

**ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Hearing
(Day 23)**

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Wednesday, 27 November 2013 at 10.45am

Before the Chair: Justice Peter McClellan AM
Before Commissioners: Justice Jennifer Coate
Mr Robert Fitzgerald AM

Counsel Assisting: Ms Gail Furness SC
Mr Simeon Beckett

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Ultimately, it will be our submission that any recommendations the Commission makes will have to have a characteristic of practicality and utility, to avoid the problems of the past.

THE CHAIR: Yes, that's right. We can't achieve it today, but from people like Mr Elliott and his colleagues we would be looking for an assurance that what is coming, or what will be put in place, will meet their expectations so that they not only will use it but feel they can rely upon it.

MR GRIFFIN: We accept that proposition.

THE CHAIR: With that in mind, Mr Elliott, thank you for waiting. We can formally excuse you today, but we really are looking for the help of all of the directors, together with the national body, to make sure that, having looked at the problem, it is resolved in some satisfactory way before we leave the issue altogether.

Mr Griffin, we will leave that in your hands.

MR GRIFFIN: Thank you, your Honour.

MR BECKETT: Your Honour, I understand that senior counsel assisting will now examine the next witness.

MS FURNESS: Thank you, your Honour. I call Archbishop Herft.

<ROGER ADRIAN HERFT, sworn: [12.30pm]

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. Would you tell the Royal Commission your full name and occupation?

A. Roger Adrian Herft, Archbishop of Perth.

Q. You have provided a statement dated 8 November 2013, archbishop?

A. Yes, that's right.

Q. That statement has been tendered as exhibit 3-1 and can be found in volume 6, tab 17. Do you have a copy of that statement with you?

A. I do.

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Q. Are the contents of that statement true and correct?

A. Yes.

Q. You were the Bishop of Newcastle between 1993 and April 2005?

A. That is correct.

Q. And you went from that position to your current position?

A. That is correct.

Q. In your statement, in paragraph 5, you refer to first learning of Allan Kitchingman in about 2000; do you see that?

A. That is correct.

Q. The context of you having learnt about him at that time was that he was worshipping at a church within the Newcastle Diocese?

A. Yes, that's correct.

Q. Did you know anything else about him at that time other than that he was a worshipper?

A. No.

Q. Did you know that he was ordained as a person in holy orders?

A. Yes.

Q. You say that he didn't seek to have a licence to officiate in your diocese.

A. Yes.

Q. Had he done so, would that have necessarily had to come to your attention?

A. Yes.

Q. Are you the only person with the power to grant such a licence?

A. Yes.

Q. In paragraph 6 you say that, to the best of your knowledge, he wasn't licensed and didn't perform formal functions; do you see that?

A. Yes.

1 Q. So there is no question that he was not licensed, if
2 you were the only person with the power to licence him; is
3 that right?

4 A. Yes.

5

6 Q. In terms of not performing any formal functions, do
7 you say that is only to the best of your knowledge, or do
8 you say that he did not perform those functions?

9 A. To the best of my knowledge, he did not perform any
10 sacramental or other functions.

11

12 Q. Could he have performed them and you not know about
13 them within your diocese?

14 A. That is possible.

15

16 Q. Not likely, however?

17 A. Not likely.

18

19 Q. You say in paragraph 8 that you received a facsimile
20 concerning a telephone call from Bishop Freier. Do you see
21 that? Who at that stage was Bishop Freier?

22 A. Bishop Freier was the Bishop of the Northern
23 Territory.

24

25 Q. In August 2002 you had drawn to your attention
26 a newspaper article?

27 A. Yes.

28

29 Q. Prior to having received that article, you were told
30 something by Dean Lawrence; is that right?

31 A. Yes.

32

33 Q. Would you tell the Royal Commission who Dean Lawrence
34 was at that time?

35 A. Dean Lawrence was the dean of Christ Church Cathedral
36 in Newcastle.

37

38 Q. So he was someone who was within your diocese?

39 A. Yes.

40

41 Q. You have set out in paragraph 9 what Dean Lawrence
42 told you. Was that the first time you had heard of those
43 facts?

