late March 2006 the Diocese had become aware of Fr Nestor's return to Australia after approximately six years overseas [CTJH.001.12001.0127]; and **Tab 244**
 - on 25 July 2006 Fr Comensoli, the then Chancellor, wrote to Ms Sue Phelan, Principal Investigator at the NSW Ombudsman Office, seeking clarification and direction as to what steps were to be taken by the Diocese in relation to the allegations against Fr Nestor [CTJH.001.12001.0128]. **Tab 257**
OMB.0004.001.0717

When I replaced Fr Comensoli dialogue with the NSW Ombudsman Office became my responsibility on behalf of Bishop Ingham.

37 On 31 August 2006 I spoke to Ms Anne Barwick, Assistant Ombudsman with Responsibility for Child Protection, inquiring whether or not the matters relating to Fr Nestor came under the jurisdiction of the NSW Ombudsman. I recall that at the time, having reviewed Fr Nestor's file, I was aware that there were a number of allegations against Fr Nestor from different complainants, some of which were serious. I spoke with Ms Barwick because I wished to be sure that the Diocese complied fully with its obligations under the Ombudsman Act in relation to the Fr Nestor case.

38 On 15 September 2006 I wrote to Ms Barwick providing additional information and requesting confirmation as to whether or not the matter came under the jurisdiction of the Ombudsman Office

Tab 263 [CTJH.001.12001.0131 and CTJH. 001.12001.0132]. **Tab 262**

39 In a letter dated 19 September 2006 Ms Barwick advised that the allegations against Fr Nestor were reportable and set out the basis for that advice [CTJH.002.02003.0025]. On 22 September 2006 I **Tab 264** wrote to Ms Barwick confirming that the Diocese would comply fully with its obligations under Part 3A of the *Ombudsman Act 1974* [CTJH.001.02001.0808]. **Tab 265A**

40 From then I was involved in implementing and overseeing the various processes which were required of the Diocese to fulfil its obligations under the *Ombudsman Act 1974*. In summary, this included to:

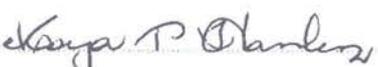
- (a) arrange the appointment of an investigation company, Kamira Stacey Consulting, to investigate and assess the allegations against Fr Nestor and to produce a report;
- (b) oversee the investigation conducted by Kamira Stacey Consulting;
- (c) assist in contacting the different complainants and other witnesses to determine whether or not they were willing to be interviewed as part of the investigation;
- (d) communicate with Kamira Stacey Consulting from time to time to determine the progress of the investigation and, where necessary, provide assistance by the provision of additional documents and information;
- (e) communicate regularly with the Ombudsman Office, by telephone and in writing, to discuss the progress of the investigation including the interim assessment reports from the investigators as they became available, and correspondence from Fr Nestor concerning the investigation process, and to seek the guidance of the Office;
- (f) liaise with people within the Diocese and other Catholic bodies to inform them as appropriate of the progress of the investigation and obtain assistance where necessary. In particular, I worked closely with Ms Kath McCormack, then Director of Centacare (now CatholicCare) and Ms Margaret Chittick, the Diocesan Child Protection Advisor. I also spoke regularly with Bishop Ingham to update him about the progress of the investigation.

41 I have described the various steps in these processes in greater detail in the following paragraphs. While I have not referred individually to each of the numerous documents which were created as part

of the Diocese's interaction with the NSW Ombudsman Office, I have sought to refer to those documents which I consider evidence the key steps in the Diocese's dealings with the NSW Ombudsman.

