



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

File Number: S94/2025
File Title: AA v. The Trustees of the Roman Catholic Church for the Dioc
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Important Information

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BETWEEN:

AA
Appellant

and

10 THE TRUSTEES OF THE ROMAN CATHOLIC CHURCH FOR THE
DIOCESE OF MAITLAND-NEWCASTLE
ABN 79469343054
Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

PART I: PUBLICATION

1. This outline is in a form suitable for publication on the internet.

PART II: OUTLINE OF ORAL SUBMISSIONS

(1) Proceedings against an unincorporated organisation

- 20 2. Section 6O of the *Civil Liability Act* (**JBA vol 1 tab 3**) permits a court to make substantive findings of liability ‘as if the organisation had legal personality’ (**AS[20]–[22]**). The respondent is a proper defendant to a claim in respect of the unincorporated Diocese of Maitland-Newcastle (**AS[15]–[19]**).

(2) Ground 2 – general duty of care

3. It was an agreed fact at trial that Father Pickin was the parish priest of St Patrick’s Church. The significance of that fact is that the case was conducted on the basis that he had the authority of the Diocese to decide who was invited to the Presbytery and what events could take place there. It would be procedurally unfair and substantively unsound to seek to controvert that position now (**AS[54]; Reply[2], [5]**).
- 30 4. The Diocese required priests, not merely parish priests, to interact with children as part of an educational ministry. At the time, priests, not merely parish priests, were figures of serious and unquestionable authority. This added to the inherent vulnerability of children as a class (**AS[54]–[55]; Reply[8]**).

5. The Diocese, in the person of the Bishop, had control over priests, not merely parish priests, and Diocesan premises (AS[54]; Reply[5]).

6. As for awareness of risks: (a) there was evidence that Bishops and other senior clergy were aware of the risk that priests may sexually abuse children; (b) there was also evidence that the Bishop of this Diocese was aware of that risk since at least 1954; and (c) knowledge on the part of the parish priest, Father Doran, of a complaint about Father Pickin in 1966 should be attributed to the Diocese (AS[51]–[53]; Reply[7]).

O'Connor v Comensoli [2022] VSC 313 at [235]–[246], [282], [289]–[295] (JBA vol 7 tab 46)

10 7. In any event, foreseeability does not depend on subjective prior knowledge of the particular means by which a harm comes about (AS[49]–[50]).

8. It is not an answer for the respondent to say that Father Pickin's particular conduct was utterly out of order and not something associated with any normal church activity.

(3) Ground 1 – non-delegable duty

9. The existence of a non-delegable duty was pleaded and put in issue (AS[25], Reply [12]).

10. The nature of that relationship with the appellant is appropriately recognised as one where the Diocese had 'assumed a particular responsibility to ensure that care is taken, rather than merely to take reasonable care.' There is an analogy with the hospital, school and employment cases (AS[34]–[41], Reply [13]–[19]).

20 *Bird v DP* (2024) 98 ALJR 1349 at 1360 [37] (JBA vol 6 tab 32)

Kondis v State Transport Authority (1984) 154 CLR 672 at 687 (JBA vol 3 tab 19)

11. Liability for breach of a non-delegable duty may be based on an intentional wrong by the wrongdoer.

(a) That is consistent with authority prior to *Lepore*.

Morris v CW Martin & Sons [1966] 1 QB 716 (JBA vol 7 tab 44)

Burnie Port Authority v General Jones Pty Ltd (1994) 179 CLR 520 at 551, 553 (JBA vol 3 tab 13)

(b) The majority in *Lepore* made errors in their reasoning.

New South Wales v Lepore (2003) 212 CLR 511 (JBA vol 4 tab 24)

- (c) The conclusion of the majority produces perverse results.

Armes v Nottinghamshire County Council [2018] AC 355 at [51] (**JBA vol 6 tab 31**)

- (d) The reasons at CA [165]–[166] are not persuasive.

12. There is no reason for restraint to preclude departing from *Lepore*.

(4) Notice of contention

13. This Court should determine for itself the matters raised in the notice of contention. The Diocese should not be permitted to raise new contentions that were not raised at trial (**Reply [2]**).

- 10 14. On the **occurrence of the abuse**: the Diocese’s challenge to the primary judge’s credit-based finding that the appellant was abused by Fr Pickin did not lead to any dispositive reasoning in the Court of Appeal: CA[13], [154] (**Reply [20]**).

15. There is no proper basis on which to overturn the primary judge’s finding that the abuse occurred. That finding was consistent with the undisputed facts, and was neither glaringly improbable nor contrary to compelling inferences. Ball JA’s approach was correct (**Reply [21]–[22]**).

16. Mr Perry’s evidence did not require rejection of the appellant’s case (**Reply [4], [23]**); and no case was put that the appellant had a sincere but mistaken belief (**Reply [24]**).

- 20 17. On **breach**: no ground of appeal was raised in the CA challenging breach (**Reply [25]**).
The primary judge’s finding of breach was correct (**Reply [26]–[27]**).

18. On **causation**: the primary judge’s finding was correct (**Reply [28]**).

Dated: 7 August 2025



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