

16 December 2014

Most Reverend William Wright
Bishop of Maitland-Newcastle
841 Hunter Street
Newcastle West NSW 2301

Dear Bishop,

**Formal Advice to the Bishop of Maitland-Newcastle from his
Independent Advisory Panel regarding Rev. William Burston**

On 24 July 2014 you established a Panel, which came to comprise the undersigned:

To examine and report on adverse comments made in the Cunneen Report concerning Fr Burston.... [a] serving priest in the Diocese, and to advise Bishop William Wright of what further action, if any, ought to be taken in relation to [his] holding of Church offices in the Diocese and [his] continued public ministry.

On 5 August the Diocese invited submissions from the public with a closing date of 19 August. Seventy two submissions were received, some from multiple respondents.

On 20 August the Panel was advised by the Very Reverend Professor Ian B Waters that Father Burston, in giving evidence to the Special Commission of Inquiry, did not fail to fulfil the canonical obligations of his offices in the Diocese. On 30 October the Panel, having considered the Cunneen Report, the transcript of the evidence of Father Burston, and the submissions received from members of the public, concluded unanimously that he had a case to answer. We caused a letter to be sent to him setting out our preliminary findings and invited him to show cause against their confirmation. Our letter was in the following terms:

Dear Fr Burston,

The members of the Advisory Panel established by Bishop Wright to consider your conduct before the Special Commission of Inquiry in 2013 have considered the Report of the Commission, the transcript of your evidence before the Commission, and the submissions received from the public. Having done so, we have come unanimously to the conclusion that you have a case to answer in relation to your conduct in 2013 when giving evidence during the public hearings of the Commission.

The Panel accepts the opinion of the Very Reverend Professor Ian Waters that your conduct in 2013 did not involve a breach of the Canon Law. We also accept the Commission's findings in your favour eg paras 15.30 and 18.85. The Panel's concerns relate to your evidence before the Commission and the manner in which it was apparently given as found by

Cunneen SC (paras 12.254-12.59, 12.279-81,12.316,15.25, 20.26-27). The Commissioner did not accept the suggestion that you had a medical problem affecting your memory (para 12.279). The particularly troubling findings were that you were not prepared to consider questions fully or explore your memory to assist the Commission (paras 12.281, 20.27); and that you were keen to distance yourself from having had access to McAlinden's file, although it was probable that you had such access (paras 12.315, 12.317). She concluded that you were an "unimpressive witness" (para 20.26).

The Panel, having read the transcript, and considered the submissions from those members of the public who attended the public hearings when you gave evidence, sees no reason at the moment to disagree with any of those findings. However you have not yet had an opportunity to persuade us to reach a different conclusion.

The Panel is well aware of the potential injustice of judging conduct in the distant past by the very different standards of the present. Nevertheless, as at present advised, we see no injustice in judging your conduct in the witness box of the Commission in 2013 against contemporary standards in the community. In any event it may be appropriate for the Panel to apply higher standards, those expected of a priest and elder of the Church by Christ, His Church, and faithful priests and laity.

When the Commission was established Bishop Wright wrote in his pastoral letter of 1 March 2013:

As the Bishop of Maitland-Newcastle, I enjoin any member of our clergy...who has any information that may be relevant to the [Cunneen] enquiry, to come forward... and give them your information.

On 13 March 2013 the Bishop spoke to Diocesan clergy on a written presentation which contained the following statements which might be thought relevant:

The Diocese will help the truth to be known by...

- 1. Demonstrating a complete and genuine commitment to...supporting the Inquiry.*
- 6. Encouraging all members of the Diocese to make themselves available to the...Inquiry.*
- 7. ...We have an opportunity to 'get it out into the open'...*
- 9. ...Today our Diocese continues to cooperate with the Inquiry.*

In his further pastoral letter of 28 June 2013, shortly before the public hearings of the Cunneen Commission were due to begin on 1 July, the Bishop wrote:

"I have repeatedly committed the Diocese to co-operating fully with the State Commission, and I renew that undertaking today."

