



# Reporting the FAILURES of the CATHOLIC CHURCH in regard to FATHER 'F'

In January 2013 the Catholic Bishops of Armidale and Parramatta released a report of an inquiry into 'processes related to the management'<sup>1</sup> of a priest who had sexually abused children.

**T**he report by Antony Whitlam QC into the failures of the Catholic Church in regard to Father 'F'<sup>2</sup> is yet another example of why organisations should not be left to investigate serious criminal allegations against themselves.

The report was commissioned by the present Bishops of Armidale and Parramatta. Mr Whitlam QC had the advantage of speaking to most of the clergy involved, examining records and speaking to some victims and the families of victims.

He details a long history of very serious allegations against Father 'F' and does not doubt those allegations.

In 1987 Father 'F' was arrested and charged with serious sexual offences against a young boy, Damian Jurd. It appears from the report<sup>3</sup> that the parish paid the fees of Chester Porter QC (defence barrister for Father 'F') at the suggestion of the then Bishop of Armidale, Bishop HJ Kennedy, with the result that Damian Jurd, who made serious (and well-founded) allegations of abuse, was effectively demolished<sup>4</sup> in the witness box and the prosecution went no further.

Mr Whitlam QC makes no comment upon the appropriateness of the Church spending significant sums of money to protect a priest but not one of its altar boys. Mr Whitlam QC does not doubt that Damian Jurd (who later committed suicide) was abused.

There are many surprising instances where Mr Whitlam QC makes no clear adverse findings.

Father 'F's continued attempts to be alone with children led Father Usher, Director of Centacare in the Archdiocese

of Sydney, to write a letter to Father Wayne Petes, who had served as the Armidale representative on committees of the Church concerned with the sexual abuse of children. In the letter, dated 16 September 1990, Father Usher wrote that although Father 'F' had been acquitted:

'His personal manner and his ongoing need to spend time with children is a matter of grave concern to me. During my interview with him I gained the impression that he was unable to understand the seriousness of the matters with which he had been charged and was arrogantly dismissing the whole affair as a figment of other people's imagination. The events, serious as they were alleged to be, did not seem to distress him greatly. His behaviour, therefore, indicated that his feelings were repressed and that he had developed certain defence mechanisms which enabled him to cope with such stressful events by denying that they had any basis of truth at all. Of course, denial is a trait of many child sexual assault offenders and it is not uncommon to witness complete disinterest in such people in relation to their behaviour. I am not suggesting that the priest in question is guilty of such behaviour but his personality traits indicate some deep-seated disorder. During the single interview I had with him I was in no position to make any comprehensive assessment nor would it ... [be] appropriate for me to do so.'<sup>5</sup>

Father Usher recommended a further assessment before any decision about whether Father 'F' be given a pastoral appointment.

Bishop Manning took office as the Bishop of Armidale in July 1991. In late 1991 he made a typewritten note of advice that he had received from Father Peters. The note records Father Peters saying that there 'are still children around who were silenced at the time of the court case'. Both Bishop Manning<sup>6</sup> and, it appears, Father Peters had a failure of memory when interviewed by Mr Whitlam QC as to this silencing of witnesses. Yet there are no critical comments in Mr Whitlam's report about such an extremely disturbing allegation.

Bishop Manning had a meeting with Father 'F' on 9 October 1991. Afterwards the Bishop summarised the meeting for his files. He wrote that he had mentioned to Father 'F': 'incidents with boys in Moree', the court case in Narrabri and 'the silencing of witnesses in Moree by Rev Monsignor Ryan', widespread knowledge of these matters and 'potential damage to the diocese and the priesthood'. There is concern about 'the danger to children if a cure had not been effected' but no expression of concern whatsoever for existing victims. Yet Mr Whitlam QC makes no clear adverse finding in respect of such serious matters. Bishop Manning had a failure of memory in relation to this matter,<sup>7</sup> which again goes without adverse comment. Similarly, there is no adverse comment about the fact that serious allegations in relation to abuse of a 12-year-old boy, Daniel Powell, in the Parramatta area were played down by the vicar-general Father Richard Cattell.<sup>8</sup>

Father 'F' was suspended by Bishop Manning and ultimately referred to the committee of Fathers Usher, Peters and Brian Lucas. Brian Lucas was a senior member of the clergy and also a lawyer, and, like Father Usher, one of the leaders in developing for the bishop's conference the protocols that became called 'Towards Healing'.<sup>9</sup> The committee of Fathers Usher, Peters and Lucas first met Father 'F' on 3 September 1992.