Initial steps

- 42 On 17 October 2006 I sent Ms Barwick a completed *Notification Form Part A* in relation to the **Tab 267** complaints against Fr Nestor [CTJH.001.12001.0140 and CTJH.002.01072.0795]. The completed **Tab 248** Part A form identified eleven alleged victims by name and a group described as "classes of **CTJH.001.03005.0083** (unnamed) boys". I prepared the Part A form using the information in the Diocesan files on Fr Nestor.
- 43 On 31 October 2006 I received a telephone call from Mr Dylan Thompsett from the NSW Ombudsman Office [CTJH.001.02001.0297]. Mr Thompsett acknowledged receipt of the Part A notification and supported my suggestion that a letter be sent to Fr Nestor from Bishop Ingham informing him of the Ombudsman notification and associated investigation process. Mr Thompsett informed me that the investigation would be monitored by the Ombudsman Office. I was grateful for this because I judged that oversight by the Ombudsman Office would ensure that our investigation was appropriate and complied with the requirements of child protection regulations. It also provided a greater independence to the investigation. Finally, Mr Thompsett provided some advice on responding to Fr Nestor's requests for documentation and approved the appointment of Kylie Starling to conduct the independent investigation. My file note of this call also refers to Clair Pirola as an independent investigator but I do not have any recollection of talking to Mr Thompsett about Ms Pirola or of ever contacting Ms Pirola.
- 44 On the same day, following my conversation with Mr Thompsett, Bishop Ingham wrote to Fr Nestor informing him that the Ombudsman Office had been notified of the matter and that the Diocese would initiate an independent investigation into the allegations [CTJH.001.12001.0305]. **Tab 269**
- 45 I have been shown an undated document titled "*Initial Plan of Investigation*" [CTJH.001.12001.0146]. The document was prepared by me with assistance from Ms Chittick, who had many years of experience dealing with allegations of child sex abuse, initially as an employee of Centacare (now CatholicCare) and subsequently of the Catholic Education Office, both agencies of the Diocese of Wollongong.
- 46 Points 5 and 6 of the plan refer to "*external investigator/s – Ms Kylie Starling and Harriet Stacey*" of the firm Kamira Stacey Consulting. While I do not specifically recall meeting with Kylie Starling and Harriet Stacey before preparing this plan I think I probably did, and they would have contributed to the preparation of the investigation plan.
- 47 On 17 November 2006 Mr Thompsett wrote to Fr Jones, Vicar General of the Diocese, formally advising him that the Ombudsman Office had decided to monitor the investigation by the Diocese of Wollongong and requesting additional information [CTJH.001.12001.0141]. I do not recall why Mr **Tab 272**

Signature  | Witness 

Thompsett wrote to Fr Jones but I assume it was because Bishop Ingham was not in the Diocese at that time.

- 48 On 14 December 2006 I responded to Mr Thompsett's request [CTJH.001.12001.0143 (cover letter) and CTJH.001.12001.0144 (information required under section 25E(3) of the Ombudsman Act)]. The reference in the first line of my letter to Mr Thompsett's letter of 17 December 2006 is an error. It was intended to be a reference to Mr Thompsett's letter of 17 November 2006.

Conduct of investigation

- 49 On or about 18 December 2006 I received a document from Kylie Starling titled "Assessment by Kamira Stacey Consulting PIL of investigation documents related to Father John Gerard Nestor and further investigative action" [CTJH.001.02001.0326]. The document identified a number of further actions to be taken by the Diocese including contacting witnesses, locating additional documents and forwarding certain information to the Ombudsman Office.
- 50 On or about 10 January 2007 I received a document from Ms Starling titled "Investigation Plan" [CTJH.001.12001.0188]. The Investigation Plan identified and summarised four allegations against Fr Nestor which required further investigation. The note at the top of the first page, giving the date on which the document was received by the Diocese, is in my handwriting.
- 51 On 10 January 2007 I met with Ms Barwick and Mr Thompsett at the NSW Ombudsman Office in Sydney. Ms Starling, Ms Stacey and Ms Chittick were also present at this meeting [CTJH.001.12001.0186 and CTJH.001.12001.0187]. The purpose of the meeting was to discuss the proposed investigation by Ms Starling and Ms Stacey of the four complaints against Fr Nestor identified in the Investigation Plan, and to give Ms Starling and Ms Stacey an opportunity to familiarise themselves with the requirements of the Ombudsman. I do not recall precisely what was said at this meeting but in general terms Ms Starling and Ms Stacey outlined how they were proposing to conduct the investigation and Ms Barwick and Mr Thompsett indicated that the Ombudsman Office was happy with their proposal.
- 52 On 15 January 2007 I wrote to Ms Stacey and Ms Starling formally notifying them that Bishop Ingham had authorised the appointment of Kamira Stacey Consulting as external assessor to conduct a formal investigation into allegations against Fr Nestor [CTJH.001.02001.0342]. On 23 **Tab 280** January 2007 I wrote to Fr Nestor to notify him of this appointment [CTJH.001.02001.0813]. On 9 **Tab 281** February 2007 Ms Stacey, on behalf of Kamira Stacey Consulting, formally accepted the terms of the appointment [CTJH.001.12001.0208]. **Tab 282**
- 53 Over the next few months Ms Chittick and I contacted a number of potential witnesses in the investigation. Our usual practice was to telephone the person to explain the situation and ask whether they would be willing to assist with the investigation. If Ms Chittick had had previous contact with the person in question, she would usually make the telephone call; otherwise I contacted the witnesses.