44 A. Yes.

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46 Q. Had you heard, before that, that he had been charged?

47 A. No, I had not.

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Q. Had you heard, before that, of any conduct unbecoming by Kitchingman?

A. No.

Q. I think you then caused there to be a media statement issued on behalf of your diocese stating the extent to which Allan Kitchingman had contact with the diocese?

A. Yes, that's correct.

Q. At that stage you say that there was no national register; that's right?

A. Yes.

Q. What was the protocol or practice in place in 2002 when it came to your attention, as a bishop, that a person who was resident in your diocese had been convicted of offences in relation to children in the care of the church?

A. What I did at that stage was to inform the Bishop of Grafton, because no other bishop or professional standards person or anyone had informed me about any prior case concerning Allan Kitchingman. This was the first time that I received that particular detail, and so I contacted the Bishop of Grafton, thinking that he didn't know about this, either.

Q. What did the Bishop of Grafton tell you?

A. The Bishop of Grafton, as I recall it, said that this matter had - he knew what the matter was, that it was to do with a home in Lismore, and that, as far as he was concerned, the matter was now proceeding to compensation. That's what he told me.

Q. Was there any discussion with the Bishop of Grafton as to what should be done, given that this man was ordained as a priest?

A. Given that it had reached the stage of compensation, I believed that the matter had been completed as far as attentiveness to those who had suffered abuse, at least at that level, but also that if there was any action to be taken further, the Bishop of Grafton would in fact take that action.

Q. Did you discuss that with the Bishop of Grafton?

A. No, I did not.

Q. Did you discuss disciplining Kitchingman in any way at

1 all with the Bishop of Grafton?

2 A. No, I did not.

3

4 Q. What did you do, in 2002 when that knowledge came to
5 your attention, to acquire information as to your
6 obligations or powers in respect of Kitchingman in light of
7 the conviction?

8 A. The difficulty I faced was that Kitchingman never had
9 a licence, never asked for a licence from me. He came as
10 a retired person. I was simply told in an informal way
11 that he had been the administrator of the Diocese of the
12 Northern Territory.

13

14 In the usual process of things, if there's
15 disciplinary action to be taken, there would first be the
16 suspension of a licence, the moment I receive some
17 information and investigation is under way. Then there
18 would be the revoking of the licence after due
19 investigation. Then the third stage would be the
20 defrocking or the deposition of the person from holy
21 orders.

22

23 My difficulty, I suppose, at that stage was that
24 Allan Kitchingman at no stage, either symbolic or in any
25 other way, represented the church. He didn't wear our
26 clerical collar. He, to all intents and purposes, was
27 functioning as a layperson within the cathedral, as
28 a parishioner.

29

30 I did have the right to depose that individual at that
31 time, but I was under the impression that because I did not
32 have any information - nobody had written to me about it;
33 no complaint or person who had been abused had brought this
34 to my attention; no bishop had brought it to my attention;
35 no professional standards had brought it to my attention -
36 all that I had was the court case, and that was extremely
37 serious, plus the anonymous letter that I received, saying
38 there was more to it than seemed to meet the eye in terms
39 of the judgment.

40

41 Q. Did you seek advice from anyone as to your obligations
42 or powers in respect to Allan Kitchingman in the
43 circumstances in which he was resident in your diocese?

44 A. At the time I asked the diocesan legal personnel as to
45 what my obligations were, firstly, in terms of the court
46 case that had just been completed and the anonymous letter
47 that I had received. He told me that he would attend to

1 that in terms of bringing it to the attention of the public
2 prosecutor, which he did. Then he said to me, I think in
3 some correspondence, that that was as far as I needed to go
4 in that matter.

5

6 Q. You understand, archbishop, that there is a difference
7 between what action you may or may not take in respect of
8 the information that came to your attention, given the
9 sentencing remarks, and your role as archbishop, with
10 Allan Kitchingman as resident in your parish still being
11 ordained in holy orders; you understand there is
12 a difference between the two?