Two days before that, on 1 September 1992, Bishop Manning met with Father 'F'. Bishop Manning's handwritten file note on that meeting stated that father 'F' claimed complete innocence in respect of the Damian Jurd charge but 'referred to three other incidents which could have brought him "14 years apiece". I didn't question him about these'.<sup>10</sup>

The failure to explore such serious potential criminal conduct is not explained by Bishop Manning nor criticised by Mr Whitlam QC.

Despite subsequent comments by Cardinal Pell, there is no contemporaneous record of the meeting between Father 'F' and Fathers Usher, Peters and Lucas at the Cathedral presbytery in Sydney on 3 September 1992. The meeting, which lasted nearly three hours, was the subject of a report from Father Peters to Bishop Manning dated 11 September 1992 (eight days later). I set out that letter at some length: 'After opening remarks from Rev Brian Lucas, "F" indicated that he wished to make certain admissions.

He admitted that there had been five boys around the age of ten and eleven that he had sexually interfered with in varying degrees in the years approximately 1982 to 1984 while he was the assistant priest at Moree.

He had placed his hand on the leg of one boy who had indicated that he did not want that to happen. "F"

maintains he never attempted any advances again to that particular child.

It was a similar story with another boy. He made advances by touching the second child on the leg and the child indicated he did not want that to happen. "F" maintains he made no such further advances to that child.

A third child was the boy who eventually brought criminal charges against "F" in the civil courts. Although the magistrate did not send the matter to formal trial because of a lack of evidence, while denying most of the charges, "F" did admit that he fondled the boy's genitals during a car trip from Moree to Narrabri.

The situations of boys four and five were the occasion of more serious admissions on the part of "F". He admitted that over a period of approximately 12 months he fondled the genitals of each of these boys and, to quote, "sucked off their dicks". As far as "F" can remember this was done on about a monthly basis over a period of 12 months. It was done only when each boy was alone with him. The boys were never together when an offence took place. After the allegations of this behaviour were made, "F" was transferred to another parish. He alleges he then became sexually involved with a woman ..."<sup>11</sup>

After recording these matters, Father Peters then noted that what was considered was laicisation and a program of therapy.<sup>12</sup>

Curiously, Bishop Manning could not remember that letter. Neither Fathers Lucas nor Usher remember any such admissions. However, Father Usher made a note soon after the meeting that "F" is unrepentant about his sexual misconduct with children in my opinion.<sup>13</sup>

There was a further meeting between the three priests and Father 'F' on 24 September 1992 and a third meeting on 12 November 1992.<sup>14</sup>

Ultimately, in 1996, an action was brought on behalf of Damian Jurd against Father 'F', Bishop HJ Kennedy, the Trustees for the Diocese of Armidale, Cardinal Clancy and the Trustees for the Archbishop of Sydney, Kelvin Canavan of the Catholic Education Office and Monsignor Ryan. Those proceedings were settled in January 1999 by a deed of release and upon payment of an undisclosed sum.<sup>15</sup>

Mr Whitlam QC is critical of the magistrate's reasons in dismissing the original charges (in 1987), saying that his reasons are 'plainly unsatisfactory and provide no support for his stated conclusion'.<sup>16</sup> In addition, he is critical of the decision not to continue the prosecution of 'F' on an *ex officio* indictment.<sup>17</sup> Mr Whitlam QC does go on, however, to say that:

'For my purposes, the real significance of the proceedings is that a good deal of the evidence cried out for investigation by the Church authorities.'<sup>18</sup>

Father 'F' was charged with sexually assaulting a 15-year-old girl in 1998. This charge was dismissed in Armidale on 4 February 1999.<sup>19</sup>

