

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

**Public Hearing
(Day 19)**

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Thursday, 21 November 2013 at 10.00am

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

1 THE CHAIR: Yes, Mr Beckett.

2

3 MR BECKETT: I call Philip Gerber.

4

5 <PHILIP CHARLES GERBER, sworn: [10.02am]

6

7 <EXAMINATION BY MR BECKETT:

8

9 MR BECKETT: Q. Mr Gerber, I wonder if you could state
10 your full name and occupation for the Royal Commission?

11 A. Philip Charles Gerber and I am presently a contracted
12 public servant in the aged care complaints scheme.

13

14 Q. You have provided your address to the
15 Royal Commission?

16 A. That's correct.

17

18 Q. I wonder if the statement of Mr Gerber of 31 October
19 2013 could be brought up on the screen. Did you provide
20 a statement dated 31 October 2013 to the Royal Commission
21 in this matter?

22 A. That's correct.

23

24 Q. Have you had occasion to read that statement recently?

25 A. Yes.

26

27 Q. Do you say it is true and correct to the best of your
28 knowledge?

29 A. With the exception of paragraph 4, where I was
30 admitted as a solicitor in 1986, not 1996.

31

32 Q. When did you become the director of professional
33 standards at the Diocese of Sydney?

34 A. In April or May 2000.

35

36 Q. You say that in 2001 or 2002 you were approached by
37 the Anglican Diocese of Grafton about the possibility of
38 assisting them, is that correct, and did you become the
39 professional standards director then or at some period
40 after that?

41 A. I was approached by Bruce McAteer, who was the
42 registrar at the time, Canon Bruce McAteer. I assisted him
43 or advised him in relation to a particular matter, which
44 I don't remember much detail about. I can't really tell
45 you when I became the titular professional standards
46 director. There was a point at which I was starting to be
47 regarded as the professional standards director, and it was

1 probably some time before - around a period of 2003, before
2 they adopted their --

3

4 Q. The professional standards director is a term that has
5 a particular significance in terms of the Professional
6 Standards Ordinance that was adopted by the General Synod
7 in 2004; that's correct, isn't it?

8 A. Sorry, adopted by the --

9

10 Q. General Synod.

11 A. Well, the General Synod didn't actually adopt any
12 canons in relation to it. They recommended a model
13 ordinance.

14

15 Q. Thank you for that clarification. Prior to that
16 stage, was the term "professional standards director" in
17 use either in Sydney or in other dioceses of the Anglican
18 Church?

19 A. Yes, it was. So the term and the positions came about
20 particularly in Sydney, for example, before there was
21 actually an ordinance that set out the full duties of it.
22 When I was appointed, for example, in Sydney, I think my
23 duties were set out in a duty statement rather than in an
24 ordinance anywhere.

25

26 Q. In terms of what you say at paragraph 8 of your
27 statement, is it the case that you were providing services
28 in the nature of a professional standards director from
29 2001 or 2002 to the Diocese of Grafton?

30 A. Yes.

31

32 Q. I understand you also provided, at various stages,
33 similar advice in the nature of a professional standards
34 director, as we now know it, to the Diocese of Newcastle;
35 is that correct?

36 A. That's correct.

37

38 Q. Do you recall when you started to provide that advice
39 to them?

40 A. I can't put an actual date on it. It was when
41 Bishop Herft was still there. My best guess is that it was
42 around the 2002/2003 period. In a sense, I eased into
43 that, in that I advised them on particular matters to start
44 with, and then, when Bishop Farran became a bishop, it
45 became a little bit more definite, and I was still
46 providing services to them.

47

1 Q. We have some evidence that now Archbishop Herft
2 resigned his position as Bishop of Newcastle in about June
3 2005, from memory?