- 54 If the person contacted indicated that they were willing to assist, I sent a letter to them explaining the nature of the investigation and informing them that the investigators would contact them directly [see, for example, **CTJH.001.03008.0212**]. If the person stated that they did not want to be involved, Kamira Stacey Consulting would be instructed not to contact that particular person.
- 55 Kamira Stacey Consulting then arranged to interview those witnesses who had indicated they were prepared to assist. I was not present at any of the witness interviews but I was usually sent a copy of the transcript of interview or the statement provided by each witness.
- 56 On 15 May 2007 I forwarded a copy of Kamira Stacey's "Interim Report" to Mr Thompsett
Tab 283 [**CTJH.001.12001.0217** (cover letter) and **CTJH.001.12001.0218** (report)]. The Interim Report outlined the nature of the investigation conducted to date and proposed further action in respect of some of the complainants.
- 57 In the period from approximately 15 May 2007 until the end of August 2007 I or Ms Chittick contacted additional witnesses and obtained additional documentation for Kamira Stacey Consulting, including documentation from the NSW Police Force and the Department of Community Services. The witnesses that I contacted were principally persons who had been present at the "Summer Safari" camps conducted by Fr Nestor in the early 1990s, or the parents of these persons. I also contacted several people whom I understood to be friends and supporters of Fr Nestor, or who assisted Fr Nestor to organise the camps, including Fr Mark De Battista [**CTJH.001.03008.0162**], Mr Jeff De Battista [**CTJH.001.03008.0164**], Mrs Fiona Carolan [**CTJH.001.03008.0166**], Fr Bernard Gordon [**CTJH.001.03008.0173**] and Fr Patrick Vaughan [**CTJH.001.03008.0168**]. I considered it a matter of justice that the investigators hear all sides of the story, so to speak, and hence I asked them to speak with people who were regarded as Fr Nestor's supporters. In asking the investigators to interview these people, I followed the same procedure as with other witnesses: I contacted each person to ask them would they be willing to be interviewed by Kamira Stacey Consulting. A number of them asked for written questions in advance of an interview, and these were supplied to them by Kamira Stacey Consulting [for example, **CTJH.001.03008.0185** and **CTJH.001.03008.0187**].
- 58 Ms Carolan responded in writing to the questions from Kamira Stacey Consulting on 3 September 2007 [**CTJH.001.03008.0204**]. On 19 December 2007 Frs Gordon and De Battista wrote that they considered the investigation to be unfair and would not participate in it for that reason [**CTJH.001.03008.0208**]. **Tab 292**
- 59 From time to time I corresponded with various individuals at the Ombudsman Office to update them on the progress of the investigation and provide them with supporting documentation.
- 60 I have been shown a document titled "Notes from meeting at Catholic Diocesan Offices Wollongong Wednesday 18 July 2007" [**CTJH.001.12001.0228**]. I did not prepare this document but it accords with my general recollection of meeting with Ms Stacey, Ms Starling and Ms Chittick about mid-July 2007 to discuss the Nestor investigation.

- 61 On or around 24 July 2007 I assisted Bishop Ingham to prepare a letter to Fr Nestor to update him on the progress of the investigation [CTJH.001.12001.0232]. **Tab 284**
- 62 On or around 28 September 2007 I again assisted Bishop Ingham to prepare a letter to Fr Nestor. The purpose of this letter was to inform Fr Nestor that he would be contacted by Kamira Stacey Consulting in the near future and would be invited to attend an interview in relation to the allegations against him [CTJH.001.12001.0239]. **Tab 288**
- 63 I have been shown a letter from Ms Starling to Fr Nestor dated 11 October 2007 attaching a description of each of the allegations against him [CTJH.001.02001.0459 and **Tab 289** CTJH.001.02001.0452]. I am familiar with this letter and I believe that I was given a copy by Ms Starling at or around the time that it was sent.
- 64 I have been shown a letter from Fr Nestor dated 4 November 2007 in which he responds to Ms **Tab 290** Starling's letter [CTJH.001.03008.0028]. I am familiar with this letter and I believe that I was given a copy by Ms Starling at or around the time that it was received. On 21 November 2007 I sent a copy of this letter to Mr Kelvin Simon at the NSW Ombudsman Office [CTJH.001.12001.0243]. **Tab 291**
- 65 I am aware that subsequent to this, on 27 November 2007, Ms Starling met with and interviewed Fr Nestor. I have been shown a transcript of that interview [CTJH.001.03007.0077]. I believe that I was provided with a copy of the interview transcript on or shortly after the day on which the interview was conducted.