Also in 1998, Father 'F' appears to have had further dealings with Daniel Powell. During that year, Father 'F' and Mr Powell met several times and various sums of money, totalling about \$22,000, were paid by Father 'F' to Mr Powell. >>

Father 'F' then alleged those sums were paid as a result of blackmail, because Mr Powell threatened he would otherwise go to the police and accuse Father 'F' of sexually assaulting him as a young boy. After a further alleged request for \$18,000, Father 'F' spoke to 'a friend in the police'<sup>20</sup> and Daniel Powell was arrested and charged with 12 counts of demanding money with menaces.<sup>21</sup>

Two further complaints of sexual abuse by Father 'F' during his time in Moree were received by the Church. One was received by Fathers Lucas and John Davoren in Sydney in June 2001 and another in 2002 by Cardinal Pell while he was in Melbourne.<sup>22</sup> Neither of these complaints (it appears) were referred to the police. Cardinal Pell has subsequently said that he advised the victim to go to the police, but there is no adverse comment about the obvious failure of senior clergy in the Church to refer these matters to the police themselves.

In October 2003, Daniel Powell, while being interviewed by police, made very serious allegations of sexual assault by Father 'F'.<sup>23</sup> When Father 'F' was cross-examined at Parramatta Local Court on 14 October 2003, counsel for Mr Powell asked about the allegations of sexual abuse and Father 'F' objected on the grounds of self-incrimination. The solicitor from the Office of the DPP told the magistrate that no charges were to be laid against Father 'F' in relation to those allegations 'at this time'. Mr Powell was committed for trial.<sup>24</sup> At that trial in June 2004, it appears that Father 'F' admitted sneaking Mr Powell into the presbytery when he was 12 years of age and giving him cigars and alcohol, allowing him to drive his car on private land and giving him firearms to play with. He regarded the boy as a great 'mate' whom he 'loved', but declined to answer questions in relation to a sexual relationship on the grounds of self-incrimination.<sup>25</sup>

The report from Father Peters to Bishop Manning of 11 September 1992 was tendered but not admitted into evidence. However, the trial judge said that counsel could show the document to Father 'F' and ask questions based on it. Father 'F' was then asked about the meeting of 3 September 1992 in these terms:

Q. And ... I suggest to you that at that meeting you made certain admissions to those priests that you had had oral sex with young boys, what do you say about that?

A. Yes.

Q. And that's the reason why they won't let you carry out your duties as a priest isn't it?

A. That's part of it, yes.<sup>26</sup>

The trial concluded on 18 June 2004 and the jury returned verdicts of not guilty on all counts.<sup>27</sup>

On 27 June 2012, in relation to the meeting of 3 September 1992, Father Lucas told a producer with the ABC's *Four Corners* program that Father 'F' did not say anything that he felt should be reported to the police.<sup>28</sup> Monsignor Usher went further when he told the producer on 29 June 2012, 'I can state that "F" made no personal disclosures of criminal behaviour during the meeting in September 1992. There was, therefore, nothing that could be reported to the NSW Police and hence no report was made by us.'<sup>29</sup>

Those, of course, are not statements of lack of recollection but flat statements that nothing was said.

Father Peters, when asked by the producer, said that in his report to Bishop Manning:

"F" conceded that there had been instances of misconduct but deliberately would not give any details or say anything that would incriminate him or amount to an admission in the legal sense. He persisted in denying the charges in the case which had gone to court. However, we concluded that he should be removed from ministry.<sup>30</sup>

How does Mr Whitlam QC deal with the clear conflict in the material? He says it is unsurprising that after 20 years the three men have different recollections of the 1992 meeting. That is so, but what is surprising is that Mr Whitlam QC prefers the present and self-serving recollection of the three senior clergy to the express terms of a report to the Bishop on the meeting written only eight days later.<sup>31</sup>

In the *Four Corners* program Cardinal Pell referred to a 'file note' of the meeting on 3 September 1992 that he said, 'does not show that [F] made any admission'.<sup>32</sup> About this, Mr Whitlam QC says only:

'It would be unfortunate if that statement gave the impression that Father Usher's briefing note was a contemporaneous record of the meeting in question.'<sup>33</sup>

Mr Whitlam QC was being extraordinarily charitable. There was no record of the meeting other than the report of 11 September 1992 by Father Peters. The so-called 'file note' was merely a note of 6 June 2012 (20 years later) saying 'He made no admissions.' It was Monsignor Usher's then recollection of events. For Cardinal Pell to represent this as a file note of the meeting is clearly seriously misleading. The absence of clear criticism of Cardinal Pell in respect of this and in respect of his failure to deal appropriately with the complaint by a victim in 2002 is, at the least, disturbing.