4 A. Right.

5

6 Q. Does that accord with your memory?

7 A. Yes, I was giving them some assistance and giving them
8 some advice whilst he was the bishop of Newcastle.

9

10 Q. I understand that you had a significant role to play
11 in the development of the model ordinance, as you indicated
12 earlier, and I presume a model protocol by something called
13 the --

14 A. Sexual abuse working group.

15

16 Q. Thank you, the sexual abuse working group. First of
17 all, how did that group come to be established?

18 A. I think it would have been - no, I don't - I'm sure it
19 was a group that was nominated by the standing committee of
20 the General Synod. They were, at that stage, starting to
21 realise that there had to be some sort of steps taken and
22 some sort of uniform approach worked out and adopted around
23 the country through the various dioceses. So they set up
24 two groups. One was the sexual abuse working group, and
25 there was another group I can't remember the name of, which
26 was looking more at what might be called compliance issues,
27 that is, screening and training and looking at current
28 practices with employees, clergy and so on.

29

30 Q. So your focus was more on the claimant side of the
31 equation, if you like?

32 A. Well, because I was one of the earlier - I think I was
33 probably the first professional standards director
34 appointed in the Australian church and because I was with
35 a big diocese, I actually ended up on both groups, for my
36 sins.

37

38 Q. The standing committee of the General Synod is a body
39 that meets, obviously, more frequently than the General
40 Synod itself?

41 A. Yes, it is effectively the executive of the General
42 Synod. The General Synod only meets every three or four
43 years, and the standing committee meets I think about every
44 three months.

45

46 Q. The chair of the standing committee is the general
47 secretary or the primate?

1 A. No, the primate.
2
3 Q. The general secretary also sits on that?
4 A. Look, I don't know whether he - he certainly attends
5 and plays a pivotal role. I don't know if he is actually
6 a member of the committee or is there as, effectively, the
7 CEO.
8
9 Q. Annexure PG-2 to your statement is a report of the
10 sexual abuse working group dated March 2003.
11 A. Yes.
12
13 Q. Do I take it, as a member of that committee, you were
14 one of the authors of the document; is that correct?
15 A. Yes.
16
17 Q. I wonder if you could just go, please, to
18 paragraph 1.5. It is on Ringtail 1800.1907.
19 A. Yes.
20
21 Q. You were considering at this relatively early stage of
22 the report a number of concerns that had been expressed
23 from both the wider community and inside the Anglican
24 Church about the way in which claims of sexual abuse had
25 been handled; is that correct?
26 A. Yes.
27
28 Q. Just to clarify, when you use the term "sexual abuse"
29 that includes both abuse of adults and abuse of children?
30 A. That's correct.
31
32 Q. At 1.5 you will see that there are a number of matters
33 set out?
34 A. Yes.
35
36 Q. I wonder if you could read through those, if you are
37 not familiar with them, and then going over the page as
38 well?
39 A. I'm familiar with them.
40
41 Q. So they are criticisms of the church, if you like,
42 both from the wider community and from within the church;
43 is that correct?
44 A. Some of them would have come from criticisms. Some of
45 them would have come from the general wisdom of the group
46 trying to figure out what was an appropriate way to deal
47 with these things. For example, I personally was helped

1 significantly by a group in Sydney called Towards a More
2 Appropriate Response, TAMAR, who were a group of mainly
3 women who were victims of sexual abuse themselves by church
4 workers or clergy or friends or relatives and who wanted
5 the church to get it right, because they were still members
6 of the church. So they were, for me personally, anyway,
7 a very significant group in terms of informing us what was
8 really an appropriate way to respond.

9
10 Q. You used some of that material, did you, to help shape
11 these matters that are set out as appropriate principles to
12 follow with respect to dealing with child sexual abuse
13 matters?

14 A. Yes, and my recollection is that we also looked at
15 a lot of material from other organisations, other churches,
16 other denominations, and I think probably some overseas
17 stuff as well.