Final stages and outcome of investigation

- 66 On 6 March 2008 I forwarded a copy of the report from Kamira Stacey Consulting dated January 2008 to Ms Mewing at the NSW Ombudsman Office [CTJH.001.12001.0245]. The report was in five **Tab 293** parts, comprising a "Covering Report" [CTJH.001.03004.0004] and four separate reports into each of **Tab 294** the allegations against Fr Nestor [CTJH.001.03004.0020, CTJH.001.03004.0047, CTJH.001.03004.0073 and CTJH.001.03004.0088]. Although I described this report in my letter to Ms Mewing as the "final report" this is incorrect as Kamira Stacey Consulting subsequently prepared another report dated May 2008 [CTJH. 001.03005.0002]. **Tab 298**
- 67 On or about 25 March 2008 I received a letter from Ms Mewing of the Ombudsman Office **Tab 295** [CTJH.001.12001.0246]. Ms Mewing informed me that, as part of the Ombudsman's monitoring of the investigation, she was providing comments for my consideration and also requesting further information. Some of the comments provided by Ms Mewing addressed the concerns raised by Fr Nestor in his letter of 4 November 2007. In general I interpreted these comments, which appear on page 3 of the letter under the heading "Concerns raised by Fr Nestor", to be indicating that the Ombudsman did not accept Fr Nestor's concerns.
- 68 On page 4 of Ms Mewing's letter, under the heading "Information required", Ms Mewing listed four items including: "1. The diocese's final findings and report on this matter..." and "2. A copy of any

advice to Fr Nestor about proposed findings, any response from Fr Nestor, and any final advice to Fr Nestor about findings and action taken."

69 On or about 18 April 2008 I assisted Bishop Ingham to prepare a letter to Fr Nestor

Tab 296 [CTJH.001.12001.0255]. The main purpose of this letter was to address the concerns which Fr Nestor had raised in his letter of 4 November 2007 concerning the conduct of the investigation. In drafting the letter I drew upon Ms Mewing's letter of 25 March 2008 including informing Fr Nestor of his right to make a Freedom of Information request.

70 On 26 May 2008 I sent a letter to Ms Mewing in response to the various points raised in her letter of 25 March 2008 [CTJH.001.02001.0679]. On page 4 of the letter, under the heading "*Information Required*" I stated that:

The Diocese has not yet received the final copy of the report from Kamira Stacey Consulting. When this becomes available and the Diocese has had the opportunity to consider it carefully, the Diocese will make a finding. The Diocese will communicate this finding and a report on the matter to the Office of the Ombudsman."

71 Shortly after this, on or about 3 June 2008, I received a copy of the final signed report from Kamira Stacey Consulting dated May 2008 [CTJH.001.03005.0002]. On 4 June 2008 I forwarded a copy of this report to Ms Mewing [CTJH.001.12001.0257].

Tab 298
Tab 297

72 In the days following I met with Bishop Ingham and discussed with him the findings as set out in the final report. Bishop Ingham took the report to study it more closely.

73 On 11 June 2008 I wrote a further letter to Ms Mewing [CTJH.001.12001.0258]. On page 4 of the **Tab 299** letter, under the heading "*Information Required*" I stated that:

The Diocese has now received the final copy of the report from Kamira Stacey Consulting. The Diocese has had the opportunity to consider the report carefully and will communicate the proposed finding to Fr Nestor and invite him to respond in writing.

74 On or about 12 June 2008 I assisted Bishop Ingham to prepare a letter to send to Fr Nestor informing him of the Bishop's preliminary findings in relation to the four allegations detailed in the final report from Kamira Stacey Consulting and inviting Fr Nestor to provide a written response within 21 days

Tab 300 [CTJH.001.12001.0267]. On 2 July 2008 Bishop Ingham received Fr Nestor's response dated 29

Tab 301 June 2008 [CTJH.001.12001.0273]. I forwarded a copy of this letter to Mr Simon at the Ombudsman Office on 8 July 2008 [CTJH.001.12001.0277]. **Tab 302**

75 Some days after Bishop Ingham had received Fr Nestor's response I met with him to discuss the findings as set out by Kamira Stacey Consulting and Fr Nestor's response. Over the coming days Bishop Ingham again read the report and considered the findings together with Fr Nestor's