Mr Whitlam QC accepts that the very specific admissions contained in the report of 11 September 1992 cannot be reconciled with what the ABC was told. Nor do they accord with what Father Lucas and Monsignor Usher recalled to Mr Whitlam QC.<sup>34</sup>

Mr Whitlam QC concludes there is nothing sinister in the conflict between the admissions and does not accept that the earlier document must necessarily be accepted as a more accurate record. He thinks Father Peters prepared a report for his Bishop which drew on information not available to Fathers Lucas and Usher.<sup>35</sup> He therefore concludes that 'notwithstanding the honest differences in recollection, I do not disbelieve Father Lucas and Monsignor Usher. Accordingly, if "F" made no admissions that either of them considered could and should be reported to the police, then there was no "cover-up" back in 1992.'<sup>36</sup>

However, the terms of Father Peters' report of 11 September 1992 suggest that Father 'F' made express admissions, when during the meeting he made them, and purport to quote his precise words, at least in part.<sup>37</sup> To suggest that this might be information gathered from some other source is on the face of it desperate speculation to explain the inexplicable. It does not amount to a logical or rational explanation for the terms of that report.

Mr Whitlam QC does not say that Father Peters says the information came from other sources. That is Mr Whitlam QC's explanation.

Moreover, even if that information came to Father Peters from a different context, where is the criticism of Father Peters for not going to the police? The failure of Mr Whitlam QC to grapple seriously with the conduct of Fathers Peters, Usher and Lucas, as well as the very tender treatment of the conduct of Cardinal Pell, inspires no confidence in the conclusions in the report.

Mr Whitlam QC omits to mention here that Father Usher noted soon after the meeting that "F" is unrepentant about his sexual misconduct with children in my opinion'.<sup>38</sup>

Even more seriously, he fails to mention that Father 'F' was said by Father Lucas to have admitted being 'a bad boy' and Father Lucas described it as 'criminal and wicked behaviour'. Father Lucas conceded that admissions were made at that meeting but did not think it useful to report them to police because the names of the altar boys involved were not disclosed.<sup>39</sup> Of course, one was expressly identified in Father Peters' report of 11 September 1992 – 'the boy who eventually brought criminal charges against "F" in the civil courts' – Damian Jurd. The others would have been readily obtainable by the simplest enquiry in Moree.

Mr Whitlam QC's failure to analyse this material makes his conclusion in respect of the three senior clergy worthless. The evidence is damning against the suggestion that no admissions were made. His failure to criticise three senior clergy or, in particular, Father Peters who wrote the letter, or Bishop Manning who received it, is extraordinary and inspires no confidence whatever in his report.

Mr Whitlam QC reserves his most serious criticism for Bishop HJ Kennedy's failures. It seems perfectly clear that Bishop HJ Kennedy continued to support Father 'F' despite medical evidence that seemed to assume a history of abuse of children.<sup>40</sup> Mr Whitlam QC regards his failures<sup>41</sup> to look into the various matters as 'utterly inexplicable'. He refers to 'the silencing of the witnesses' by Monsignor Ryan as having been accepted as fact by Bishop HJ Kennedy, but fails to make the obvious comments or express the need for further investigation into that conduct.<sup>42</sup> He is critical of the ability to have a 12-year-old drinking and smoking in a house shared by Father 'F' with the parish priest.<sup>43</sup>

Mr Whitlam QC has no doubt that Father 'F' was guilty 'of the most vile sexual abuse of Damian Jurd and Daniel Powell', both of whom subsequently committed suicide. When the Jurd family approached Bishop HJ Kennedy with the allegation that a priest had abused their son, the Bishop did not ask who the priest was and said, 'There's nothing I can do for you'. Mr Whitlam QC says this conduct was 'a disgrace', and it is easy to agree with that. It is also easy to make such comments about someone who is dead.

