

Appendix A

Canon Law Evidence

**IN THE SUPREME COURT
OF NEW SOUTH WALES
SYDNEY REGISTRY
COMMON LAW DIVISION**

No 20308 of 2004

AFFIDAVIT

Deponent: Rodger Joseph Austin

JOHN ANDREW ELLIS
Plaintiff

**HIS EMINENCE CARDINAL
GEORGE PELL FOR AND ON
BEHALF OF THE ROMAN
CATHOLIC ARCHDIOCESE OF
SYDNEY**

First Defendant

**THE TRUSTEES OF THE
ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF
SYDNEY**

Second Defendant

**REVEREND AIDAN DUGGAN
OSB**

Third Defendant

David Begg & Associates
Solicitors
Suite 1404, Level 14
14 Martin Place
Sydney NSW 2000
Ph: (02) [REDACTED]
Fax: (02) 9232 5388
Ref: David Begg

On the 10th day of October 2005, I, **RODGER
JOSEPH AUSTIN**, of [REDACTED], Church
Lawyer say on oath:

1. I refer to my report of 5 September 2005, annexed hereto and marked with the letter "A".
2. In particular, I refer to paragraph 61 of the said report.
3. When a bishop takes possession of a diocese he assumes all responsibilities and obligations pertaining to the diocese, including the decisions and obligations of his predecessor(s). In effect, the Bishop indemnifies the activities of his predecessor, in particular in relation to any civil law obligations.
4. In canon law, and as a matter of practice, when a Bishop assumes governance of a Diocese he assumes responsibility for:
 - The appointments made by his predecessor. He must follow church law if he wishes to change any such appointment;
 - The decisions of his predecessor in relation to the spiritual and temporal

welfare of the Diocese;

- Any obligations or commitments be they spiritual or temporal, undertaken by his predecessor;
 - All existing civil and canonical obligations incumbent upon the Diocese
5. The *Roman Catholic Church Trust Property Act* 1936 No. 25 (NSW) was amended in 1986. For many years the body corporate (the Second Defendant) was used in a range of transactions other than those related to property.
 6. In my experience, from at least 1972 (the year I returned from doctoral studies in canon law in Rome), the Second Defendant was used in transactions such as insurance contracts and as the registered authority to conduct aged care facilities, retirement villages etc.
 7. The public liability policies that preceded the 1986 amendments, had for many years insured the public liability of all parish activities in the name of the Second Defendant.
 8. I am aware of parishes that have built aged care facilities / retirement villages that were registered in the name of the Second Defendant well before the 1986 amendments.
 9. As a result of these activities being undertaken, recommendations were made to the State Government for amendments to be made to the Act in order to reflect these practices.
 10. I verily believe the Second Defendant was the registered authority to conduct parochial and other Catholic Schools.
 11. Although the day to day management of parish schools, aged care facilities / retirement villages etc. were and are the responsibility of the parish priest along with local committees, the priest and the committees were ultimately answerable to the Second Defendant.
 12. The Diocesan Synod of the Archdiocese of Sydney of 27 December 1951 (Article 56) stated that the parish priest was the “manager” of the parish school. It was however the Second Defendant who was answerable to the relevant education authority.
 13. The parish priest is responsible for the spiritual and temporal welfare of the parish. He manages the buildings and is required by his appointment as parish priest to provide divine worship, such appointment being made by the diocesan Bishop. The Second Defendant as registered owner of the parish property has the power to exclude the priest from the property,

inter alia for unfitness of the priest to continue residence in the building. The Archbishop of Sydney (in the name if the Second Defendant) has in recent times excluded a priest from the parish house at Oatley on a disciplinary matter.

- 14. Thus the First Defendant has the power in canon law to discipline a priest, and may do so by removing him from the parish property owned by the Second Defendant.
- 15. The Second Defendant has the power to exclude a priest on the basis of activities inconsistent with the stated or implied conditions of residence at the parochial house. This would include a breach of canon law such as the misdemeanour alleged by the Plaintiff in these proceedings.
- 16. In accordance with the Act, the members of the body corporate known as the Second Defendant were the Archbishop of Sydney and the bishops and priests whom he appointed in accordance with the norms of canon law as his "Diocesan Consultors". In the 1983 Code of Canon Law the Diocesan Consultors are called the "College of Consultors".
- 17. Shown to me are Exhibits 42, 43 and 44 to the affidavit of David John Begg sworn on 7 September 2005. These exhibits are records of meetings of the Trustees pursuant to section 3 of *The Roman Catholic Church Trust Property Act 1936 No. 25 (NSW)*.
- 18. In the governance of his Diocese, the Bishop is obliged by canon law to appoint a Vicar General who shares in the authority of the Bishop in governing the Diocese. The Vicar General is also a member of the body corporate known as the Second Defendant.
- 19. In the governance of his Diocese, the diocesan Bishop is obliged by canon law to appoint a Chancellor whose administrative functions are determined by canon law and the diocesan Bishop. The Chancellor may or may not be a member of the body corporate known as the Second Defendant.
- 20. The Dean of the Cathedral parish fulfils his duties under the authority of the First Defendant. The Dean may or may not be a member of the body corporate known as the Second Defendant.

SWORN by the Deponent

at)
Before me:)
)

.....
Solicitor/Justice of the Peace

.....
Deponent

"A"

REPORT

OF

DR RODGER JOSEPH AUSTIN JCD STL

IN THE MATTER

OF

JOHN ANDREW ELLIS

V

HIS EMINENCE CARDINAL GEORGE PELL &

**THE TRUSTEES OF THE ROMAN CATHOLIC
ARCHDIOCESE OF SYDNEY &**

ORS

This is the annexure marked "A" referred
in the annexed affidavit of Dr. Rodger Joseph Austin
sworn at Sydney this 10th day
October 2009 before me:



Natalia Ward
Solicitor, SLP of NSW

REPORT

OF

Dr Rodger Joseph Austin JCD STL

Author of this Report

I, the undersigned, Rodger Joseph Austin, am the author of this Report. I was born on 13 August 1939. I am a canon or church lawyer. I obtained a degree in theology [STL] from the Ecclesiastical Theological Faculty of Sydney in 1967 and a doctorate in canon law [JCD] from the Pontifical Urban University, Rome in 1972.

I was a lecturer in canon law at the Catholic Theological Institutes in Sydney from 1972-1996. I was a judge of the Ecclesiastical Regional Tribunal of Sydney 1979-2004 and of the Tribunal of Appeal for Australia and New Zealand 1981-2004. I was ordained a priest in 1967 and Pope John Paul II dispensed me from all obligations arising from ordination in 2004. I held various ecclesiastical offices in the Diocese of Wollongong and the Archdiocese of Sydney between 1972 and 1989. I was Assistant Secretary to the Australian Catholic Bishops' Conference in Canberra 1989-1991. I have contributed to theological and canonical journals in Australia and overseas.

I am an advocate of the Ecclesiastical Regional Tribunal of Sydney and the Tribunal of Appeal for Australia and New Zealand. I am an advisor and consultant in canon law in Australia and overseas, especially New Zealand, to diocesan bishops, diocesan agencies, parishes, religious institutes and other Church organisations and individuals. My Curriculum Vitae is annexed to this Report as Annexure 'A'.

Agreement to Expert Witness Code of Conduct

I have read the Supreme Court Expert Witness Code of Conduct and agree to be bound by it.

I have been requested to provide an expert report as to the teaching and legislation of the Catholic Church with respect to the questions set out below and on the assumption of the correctness of the following facts and matters.

I have been instructed to assume the following facts:

- (A) Father Aidan Duggan OSB (Fr Duggan) was ordained in 1950 by Cardinal Gilroy, Archbishop of Sydney for the New Norcia Benedictine Community.
- (B) Some time later, Fr Duggan was accepted into the English Benedictine Congregation and worked in various positions in the United Kingdom, including Fort Augustus Abbey in Scotland.
- (C) In February 1974, Fr Duggan requested Cardinal Freeman (Archbishop of Sydney) for acceptance *ad experimentum* to work in the Archdiocese of Sydney with a view to incardination at a later time.
- (D) In March 1974, Cardinal Freeman agreed to accept Fr Duggan into the Archdiocese of Sydney *ad experimentum* for a year.
- (E) To this end, the Abbot of Fort Augustus granted Fr Duggan a leave of absence from early September 1974.
- (F) In July 1974, the Archdiocese of Sydney sent to Fr Duggan an air ticket to fly to Sydney, paid for by the Archdiocese of Sydney.
- (G) In September 1974, Fr Duggan was appointed to Christ the King Parish, Bass Hill in the Archdiocese of Sydney by Cardinal Freeman.
- (H) In approximately September 1975, Cardinal Freeman applied to the Abbot of Fort Augustus Abbey for an extension of Fr Duggan's leave of absence from the Abbey.
- (I) In October 1975, the Abbot advised that it was not in his power to extend the leave, and so the better approach may be for Fr Duggan to seek dispensation from his vows and continue to give his services to the Archdiocese of Sydney on a permanent basis.
- (J) In December 1975, Cardinal Freeman notified the Abbot of Fort Augustus Abbey that Fr Duggan requested time to consider his position.