In giving evidence in the public hearings you were, of course, representing yourself. It may also be appropriate for the Panel to see you as also representing the Church, the Diocese, and the other priests in

the Diocese and for you to be seen as such by the laity and the general public. You gave your evidence at a time when the criminal conduct of some priests and the response of leaders of the Diocese at the time when they became aware of this conduct, were under intense public scrutiny. The Panel may be entitled to conclude that the Bishop's wish, or perhaps instruction, for the Diocese to co-operate with the Commission in getting to the truth, required any priest giving evidence during public hearings to do so with conspicuous honesty and candour. The findings of the Commission referred to above, unless displaced, would indicate that you failed in these respects when giving evidence in the public sessions. This view is supported by the reaction, reflected in their submissions to the Panel, of those who were present when you gave your evidence.

The Panel invites you to show cause against these preliminary views, and to do so in writing sent or delivered to Mr Sean Tynan at Zimmerman Services c/- of the Diocese within 21 days of the date of this letter.

The relevant findings of the Commission were:

- 1.150 Father Burston was found to be an unimpressive and/or unsatisfactory witness in some respects.*
- 12.254 In his evidence before the Commission Burston did not recall any matter relating to the disciplining of priests arising at any meetings of consultors, nor could he recall any occasion on which the question of a priest being subject to disciplinary action by the bishop was recorded in the minutes of consultors. Similarly he could not recall the nature of any complaint he first heard about McAlinden. He did however think McAlinden was the first priest of the Diocese about which concerns of that nature had been raised.*
- 12.256 Generally Burston said that he perceived himself to have some problems with his memory and that this affected his ability to accurately recall past events, particularly events relating to McAlinden. In this regard, a medical report from Burston's general practitioner opined that the author had the impression that Burston had a mild impairment of memory. As noted in paragraph 12.279 that report is subject to significant limitations affecting the weight that it can be given.*
- 12.257 Whatever the actual state of his memory, Burston maintained that he did not recall any conversation with any church official about McAlinden and the risks he posed.*
- 12.258 In evidence Burston was, however, prepared to accept that he had had a conversation with Redgrove about AL having been sexually abused by McAlinden and that such a conversation might have occurred in about 1993 to 1994. He said he could not remember the conversation precisely or whether it was in person or by telephone. He was prompted to recall that AL had said McAlinden had sexually abused her, that she had confided that information to Sister.... Redgrove and that, 'if I recall, there was a very strong refusal to take it to the police'.*
- 12.279 The legal representatives for Burston provided to the Commission a one-page report from his general practitioner*

relating to Burston's memory. That report was however, subject to significant limitations that attenuate the weight that can be given to it. In particular, the author.... had no baseline testing of Burston against which to measure any memory loss. The author's statement that Burston had a 'mild impairment of memory' was stated to be an 'impression' only. Taking into account the limited utility of that evidence, together with Burston's demeanour as a witness (as noted below) the Commission does not accept the suggestion that there was a medical problem affecting Burston's memory. This is so bearing in mind the sharp and specific recall he maintained in relation to certain matters that could be perceived as tending to explain his past actions or exculpate him. This was juxtaposed with his asserted absence of recollection of events that might cast him in a less favourable light.

12.280 More specifically, Burston professed a complete absence of recollection in relation to many relevant matters and particularly those that tended to suggest that he might have had knowledge (or earlier knowledge) of allegations about McAlinden having sexually abused children. In contrast, when it came to matters that might potentially exonerate him in terms of his knowledge or conduct, his recollection was at times acute and striking in its particularity. For example, he recollected that in the case of AL's complaint there was a 'very strong refusal to take it to the police'. This evidence was in connection with a conversation he had initially said he could not be precise about.

12.281 The regularity with which Burston replied 'I don't recollect' was a feature of his testimony. It left an unavoidable impression that, in relation to many matters about which he was questioned, he was not prepared to consider the question fully or to examine or explore his memory in order to assist the Commission. Having regard to the totality of his evidence, the Commission found Burston to be an unimpressive witness in certain respects.... (Repeated in 20.26-7).