- response. He told me that he had formed the opinion that the investigation had been thorough, independent and fair and he accepted the findings.
- 76 On or about 19 August 2008 I assisted Bishop Ingham to prepare a letter to send to Fr Nestor informing Fr Nestor of his findings in relation to each of four allegations [CTJH.001.12001.0279]. **Tab 303** The letter also contained an explanation of the obligations of the Diocese in relation to the Commission for Children and Young People (CCYP) and informed Fr Nestor that the Diocese would notify CCYP of a "relevant employment proceeding". On the same day I forwarded a copy of Bishop Ingham's letter to Mr Simon at the Ombudsman Office [CTJH.001.12001.0281]. **Tab 304**
- 77 On 21 August 2008 I called Mr John Tubridy. I had become aware from the Diocese file that he had sent information in relation to Fr Nestor's camps to the Industrial Officer at the Wollongong Catholic Education Office in November 1993 and I wanted to find out why he had done this. Although this information came to me after the Ombudsman investigation had been completed, and I cannot recall from what source, I thought it would be wise to pursue it as it could provide information of a substantial nature not already available. I recall that Mr Tubridy told me that he had some general misgivings about the camps but that he did not have any particular reason for concern. On the following day I made a file note of the call from my hand written notes [CTJH.001.02001.0721].
- 78 On 26 August 2008 I submitted a "Relevant Employment Proceedings Notification" to the CCYP naming Fr Nestor as the relevant employee [CTJH. 001.12001.0282], and assisted Bishop Ingham to **Tab 306** prepare a letter to Fr Nestor advising him that his name was being registered with the CCYP [CTJH.001.12001.0283]. **Tab 307**
- 79 I also sent a letter to Mr Simon enclosing the *Part B: Outcome of the Investigation* **Tab 308** [CTJH.001.12001.0286 and CTJH.001.12001.0287]. The letter enclosed a copy of the CCYP **Tab 309** notification and of the letter to Fr Nestor referred to above in paragraph 78. In addition, it included a copy of the letter from Bishop Ingham to Fr Nestor advising him of the initiation of a process under the Catholic Church's *Code of Canon Law*. While I can no longer specifically recall, I assume that this last letter was a draft version of the letter sent to Fr Nestor on 29 August 2008 which is referred to in paragraph 87.
- 80 This concluded the Diocese's investigation under the NSW *Ombudsman Act*.
- 81 I have been shown a letter dated 26 September 2008 written by me to Ms Candice White of the NSW **Tab 330** Ombudsman Office [CTJH.001.12001.0295]. The letter refers to "recent telephone calls" from Ms White "in relation to the Diocese's response to Natasha Mewing's letter to the Diocese, dated 25 March 2008." I cannot recall speaking to Ms White and I do not recall the background or reasons for writing this letter to her.
- 82 On or about 21 October 2008 I received a letter from the Ombudsman Office in relation to the **Tab 332** investigation of Fr Nestor [CTJH.001.12001.0300]. The letter stated, "After reviewing the information you have provided, I am satisfied that this matter was handled appropriately and do not require the

Diocese to provide any further information in relation to this matter at this time... I will now close this child protection file."