- (K) In August 1976, the Abbot of Fort Augustus Abbey wrote to Fr Duggan and Cardinal Freeman stating that, in the Abbot's opinion, Cardinal Freeman had taken responsibility for the extension from one year to two and that: "I must make it quite clear that I will accept no responsibility for either of you, or for your activities, while you are absent from the monastery."
- (L) In October 1980, the Abbot of Fort Augustus requested regularisation of Fr Duggan's position.
- (M) In February 1981, Fr Duggan was granted an indult of exclaustation from Fort Augustus Abbey to work in the Archdiocese of Sydney for two years. This was granted by the Sacred Congregation of Religious and Secular Institutes in the Vatican.
- (N) In January 1983, the Archbishop of Sydney requested the Abbot of Fort Augustus to apply for an extension of the rescript of exclaustation.
- (O) In March 1983, the rescript was extended for a further three years.
- (P) In June 1986, the rescript was extended for a further three years.
- (Q) In January 1989, the Abbot of Fort Augustus wrote to the Archbishop of Sydney requesting a decision about Fr Duggan's future before expiry of the rescript of exclaustation.
- (R) In May 1990, the Abbot President of the English Benedictine Congregation requested the Archbishop of Sydney to regularise the position of Fr Duggan within the Archdiocese of Sydney.
- (S) On 27 December 1990, Fr Duggan was formally incardinated into the Archdiocese of Sydney.
- (T) Fr Duggan held the following appointments in the Archdiocese of Sydney between 1974 and 1987:
- Assistant Priest to the parish of Bass Hill 1974-1979;
 - Assistant Priest to the parish of Gynea 1979-1980 (including periods as Administrator);

- St Mary's Cathedral 1980-1985;
 - Assistant Priest to the parish of Camperdown, 1985-1986;
 - Administrator to the parish of Camperdown, from 1986.
- (U) Those appointments were made by the Archdiocesan Council of the Archdiocese of Sydney.
- (V) Between 1975 and 1987, Fr Duggan sexually abused Mr John Andrew Ellis. The abuse took place in the presbytery at the parish of Bass Hill between 1975 and 1979; the presbytery at the parish of Gynea during 1979; the presbytery at St Mary's Cathedral between 1980 and 1985 and the presbytery at the parish of Camperdown between 1986 and 1987, as well as other places.
- (W) At the time the abuse commenced, Mr Ellis was an altar server at Bass Hill parish and was aged 14 years old.
- (X) Between 1980 and 1982, Fr Duggan sexually abused another boy ("S"). The abuse took place in the presbytery at St Mary's Cathedral as well as other places. At the time the abuse commenced, S was an altar server at St Mary's Cathedral and was aged 15 years old.
- (Y) At times when the abuse of the two boys was taking place, there were other priests in the presbyteries (including, in relation to S, the Archbishop and the Dean/Administrator of St Mary's Cathedral, and in relation to Mr Ellis, the Parish Priest of Bass Hill Parish and a member of the Archdiocesan Council of Consultors).
- (Z) In mid 1983, S made a complaint regarding the sexual abuse he has suffered at the hands of Fr Duggan. The report was given to the then Dean of St Mary's Cathedral. S knew of the abuse by Fr Duggan of Mr Ellis, and would have identified this to any investigator appointed to investigate his complaint. No such investigation was undertaken.

I have been requested to answer the following questions on the basis of the facts, matters and assumptions hereinbefore set out:

1. What is the meaning and effect of *incardination*?
2. What is the meaning and effect of *exclaustration*?
3. What is the meaning of a religious priest being accepted into a diocese *ad experimentum*? What are the effects of such acceptance?
4. Who has the authority to assign a religious priest accepted into a diocese *ad experimentum* to a specific position or office within a diocese?
5. Who determines the duties to be carried out by a priest when he is assigned to a specific position or office? How are these duties specified?
6. Is a priest bound to observe the law of the Church and the directives of the diocesan bishop in whose diocese he is serving in the performance of his duties?
7. If a priest is assigned to a specific position or office in a diocese, who determines where he resides and who provides his accommodation?
8. If a priest is assigned to a specific position or office in a diocese, how and by whom is his remuneration determined?
9. If a priest is assigned to a specific position or office in a diocese, is he bound to reside in a certain place and is he required to seek the permission of the diocesan bishop to be absent from the diocese?
10. Who has the authority to remove a priest from the position or office to which he has been assigned and what are the reasons for which such a removal can be made?
11. What behavioural standards does the Church require of its priests?

12. Specifically, what are the duties and obligations of priests in dealing with minor parishioners generally and altar servers (as servants of the Church) in particular?
13. What are the Church law requirements on a bishop before accepting a priest to work within his diocese (whether temporarily or with a view to incardination)?
14. What is good practice for a bishop in terms of:
 - (a) checks to be undertaken on a religious cleric before appointing him to a diocesan position, whether temporarily or with a view to incardination? and
 - (b) monitoring of the conduct of a cleric accepted *ad experimentum*, prior to the time of incardination?
15. What are the obligations placed by the Church on a priest (or other cleric) working within a diocese to whom a report of sexual misconduct by another cleric within that diocese has been made? Would your answer be different if the cleric to whom the report was made was the Administrator of the parish in which the accused cleric was working at the time of the abuse, and where the abuse took place?
16. What obligations are there on clergy in terms of reporting their own misconduct (in particular, sexual misconduct)?
17. What are the specific obligations of a diocesan bishop in terms of the investigation of a report of sexual misconduct by a cleric working within the diocese?
18. Would the answer to Question 17 be different if the accused cleric was a religious cleric working in the diocese *ad experimentum*?

THREE PRELIMINARY AND EXPLANATORY STATEMENTS

1. In order to provide answers to the questions hereinbefore set out it is necessary to make three preliminary and explanatory statements with regard to:

- the teaching of Catholic Church;
- the law of the Catholic Church; and
- the meaning of the word *Church*.

I. THE TEACHING OF THE CATHOLIC CHURCH

Teaching authority of the Roman Pontiff

2. The Roman Pontiff (the Pope) has supreme and full authority over the whole Catholic Church in matters of faith and morals as well as those pertaining to the discipline and governance of the Church.

The Roman Pontiff exercises his teaching authority in a variety of ways, for example Encyclical Letters, Apostolic Exhortations and Papal Allocutions. The Roman Pontiff is the legislator for the whole Church.

The official text of papal teaching is in the *Acta Apostolicae Sedis* the official organ of the Holy See (the Vatican). The official language of papal documents is, as a rule, Latin. Papal teaching to which I refer in this report has been translated by me from the original language.

Teaching authority of an Ecumenical Council

3. The College of Bishops, that is all the Bishops of the Church with the Roman Pontiff as their Head, also possesses full authority over the whole Church and this power is exercised in a solemn form in an ecumenical council.
4. On 25 January 1959 Pope John XXIII convened an ecumenical council to be held at the Vatican. The first Ecumenical Council held at the Vatican was in 1870. The Ecumenical Council convened by Pope John XXIII was held from 1962-1965 and is known as the Second Vatican Council.

The official text of the Acts of the Council, that is the Constitutions, Decrees and Declarations enacted by the Second Vatican Council with the authority of Pope Paul VI, is in Latin.

The official text of the Acts of the Second Vatican Council is in the *Acta Apostolicae Sedis*. The teaching of the Second Vatican Council to which I refer in this report has been translated by me from the original Latin.

II. THE LAW OF THE CATHOLIC CHURCH - CANON LAW

5. From the earliest times the legislation promulgated by the Church was referred to as *ius canonicum* - canon law. Since the Twelfth Century, the Church has referred to the laws enacted by secular authorities as the civil law.

Canon law can be defined as that system of laws promulgated by lawful ecclesiastical authority by which the constitution and governance of the Church is regulated and the actions of the members of the Church are directed towards its purpose.¹

THE CODE OF CANON LAW

6. The development of the Church's legal system from New Testament times until the present is very complex.² For the purposes of this report it is necessary to note the following.

Code of Canon Law 1917-1983

7. As requested by the First Vatican Council of 1870 Pope Pius X undertook, from 1904 to 1917, the reform of canon law. In the process of reform it was decided to adopt a codified approach to canon law, a decision in large part influenced by the codification of civil

¹ cf. Felix M. Cappello SJ *Summa Iuris Canonici* 3 Vols. Editio Sexta (Rome: Pontificia Universitas Gregoriana, 1961) I, p. 8.
² cf. Amleto G. Cicognani *Canon Law* Second Revised Edition Authorized English Version of *Ius Canonicum* (Maryland: Newman, 1934); Alphonsus M. Stickler *Historia Iuris Canonici* 6 Vols. (Rome: Pontificia Studiorum Universitas Salesiana, 1950); James A. Coriden *An Introduction to Canon Law* (London: Chapman, 1961).

legislation in Europe in the Eighteenth and Nineteenth Centuries.³

Pope Benedict XV promulgated the Code of Canon Law on 27 May 1917 and decreed that it come into force on 17 May 1918.

The 1917 Code of Canon Law remained in force until 27 November 1983.

The official text of the 1917 Code of Canon Law is in Latin: *Codex Iuris Canonici PII X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus.*

The official text of the 1917 *Codex Iuris Canonici* is in the *Acta Apostolicae Sedis*.