13 A. I do.

14

15 Q. You have given an answer to my question in respect to
16 the former. Can I ask you in respect to the latter, that
17 is, did you seek advice from any person in respect to your
18 obligations or powers, given that Allan Kitchingman was
19 still ordained in holy orders and resident in your diocese?

20 A. No, I did not.

21

22 Q. Do you now have a view as to whether or not you had
23 any obligations in respect of him in those circumstances?

24 A. I do.

25

26 Q. What is your current view?

27 A. My current view is that if the matter came up to me
28 now, I would seek ways and means of deposing him from his
29 position as an ordained person in the church, in the
30 Anglican Church of Australia.

31

32 Q. What information have you acquired to come to the view
33 you now hold?

34 A. In 2002 the deposing of a person from holy orders was
35 the highest level to which you could go to remove what we
36 would call the indelibility of holy orders from an
37 individual. As I understood, it was very rarely, if ever,
38 used, and I could not do it on my own. It would have to go
39 through due process. In our case, in the Diocese of
40 Newcastle at the time, it would have to go through the
41 disciplinary tribunals, and then, as a consequence of their
42 determination, I would then receive a request from them, or
43 a recommendation from them, to depose the person from holy
44 orders. It wasn't an action that I could take on my own.

45

46 Q. But it was an action that you, and you alone, could
47 initiate, wasn't it?

1 A. I could have initiated it, or other persons within the
2 diocese could have.

3

4 Q. It required the action of the bishop, did it not, to
5 begin the process you have described?

6 A. I'm not altogether sure about that.

7

8 Q. If it was the case that it was the bishop alone who
9 could initiate that process, you didn't do it in 2002. Do
10 you now have the view that you could have done it in 2002?

11 A. I do.

12

13 Q. Is the reason that you didn't do it because you lacked
14 the knowledge as to the powers that were available to you
15 then?

16 A. I think that is one answer to the question. The other
17 is that I was under the impression that Grafton had gone
18 further down the track on this matter than I was even aware
19 of, and I again thought that the matter would be completed
20 by the Diocese of Grafton.

21

22 Q. But you didn't confirm that impression --

23 A. No, I did not.

24

25 Q. -- in a discussion with the Bishop of Grafton as to
26 disciplinary action, did you?

27 A. No, I did not.

28

29 Q. Can I ask you about the cathedral. You say in your
30 statement that Allan Kitchingman worshipped at the Christ
31 Church Cathedral. Can I show you a transcript of evidence
32 given by Mr Gerber earlier, and I ask that page 1948 be put
33 on the screen. You know who Mr Gerber is?

34 A. I do.

35

36 Q. If we can scroll up a few lines, do you see at line 30
37 there is a question, and Mr Gerber answers it at line 34
38 that he wasn't surprised that Reverend Kitchingman
39 worshipped at the Christ Church Cathedral; do you see that?

40 A. I do.

41

42 Q. Then down at line 42 he gives an explanation as to why
43 he was not surprised. Can you just read that to yourself?

44 A. Yes.

45

46 Q. If we could continue over the page and if I could ask
47 you to keep reading to yourself. We can continue to scroll

1 up so that the first line is at the top of the screen. If
2 we then scroll down to the last three-line paragraph and
3 stop there. Thank you. Have you read that?

4 A. Yes, I have.

5

6 Q. Is this the first time this part of the transcript has
7 been brought to your attention, archbishop?

8 A. I read it when Mr Gerber made his submissions.

9

10 Q. Were any of the matters that Mr Gerber refers to in
11 those paragraphs I have referred you to within your
12 knowledge at the time that you were the Bishop of
13 Newcastle?

14 A. When I became Bishop of Newcastle in 1993, through to
15 2005, no-one ever raised with me either directly or
16 indirectly any matter that would have brought concern to me
17 regarding the behaviour or otherwise of the Dean of
18 Newcastle.

19

20 Q. What system did you have in place in that period
21 between 1993 and 2005 for such matters to come to your
22 attention?