Application to the Congregation for the Doctrine of the Faith

- 83 Throughout the period from approximately 1 August 2006 until 26 August 2008 the Diocese took no steps to initiate a canonical process in relation to Fr Nestor because the investigation under the Ombudsman Act was being actively pursued. The position at this time was, in summary:
- (a) Bishop Wilson had, on 22 January 1998, following an occasion when Fr Nestor celebrated a Sunday Mass in a Parish of the Diocese and preached the homily, issued a decree instructing Fr Nestor, under obedience, to cease functioning publicly as a priest in any place until he is given permission to do so.
 - (b) Bishop Wilson had, on 7 August 1998, issued a decree restricting Fr Nestor from exercising any public ministry as a priest pending an assessment of his suitability by Encompass. This decree was an administrative action by Bishop Wilson and was not penal in character within the meaning of canon law.
 - (c) Bishop Wilson had also received advice from the Congregation for the Doctrine of the Faith that it was the relevant authority with jurisdiction to consider dismissal of a priest in relation to matters such as child sexual abuse.
 - (d) In the interim, however, Fr Nestor had sought recourse against Bishop Wilson's administrative decree to the Congregation for the Clergy. In a decision dated 21 December 2000, the Congregation for the Clergy upheld the recourse of Fr Nestor and decreed that he be restored immediately to the full exercise of his public ministry.
 - (e) Subsequently, on 12 January 2001, Bishop Wilson, by then Diocesan Administrator of Wollongong and Bishop-Elect of Adelaide, wrote to the Congregation for the Clergy requesting them to review their decision of 21 December 2000. Bishop-Elect Wilson informed Fr Nestor of this on that same day.
 - (f) On 22 February 2001, Fr Bryan Jones, then Diocesan Administrator, appealed to the Apostolic Signatura against the decree of the Congregation of the Clergy. The Apostolic Signatura, on 22 April 2002, subsequently suspended the requirement of the Decree of the Congregation for the Clergy that Fr Nestor be restored to the full exercise of his public ministry.
 - (g) On 30 April 2001, Pope John Paul II issued *Motu Proprio Sacramentorum Sanctitatis Tutela* (SST) which reserved to the Congregation for the Doctrine of the Faith the processing of allegations of the sexual abuse of a minor below the age of eighteen years by a cleric.
 - (h) On 7 November 2002, Pope John Paul II granted the faculty to the Congregation for the Doctrine of the Faith to derogate from the time limit mentioned in SST (10 years from the

completion of the eighteenth year) on a case by case basis, having considered the request of the Bishop and the reasons for such request.

- (i) In 2003 Cardinal Ratzinger, then Prefect of the Congregation for the Doctrine of the Faith, obtained from Pope John Paul II greater flexibility in conducting penal processes for delicts such as the sexual abuse of children. These concessions included the use of the administrative penal process.
 - (j) In July 2006, Bishop Ingham received the definitive response from the Apostolic Signatura in which it upheld the recourse of Bishop Wilson against the decision of the Congregation for the Clergy.
- 84 The 1983 Code of Canon Law makes clear that whenever the Bishop receives information, which has at least a semblance of truth, about an offence, he is to institute a preliminary investigation under canon 1717 about the facts and circumstances, and about the imputability of the offence, unless the enquiry would be entirely superfluous.
- 85 Following the completion of the Ombudsman investigation, on 27 August 2008, Bishop Ingham, having formed the opinion that serious offences against Church law had been committed by Fr Nestor, initiated a preliminary investigation under canon 1717. He issued two decrees:
- (a) A decree opening the preliminary investigation of a penal process under canon 1717 to investigate the allegations against Fr Nestor. In this decree he further decreed that the *Report of the Investigation of Allegations of Reportable Conduct* carried out by Kamira Stacey Consulting, and all accompanying documentation be admitted to the Acts of the case, and he appointed Fr Greg Homeming to serve as auditor [CTJH.001.03006.0127]; and **Tab 310**
 - (b) A decree directed to Fr Homeming appointing him as auditor for the preliminary investigation and directing him to conduct an appropriate investigation [CTJH.001.03006.0128]. **Tab 311**
- 86 It is understandably necessary that persons bringing serious allegations against a cleric are required in canon law to give such evidence under oath. Bishop Ingham and I were concerned that the three complainants who had brought allegations against Fr Nestor and who were to be interviewed as part of the preliminary investigation had already cooperated with earlier investigations and that their participation in this investigation could be distressing for them. For this reason, after discussing the matter with me, Bishop Ingham decided that one complainant would be given a copy of his court statement and the investigation transcript from Kamira Stacey Consulting and the other two would be given a copy of their respective investigation transcripts (these two complainants had not been before the court). The complainants were asked to read the statements carefully in the presence of the auditor and, under oath, to confirm their veracity or to amend or retract sections if they judged that necessary. On 28 August 2008 the Bishop signed a document titled "*Preliminary Investigation Questioning Process*" which set out the process for Fr Homeming to follow in conducting his

Tab 312 investigation [CTJH.001.03006.0043]. Each complainant was interviewed privately and not in the presence of one or both of the other complainants.

87 On or shortly before 29 August 2008 I assisted Bishop Ingham to draft a letter to Fr Nestor informing him of Bishop Ingham's decrees of 27 August 2008 [CTJH.001.03006.0131]. The letter concluded "I **Tab 314** shall let you know when this preliminary investigation has been concluded and any further steps to be taken. I encourage you to obtain competent canonical advice."