The text of canons of the 1917 Code of Canon Law to which I refer in this report has been translated by me from the original Latin. The 1917 Code of Canon Law is identified as CIC {1917}.

After the 1917 Code of Canon Law came into force the Roman Pontiffs promulgated further legislation.

Code of Canon Law 1983

8. On 25 January 1959 when Pope John XXIII convened the Second Vatican Council he said it would be accompanied and completed by the revision of the 1917 Code of Canon Law.⁴ On 25 November 1967 Pope Paul VI inaugurated the work of the Pontifical Commission for the Revision of the 1917 Code of Canon Law that was brought to completion on 22 April 1982.

On 25 January 1983 Pope John Paul II promulgated the revised Code of Canon Law and decreed that it come into force on 27 November 1983.

The official text of the 1983 Code of Canon Law is in Latin: *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus.*

³ Cicognani, pp.417-418.

⁴ Pope John XXIII Allocutio 25 January 1959.

The official text of the 1983 Codex Iuris Canonici is in the *Acta Apostolicae Sedis*.

The text of canons of the 1983 Code of Canon Law to which I refer in this report has been translated by me from the original Latin. The 1983 Code of Canon Law is identified as CIC (1983).

After the 1983 Code of Canon Law came into force Pope John Paul II promulgated further legislation.

NORMS OF CANON LAW APPLICABLE TO THE QUESTIONS

9. The questions to which I have been requested to provide a response in this report concern matters pertaining to a period of time approximately from March 1974 to 1987.

March 1974 - November 1983

10. For the period from March 1974 to 27 November 1983 the relevant norms of canon law are those of the 1917 Code of Canon Law, any relevant legislation promulgated by the Roman Pontiffs, any relevant legislation promulgated by the Second Vatican Council and/or by either Pope Paul VI or Pope John Paul II between 8 December 1965, the day the Second Vatican Council concluded, and 27 November 1983.

27 November 1983 - 1987

11. From 27 November 1983 onwards the relevant norms of canon law are those of the 1983 Code of Canon Law.

The norms of law in the 1983 Code of Canon Law relevant to the questions to which I have been requested to provide a response in this report either repeat or substantially reproduce the former legislation.

I shall indicate clearly in this report any particular matter in which the 1983 Code of Canon Law significantly differs from the former legislation.

OTHER ECCLESIASTICAL LEGISLATION

12. Diocesan bishops and Plenary Councils also possess legislative power within the Church. Whilst the phrase canon law refers primarily to the Code of Canon Law it also refers to ecclesiastical laws promulgated by authorities other than the Roman Pontiff.

- **IV Plenary Council of Australia and New Zealand 1937**

13. Other ecclesiastical laws relevant to the questions to which I have been requested to provide a response in this report are Decrees promulgated by the IV Plenary Council of Australia and New Zealand, held at Sydney in 1937, and approved by Pope Pius XI on 14 March 1938.

These Decrees remained in force until 27 November 1983, unless abrogated or derogated by the Second Vatican Council or by legislation promulgated by either Pope Paul VI or Pope John Paul II prior to 27 November 1983. Any Decrees of the 1937 IV Plenary Council contrary to the provisions of the 1983 Code of Canon Law were abrogated on 27 November 1983 when that Code of Canon Law came into force. [CIC {1983} canon 6 §1 2°]

The official text of the Decrees of the 1937 IV Plenary Council 1937 is in Latin: *Concilium Plenarium IV Australiae et Novae Zelandiae Habitum apud Sydney Anno Domini 1937 Editio Officialis.*

The text of Decrees of the 1937 IV Plenary Council to which I refer in this report has been translated by me from the original Latin.

- **Synod of the Archdiocese of Sydney 1951**

14. The 1917 Code of Canon Law required that a diocesan synod be held every ten years. [CIC {1917} canon 356] The diocesan bishop is the sole legislator in the synod [CIC {1917} canon 362] and the laws promulgated in the Synod are referred to in the Code of Canon Law as diocesan statutes [CIC {1917} canon 476 §6].

Therefore, relevant to the questions to which I have been requested to provide a response in this report are the statutes promulgated by the Archbishop of Sydney in the Diocesan Synod of the Archdiocese of Sydney on 27 December 1951. Any Statutes of the Archdiocese of Sydney, which were contrary to the provisions of the 1983 Code of Canon Law, were abrogated on 27 November 1983 when that Code of Canon Law came into force. [CIC {1983} canon 6 §1 2°] The official text of the Diocesan Statutes is in English.

III. THE MEANING OF THE WORD CHURCH

15. It is necessary to provide an explanation of the meaning of the word *Church* as used by the Catholic Church and relevant to this report.

The Universal Church

16. The word *Church* means in the first instance the entire Catholic Church of which the Bishop of the Church of Rome - the Roman Pontiff, the Pope - as the successor of Saint Peter and the Vicar of Christ is the visible head.⁵

The Roman Pontiff is the Chief Pastor of the Universal Church and by virtue of his office has full, supreme and universal power over the whole Church.⁶ This power is legislative, executive and judicial.⁷

Individual/Particular Churches - Arch/dioceses

17. The teaching of the Church is that the Universal Church is not one single monolithic structure but a communion of individual or particular Churches.

The word *Church* means in the second instance the various individual or particular Churches, also called dioceses, in and from which the Universal Church comes into being.⁸

In this report the word *diocese* includes *archdiocese* and the word *bishop* includes *archbishop*.

⁵ Vatican II Dogmatic Constitution on the Church n.18.
⁶ Vatican II Dogmatic Constitution on the Church n.22.
⁷ Vatican II Dogmatic Constitution on the Church n.27.
⁸ Vatican II Dogmatic Constitution on the Church n.23.

18. The teaching of the Church is that a diocese is a section of the People of God entrusted to a bishop to be shepherded by him with the cooperation of the presbyterium, that is the priests.⁹

Diocesan bishops are not the delegates of the Roman Pontiff but govern the individual or particular Churches assigned to them as the vicars and ambassadors of Christ.¹⁰

In the diocese entrusted to his pastoral care the diocesan bishop, as of right, possesses all the ordinary, proper and immediate power required for the exercise of his pastoral office, without prejudice to the supreme authority of the Roman Pontiff.¹¹

The diocesan bishop's power is legislative, judicial and executive. [CIC (1917) canons 335 §1, 1519]

19. Every diocese is, in accordance with the law of the Church, established as a legal entity, called in canon law a moral person. [CIC (1917) canons 100 §1, 215 §1] In the 1983 Code of Canon Law the term used is *juridic person*. [CIC (1983) canon 113 §2]

With the exception of those Nations with which the Holy See has executed a Concordat whereby dioceses are recognised as legal entities in the civil law, every diocese is obliged to establish a legal entity in accordance with the civil law.

20. In New South Wales each diocese has established such a legal entity pursuant to the provisions of the Roman Catholic Church Trust Property Act of 1936.

For the Archdiocese of Sydney its body corporate is: *The Trustees of the Roman Catholic Church for the Archdiocese of Sydney*.

The Trustees of the Roman Catholic Church for the Archdiocese of Sydney holds legal title to the real

⁹ Vatican II Decree on the Bishops' Pastoral Office in the Church n.11.

¹⁰ Vatican II Dogmatic Constitution on the Church n.27.

¹¹ Vatican II Decree on the Bishops' Pastoral Office in the Church n.8(a).

property owned by the Archdiocese of Sydney and by all the parishes within the Archdiocese of Sydney. This land is held for the Church or for the use or benefit or for any purpose of the Church unless subject to a specific trust.

The Trustees of the Roman Catholic Church for the Archdiocese of Sydney is the legal entity used in all matters relating to contracts as required by the norms of canon law. [CIC (1917) canon 1529]

21. Within each individual or particular Church, the diocesan bishop of necessity must establish groups of the faithful of which the most important are parishes. Each parish with its own pastor in some way represents the Church constituted throughout the world.¹²

The law of the Church requires that each diocese be divided into distinct parts or parishes. [CIC (1917) canon 216 §§1,3]

The law of the Church requires that the diocesan bishop assign to each parish a parish priest to whom is entrusted, under the authority of the diocesan bishop, the pastoral care of the parochial community. [CIC (1917) canon 451 §1]

¹² Vatican II Constitution on the Sacred Liturgy n.42.

QUESTION ONE

WHAT IS THE MEANING AND EFFECT OF INCARDINATION?

22. The Church forbids any cleric to be unattached, that is, without a community for whom he exercises his ministry and a superior to whom he is accountable and whom he must obey.

The law of the Church requires that every cleric must be incardinated into a diocese or religious organization that is, an institute of consecrated life, a society of apostolic life or a personal prelatute. [CIC (1917) canon 111 §1]

The Abbey of Saint Benedict of Fort Augustus of the English Benedictine Congregation, which is located in Scotland, falls within the meaning of the term *institute of consecrated life*.

Incardination is the permanent attachment or incorporation of a cleric into a diocese or religious organization. Incardination creates a juridical bond between the cleric and the diocese or religious organization.

23. The effect of being incardinated into a diocese is that the rights and obligations a cleric possesses by virtue of the law of the Church [CIC (1917) canons 118-144] are exercised and fulfilled in the diocese of incardination.

Priests incardinated into a diocese must be authorized by the diocesan bishop in order to perform their priestly ministry in that diocese. This authorization is called *the granting of faculties*.