18
19 Q. One of the matters is at 1.5.10 concerning - well, the
20 report says:

21
22 *Ensuring that Bishops do not exercise*
23 *conflicting roles, such as pastoral care of*
24 *one or more involved, determining*
25 *compensation, handling litigation and*
26 *disciplining clergy.*

27
28 Just briefly, I wonder if you could state what was behind
29 that? What were the issues that had arisen that led to
30 you, as an author of the report, stating that that was
31 a concern?

32 A. I think there had been a history of bishops, for all
33 the right reasons, trying to solve - when allegations came
34 up against members of their clergy who they had a pastoral
35 and supervisory role in dealing with, there had been
36 a history of them trying to solve the problem, that is,
37 responding to victims or claimants and trying to deal with
38 the perpetrator as well.

39
40 Obviously, even though they have a pastoral role, they
41 also have a leadership role, and they are usually, not
42 always, the chair of their Bishop-in-Council or standing
43 committee and chair of their synod, so they have a dual
44 role. They have that pastoral role and role of leadership
45 and so on, but they also have a role in terms of managing
46 finances and leading the whole organisation. So it was
47 very easy for them to get that confused and not necessarily

1 put victims first, or even perpetrators first, but be
2 concerned about things like the financial viability of
3 their diocese and so on.
4

5 Q. There are a number of interests, if you like, in that
6 multifarious role that you have just described, some or
7 many of which could conflict?

8 A. Yes. Oh, sorry, and the other significant role they
9 had is that in all the legislation - the separate diocesan
10 legislation, tribunal legislation - once a matter is heard
11 and if there is a finding against a member of the clergy
12 and a recommendation is made, they are the final, as it
13 were, imposer of the sentence, including having the right
14 to mitigate and show mercy and apply a lesser sentence than
15 that recommended by a tribunal. So they have that ultimate
16 sort of legal role, too.
17

18 Q. I will come to that process in a moment. Essentially
19 that's an issue that after, for example, a special tribunal
20 has heard charges - I'm not sure if that is the correct
21 term, but that a member of clergy should be deposed from
22 holy orders - a recommendation may be made by the special
23 tribunal to the bishop that a particular person be deposed
24 from holy orders; is that correct?

25 A. That's right.
26

27 Q. And the ultimate decision is one for the bishop?

28 A. That's correct.
29

30 Q. As a result of this particular close analysis that you
31 took and which is set out in the report of March 2003, the
32 committee recommended the adoption at General Synod level
33 of a model ordinance?

34 A. That's correct.
35

36 Q. Professional Standards Ordinance; is that correct?

37 A. That's correct.
38

39 Q. And also the adoption of an associated protocol?

40 A. I think that's right, yes.
41

42 Q. You are aware, of course, that Sydney and some other
43 dioceses have also, in addition, adopted a care and
44 assistance policy, if you like, which works within that
45 structure established by the ordinance and the protocol; is
46 that right?

47 A. Yes, I believe that the Diocese of Tasmania was the

1 first one to adopt that care and assistance package, which
2 is essentially analogous to a criminal injuries
3 compensation scheme, and then various dioceses followed.
4 I don't know if Sydney was the second one, but certainly
5 Sydney did - as the bishop of Tasmania often reminds me
6 whenever I see him, we ended up following the lead that
7 Tasmania had given. We adopted that.

8
9 Q. In terms of the way that the model ordinance worked -
10 as I understand it, the model ordinance was then adopted as
11 the Professional Standards Ordinance in the Diocese of
12 Sydney; is that correct?

13 A. The Diocese of Sydney already had a professional
14 discipline ordinance, and so what we did in Sydney was that
15 we tried to bring that - without rewriting it - sorry,
16 without going back to scratch, there was a process of
17 trying to bring what we already had into tune and into
18 consistency with the national ordinance. I think
19 Michael Orpwood did that.

20
21 Q. But in Grafton, where you were from time to time
22 providing professional standards director services, the
23 Professional Standards Ordinance that was adopted by
24 Grafton in 2004 was based very heavily on the model
25 ordinance adopted by General Synod; is that correct?