12.315 Burston was keen to distance himself from the appearance of having gained access to McAlinden's file in order to deal with any of the correspondence. He said.... that for the correspondence he was preparing it was not necessary to look at McAlinden's file in the bishop's office so as to put himself in a position to write such letters or ensure their accuracy. Burston seemed to be at pains to emphasise that he did not see whatever file or information was used to obtain the material in the letter he was asked to write for the bishop. He told the Commission that he had no recollection of ever looking at the bishop's files. [Bishop] Malone's evidence, however, was that the vicar-general [an office that Burston held from 1 January 1996 for 5 years] usually had access to the file kept in the bishop's office.

12.316 Burston said that he did not recall Malone telling him anything about evidence supporting allegations that led to the pursuit of the laicisation [of McAlinden], did not recall having seen Clarke's formal letter to McAlinden dated 19 October 1995 that was in pursuit of the laicisation, did not recall Malone or anyone

else telling him in 1996 that McAlinden had made a confession to Lucas, and did not recall Malone telling him in 1996 that some people were threatening to take the 'whole matter' to the police.

12.317 It is improbable that Burston would have written such letters to McAlinden [and we might add telephone the Chancellor of the Archdiocese of Dublin and follow this up with a letter to him] without having read earlier and related correspondence to understand the context in which he was writing, to ensure the accuracy of his letters, and to understand McAlinden's responses. The Commission considers that in his oral evidence Burston tried to distance himself from appearing to have any knowledge of McAlinden's offending."

Father Burston showed cause on 1 December when his solicitor lodged a 5 page written submission. This initially focussed on the Commission's findings that he was an unimpressive witness "in certain respects" (paragraphs 5, 6, 7, and 8), suggesting that the problems were marginal rather than fundamental. This glossed over the extent of *"those respects"*. Father Burston was first called on to give evidence on 17 July 2013, and gave evidence that day and on 18, 19, and 29 July and on 2 September. His transcript commenced at p. 1222. His *"I can't recall"* commenced on pp. 1234, and already on p. 1235 counsel assisting is asking whether he is doing his best to assist, and is not trying to distance himself from any knowledge of McAlinden. Yet at p. 1238 he recalled an incident in the 1950s involving McAlinden's lack of carpentry skills. The transcript reveals the following responses of *"I don't recall"* or equivalent, or *"not necessarily"*, a stock answer of those who seek to evade questions:

p. 1245 3 examples and one *"not necessarily"*, counsel asks *"what makes you resist the notion that you had taken charge of the laicisation process?"*

p. 1246 another *"not necessarily"*

pp. 1246-7 counsel asks *"Doing the best you can for the Commission now, do you think it's likely...?"*, his answer was "not necessarily"

p. 1248 *"I don't recall"* twice and in answer to the question *"...as vicar general...you had access to the bishop's filerelating to McAlinden? Not necessarilyif there was any access.... it would have to be given.... to me by the.... bishop"* [something Bishop Malone denied]

p. 1249 three *"no recalls"* and a denial that Bishop Malone ever gave him access to a priest's file

p. 1250 another *"not necessarily"*

p. 1251 he said that it was not necessary for him to look at McAlinden's file

p. 1253 he denied seeing McAlinden's file

- p. 1254 he had no recollection of *"ever looking at the bishop's files"*
- p. 1262 *"I cannot recall"*
- p. 1263 three *"can't recalls"* or equivalent
- p. 1266 four
- p. 1267 three
- p. 1268 four
- p. 1269 six
- p. 1270 one
- p. 1272 two
- p. 1273 he is asked about a media release by the Diocese on 24 April 1996 after Father Ryan was charged with child sexual abuse, which named Father Burston as the contact person in the Diocese, and he says that he is not sure that he was involved in its preparation, and at p. 1274 he could not explain a statement in it
- pp. 1275-8 he was examined about a letter he wrote to the Church's Professional Standards Office on 10 August 1999 which produced three *"I don't knows"* or equivalent on p. 1276, two on p. 1277, and one on p. 1278
- p. 1278 he is asked about a letter he wrote to the Bishop of Nottingham on the same day and this produced *"I can't recalls"* on p. 1279 and p. 1280
- p. 1283 he is asked about a letter he wrote to McAlinden the same day which produced three *"I don't knows"* or equivalent
- p. 1284 he is asked about a letter he received from the Professional Standards Office on 24 August 1999 which produced three *"I don't recalls"*
- p. 1286 three
- p. 1287 four
- p. 1288 one
- p. 1290 he agreed that his memory had been quite precise on some aspects, but denied that he had been *"selective"* in his evidence in terms of what he was willing to and able to recall