A faculty is the ecclesiastical authorisation necessary to perform, either lawfully or validly, an act of ministry in the name of the Church.

A priest is not entitled to the faculties; they are a free grant by the diocesan bishop. The diocesan bishop can at any time, for a just cause, withdraw the faculties.

For example, a priest requires the faculty to preach and to celebrate the Sacraments of Penance and Marriage. [CIC (1917) canons 1337, 874 §1, 1094]

24. The pastoral care of the faithful in a diocese is entrusted to the diocesan bishop.¹³

Hence priests in carrying out the duties assigned to them by the diocesan bishop are not providing a service for the bishop. On the contrary, they are serving the People of God entrusted to the pastoral care of the diocesan bishop, because priests are the prudent cooperators as well as the support and instruments of the bishop.¹⁴

Incardination into a diocese constitutes a juridical relationship between the cleric and the diocesan bishop and unites a priest with the other priests and the other members of that particular or individual Church.

25. Incardination into an institute of consecrated life constitutes a juridical bond between the cleric and the superior of the institute and the other members of the institute. This bond takes on a special character by virtue of the fact that a religious professes vows, traditionally described as the vows of chastity, poverty and obedience.

The institute of consecrated life becomes the context in which the religious cleric exercises his rights and fulfils his duties.

According to the law of the Church a priest who is a member of an institute of consecrated life has to be authorized by the diocesan bishop in order to exercise his priestly ministry in that diocese. [CIC (1917) canons 1337, 874 §1, 1094]

¹³ Vatican II Decree on the Bishops' Pastoral Office in the Church nn.16,18.

¹⁴ Vatican II Dogmatic Constitution on the Church n.28.

QUESTION TWO

WHAT IS THE MEANING AND EFFECT OF EXCLAUSTRATION?

26. By virtue of his religious profession a religious priest is bound to live with his religious community in the house designated by his superior. [CIC (1917) canon 594]
27. The law of the Church permits a superior, in accordance with the Constitutions of the institute, to give permission to a religious priest to be absent from his community for the purposes of ministry. [CIC (1917) canon 608]

For example, a diocesan bishop may ask for a religious priest to be made available to his diocese because of a shortage of incardinated priests. If a religious priest is permitted to leave his community in order to exercise his priestly ministry in a diocese, he becomes subject to the authority of the diocesan bishop insofar as the exercise of his ministry is concerned. The religious priest remains bound by his vows and the Constitutions in so far as their observance is consistent with his duties in the diocese. [CIC (1917) canon 630]

For example, a religious priest may ask for permission to leave his community to work in a diocese *ad experimentum* because he is unsure about his vocation as a religious. The superior can only grant this permission if a diocesan bishop has indicated his willingness to accept the priest into his diocese. The religious priest becomes subject to the authority of the diocesan bishop, although still bound by his vows.

28. The law of the Church permits a religious priest to request permission to separate himself temporarily from his institute of consecrated life. This is called exclaustation.

For a religious priest incardinated into the Abbey of Saint Benedict of Fort Augustus the authority competent to give an indult of exclaustation according to the norms of law in the 1917 Code of Canon Law was the Holy See. [CIC (1917) canon 638]

In the 1983 Code of Canon Law the Abbot has the authority to grant an indult of exclaustation for up to three years and the extension of that indult is reserved to the Holy See. [CIC (1983) canon 686 §1]

According to the law of the Church a religious priest who obtains an indult of exclaustation remains bound by his vows and other obligations of religious profession compatible with the situation of temporary separation. However, he loses his voting rights in the community. Moreover, a religious priest becomes subject to the diocesan bishop in whose diocese he is resident. [CIC (1917) canon 639]

QUESTION THREE

WHAT IS THE MEANING OF A RELIGIOUS PRIEST BEING ACCEPTED INTO A DIOCESE AD EXPERIMENTUM? WHAT ARE THE EFFECTS OF SUCH ACCEPTANCE?

29. The law of the Church prohibits a diocesan bishop from incardinating any priest into his diocese unless the need or the good of his individual or particular Church requires it. [CIC (1917) canon 117 1°]

The law of the Church permits a religious priest who is incardinated into an institute of consecrated life to request to be incardinated into a diocese.

When a religious priest seeks to be incardinated into a diocese, the diocesan bishop can accept him either *pure et simpliciter* or *ad experimentum*. [CIC canon (1917) canon 641 §2]

The phrase *pure et simpliciter* in this context means that the diocesan bishop immediately incardicates the religious priest into his diocese.

The phrase *ad experimentum* in this context means that the diocesan bishop accepts the religious priest on probation. The period of probation provides the opportunity for the diocesan bishop to assess the suitability of the cleric for service in his diocese.

The diocesan bishop is free to terminate the period of probation at any time and thereby dismiss the religious priest from the diocese.

The period of probation also provides the religious priest with the opportunity to consider his future as a cleric of the diocese. If the religious priest were to decide that he does not wish to continue with the period of probation he is bound to return to his institute of consecrated life.

30. If a religious priest is accepted by a diocesan bishop *ad experimentum* he immediately becomes subject to the authority of the diocesan bishop.

He is bound by the norms of the Code of Canon Law with regard to the obligations of clerics.

For example, all clerics have a special obligation to show reverence and obedience to the diocesan bishop. [CIC (1917) canon 127] This is referred to as *canonical obedience* because it is based upon the norms of law established by the Church.

By virtue of canonical obedience a religious priest accepted into a diocese *ad experimentum* is bound to accept and faithfully fulfil any assignment the diocesan bishop gives him. [CIC (1917) canon 128]

He is bound to observe also any other relevant ecclesiastical laws in force within the diocese. In the Archdiocese of Sydney the priest is bound by Decrees 31-69 of the 1937 IV Plenary Council of Australia and New Zealand.

For example, Decrees 47-49 concern priests' relationships with women. Decrees 52 and 53 prohibits priests attending live theatre unless the diocesan bishop made provision otherwise in the case of opera. Decree 55 prohibits priests from attending professional boxing. Decree 58 regulates the purchase and use of automobiles. Decree 59 concerns the use of alcohol.

He is bound to observe also the Diocesan Statutes. For example, Statute 3 states that priests are expected to be in their respective presbyteries by a reasonable hour of the evening. Statute 7 requires priests to attend Conferences of the Clergy.

QUESTION FOUR

WHO HAS THE AUTHORITY TO ASSIGN A RELIGIOUS PRIEST ACCEPTED INTO A DIOCESE AD EXPERIMENTUM TO A SPECIFIC POSITION OR OFFICE WITHIN A DIOCESE?

31. In order that a religious priest may exercise his priestly ministry in the diocese into which he is accepted *ad experimentum*, he must be granted the faculties of that diocese by the diocesan bishop.

It is the diocesan bishop who has the right to assign all priests to a specific position or office in the diocese.

Although a priest incardinated into a diocese or accepted into a diocese *ad experimentum* does not possess a right to a specific assignment, the law requires that he accept and faithfully fulfil the assignment a bishop may give him. [CIC {1917} canon 128]

QUESTION FIVE

WHO DETERMINES THE DUTIES TO BE CARRIED OUT BY A PRIEST WHEN HE IS ASSIGNED TO A SPECIFIC POSITION OR OFFICE? HOW ARE THESE DUTIES SPECIFIED?

32. Within a diocese two pastorally important ecclesiastical offices are the offices of parish priest and assistant priest.

If a priest is appointed to the office of parish priest his duties are determined by the norms of canon law. [CIC {1917} canons 462-470]

If a priest is appointed to the office of parish priest his duties are determined also by Decrees 198-227, concerning the obligations of parish priests, of the 1937 IV Plenary Council of Australia and New Zealand.

For example, Decree 199 provides that the parish priest has the right to regulate the parochial house, organise the common life, and supervise paternally the assistant priest(s) subject to him. Decrees 207-209 relate to the teaching of faith and morals and Decrees

210-213 concern matters pertaining to divine worship and spiritual devotions. Decrees 220-225 concern matters of parochial administration.

33. If a priest is appointed to the office of assistant priest his duties are defined by the norms of canon law, the diocesan statutes, and by the letter of appointment of the diocesan bishop. His duties are more specifically determined by the parish priest. [CIC (1917) canon 476 §§5-8]

If a priest is appointed to the office of assistant priest he is bound by Decrees 231-239, governing assistant priests, of the 1937 IV Plenary Council of Australia and New Zealand.

For example, Decree 236 states that assistant priests are dependent upon and subject to the supervision of the parish priest in fulfilling their obligations in regard to preaching, the celebration of Sacraments, visiting schools, caring for the sick, and teaching Christian doctrine to the young.

In the 1917 Code of Canon Law the assistant priest was subject to the parish priest who was to instruct him paternally and direct him in the care of souls, watch over him, and send each year a report to the bishop concerning his conduct. [CIC (1917) canon 476 §7]

In the 1983 Code of Canon Law this norm of canon law was modified such that the assistant priest is to report regularly to his parish priest as to the duties he has carried out in the parish. [CIC (1983) canon 548 §3]

34. If a priest is appointed as the administrator of a parish his duties are the same as those of a parish priest. [CIC (1917) canon 473]

QUESTION SIX

IS A PRIEST BOUND TO OBSERVE THE LAW OF THE CHURCH AND THE DIRECTIVES OF THE DIOCESAN BISHOP IN WHOSE DIOCESE HE IS SERVING IN THE PERFORMANCE OF HIS DUTIES?