26 A. Yes.

27
28 Q. Then similarly in Newcastle in 2005?

29 A. Yes.

30
31 Q. One of the principles, if you like, set out in the
32 model ordinance, and particularly the one in Grafton and
33 Newcastle, is that the issue of independence between the
34 various entities established there is important; would that
35 be a reasonable summary?

36 A. Yes.

37
38 Q. Is that, in some ways, to avoid that conflict of
39 interest matter that you described earlier with respect to
40 bishops?

41 A. Yes.

42
43 Q. The main organs appear to be a professional standards
44 committee, a professional standards director and
45 a professional standards board?

46 A. Yes.

1 Q. I wonder if you could assist with how the claim
2 process worked within Sydney and how you envisaged it would
3 work under the ordinance in Grafton with respect to
4 a claim. Let's start at the beginning, if you like. You
5 received a complaint or a claim from a particular
6 individual. What is the process that applied - in Sydney,
7 let's start with?

8 A. It was fairly important that they had someone that
9 they related to from the church who had a very good
10 understanding and ability to communicate with them, to hear
11 their story, to assist them to get it down, as it were. So
12 our contact people were all either social workers or
13 counsellors or people who, to put it bluntly, weren't
14 lawyers, and they had the ability to work with the
15 claimants, who weren't always ready immediately to tell
16 their story. Sometimes they just wanted to explore the
17 possibilities and sometimes that process took quite some
18 time - months, even years. But there was that initial
19 process of helping them to document, if I can put it that
20 way, what it is that had happened to them in relation to
21 the church.

22
23 A big part of that was trying to get from them some
24 indication of what, if anything, they wanted the church to
25 do or how they wanted the church to respond. That
26 sometimes involved them saying, "We would like some
27 compensation", but even when they did say that, in my
28 experience it was not usually the most significant part of
29 how they wanted the church to respond, but often a part of
30 it.

31
32 Then, once we had got that, we would explain to them
33 the possibility of the care and assistance package -
34 effectively, the compensation scheme - where they could go
35 through a process of telling their story to that panel,
36 either in writing or in person, and usually most people did
37 both, and they knew that there was an assessment then made
38 in terms of the scales that we had in that scheme by that
39 panel, which had a level of independence, too, because it
40 was not part of the church structures, as such. You had
41 people - lawyers, medical professionals and psychologists
42 and so on - who weren't intimately involved in the
43 hierarchy of the church. They knew that they could go
44 through that process, getting evidence from their
45 psychologist or other specialist, if necessary, tell their
46 story and get an assessment. Then at the end of that
47 process, that panel would nominate a figure somewhere

1 between nought and \$75,000, and then they could consider,
2 with the assistance of legal advice, which we paid for as
3 well, whether they should take that, whether it was in
4 their best interests to take that, whether they wanted to
5 take it and sign a deed of release.
6

7 Q. What was the attitude of the Diocese of Sydney,
8 particularly in those years 2004 to, say, 2007, towards the
9 issue of onus of proof, or at least the claimant
10 establishing a factual basis for their claim?

11 A. Essentially, we didn't put any onus on the person to
12 prove their case. We didn't take into account or raise the
13 issue of statute of limitations. Those issues were just
14 not considered. We expected the people to tell their
15 story. I can't think of a case where we ever said, "Well,
16 that isn't true", but that was always a possibility,
17 I suppose. So there was that level of proof; that is, we
18 expected people to be able to tell their story and say who
19 the offender was, if they knew, where they were, and so on
20 and so forth, but there was no sort of balance of
21 probabilities or anything like that imposed upon them.
22

23 Q. Was there a degree of investigation undertaken by the
24 church?

25 A. Usually not in relation to - or not significantly in
26 relation to the care and assistance package, although we
27 did appoint a person, Lisa Watts, as the administrator of
28 the scheme - she had been one of the contact people - to
29 particularly concentrate on that and assist claimants. She
30 did do some investigation from time to time but, really,
31 more what perhaps you would call low level - like, she may
32 do some investigation just to confirm that the member of
33 the clergy was at the parish or at the institution where it
34 was alleged, and that sort of thing. It was very low-level
35 investigation. We really relied mostly on the story that
36 was told to us by the claimants.
37

38 Q. Once the Diocese of Grafton had adopted the 2004
39 ordinance, was the same approach applied to the
40 investigation of claims?