23 A. We had a committee called the committee for sexual
24 allegations and misconduct, which came under a particular
25 set of protocols. We had the disciplinary tribunal that
26 people could invoke if there were issues or concerns
27 raised. As far as I was aware, there was no concern ever
28 brought to my knowledge concerning the matters that
29 Mr Gerber has referred to in his evidence.

30

31 Q. Given the systems that were in place that you have
32 described and the no doubt less formal systems which were
33 in place, is it of concern to you that Mr Gerber had
34 concerns of the type that he has given evidence about and
35 didn't tell you about them?

36 A. Yes, it is.

37

38 Q. Would you have expected concerns of the nature he gave
39 evidence of to have been brought to your attention?

40 A. I would have.

41

42 Q. Notwithstanding, as he said, the low level of them?

43 A. Yes.

44

45 MS FURNESS: Thank you. I have nothing further.

46

47 THE CHAIR: Does anyone else have any questions?

1
2 MR GRIFFIN: No, thank you.

3
4 MR E ROSS-ADJIE: If the please the Commission, I appear
5 on behalf of Archbishop Herft.

6
7 THE CHAIR: You have leave to appear.

8
9 MR ROSS-ADJIE: I do, indeed, your Honour, yes, I have
10 a letter from general counsel, dated 15 November,
11 confirming that you granted me leave. Thank you. Do you
12 need to see a copy of that letter?

13
14 <EXAMINATION BY MR ROSS-ADJIE:

15
16 MR ROSS-ADJIE: Q. Archbishop, can I take you to your
17 statement and attachment RH-16, which is the Diocese of
18 Newcastle's Clergy Discipline Ordinance 1966-2001, in
19 particular, section 6(2) on page 4 of that ordinance.

20 A. RH?

21
22 Q. RH-16. It is up on the screen.

23 A. Yes.

24
25 Q. I wonder if you could read out for me subsection (2)?

26 A.

27 *A charge of an offence other than breach of*
28 *faith ritual or ceremonial may be made by:*

29 *(a) the Bishop of his own mere motion or*

30 *(b) a person appointed by the Bishop or*

31 *(c) any other adult member of the church*

32 *resident within the diocese.*

33
34 Q. Is it safe, then, to assume from that section that
35 a charge against Reverend Kitchingman could have been made
36 not just by yourself but by persons appointed by you or any
37 other adult member of the church resident within the
38 diocese; in other words, a charge did not have to just be
39 made by yourself?

40 A. That is true. That is correct.

41
42 MR ROSS-ADJIE: I have nothing further, your Honour.

43
44 THE CHAIR: Thank you.

45
46 MS FURNESS: Nothing, your Honour.

47

1 THE CHAIR: Thank you, archbishop.

2

3 THE WITNESS: Your Honour, if I may crave your indulgence,
4 may I first say that I do welcome, as the national church
5 has done, the Royal Commission. It provides a public
6 institution like the church with an opportunity of being
7 scrutinised correctly and helpfully.

8

9 Once I read the transcripts of what took place in
10 Lismore, I would want to say how profoundly saddened I am
11 by what took place, that people who rightly expected the
12 sanctity and dignity of life did not receive it but
13 received something totally opposite to that, which has
14 harmed and hurt them, and I would simply want to say that
15 I am deeply remorseful that any acts of commission or
16 omission on my part may have added to their own trauma.

17

18 The other matter, I think, is that it certainly is
19 helpful through this public scrutiny for us as a church to
20 hopefully get a handle on how best we should have our
21 structures in place to assist the ongoing work of the
22 church as it continues to be a witness in our land.

23

24 THE CHAIR: Thank you, archbishop, and thank you for
25 coming. You are now excused.

26

27 <THE WITNESS WITHDREW

28

29 MS FURNESS: I note the time. Does your Honour wish to
30 take the luncheon adjournment?

31

32 THE CHAIR: We might take the luncheon adjournment now,
33 yes. Thank you.

34

35 **LUNCHEON ADJOURNMENT**

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