35. Every priest is bound to observe the laws of the Church in the exercise of his priestly ministry.

Every priest is bound to observe the directives issued by the diocesan bishop in whose diocese he is exercising his priestly ministry.

The Church imposes these obligations upon:

- priests who are incardinated into the diocese;
- priests who are accepted into the diocese *ad experimentum*;
- priests not incardinated into the diocese who are authorized by the diocesan bishop to exercise their priestly ministry in the diocese;
- priests belonging to institutes of consecrated life.

Religious priests are subject to the authority of the diocesan bishop in all that concerns the pastoral care of the people and the celebration of divine worship. [CIC (1917) canons 344, 630]

Consequently all religious priests are bound to obey the diocesan bishop in these matters. If necessary the diocesan bishop can insist upon such obedience by invoking or inflicting canonical penalties. [CIC (1917) canon 619]

QUESTION SEVEN

IF A PRIEST IS ASSIGNED TO A SPECIFIC POSITION OR OFFICE IN A DIOCESE WHO DETERMINES WHERE HE RESIDES AND WHO PROVIDES HIS ACCOMMODATION?

36. All clerics are bound to reside in the diocese into which they are incardinated and may not be absent from it for a notable length of time without at least the presumed permission of the diocesan bishop. [CIC (1917) canon 143]

In the same way a religious cleric who is accepted into a diocese *ad experimentum* is bound to reside in the diocese.

37. A parish priest is bound by the law of the Church to reside in the parochial house. [CIC (1917) canon 465 §1] Decree 201 of the 1937 IV Plenary Council of Australia and New Zealand requires that the parochial house be near the parish church.

An assistant priest is bound by the law of the Church to reside in the parish. [CIC (1917) canon 476 §5] Decree 238 of the 1937 IV Plenary Council of Australia and New Zealand requires that the assistant priest reside, if possible, in the parochial house.

38. In keeping with what has been stated in n.20 above, in the Archdiocese of Sydney the residence in which the parish priest and his assistant priest(s) reside is vested in the body corporate of the civil law, *The Trustees of the Roman Catholic Church for the Archdiocese of Sydney*.

QUESTION EIGHT

IF A PRIEST IS ASSIGNED TO A SPECIFIC POSITION OR OFFICE IN A DIOCESE HOW AND BY WHOM IS HIS REMUNERATION DETERMINED?

39. Up until the Second Vatican Council 1962-1965 the remuneration received by a parish priest and an assistant priest in dioceses in Australia came from the voluntary offerings of the faithful, who were obliged by the law of the Church to provide support for the clergy. [CIC {1917} canon 1496]

Subsequent to the teaching of the Second Vatican Council and the legislation promulgated by Pope Paul VI on 6 August 1966, the remuneration of priests in the Archdiocese of Sydney was reorganised.

40. In his norms for the implementation of the teaching of the Second Vatican Council on the remuneration of priests and provision for the care of ill and aged priests¹⁵, Pope Paul VI regulated that the remuneration of the clergy was to be principally the same for all living in the same circumstances, taking account of the nature of their duties and of the conditions of time and place.

Pope Paul VI further provided that, in places where the remuneration was provided for either totally or in great part from the voluntary offerings of the faithful, a special fund was to be established for the purpose of collecting the offerings. The diocesan bishop himself was to be the administrator of the fund with the help of priests, and also of lay experts if appropriate.

Pope Paul VI further provided that there was to be a fund to ensure adequate provision could be made for the care of priests in sickness and old age.¹⁶

41. As a means of implementing in the Archdiocese of Sydney the legislation of Pope Paul VI, the Archbishop of Sydney introduced, as of 1 January 1972, the Clergy Remuneration System.

¹⁵ Vatican II Decree on the Ministry and Life of Priests nn.17,20-21.
¹⁶ Pope Paul VI Motu proprio *Ecclesiae Sanctae* 6 August 1966 I, 4, 8.

The Clergy Remuneration System provides for the remuneration of the clergy as well as a Scheme of Superannuation and Payment for Retired Priests.

The Clergy Remuneration System is administered by a Board of Management, of which the Archbishop of Sydney or his nominee is the President.

The priests who receive their remuneration by means of the Clergy Remuneration System are:

- all priests incardinated into the Archdiocese of Sydney and appointed by the Archbishop of Sydney to work in a parish;
- all priests who care for migrant communities (Migrant Chaplains) and all other priests, not incardinated into the Archdiocese of Sydney, who are appointed by the Archbishop of Sydney to work in a parish.

42. The remuneration received by these priests is determined according to a scale acknowledging the differentiation in the duties and responsibilities of the priests.

Assistant priests form one category, administrators of parishes form a second category, and parish priests form a third category.

The Board of Management, in accordance with the Constitution, adjusts the scale of remuneration as stated in the Constitution.

In accordance with the Constitution, priests appointed to a parish receive their remuneration from the Parish Pastoral Revenue Account. This Account is the property of the Clergy Remuneration System and is operated and administered on behalf of the Clergy Remuneration System by the parish priest or administrator of the parish.

QUESTION NINE

IF A PRIEST IS ASSIGNED TO A SPECIFIC POSITION OR OFFICE IN A DIOCESE IS HE BOUND TO RESIDE IN A CERTAIN PLACE AND IS HE REQUIRED TO SEEK THE PERMISSION OF THE DIOCESAN BISHOP TO BE ABSENT FROM THE DIOCESE?

43. A parish priest is bound to reside in his parish. The law permits the parish priest to be absent from the parish for the purposes of an annual vacation and annual retreat. [CIC (1917) canon 465 §§1-5]

Decree 202 of the 1937 IV Plenary Council of Australia and New Zealand requires the parish priest to obtain the written permission of the diocesan bishop to be absent from his parish for more than a week.

44. An assistant priest is bound to reside in the parish to which he is appointed.

Statute 10 of the statutes of the Archdiocese of Sydney stated that the normal annual vacation of the priests shall not comprise more than three consecutive Sundays.

Decree 239 of the 1937 IV Plenary Council of Australia and New Zealand requires that an assistant priest inform the parish priest and the diocesan bishop if he was to be absent from his parish for three days. To be absent from his parish for more than five days or on a Sunday the assistant priest required the written permission of the diocesan bishop.

In the 1983 Code of Canon Law, in regard to annual vacation and annual retreat, the assistant priest has the same rights as the parish priest. [CIC (1983) canon 550 §3]

QUESTION TEN

WHO HAS THE AUTHORITY TO REMOVE A PRIEST FROM THE POSITION OR OFFICE TO WHICH HE HAS BEEN ASSIGNED AND WHAT ARE THE REASONS FOR WHICH SUCH A REMOVAL CAN BE MADE?

45. The diocesan bishop has the authority to remove a priest from the office of parish priest if his ministry has for some reason become harmful or at least ineffective, even though this occurs without any serious fault on the part of the parish priest. [CIC canon (1917) canon 2147 §1]

The principal reasons for which a diocesan bishop may remove a parish priest and the procedure for such removal are established in the Code of Canon Law. [CIC (1917) canons 2147-2161 cf. Decrees 228-230 of the 1937 IV Plenary Council of Australia and New Zealand]

46. The diocesan bishop has the authority to remove a priest from the office of assistant priest. The diocesan bishop must have a just reason for removing the assistant priest from his office. [CIC (1917) canons 192 §3, 477 §1]

By the analogy of law with the reasons for which a parish priest can be removed, an assistant priest can be removed from office if his behaviour brings grave harm or disturbance to the parochial community. For example, if the assistant priest has lost his good reputation among upright and serious minded parishioners the diocesan bishop could remove him from the parish. [CIC (1917) canon 2147 3°]

A diocesan bishop can remove from office any priest whom he has appointed to the office of parish priest or assistant priest, irrespective of whether or not the priest is incardinated into the diocese.

QUESTION ELEVEN

WHAT BEHAVIOURAL STANDARDS DOES THE CHURCH REQUIRE OF ITS PRIESTS?

47. It is the teaching of the Church that priests by reason of their ordination act in the person of Christ as Head of the Church and in the name of the Church.¹⁷

It is the teaching of the Church that the sacred ministry, instituted by Christ and exercised by bishops and priests, is essential to the Church fulfilling its mission of preaching the Gospel and bringing Christ's salvation to all peoples.¹⁸

48. In canon 124 of the 1917 Code of Canon Law the Church imposed on all priests the obligation to live their priestly lives in such a way that they would provide an example of virtue and good deeds to the lay people. [CIC (1917) canon 124]

The articulation of this obligation in CIC (1917) canon 124 is the juridical expression of the traditional teaching of the Church, namely that priests are called to lead a life of holiness befitting the priesthood they receive from Christ through the Church as a gift.