41 A. Sorry, are you saying that there is a connection
42 between an adoption of the ordinance and the investigation
43 of claims?
44

45 Q. No. I was more talking about the period of time after
46 the adoption of the ordinance, what the position was in
47 Grafton with respect to the investigation of claims in the

1 way that you have just indicated with respect to Sydney?

2 A. The ordinance really is, effectively, as I understand
3 it, a process to deal with perpetrators or accused people
4 or offenders rather than - I mean, it obviously has
5 principles in it that claimants will be assisted and
6 supported and so on, but the --

7

8 Q. I think I may have misled you slightly, I am sorry to
9 interrupt. What I am asking you really is about the time
10 period rather than the application of the ordinance. I am
11 talking about the time period after the ordinance had been
12 adopted, what the position was in the Diocese of Grafton
13 about proof of claims, investigation of claims?

14 A. Well, I don't know. My understanding was that the
15 Diocese of Grafton - my understanding at the time was that
16 they were taking our advice that they should adopt a care
17 and assistance package, but my understanding was that in
18 the end they didn't really go down that route at all. If
19 they had, yes, they would have adopted what I have just
20 described in terms of not putting any onus on people, and
21 so on. But any hearings that were had in relation to
22 dealing with perpetrators, there would have been some
23 investigation. So we certainly - and this is - sorry to go
24 into too much detail, but --

25

26 Q. When you say "we", what do you mean?

27 A. Sorry, in Sydney, if we had an allegation against
28 a member of the clergy or a church worker, we did actually
29 appoint investigators to investigate the circumstances so
30 that we could proceed with disciplinary proceedings, if it
31 was appropriate. That's a separate area.

32

33 Q. I will ask you about the connection between those two
34 matters, and clearly the ordinance has a lot to say about
35 that particular issue. So a claim has come to you. It has
36 been dealt with in terms of the appropriate response for
37 the claimant?

38 A. Yes.

39

40 Q. That may include processing through the care and
41 assistance package and consideration at the - I forget the
42 characterisation you used, but there was a meeting at which
43 the person could present their evidence?

44 A. It was effectively a hearing, but it was fairly
45 informal. A meeting, perhaps.

46

47 Q. Are disciplinary matters then pursued at the

1 conclusion of that, or have they already started in the
2 process?

3 A. It varied, depending on a whole lot of factors, but
4 they ran concurrently. The care and assistance process
5 could be concluded well before the disciplinary proceedings
6 were perhaps even commenced sometimes.

7
8 Q. You mentioned a moment ago an investigation point, as
9 part of the consideration of disciplinary matters. Could
10 you just explain what the trigger points are? Would the
11 investigation be triggered as soon as the claim comes in,
12 or is there an intermediate step?

13 A. Once we have got a documented - no, no intermediate
14 step. Once there had been that process of documentation,
15 we would then appoint an investigator to look into it. The
16 trigger would have to be, also, that we had an alleged
17 perpetrator still operating or still resident in the
18 diocese.

19
20 Q. So there had to be some connection with the diocese;
21 is that correct?

22 A. Yes.

23
24 Q. What if they lived elsewhere rather than Sydney?

25 A. If they lived elsewhere and the allegations related to
26 events in the diocese, we would still appoint an
27 investigator, yes.

28
29 Q. Then you would wait for the investigator's report
30 before referring it to back to the PSC, or would it go to
31 the PSB?