- p. 1293 he was asked about his knowledge that Father Fletcher, a friend of his, had abused boys. This produced one *"don't recall"* on p. 1293, three on p. 1294, one on pp. 1295 and 1296 and two on p. 1297.
- p. 1302 he could not remember how frequently he saw Father Fletcher after the latter was accused of sexual abuse on a 60 Minutes program
- p. 1304 he agreed that he was shocked to learn that McAlinden had been abusing children, that it was a momentous occasion but he could not recall the time or the occasion with four *"no recalls"* on pp. 1304-5
- pp. 1306-7 five
- p. 1308 four
- p. 1309 three
- p. 1311 three
- p. 1312 one
- p. 1315 four
- p. 1316 one
- p. 1319 one
- p. 1327 one
- p. 1333 one
- p. 1335 one
- p. 1344 one
- p. 1345 one
- p. 1346 four
- p. 1347 one
- p. 1361 one
- p. 1372 three

It is clear from the transcript that the "certain respects" referred to by the Commissioner were not limited or isolated, but related to significant and extensive parts of Father Burston's evidence.

[REDACTED]

The public proceedings of the Commission, particularly 'highlights' from the evidence of victims and of clergy were extensively televised on Hunter Valley and State wide television. The excerpts televised would not have been chosen to show clergy witnesses in the best possible light. It would be reasonable to infer that many viewers within and outside the Catholic Church, formed the same opinion of Father Burston and his evidence.

The Panel therefore rejects paragraphs 5, 6, 7, and 8 of Father Burston's submissions.

Paragraph 12 of his submissions asserts that Father Burston *"apparently did not have adequate opportunity to expand on his evidence subsequently."* This cannot be accepted. He gave evidence on 17, 18, 19 and 29 July, and on 2 September. His counsel did not apply to recall Father Burston and did not seek to re-examine him at any stage.

Paragraph 13 refers to Bishop Malone's evidence noted at 12.317 that the Vicar-General had access to the files for priests held in the Bishop's office. Father Burston did say many times that he had no recollection of seeing McAlinden's file, and twice denied having seen it (pp. 1249, 1252). However he claimed, contrary to Bishop Malone, that he would have had to ask for access to a priest's file. His continued refusal to accept that he may have obtained McAlinden's address in Ireland from the file and looked at it before he wrote the letters he did is scarcely credible on the face of the transcript. We probably could not have made that finding without seeing Father Burston give evidence but we can say that the Commissioner's adverse findings are fully supported by the transcript.

Paragraphs 16, 18, 19 and 24 refer to the abuse to which Father Burston was subjected outside the Commission on the first and second days when he gave evidence. When he was asked on a later day whether this had affected his evidence he said (p. 1930) "*I don't think so, no*" and added that it had not impacted on his ability to remember things in the past.

Paragraph 17 claimed that "*it is reasonable to expect imperfect recall in anyone of [Father Burston's] age even without the medical interventions detailed by Dr Frost*". This may be accepted, but does not explain or justify his frequent refusal to acknowledge probabilities, his ability to recall matters to his apparent advantage, and his unwillingness to carefully consider questions and search his recollection. These were noted by the Commissioner and are supported by the transcript. Indeed there is a concession in paragraph 25 "*that he may well have answered some questions without giving adequate thought to the question before answering*" which is what the Commissioner found.

Paragraph 26 claimed that it was not possible in the time allowed for a response to the Panel's show cause letter "*to obtain any further expert assessment in relation to his memory function.*" The time allowed for submissions was 21 days, but the establishment of the Panel had been announced on 1 July 2014 and it was clear that the focus would be on the findings of the Commission. Father Burston's neurological condition, if it explained his inability to recall past events, would clearly be highly relevant, and tend to excuse his conduct in the witness box.