88 On 1 September 2008 Fr Homeming gave Bishop Ingham the written report of his investigation **Tab 315** [CTJH.001.03006.0044]. Fr Homeming provided the sworn statements by three complainants of their allegations against Fr Nestor [CTJH.001.03006.0067, CTJH.001.03006.0081 and CTJH.001.03006.0096].

89 On 10 September 2008, following completion of the investigation by Fr Homeming, Bishop Ingham issued another decree, as required by canon 1718, closing the preliminary investigation [CTJH.001.03006.0132]. **Tab 325**

90 On the same day, the Bishop wrote to Cardinal William Levada, Prefect of the Congregation for the Doctrine of the Faith, requesting guidance in determining the appropriate action to be taken in Fr **Tab 317** Nestor's case [CTJH.001.03006.0028]. Accompanying the letter were 5 volumes of documents. Volume 1, which I prepared, set out the Diocese's summary of the case and the evidence against Fr Nestor. Included in this volume was Bishop Ingham's "Votum" or formal opinion in relation to the case, together with a synopsis of the case against Fr Nestor and four other sections denominated Part II, Sections B to E [CTJH.001.03006.0034, CTJH.001.03006.0098, CTJH.001.03006.0102, CTJH.001.03006.0116 and CTJH.001.03006.0124]. Volumes 2, 3 and 4 contained documentation from **Tab 323** Kamira Stacey Consulting relating to their investigation under the Ombudsman Act. **Tab 320** **Tab 321** **Tab 322** **Tab 324**

91 Also on 10 September 2008, Bishop Ingham wrote to Fr Nestor informing him that the preliminary investigation had been decreed closed and that the *Acts of the Preliminary Investigation* and other relevant documentation had been forwarded to the Congregation for the Doctrine of the Faith **Tab 326** [CTJH.001.12001.0064].

92 On 12 September 2008 I met with one of the complainants against Fr Nestor, ABO [REDACTED], and his older brother, REDACTED, about an incident in which Fr Nestor had visited ABO [REDACTED] residence and had later telephoned. I have been shown a file note titled "Record of Interview re Rev John Nestor" [CTJH.001.12001.0052]. I prepared this document with Ms Chittick and I believe it accurately records the circumstances and substance of my meeting with ABO [REDACTED] and REDACTED [REDACTED] on that day. I have also been shown another file note dated 12 September 2008 of a telephone call from me about this matter [CTJH.402.05001.0398]. I did not prepare this file note and I do not specifically recall the phone call that it refers to, but looking at the document I believe it would be a file note from the Professional Standards Office (NSW & ACT) and was possibly prepared by Mr Michael Salmon from that office.

- 93 Shortly after my meeting with ABO and REDACTED I drafted a letter for Bishop Ingham to send to Fr Nestor asking him again not to contact or approach any member of the ABN family or any other person involved in the matter [CTJH.001.03003.0175]. As far as I am aware Fr Nestor did not attempt to make contact with any other complainants after this date.
- Tab 327**
- 94 On 24 September 2008 Bishop Ingham wrote to Cardinal Levada at the Congregation for the Doctrine of the Faith to inform him that Fr Nestor had contacted ABO and REDACTED and that they had experienced this contact as intimidation [CTJH.001.12001.0066]. **Tab 329**
- 95 On 17 October 2008, Pope Benedict XVI issued a decree dismissing Fr Nestor from the clerical state and releasing him from all the obligations of the priesthood, including that of celibacy. [CTJH.001.03006.0007 (original decree - Latin) and CTJH.001.12001.0060 (unofficial translation)]. **Tab 331**
- 96 I have been shown a letter, dated 23 October 2008, from Archbishop Ladaria, Secretary of the Congregation for the Doctrine of the Faith, to Bishop Ingham requesting Bishop Ingham to inform Fr Nestor of Pope Benedict XVI's decree [CTJH.001.03006.0006]. **Tab 333**
- 97 Bishop Ingham initially had difficulty in making contact with Fr Nestor to inform him of the decree of Pope Benedict XVI. Eventually the two made contact and Fr Nestor agreed to meet with the Bishop and Fr Jones, the Vicar General, at the Office of the Bishop. Fr Nestor was invited to bring a support person to this meeting but declined. On the day of the planned meeting, shortly before the scheduled time, Fr Nestor telephoned Bishop Ingham to inform him that he was having trouble with his car and would not be able to keep the appointment. I was in the Office of the Bishop at the time of the telephone call and made a file note in relation to it [CTJH.001.12001.0029]. In essence, Bishop Ingham informed Fr Nestor that he had been dismissed from the clerical state. The telephone call was then concluded, however, Bishop Ingham called Mr Nestor again a few minutes later and read him the unofficial translation of the text of the decree. **Tab 336**
- 98 On or about 27 January 2009 I assisted Bishop Ingham to draft a letter to Mr Nestor which enclosed the decree. In the letter Bishop Ingham offered to make a financial contribution to Mr Nestor to assist with the period of transition to lay life [CTJH.001.03006.0020]. **Tab 337**
- 99 In the following month I assisted Bishop Ingham to draft letters to a several people who had been involved with the case to inform them that Fr Nestor had been dismissed from the clerical state. A letter was also sent to Archbishop Wilson, the then chairperson of the Australian Catholic Bishops Conference, so that Bishops throughout Australia could be notified that Mr Nestor was no longer a cleric and hence could not function as such.
- 100 On or about 26 February 2009 Bishop Ingham wrote to Cardinal Levada enclosing the signed documentation relating to Mr Nestor [CTJH.001.03006.0023]. I am aware that shortly after this, on or about 4 March 2009, Mr Nestor wrote to Cardinal Levada outlining his views on the case and the process followed by the Diocese and the Congregation for the Doctrine of the Faith **Tab 341**