32 A. The PSC, and then the PSC had to make certain
33 decisions about where it went from there based on the
34 investigator's report.

35
36 Q. One of those decisions was that it could be referred
37 to the professional standards board for consideration of
38 disciplinary matters?

39 A. Correct.

40
41 Q. And then there is a separate hearing of the PSB?

42 A. The professional standards board is, in effect, a -
43 the PSC is effectively a prima facie sort of consideration
44 and the PSC says, "Well, we think there is a case that
45 needs to be answered", in effect. I'm not using the words
46 in the ordinance, but that is the effect of it. Then they
47 send it to the board, and the board is constituted and

1 considers the matter with appearances from the perpetrator
2 and, effectively, a prosecutor, and so on.

3

4 Q. Is the support of the bishop required to refer
5 a matter from the PSC to the PSB?

6 A. No.

7

8 Q. So the PSB then gains jurisdiction, I presume?

9 A. Yes.

10

11 Q. And considers the matter?

12 A. Yes.

13

14 Q. If the issue is about, for example, a member of clergy
15 who has retired and no longer has a licence to officiate,
16 they still have jurisdiction, do they not, with respect to
17 those people?

18 A. That's right, yes, that's correct.

19

20 Q. One of the options that they can consider is
21 deposition from holy orders?

22 A. That's correct.

23

24 Q. That would be by way of a recommendation then made to
25 the bishop at the conclusion of the PSB hearings as to what
26 should occur?

27 A. That's correct, yes.

28

29 Q. What I'm a little unsure of is, after that particular
30 stage, is there a special tribunal process that is then
31 interposed prior to the bishop being able to make
32 a decision as to whether or not to accept that
33 recommendation?

34 A. Look, my understanding is no. There was already - and
35 this is where it gets complicated or murky and I don't have
36 it all at my fingertips - a tribunal process in place both
37 for clergy and for bishops, there was a special tribunal
38 for bishops, which had been set up by a canon of General
39 Synod, and it wasn't abolished when these professional
40 standards canons or ordinances were adopted by individual
41 dioceses.

42

43 Q. Does that mean there are two parallel processes?

44 A. There are actually two parallel processes. That's my
45 understanding.

46

47 Q. Do they intersect? So, for example, a recommendation

1 from a professional standards board, for example, to depose
2 a member of clergy from holy orders, possibly - was the
3 practice to refer it to a special tribunal, or was that
4 effectively implemented?

5 A. My understanding is, no, they didn't intersect or have
6 any connection. The problem with the tribunal process,
7 which went back to the 1960s and perhaps even further back,
8 was that there were only five specific charges that could
9 be brought, and I can't remember what they are. One of
10 them related to immoral conduct, or words to that effect.
11 So you had to make out your case in a quite rigid
12 framework. That's why that was not abolished, but
13 basically we went down the route of recommending
14 professional standards where it was examinable conduct and
15 a more broader definition of what could be brought before
16 the boards.

17

18 Q. So there was an expansion, to some degree?

19 A. Mmm.

20

21 Q. I will just ask you, then, about Reverend Kitchingman.
22 Were you aware in August 2002 that he had been convicted at
23 Newcastle of five counts of indecent assault?

24 A. I can't now tell you when I was aware that he had been
25 convicted. I was aware that he had been convicted at some
26 point, but I can't tell you when I became aware of that.

27

28 Q. I will show you a document. It is a press release
29 issued by Archbishop Herft. Could RH-2 be put on the
30 screen, please. Page 001.0013. Would you just read that
31 particular page, please?

32 A. Yes. I have read that.

33

34 Q. Have you seen that document before?

35 A. I don't think so. I can't swear that I haven't seen
36 it before, but I don't particularly recall it. My best
37 recollection is that I was aware that Kitchingman had been
38 convicted, but I can't at this stage tell you how I became
39 aware of that.