However, the failure to make a similar analysis of Fathers Usher, Lucas and particularly Father Peters, let alone the late Monsignor Ryan, is highly disturbing. The terms of Father Peters' report and the concessions by Father Lucas leave little room for the suggestion that admissions were not made at the meeting of 3 September 1992. Father 'F' subsequently in

sworn evidence conceded that they were made. The failure to criticise senior clergy for failing to go to the police is utterly inexplicable.

A suggestion that Father Usher would have gone to the police had he known and because he did not go to the police he did not know is an exercise in *post hoc ergo propter hoc* and as a form of reasoning beggars description. The unchallenged evidence of the police in the Victorian Legislative Council Inquiry that no one in the Church in that state has ever reported a priest for misconduct to the police belies Father Usher's words. In NSW, Cardinal Pell says he has reviewed the files in his archdiocese and cannot say whether any of the matters in respect of which adverse findings were made against priests were reported to the police. Father Usher does not appear to have ever reported any of the aberrant priests he has dealt with.

The suggestion that the procedures put in place during the 1990s known as the 'Towards Healing' process would have made a real difference if implemented<sup>44</sup> ignores the fact that in practice no one in Australia can point to any case in which the Church has referred a priest in respect of whom adverse findings of a criminal nature have been made by internal inquiry, to the police. It follows that there is no basis for any inference that the Church has in substance changed its ways. There is certainly no basis for Cardinal Pell's assertion, when criticising the desirability of a Royal Commission, when he suggested that these problems were all historic. The failure to investigate and expressly criticise the silencing of witnesses, and the failure to criticise the failure to report Father 'F' to the police by Bishop Manning, Father Usher, Father Peters and Father Lucas suggest that Mr Whitlam QC himself failed to grapple with the real issues in this matter.

Internal reports are no substitute for external scrutiny and the failures in this report merely emphasise the need for examination of this conduct by the Royal Commission as part of its enquiries. ■

**Notes:** 1 'Report by the Hon Antony Whitlam QC released', media release from the dioceses of Armidale and Parramatta, 17 January 2013. 2 Report Commissioned by the Bishops of Armidale and Parramatta into Processes Related to the Management of 'F', released 17 January 2013, [www.parra.catholic.org.au/news—events/latest-news/latest-news.aspx/report-by-the-hon-antony-whitlam-qc-released.aspx](http://www.parra.catholic.org.au/news—events/latest-news/latest-news.aspx/report-by-the-hon-antony-whitlam-qc-released.aspx). 3 *Ibid*, [22]. 4 *Ibid*, [25]. 5 *Ibid*, [45]. 6 *Ibid*, [58]. 7 *Ibid*, [60]. 8 *Ibid*, [73]. 9 *Ibid*, [77]. 10 *Ibid*, [90]. 11 *Ibid*, [92]. 12 *Ibid*, [93]. 13 *Ibid*, [94]. 14 *Ibid*, [99]. 15 *Ibid*, [107]. 16 *Ibid*, [113]. 17 *Ibid*, [114]. 18 *Ibid*. 19 *Ibid*, [118]. 20 *Ibid*, [120]. 21 *Ibid*, [122]. 22 *Ibid*, [126]. 23 *Ibid*, [129]. 24 *Ibid*, [130]. 25 *Ibid*, [134]. 26 *Ibid*, [135]. 27 *Ibid*, [136]. 28 *Ibid*, [145]. 29 *Ibid*, [146]. 30 *Ibid*, [147]. 31 *Ibid*, [152]. 32 *Ibid*, [149]. 33 *Ibid*. 34 *Ibid*, [156]. 35 *Ibid*. 36 *Ibid*, [157]. 37 *Ibid*, [92]. 38 *Ibid*, [94]. 39 'Lucas: no case to refer "Father F" to police in 1992', ABC AM, 6 July 2012. 40 *Op. cit*, [30]. 41 *Ibid*, [164]. 42 *Ibid*, [169]. 43 *Ibid*, [169]. 44 *Ibid*, [177].

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