In his Encyclical Letter on the Catholic Priesthood of 20 December 1935 Pope Pius XI taught that priests were obliged to have a loftiness of spirit, a purity of heart and an integrity of life in keeping with the sublimity and sanctity of the priestly calling.¹⁹ Pope Pius XI reminded priests of the law of the Church that they were so strictly bound by the obligation to observe chastity that a sin against chastity was also a sacrilege.²⁰ [CIC (1917) canon 132 §1]

¹⁷ Vatican II Dogmatic Constitution on the Church nn.10, 20, 37;
Vatican II Constitution on the Sacred Liturgy n.33;
Vatican II Decree on the Bishops' Pastoral Office in the Church
n.11; Decree on the Ministry and Life of Priests nn.2, 6, 12.
¹⁸ Vatican II Dogmatic Constitution on the Church n.28;
Decree on the Ministry and Life of Priests n.2.
¹⁹ Pope Pius XI Encyclical Letter *Ad Catholici Sacerdotii* n.20.
²⁰ Pope Pius XI Encyclical Letter *Ad Catholici Sacerdotii* n.25.

In his Apostolic Exhortation of 23 September 1950 to all clergy on the sanctification of the priestly life, Pope Pius XII taught that it is absolutely impossible for the priestly ministry to fulfil its purpose in the Church unless priests give an outstanding example of holiness.²¹ Pope Pius XII also addressed the issue of chastity, in particular reminding priests of the means to be taken to safeguard priestly chastity.²²

The Second Vatican Council repeated the traditional teaching that priests are to give example to the Church of true priestly and pastoral ministry and that a priest's ministry will not be fruitful unless he excels in holiness.²³

49. The seriousness with which the Church considers the obligations of priests is measured by the provisions made by the Church in its law for the violation of those obligations.

In canon law an offence or delict is the violation of a law for which a person can incur a penalty.

The law of the Church provides for priests to be punished with canonical penalties for the violation of their obligations.

In accordance with the 1917 Code of Canon Law priests could be punished, for example, for the violation of the laws regulating the celebration of the Liturgy, [CIC {1917} canon 2378], the violation of the laws regarding clerical attire [CIC {1917} canon 2379], and the violation of the law of residence [CIC {1917} canon 2381].

In the 1917 Code of Canon Law canon 2359 §§2-3 dealt with offences committed by priests, including religious priests, against chastity.

In CIC {1917} canon 2359 §2 the offences against chastity were: a sin against the sixth commandment with a person of either sex under the age of sixteen; adultery; rape; bestiality; sodomy; panderage and

²¹ Pope Pius XII Apostolic Exhortation *Menti Nostrae* Introduction.
²² Pope Pius XII Apostolic Exhortation *Menti Nostrae* Part I.
²³ Vatican II Dogmatic Constitution on the Church n.28; Vatican II Decree on the Ministry and Life of Priests n.12.

incest. If a priest committed any of these offences he was to be suspended, that is prohibited from exercising the priestly ministry, deprived of every office, dignity or position he may hold, and in more grievous cases dismissed from the clerical state.

In accordance with CIC (1917) canon 2359 §3 any priest, including a religious priest, who offended against chastity in a way not mentioned in CIC (1917) canon 2359 §2, was to be punished in proportion to the gravity of the delict. If the priest was a parish priest or an assistant priest he could also be deprived of his office.

50. The 1983 Code of Canon Law modifies the former legislation, due in part to the revision of the system of penalties. [CIC (1983) canon 1395]

Since 27 November 1983 priests, including religious priests, who violate their obligation to observe chastity by living in concubinage or by engaging in habitual sexual offences are to be punished with suspension and if necessary other penalties and ultimately dismissal from the clerical state. [CIC (1983) canon 1395 §1]

Since 27 November 1983 priests, including religious priests, who violate their obligation to observe chastity in other ways which are especially serious if they are perpetrated publicly, or with force, or with threats, or with a person under sixteen years of age are to be punished with just penalties and can be dismissed from the clerical state if the case demands it. [CIC (1983) canon 1395 §2]

QUESTION TWELVE

SPECIFICALLY, WHAT ARE THE DUTIES AND OBLIGATIONS OF PRIESTS IN DEALING WITH MINOR PARISHIONERS GENERALLY AND ALTAR SERVERS (AS SERVANTS OF THE CHURCH) IN PARTICULAR?

51. The ministry of priests is traditionally referred to as *cura animarum* - the care of souls and in more recent times as *cura pastoralis* - pastoral care.

The fundamental content of pastoral care is to bring people into a faith relationship with Christ, to see that their faith is nourished, especially by the Sacraments, and enable them to live their Christian vocation fully and efficaciously.²⁴

Priests exercise their priestly ministry for all those entrusted to their care by the diocesan bishop. Hence their pastoral care brings them into contact with children and minors.

The Second Vatican Council, reiterating the traditional teaching of the Church, taught that priests were to care for young people with special diligence.²⁵ Priests come into contact with minor parishioners in relation to their Christian education and in preparing children to receive the Sacraments as well as through contact with their family.

The fundamental obligation of priests with regard to their duty of preaching the Word is that all Catholics from their childhood must not be taught anything that is contrary to Catholic faith and morals. [CIC (1917) canon 1372]

In keeping with the teaching of the Church that priests are to preach the Word of God not only by words but also by example²⁶, priests are bound by the obligation to give witness to the teaching of the Church in faith and morals by their own behaviour. Consequently, any behaviour by a priest in the exercise of his pastoral care of a minor that is contrary to the moral teaching of the Church is a violation of his duty to preach the Word of God.

²⁴ Vatican II Dogmatic Constitution on the Church n.28.

²⁵ Vatican II Decree on the Ministry and Life of Priests n.6.

²⁶ Vatican II Decree on the Ministry and Life of Priests n.4.

52. In the 1917 Code of Canon Law the Church articulated what was an ancient practice introduced in the course of centuries namely that priests were forbidden to celebrate Mass, even privately, without a male server. [CIC (1917) canon 813]

The Church required that altar servers should be carefully instructed as to be able to fulfil their duties fittingly. It is the responsibility of parish priests to ensure that altar servers are instructed.

In regard to their relationships with altar servers all priests are bound by their fundamental obligations of pastoral care to all members of the community.

However, given that they assist the priest in the celebration of the Mass priests have a particular obligation towards altar servers, especially in view of their obligation to foster vocations to the priesthood. [CIC (1917) canon 1353]

QUESTION THIRTEEN

WHAT ARE THE CHURCH LAW REQUIREMENTS ON A BISHOP BEFORE ACCEPTING A PRIEST TO WORK WITHIN HIS DIOCESE (WHETHER TEMPORARILY OR WITH A VIEW TO INCARDINATION)?

53. It can be noted that, in keeping with a canonical tradition commencing in the Fifth Century, the law of the Church forbids a priest to celebrate Mass in another parish or diocese other than his own, unless he has authentic and valid letters of commendation from his diocesan bishop.

Likewise religious priests must have letters of commendation from their superior. [CIC (1917) canon 804]

54. If a diocesan bishop accepts any priest to work in his diocese temporarily, he is required to have evidence as to the suitability of the priest for the exercise of the priestly ministry.

The law of the Church prohibits a diocesan bishop from granting the faculties of the diocese to priests unless the priest's good moral standing and sufficiency of knowledge has been ascertained. [CIC (1917) canons 877, 1340]

55. If a diocesan bishop accepts a priest to work in his diocese with a view to the priest being incardinated into that diocese, the law of the Church requires that the diocesan bishop obtain from the priest's superior written testimony as to the priests' character, behaviour and studies.

The superior who provides the testimony is under the grave obligation to ensure the testimony is truthful. [CIC {1917} canon 117]

QUESTION FOURTEEN

WHAT IS GOOD PRACTICE FOR A BISHOP IN TERMS OF:

- (A) CHECKS TO BE UNDERTAKEN ON A RELIGIOUS PRIEST BEFORE APPOINTING HIM TO A DIOCESAN POSITION, WHETHER TEMPORARILY OR WITH A VIEW TO INCARDINATION? AND
- (B) MONITORING OF THE CONDUCT OF A PRIEST ACCEPTED AD EXPERIMENTUM, PRIOR TO THE TIME OF INCARDINATION?
56. (A) A diocesan bishop does not have the authority to appoint a religious priest to a position or office in his diocese without the permission of the superior of the religious priest.

If a diocesan bishop requests the services of a religious priest or priests, the superior of the religious community would make a recommendation as to which priest(s) would be suitable.

If a religious priest asks a diocesan bishop if he could be given an assignment in his diocese, the bishop would seek first the views and permission of the priest's superior.

If a diocesan bishop is willing to accept a religious priest into his diocese *ad experimentum*, the diocesan bishop is required to have written documentation testifying to the character, behaviour and studies of the priest. The law of the Church permits the diocesan bishop to obtain this information under secrecy if necessary. [CIC {1917} canon 117 2°]

57. (B) As the acceptance of any priest into a diocese *ad experimentum* is of its nature a period of probation, the diocesan bishop has the obligation to ensure during the period of probation that the priest is suitable for permanent service in his diocese.

As it is his responsibility to judge whether the religious priest is suitable to be incardinated into the diocese, the diocesan bishop has the obligation to take whatever steps he considers necessary or expedient, in the particular circumstances, to ensure he has the information necessary to make that judgement.