40

41 Q. At this stage, the evidence that we have available is
42 that Reverend Kitchingman was resident within the Diocese
43 of Newcastle, certainly before he was imprisoned?

44 A. Yes.

45

46 Q. And that he was released approximately 18 months after
47 this report to the media and stayed in the Diocese of

1 Newcastle. First of all, in terms of jurisdiction, there
2 would have been no impediment in 2002, would there, to the
3 Diocese of Newcastle taking disciplinary action against
4 Reverend Kitchingman?

5 A. That would be my understanding, yes.

6
7 Q. Residence alone would be sufficient?

8 A. That's certainly my understanding.

9
10 Q. During that period between 2002 and when
11 Archbishop Herft left the Diocese of Newcastle, did you
12 have occasion to speak with him about Reverend Kitchingman
13 and any disciplinary proceedings?

14 A. I don't recall having a conversation with him about
15 that at all.

16
17 Q. Do you recall making any inquiries about
18 Reverend Kitchingman during that time, particularly
19 concerning disciplinary matters?

20 A. No, I don't recall that. I didn't know that he was -
21 I don't have a recollection of knowing that he had come out
22 of gaol, that he had been released from gaol, or, indeed,
23 that he had come back to live in Newcastle.

24
25 Q. What was the position about consideration of such
26 matters within Newcastle? You said you were providing
27 professional standards director services to the Diocese of
28 Newcastle in about that period 2002 to 2005. What was the
29 process for considering such matters?

30 A. I was really reacting to any requests or matters that
31 Newcastle brought up, either by way of coming from the
32 bishop or from - well, mostly from the bishop or the
33 diocesan office there, or, indeed, a complainant that came
34 forward. I think Newcastle had its own contact people. So
35 I was reacting to what came forward rather than being
36 proactive in taking action in relation to it.

37
38 Q. One of the changes with the Professional Standards
39 Ordinance, at least the model ordinance and that adopted in
40 2005 in Newcastle and 2004 in Grafton, is that it becomes
41 the duty of a professional standards director, does it not,
42 to engage in disciplinary matters where information has
43 been received?

44 A. Yes.

45
46 Q. That term "information" is in fact defined in the
47 Professional Standards Ordinance; is that correct?

1 A. I think that's right. I would have to --

2

3 Q. That would include not only convictions, criminal
4 convictions, but also allegations of such conduct; is that
5 correct?

6 A. Yes.

7

8 Q. Given that you were the professional standards
9 director during that period of time, and I'm including the
10 period after the commencement of the ordinance, did you
11 take any steps to consider Reverend Kitchingman's matter
12 and whether disciplinary proceedings should be taken
13 against him after the commencement of the ordinance?

14 A. No.

15

16 Q. Why was that?

17 A. I have reflected on this, and I think - I accept what
18 you say about information being fairly broad and including
19 convictions and the like. I think there were two things
20 happening, as far as I was concerned. One, I was the
21 titular professional standards director and was reacting to
22 what Newcastle wanted me to do, for better or for worse.

23

24 But the other thing was that, in my mind, he had been
25 convicted and he was now no longer practising. Now, I know
26 there still need to be steps taken for him to be deposed,
27 so that it is clear-cut and final and there is absolutely
28 no doubt, sort of a belts and braces approach, but, in my
29 mind, where there were a lot of things happening at the
30 time and we were focusing on protecting people, protecting
31 children going forward and protecting other vulnerable
32 people going forward, in my mind, that was a person that
33 was not - that was a case that didn't require proactive
34 action at the time. I'm trying to recall why it was that
35 I didn't take it --

36

37 Q. Let me ask you about some of the comments you have
38 just made. You referred to a "belts and braces approach".
39 Certainly Reverend Kitchingman had been convicted and he
40 had been gaoled at that particular time, but there was
41 nothing stopping him from calling himself
42 "Reverend Kitchingman" on his return from gaol, was there?

