

Priest convicted of sexually abusing children, now for the questions about a cover-up

Written by The Conversation USA

Former priest John Farrell was [sentenced on Monday](#) to a minimum of 18 years' jail for dozens of [sexual offences committed](#) against 12 children, many of them altar boys, in the 1970s and 1980s.

Police may now shift their focus to whether senior clergymen can be prosecuted for an alleged cover-up that may have delayed the investigation and prosecution of Farrell by 20 years or more.

It is difficult to predict what evidence such an investigation will uncover. But some key pieces of evidence are already on the public record.

This includes a [letter](#), dated September 11, 1992, from Father Wayne Peters (who was, until his death last year, [vicar-general of Armidale](#)) to Bishop Kevin Manning – now [bishop emeritus of Parramatta](#). The letter outlines Farrell's detailed confessions of child sexual abuse at a meeting eight days earlier with Peters, Father Brian Lucas (now [director of Catholic Mission](#)) and Father John Usher ([until last year, Chancellor of Sydney](#)).

Also on the public record are more recent statements made by the four clergymen when the letter came to light and was the subject of a [Four Corners report](#) in 2012. It prompted the Catholic Church to respond in the form of a [commissioned report](#).

Concealing a serious offence

It is not possible for any charges to be laid against the clergymen under mandatory reporting laws.

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This is because, in New South Wales, these laws have operated [fairly narrowly and weakly](#) . They have created, at most, summary offences subject to a [six-month limitation period](#)

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[NSW provisions](#)

do not even impose a penalty if they are breached.

However, NSW has a more serious offence of [non-disclosure of a serious offence](#) , punishable by two years' imprisonment. The letter is clearly capable of supporting the inference that the letter's author, Peters, the two other clergymen present at the meeting, Lucas and Usher, and the addressee of the letter, Manning, were all aware of Farrell's child sexual abuse and concealed this from police.

The letter would provide the strongest evidence against its author, Peters – but he died last year.

Lucas and Usher could claim they had not seen the letter and it was not an accurate record of what occurred at the meeting. Manning could claim he never received the letter. In the church's report and the Four Corners report, the clergymen adopt this position.

However, unless corroborated by independent objective evidence, these denials should not prevent a prosecution. The letter, on its face, appears to be a careful record of what transpired. Given its contents, one might expect that its author would seek to ensure Manning did receive it.

Further, according to the church's report, Lucas and Usher admitted they knew of allegations against Farrell and "suspected there was probably some substance" to them.

Hearsay objections

Lucas and Usher could present a more subtle objection to a prosecution: the letter is hearsay.

The [hearsay rule](#) prevents an out-of-court statement from being relied upon to prove the facts

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it asserts. Lucas and Usher could argue that it would be wrong for a court to rely upon Peters' claim in the letter that Farrell made admissions to them because this claim was not made under oath in court and cannot be tested by cross-examination.

However, their objections would be likely to be overruled. The Peters letter appears to fall within an established [exception to the hearsay rule](#) : Peters, deceased, is unavailable to testify, and the circumstances in which the letter was written tend to support its reliability.

Manning would struggle to raise a hearsay objection to the use of the letter in his prosecution because there would be no reliance on its accuracy. Manning's receipt of the letter would support an inference that he believed Farrell had confessed to serious offences.

Given Farrell's actual commission of these offences, such a belief and the unreasonable failure to alert the police would constitute the offence.

The decision to prosecute

Finally, the clergymen could argue that, despite the evidence against them, the prosecution should exercise its [discretion not to prosecute](#) because it would be against the public interest.

The clergymen may point to the staleness of the offence and claim the prosecution would be unduly harsh and oppressive in view of their advanced age and, perhaps, their poor health. But, again, the contrary considerations appear stronger: the church covering up child sexual abuse is of general public concern, prevalent, and calls for deterrence.

Above all, church cover-ups are extremely serious. Child victims are especially vulnerable and often suffer long-term psychological harm.

These abusers are guilty of an abuse of power and a betrayal of the trust vested in them. So too are the senior clergymen who conceal these offences.

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