Moreover during the public hearings of the Commission it became clear from questions by counsel assisting that the willingness of Father Burston to assist the Commission and the state of his memory were becoming issues. Steps could have been taken to have Father Burston medically and psychometrically examined to determine whether there was a medical explanation for his inability to recall past events. Forty seven days elapsed between 17 July 2013 when he first gave evidence and 2 September when he last did so. The only medical evidence obtained by his legal representatives was the report of Dr Frost, his general practitioner, dated 24 July which counsel assisting tendered on 29 July (p. 1941). In doing so he indicated that he would be submitting that the report should be given very little weight for reasons he outlined (pp. 1942-3). This was said on behalf of Father Burston to be the only medical evidence that could be obtained in the time (p. 1943). However a further five weeks elapsed before 2 September when Father Burston gave evidence for the last time, and there was no more medical evidence on his behalf. We do not accept that the time allowed by our show cause letter provides a reason for not acting on the relevant findings of the Commission.

Paragraph 28 submitted that "*the process of inviting public submissions under these circumstances is not necessarily going to bring forth positive comments about 50 years of priestly life and the quality of the pastoral care provided by Father Burston to many under his*

care during that time." The Panel received 72 submissions, some on behalf of multiple respondents.

A minority were supportive of Father Burston, and many who considered that he ought to resign or be removed acknowledged the worth of his ministry in the past. We see no reason for discounting the submissions of those who were present when Father Burston gave evidence, They are consistent with the transcript and the findings of the Commission and come from within the Church. Those respondents might be expected to view the evidence of Father Burston in the most favourable light possible. Many outside the Church or alienated from it would have a less charitable approach.

The Panel therefore concludes that Father Burston has failed to displace the preliminary findings outlined in our 'show cause' letter and those findings are confirmed.

We find that Father Burston ignored your instruction, or at least your wish, that clergy in the Diocese should cooperate fully with the Special Commission of Inquiry. In any event the Diocese was on trial, in full view of the media and the public, and this called for clergy to give their evidence with conspicuous candour and honesty. Father Burston manifestly failed to do this. In fact he did the opposite. In our opinion Father Burston's continued public ministry in the Diocese has been fatally compromised by his evidence before the Commission and its findings. A continuation of his public ministry would hinder the mission of the Church. He should be asked to resign from his parish, and should he refuse his faculties should be withdrawn.

Yours faithfully:

PANEL MEMBER'S
NAME WITHHELD


Patricia Crennan


Ken Handley


Terry Lovat

PANEL MEMBER'S
NAME WITHHELD


Christopher de Souza

**APPENDIX TO THE FORMAL ADVICE TO WILLIAM WRIGHT,
BISHOP OF MAITLAND-NEWCASTLE**

**Submission of Rev. William Burston
to the Independent Advisory Panel
dated 1 December 2014**

SHOW CAUSE SUBMISSIONS RE FATHER WILLIAM BURSTON

1. Father William Burston ("WB") is 79 years of age.
2. He was ordained a priest in 1963; and has now served the Church continuously for over 50 years, acting in senior positions within the Diocese from time to time, including Vicar-General and as Director of Centacare (formerly the Catholic Family Welfare Bureau) for a lengthy period.
3. No adverse findings have ever been made against WB in relation to any matter until the release of the Report of the Special Commission of Inquiry into matters relating to the police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle, chaired by Ms Margaret Cuneen SC, on 30 May 2014.
4. At the outset, it is urged that the Commission's findings should be carefully considered by the Panel in context.
5. At Paragraph 20.26 Commissioner Cuneen found WB "to be an unimpressive witness in certain respects".
6. It is submitted that, on any objective basis, more extensive findings were made against other witnesses at the Commission; and that a finding that a witness is unimpressive "in certain respects" to some extent focusses negative attention on that witness's evidence in those "certain respects" rather than on the whole of the witness's evidence.
7. At paragraph 12.281 Commissioner Cuneen does state that she found WB to be an unimpressive witness in certain respects "having regard to the totality of his evidence." Although the only specific findings which could be said to be in WB's favour were those at paragraphs 15.30 and 18.85, it is submitted that the Panel can safely conclude that WB's evidence was considered satisfactory apart from the "certain respects" identified.
8. It is submitted that "unimpressive ... in certain respects" must also be seen in the overall context of the facts that:
 - 8.1 WB willingly made statements upon request to (as he then was) Detective Sergeant Peter Fox on 2 occasions, 20 May and 8 September 2003 in relation to James Fletcher; and

8.2 WB much more recently made an electronically recorded Record of Interview at the request of Detective Sergeant Little at Newcastle Police Station.