Tab 342[CTJH.001.12001.0007]. On 13 March 2009 the Diocese received a copy of this letter through Archbishop Giuseppe Lazzarotto, Apostolic Nuncio [CTJH.001.12001.0006]. **Tab 343**

101 On 14 April 2009 the Diocese received a letter dated 30 March 2009 from the Congregation for the Doctrine of the Faith referring to Mr Nestor's letter and advising that the Congregation considered the case closed and that no further action would be taken [CTJH.001.03006.0009]. On 22 April 2009 **Tab 345** Bishop Ingham wrote to Mr Nestor conveying the Congregation's reply [CTJH.001.03006.0012]. **Tab 346**

Other experience of the Diocese with the Congregation for the Doctrine of the Faith

102 Since Mr Nestor's dismissal I have assisted with three other applications to the Congregation for the Doctrine of the Faith concerning allegations of the sexual abuse of a minor by a cleric. In two of these cases the Diocese sought dismissal of the cleric and in the third the Diocese asked that particular restrictions and conditions be placed on the cleric due to his age and declining health.

103 In each case I took care to ensure that the *Votum* for the Congregation was thoroughly prepared, summarising the facts, allegations and evidence in the case. In two cases the Bishop sought the direction of the Congregation for the Doctrine of the Faith in relation to the decision to be taken and was advised to invite the clerics concerned to seek laicisation or be dismissed. One cleric sought laicisation and it was granted, however, the other chose not to and was dismissed from the clerical state. In the third case, due to the age and infirmity of the cleric the Bishop requested that he be put under penal precept to remain permanently removed from public ministry and from any contact with minors, his priestly faculties be suspended and, on his release from gaol to reside in a high security aged care facility of the Bishop's choosing. In each of these three cases the Congregation for the Doctrine of the Faith gave its decision within six months of the case being forwarded.

Freedom of Information Request

104 On or about 8 September 2008 I received a letter from Fr Nestor requesting "*all documentation relating to or used for the Diocese's decision in the four matters involved [in the Ombudsman investigation]*" [CTJH.001.12001.0056]. **Tab 316**

105 On 24 September 2008 I responded, advising Fr Nestor that the Diocese would make arrangements for the documents to be prepared for access "*in accordance with the principles of Freedom of Information*" [CTJH.001.12001.0051]. **Tab 328**

106 In the following months I took various steps to respond to the FOI request, including seeking advice from Mr Howard Harrison of Carroll & O'Dea Lawyers and Ms Anne Walker-Rolls from the Catholic Commission for Employment Relations about the appropriate way to respond, given my concerns about the sensitivity and confidentiality of some of the material provided by the complainants. On 17 December 2008 I wrote to Mr Nestor outlining the documents or sections of documents that were exempt under the *Freedom of Information Act* 1989 [CTJH.001.12001.0044]. All other documents, however, were compiled and provided to Mr Nestor in accordance with his rights under the Act.

Royal Commission into Institutional Responses to Child Sexual Abuse
Towards Healing | Witness Statement of Moya Patricia Hanlen.

Signature Moya Patricia Hanlen
Name Moya Patricia Hanlen.
Date 6 June 2014

Witness M. Hiscox
Name MARY HISCOX
Date 6 June 2014