The 1917 Code of Canon Law [CIC (1917) canon 476 §7] gave to the parish priest the responsibility of supervising his assistant priests. In keeping with this norm of law it would be good practice for the diocesan bishop to request the parish priest to provide an opinion as to the religious priest's suitability for incardination. Alternatively, the diocesan bishop could entrust this responsibility to another priest.

The diocesan bishop has the right to consult any person or persons whom he considers would be in a position to offer an opinion as to the suitability of the religious priest for service in the diocese.

In addition to any such supervision and seeking advice, the Church exhorts diocesan bishops to know their priests individually and personally and to know their character and talents, their likes and dislikes, their spiritual life, zeal and plans.²⁷

QUESTION FIFTEEN

WHAT ARE THE OBLIGATIONS PLACED BY THE CHURCH ON A PRIEST (OR OTHER CLERIC) WORKING WITHIN A DIOCESE TO WHOM A REPORT OF SEXUAL MISCONDUCT BY ANOTHER CLERIC WITHIN THAT DIOCESE HAS BEEN MADE? WOULD YOUR ANSWER BE DIFFERENT IF THE CLERIC TO WHOM THE REPORT WAS MADE WAS THE ADMINISTRATOR OF THE PARISH IN WHICH THE ACCUSED CLERIC WAS WORKING AT THE TIME OF THE ABUSE, AND WHERE THE ABUSE TOOK PLACE?

²⁷ Sacra Congregatio pro Episcopis Directorium de Pastoralis Ministerio Episcoporum 2 February 1973 n.111.

58. Some offences committed by a priest are of their nature publicly known, for example violation of the law of residence. [CIC (1917) canon 2381] Other offences such as an offence against chastity might be known only by the priest and the other person or persons concerned. [CIC (1917) canon 2359 §§2-3]

If it is reported to a priest (or other cleric) that another cleric has been involved in sexual misconduct, the priest in receipt of such a report has the obligation to inform the diocesan bishop of the report.

First, this obligation arises from the fact that priests, together with all members of the Church, are responsible for the Church being faithful to its mission.²⁸

Second, this obligation arises from the fact that all priests share with their bishops the one priesthood and ministry of Christ²⁹ and that the bishops have a responsibility for the spiritual welfare of their priests.³⁰

Third, this obligation arises from the fact that it is the diocesan bishop who has the authority to investigate the reported misconduct in order to determine what action needs to be taken. [CIC (1917) canon 1939-1946]

59. My answer would be the same if the report was made to the Administrator of the parish in which the accused cleric was working at the time of the abuse and where the abuse took place.

Moreover, there would be an added dimension to the obligation of the Administrator to inform the diocesan bishop of the report.

As stated in n.34 above the Administrator of a parish has the same duties as a parish priest. Hence to the

²⁸ Vatican II Dogmatic Constitution on the Church n.30; Vatican II Decree on the Ministry and Life of Priests n.2.
²⁹ Vatican II Decree on the Ministry and Life of Priests n.7.
³⁰ Vatican II Decree on the Bishops' Pastoral Office in the Church n.16.

Administrator is entrusted the pastoral care of the parochial community - *cura animarum*.

For an Administrator not to take action when made aware of sexual abuse by a priest working in the parish would be a dereliction of his duty to exercise pastoral care of the community entrusted to him by the diocesan bishop.

QUESTION SIXTEEN

WHAT OBLIGATIONS ARE THERE ON CLERGY IN TERMS OF REPORTING THEIR OWN MISCONDUCT (IN PARTICULAR, SEXUAL MISCONDUCT)?

60. There is no canonical obligation on clergy to report their own misconduct.

There is a moral obligation on priests to inform the bishop of their own misconduct because:

- priests are ordained to serve the Church³¹;
- priests are the indispensable helpers of the bishops in the pastoral care of the people³²;
- the fidelity of priests to their priestly ministry is essential to the Church fulfilling her mission³³; and
- the infidelity of priests is harmful to the Church and its mission³⁴.

QUESTION SEVENTEEN

WHAT ARE THE SPECIFIC OBLIGATIONS OF A DIOCESAN BISHOP IN TERMS OF THE INVESTIGATION OF A REPORT OF SEXUAL MISCONDUCT BY A CLERIC WORKING WITHIN THE DIOCESE?

61. The Church establishes the procedure to be followed by a diocesan bishop when he receives information about an offence. [CIC (1917) canons 1933-1959]

³¹ Vatican II Decree on the Ministry and Life of Priests n.2.
³² Vatican II Decree on the Ministry and Life of Priests n.7.
³³ Vatican II Decree on the Ministry and Life of Priests n.12.
³⁴ Vatican II Decree on the Ministry and Life of Priests n.12.

Unless it is certain that the offence has been committed, the diocesan bishop is to institute an investigation. [CIC (1917) canon 1939]

When the investigation is concluded the diocesan bishop is to determine what action, in accordance with the norms of canon law, is to be taken. [CIC (1917) canon 1946]

The law obliges the diocesan bishop to investigate any offence, irrespective of when it was committed and irrespective of whether the diocesan bishop was the bishop of the diocese at the time of the alleged offence.

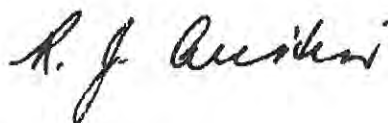
QUESTION EIGHTEEN

WOULD THE ANSWER TO QUESTION 17 BE DIFFERENT IF THE ACCUSED CLERIC WAS A RELIGIOUS CLERIC WORKING IN THE DIOCESE AD EXPERIMENTUM?

62. The answer to question 17 would not be any different if the accused cleric was a religious priest working in the diocese *ad experimentum*.

If the offence were proven then, in addition to what action the law requires the diocesan bishop to take, the diocesan bishop would terminate the period of probation.

If the offence is not proven then the diocesan bishop could terminate the period of probation. If the diocesan bishop decided to continue with the period of probation he would be obliged to establish a suitable process of supervision of the religious cleric.



(Dr) Rodger J Austin jcd stl

5 September 2005

ANNEXURE 'A'

CURRICULUM VITAE

DR RODGER J AUSTIN JCD STL

Canon Lawyer

Canon law adviser and consultant to diocesan bishops, diocesan agencies, parishes, religious institutes and other Church organizations and individuals.

Advocate of the Ecclesiastical Regional Tribunal of Sydney and the Ecclesiastical Tribunal of Appeal for Australia and New Zealand.

Qualifications

- STL Licentiate in Sacred Theology
Theological Faculty of Sydney, Manly, 1967
- JCD Doctorate in Canon Law
Pontifical Urban University, Rome, 1972

Professional Appointments

- 1972-1975 Lecturer in Canon Law
Theological Faculty of Sydney, Manly
- 1972-1975 Lecturer in Canon Law
Marist Fathers Seminary, Sydney
- 1975-1989 Lecturer in Canon Law
Catholic Theological Union, Hunter's Hill.
- 1982-1989 Lecturer in Canon Law
St Paul's National Seminary, Kensington
- 1984-1989 Lecturer in Canon Law
Catholic Institute of Sydney, Manly
- 1991-1996 Lecturer in Canon Law
St Paul's National Seminary, Kensington
- 1979-2004 Judge Ecclesiastical Regional
Tribunal of Sydney
- 1981-2004 Judge Ecclesiastical Tribunal of
Appeal for Australia and New Zealand.
- 2005-2009 Advocate for the Ecclesiastical
Regional Tribunal of Sydney and Ecclesiastical
Tribunal of Appeal for Australia and New
Zealand

**Ministerial
Appointments**

1972-1983 In the Diocese of Wollongong:
Chancellor; Diocesan Consultor;
Bishop's Secretary; Director of Centacare;
Member of Council of Priests, Diocesan Welfare
and Liturgical Commissions, and
Diocesan Development Fund Committee.

1984-1989 In the Archdiocese of Sydney:
Episcopal Vicar for Religious.

1989-1991 Assistant Secretary Australian
Catholic Bishops' Conference Canberra.

**Professional
Activities**

Member of the Canon Law Society of Australia
and New Zealand

Member of the Canon Law Society of Great
Britain and Ireland

Member of the Canadian Canon Law Society

Member of the Canon Law Society of America

Member of the City of Sydney Law Society

1972

Meeting of the Diocesan Commission at St. Marys Cathedral on 2.8.72

His Grace the Archbishop presided. Those present were their Lordships Bishops Maitland and Kelly, Mgrs. Madden and Jernin, Frs. McSwaney, Doyle, Mersden, Green and Elliott.

The following items of expenditure were approved:

Richmond: an additional \$10,000 for extensions to the Parish School bringing the total to \$70,000.

Toukley: \$37,000: Purchase of four acres of land at Budgewooi.

The Parish of Central Bankstown was given permission to sell a vacant block of land at Sandell Park for \$15,000.

The following appointments were made.

Rev. M. S. Hogan P.P. Central Bankstown.

Rev. B. Ballase, P.P. Matraville.

Because of the shortage of priests, Fr. L. Medina (Bass Hill) would be sent to Riverwood until the end of the year, and the newly-ordained Columban Father who is at present working for four days a week at Harris Park, would be asked to go to Bass Hill instead.

Approval was also given to the establishment of the parochial district of Tenney Hills; the Passionist Fathers being willing to accept the Pastoral Responsibility for this district. The responsibility will last for three years and then the situation will be reviewed by both parties.