I accompanied WB to that interview and remained throughout. After its completion, Detective Sergeant Little indicated to me that it was most unlikely that any action would be taken against WB as a result of his evidence, and none has been. I understand that no copy of the recording of that interview was available to the Special Commission. None was provided to WB following the completion of the interview.

9. In relation to the 2003 statements, I am instructed by WB that he had no recollection of having made a second statement until shown it at the Commission.
10. In relation to the finding at paragraph 20.27 concerning "pre-existing knowledge by at least 1993 of allegations that McAlinden had sexually abused children" I am instructed by WB that he cannot recall, to this day, the time when he first heard of McAlinden's possible offending behaviours.
11. WB's oral evidence was that he became aware of the risk posed by McAlinden and potential dangers for children (transcript p.1234, 33-36) but could not, even when pressed, recall the time that he was made aware. I am instructed that WB's counsel at the Commission advised him before he commenced his oral evidence not to try to guess the answers to questions if he was uncertain of the answer to, or had no memory of, what he was being asked. I am instructed that WB tried, where he had no clear recollection of events or times, not to guess or attempt to reconstruct where he genuinely did not know the answer to a particular question.
12. Upon reading the transcript and taking further instructions from my client, it is submitted that the questioning of him on 17 March 2013 seemed to proceed on the possible premise that there would have been a handover process from one Vicar-General directly to his successor, whereas the reality may have been that each took their instructions directly from the Bishop of the time. In sum, WB's evidence was that he took his instructions directly from the Bishop in relation to certain tasks that he was requested to complete by the Bishop in relation to McAlinden. It is submitted that it is improbable, in the circumstances that Bishop Malone assumed office, given adverse publicity in particular, that he would have relinquished the overall control of files in relation to priests who had been accused to anyone else. Admittedly this is with the benefit of hindsight, but WB apparently did not have adequate opportunity to expand on his evidence subsequently.

13. There is no indication in the transcript as to whether Bishop Malone, upon succeeding Bishop Clarke, was present in the Diocese at the relevant times when WB was requested to complete tasks in relation to McAlinden, or whether Bishop Malone was absent from the Diocese at any of those times. Questioning seems to have proceeded on the assumption that the Bishop was present in the Diocese. The relevance of this is, on my instructions, that the duties of a Vicar-General are usually not as onerous when the Bishop is present in the Diocese and it is less likely that WB would have accessed the Bishop's file on McAlinden simply to write correspondence as instructed by the Bishop unless the Bishop was absent and the Vicar-General was acting fully in his stead. No evidence was given to the Commission concerning the Bishop being absent from the Diocese at any relevant time. Bishop Malone's evidence (noted at 12.317) that the Vicar-General had access to files kept in his office is not the same thing as evidence verifying that WB did in fact access the McAlinden file. WB has been consistent in his evidence that he did not access the file itself at any time, taking his instructions to complete correspondence tasks from the Bishop.
14. At 20.27 the Commissioner gives an "example" concerning the manner of WB giving evidence. I am instructed that the event (i.e. refusal by AL to make a complaint to the police) was clear in his mind because of conversations about it with Sister Paula Redgrove and Bishop Michael Malone, but WB could not be precise about when or where those conversations occurred. No other examples are given by the Commissioner supporting her conclusion – and some of the tendencies she makes findings about are impossible to pick up from a written transcript. There is certainly a difference of opinion between counsel on occasions as to how quick WB's answers really were.
15. Only once previously had WB given sworn evidence in any matter and that was only briefly, in relatively non-controversial circumstances.
16. WB was subjected to abuse and harassment by a group of people at the entrance to Newcastle Courthouse and in the street on the first day he gave his evidence (transcript pp. 1256-7) and despite the Commissioner's warnings, she had to issue a further warning on the second day of evidence, against "bullying and boorish behaviour" towards witnesses, including WB (transcript p 1259).
17. This placed WB under abnormal stress for the first part of his evidence. Further, many events about which he was asked, as a person then already into the second half of his seventies, who had had a number of significant health difficulties, took place a number of years beforehand. It is now almost 19 years since WB took over

as Vicar-General; and it is submitted that it is reasonable to expect significant imperfect recall in anyone of WB's age, even without the medical interventions detailed by Dr Frost.

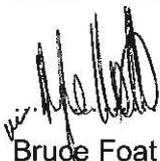
18. It should be taken into account that there has been virtually no criticism of WB arising from his more contemporaneous statements of 2003 and examination of him concerning the 2012 Record of Interview despite the criticisms of Fox, rejected by the Commission. The "bullying and harassment" adverted to by the Commissioner clearly added significantly to the levels of stress in anyone under cross-examination, resulting in the remainder of WB's evidence being adjourned for over a week.
19. It is submitted that few witnesses in any Tribunal facing experienced cross-examination are subjected to this kind of behaviour on occasions when they are required for cross-examination and the Commissioner appears to have accepted This behaviour towards a witness – and its repetition – as a stressor warranting the adjournment of the cross-examination for more than a week. It is submitted that it is a rare occurrence indeed that firstly, a witness for cross-examination would be exposed to this kind of behaviour outside of the witness box on a hearing day; and secondly, that a tribunal – or Commission of Inquiry – would adjourn cross-examination for this reason, so serious was the behaviour regarded by the Commissioner at the time.
20. When examination of WB under oath is resumed, he is asked whether any of the stress imposed by the behaviour of those at Newcastle Courthouse and on the street on the earlier occasions "may have impacted in any way on your ability to give truthful evidence to the inquiry" from Wednesday to Friday (transcript p.1930). WB's answer is "I don't think so, no". He further answers that there is, in his view, no impact on his ability to remember things that occurred in the past – such as his memory may have been of those things.
21. I am instructed that WB adheres to the truthfulness of oral evidence given by him to the inquiry.
22. The view formed by the Commission was that:

"... there was a reluctance on his part to fully consider questions put to him or to explore his memory for information that might assist the Commission." (Paragraph 20.27)

This view grounded the finding that WB was an "unimpressive witness." (Paragraph 20.26.)

23. This is not a finding that WB was an untruthful witness; nor that what had occurred when he first gave evidence to the Commission had or had not impacted on his memory.
24. WB's instructions to me are that he did indeed feel under siege and under threat both because of the shock of what was occurring outside the Courtroom; and because of the superadded pressure of the detailed cross-examination within it, about matters going back a number of years about which his recollection was imperfect. Both situations were quite alien to him; and beyond anything which he had experienced in his long life.
25. WB concedes that in these circumstances he may well have answered some questions without giving adequate thought to the question before answering.
26. Under the time constraints in relation to making this response, it was not possible for WB to obtain any further expert assessment in relation to his memory function. In preparing these submissions, I had a lengthy conversation with Dr Frost, who – while he was unable to add to his report of 24 July 2013 – was prepared to make a referral to a psycho-geriatrician for an assessment and/or to a Clinical Psychologist experienced in the field. Neither of these assessments could be obtained in the time available.
27. Additional material was made available by Zimmerman Services by way of redacted/anonymised public submission, on 14 November 2014.
28. It is respectfully submitted that the process of inviting public submissions under these circumstances is not necessarily going to bring forth positive comments about 50 years of priestly life and the quality of the pastoral care provided by WB to many under his care during that time.
29. WB takes to heart the negative sentiments expressed in those submissions, even though they are not all directed at him exclusively, or his evidence solely. Part of the criticism relates to imperfect recall of events which took place quite some years ago, and as has already been set out above, evidence given by WB in statements closer in time to the events which took place was not the subject of adverse findings.

Date: 1 December 2014



Bruce Foat

Partner

Foat Associates