+ James Carroll
11-X-1972.

Meeting of the Archbishop
Madden & Cochrane

The following
Marian & Louise & Liverpool & Brighton-le-Sands

St. Marys:
Harris Hill: \$
North Rocks: \$
Stratfield
Cherry: \$2
Baulkham: \$4
Lambton: \$
Leichhardt: \$
Lagwood: \$2
Kintla
Flemington

St. John
Fr. H. Cahade
it was hoped that
return there for
the new priest
Fr. R. Matthews
was available
there was a
so that he can
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Box D1103/0213

1972

Meeting of the Diocesan Councilors at St. Marys Cathedral on 15.12.72.

This
was

His Grace the Archbishop presided. Those present were His Grace
Archbishop Barnett, His Lordships Bishops Muldoon and Kelly, Msgr Madden
and Canon Frs. McSweeney, Doyle, Warden, Brown - collt.

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The following appointments were made:

- Rev. B. Ballone P.P. Quakers Hill, Schellfields; Rev. J. Jeffrey Adm. Mona Vale (3 months)
- J. Murphy Adm. Gosford (6 months); J. Amadio - Assistant P.O. Chaplain - Sydney
- Assistants: P. Murphy - Manly, P. Abbott - Narrabeen, P. Morrison - Kirriemuir
- J. Boland - Kogarah, R. Fitzpatrick - Central Bankstown; D. Sheedy - St. John's College
- R. Flaherty - Ryde, S. Ryan - Waterloo, P. Lavanagh - Penrith, G. Ryan - Darlinghurst
- * E. Adams - Bass Hill, S. Grawener - Shellfield, D. Burns - Lidcombe
- M. Kelly - Mascot Beach, R. Malone - Cabramatta, N. Redden - Green Hills
- D. Donovan - Badliem; J. O'Keefe - Rydalmere, A. Brock - Narrabeen, J. Duck - Rozelle
- N. Holley - Bankstown, D. Foley - Mt. Druitt, R. Wickham - Bankstown, R. Lyons - Bankstown
- L. Baden - Family Life Centre, E. Barry - Huron S.P.C. Springwood, N. Finnigan S.A.C. -
- St. Marys, R. Mc Carlane S.S.C. - Concord, P. Deady - Tempe, A. Nelson - Chaplain
- Macquarie Hills, W. Robley - West Ridge, J. Donnelly - Mearnsbrook, J. Langtry - Liverpool
- J. Gyanovic - Manly, J. Hamilton - Bankstown, M. O'Keefe - Australia of Higgins Bridge
- W. Moore - Pasquith, P. Marr - N.S.W. Leichhardt, R. Hayes - Panania, J. Baker - Mt. Pritchard
- P. Sheedy - Richmond, G. Rosen - Helensfield, J. Dixon (Vacant) - Badliem
- J. Spelling - St. Marys, W. Alifanadi - Research, G. Gray - C.P. Director
- R. Deady C.C.D. Secretary, B. Collins - Director of Botanicals in Catholic Schools

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Maltese Parishes will administer Holy Land - Festival for 6 months

The following items of expenditure were approved:

- Leichhardt \$1000 - Repairs to retaining wall and fence
- Parramatta \$2000 - Assistance towards setting up Catholic Family Welfare Bureau
- Bankstown \$940 - Repairs to Parish Hall to re-establish house
- \$750 - Renewal of water service to Primary School
- \$480 - Professional fees for plan for extension to Girls High School
- \$375 - Repairs to slate roof to Presbytery and old school
- \$1697 - Extension of services at East Roseville branch
- Katoomba \$10,000 - Water Rates
- Lancaster Bay \$46,000 - Repairs, improvements, new furniture at Parish Primary School
- Balmoral \$85,000 - Purchase of property adjacent to Kirribilli Church
- Bankstown Park \$37,000 - Library for Girls High School
- Additions to Presbytery - branch

ARCHDIOCESAN COUNCIL MEETING - 19TH JANUARY, 1978A G E N D A

1. Appointments:
 1. Parish Priest of Lalor Park
 2. Parish Priest of Hyde
 3. Parish Priest of Como-Oyster Bay
2. Clergy Changes:

Priests for reappointments.

 1. Rev. W. Noonan (Adm) 18th January
 2. Rev. S. Sma
 3. Rev. H. Weaver 2nd week February
 4. Rev. R. Flaherty 1st February
 5. Rev. G. Flynn (Sydney)
 6. Rev. R. Anderson (Hosman)
 7. Rev. D. O'Neill (Ashbury)
3. Clergy required:
 1. Merrylands (?)
 2. South Mount Druitt (?)
 3. Dulwich Hill
 4. Administrator Cathedral
 5. Fairfield
4. Notes regarding previous Minutes:
 1. Rev. H. Weaver did not take post at North Sydney Teachers' College.
 2. Rev. P. Sedro has left for study in Italy.
 3. Rev. J. Harcombe was appointed to Lakemba not Fairfield.
 4. Father Philippe remained at Penrith.
 5. Father Duran is residing at Harcombe Parish.
 6. Father McClellan assisting at St. Mary's Parish and Camperdown
5. Other matters concerning Clergy:
 1. Appointment of Rev. W. O'Connor Episcopal Vicar - Region IV
 2. Monsignor T. Burns to U.S.A. for one month to attend the Seminar on Parish Reconstruction.
 3. Rev. J. O'Garra to be asked to investigate the various welfare and charity organisations. To begin with the Paulians.
 4. Rev. B. Collins. Re. reappointment to Education Office.
 5. Director of Family Life Programme.
 6. Rev. A. Reynolds on loan to Wagga.
 7. Rev. D. Leivasley declined long leave.
6. Other matters to be discussed:
 1. Proposal to sell land at Glenorie (Sites Fund).
 2. Increase in Clergy salary (Revs. Harley, Bray and McCarthy)

- 3 -

Appointments of Clergy.

| a. LALOR PARK | | b. NYDE | |
|--------------------|------|--------------------|------|
| Rev. T. Crowley | 1959 | Rev. V. Redden | 1961 |
| Rev. V. Redden | 1961 | Rev. J. O'Neill | 1962 |
| Rev. B. Rooney | 1963 | Rev. C. Sciberras | 1964 |
| Rev. C. Sciberras | 1964 | Rev. J.J. Harcombe | 1971 |
| Rev. J.J. Harcombe | 1971 | | |

| c. COMO-OYSTER BAY | |
|--------------------|------|
| Rev. J. Gallen | 1956 |
| Rev. C. Sciberras | 1964 |
| Rev. J.J. Harcombe | 1971 |

List of Assistant Priests by duration of appointment:-

| | | |
|-----------------------------|------------------------|------------------------|
| Rev. E. Kennedy | - Cathedral | (1972) March |
| Rev. J. Roland | - Kewerah | (1973) Jan. |
| Rev. D. Christie | - Maroubra Beach | (1973) Jan. |
| Rev. P. Linder | - Liverpool | (1973) Oct. |
| Rev. J. Alt | - Chatswood | (1974) July |
| Rev. R. Anderson | - Mosman | (1974) July |
| Rev. R. Brogan | - Cathedral | (1974) Jan. |
| Rev. Aiden Dunne | - Rose Hill | (1974) Jan. |
| Rev. Fabian Dugan | - Campsie | (1974) Jan. |
| Rev. B. Hawthorne | - Maroubra | (1974) Dec. |
| Rev. J. Milliken | - Revesby | (1974) Dec. |
| Rev. J. O'Neill | - Bondi | (1974) Sept. |
| Rev. J. Porteous | - Kingsgrove | (1974) Oct. |
| Rev. J. Truman | - Bondi Beach | (1974) July |
| Rev. K. Dixon | - North Ryde | (1975) Oct. |
| Rev. V. Finnegan | - Pennant Hills | (1975) May |
| Rev. R. Hayes | - Cronulla | (1975) Dec. |
| Rev. R. Hickman | - Haberfield | (1975) Dec. |
| Rev. P. Jansch | - East Granville | (1975) June |
| Rev. J. Kemble | - Ryde | (1975) Dec. |
| Rev. M. Leonard | - Elizabeth Bay | (1975) July |
| Rev. J. McCaffery | - Woollahra | (1975) Dec. |

List of Administrators according to Seniority:-

| | |
|-------------------|---------------------|
| Rev. K. McNeill | - Doonside |
| Rev. D. Nias | - Mt. Fritchard |
| Rev. T. Kennedy | - Redfern |
| Rev. W. Hobley | - Sylvania |
| Rev. J. Gallen | - Como-Oyster Bay |
| Rev. B. Byron | - Gladesville |
| Rev. G. Connolly | - Elizabeth Bay |
| Rev. J. McRae | - Enfield |
| Rev. L. Cashan | - Crommyne |
| Rev. W. Maccham | - Greenacre |
| Rev. B. Titus | - Strathfield |
| Rev. D. O'Neill | - Ashbury |
| Rev. W. Aliprandi | - Teachers' College |
| Rev. D. Selvadley | - Liverpool |
| Rev. J. Rivett | - Central Bankstown |
| Rev. G. Kings | - Westford |
| Rev. V. Redden | - Merrylands |
| Rev. J. Alt | - Chatswood |
| Rev. K. Bray | - Mt. Fritchard |