43 A. That's correct, or, indeed, whilst he was in gaol.

44

45 Q. And he could maintain that title, really, for the
46 remainder of his life, if no action had been taken?

47 A. Look, the short answer is yes, because he's still

1 ordained.

2

3 Q. So he could represent to the world, really, that he
4 remained an ordained minister of the Anglican Church?

5 A. Yes, that's correct.

6

7 Q. You didn't consider that there was a particular danger
8 to that, both in terms of reputation for the Anglican
9 Church but also in terms of those people who would come in
10 contact with him?

11 A. I now would say yes and agree with you entirely. At
12 the time, I'm trying to recall why we didn't - why
13 I personally didn't do anything about Kitchingman. I think
14 I was putting him in the category of a person that had been
15 dealt with, because he had been convicted and he was now no
16 longer licensed and he was retired.

17

18 Q. Are you aware that his name appeared in the Anglican
19 directory all through that period that he was in gaol, all
20 the way through to 2007?

21 A. I became aware of that. I think there is a letter,
22 25 July 2006 or something. I became aware of that when
23 I looked it up, on that date when I wrote that letter,
24 which was - you would probably be able to tell me what it
25 is. It's PG-33 or PG-34, where I informed the solicitors
26 for [CH] that he was in the directory.

27

28 Q. Did you take any steps yourself to make contact with
29 those who were compiling the directory?

30 A. I don't think I did in relation to that one. I did in
31 relation to other matters, but not in relation to that one.

32

33 Q. I think the tape has been stopped. There was
34 a mention there of one of the people who has a pseudonym.

35 A. I am sorry. I am sorry.

36

37 Q. Mr Gerber, I apologise, I should have spoken to you
38 and indicated what the practice of the Royal Commission has
39 been.

40 A. I am sorry, I can see here there is a list.

41

42 Q. There is a list. If you glance down it, you will
43 recognise some of the names.

44 A. I am sorry.

45

46 Q. In that time up until you ceased professional
47 standards director duties for Newcastle - was that at the

1 same time as Grafton, namely the end of 2007, that you
2 stopped providing those services?

3 A. Yes.

4
5 Q. In that period, particularly after the conviction of
6 Reverend Kitchingman, all the way through until 2007, did
7 you take any steps in terms of issues about parish safety
8 with respect to him?

9 A. No.

10
11 Q. Was there in place a protocol within the Diocese of
12 Newcastle with respect to those matters in those years?

13 A. Not that I'm aware, and I don't know whether he was
14 involved in any parishes or attending any churches in
15 Newcastle. The reason for that is that I was really, to
16 some extent, relying on any information that Newcastle were
17 giving me. I'm not wanting to avoid personal
18 responsibility by that; I'm just telling you what the
19 situation was, which was quite different to Sydney, where
20 I was in a position to - in a better position, anyway, to
21 make inquiries and to --

22
23 Q. Are you saying, then, that effectively you were
24 hampered by being down in Sydney and you weren't able to be
25 in touch with the people within the Diocese of Newcastle on
26 a day-to-day basis to be able to understand the nature of
27 his involvement in the diocese at that stage?

28 A. Yes.

29
30 Q. Were you aware - Archbishop Herft has informed us that
31 Reverend Kitchingman worshipped at Christ Church Cathedral
32 in Newcastle both prior to and after his period of
33 imprisonment?

34 A. I wasn't aware of that, but it doesn't surprise me.

35
36 Q. Could I then move on to paragraph 26 of your
37 statement, if that could be brought up.

38 A. Your Honour, am I allowed to just explain why it
39 didn't surprise me that he was at the cathedral?

40
41 THE CHAIR: Q. Yes.

42 A. I had a feeling, or an understanding, that there was
43 a number of people, and I didn't know who they were, but
44 that there was a number of people, including the dean of
45 the cathedral - and, as it turned out, that turned out to
46 be true - who had some sort of history of misconduct or
47 abuse that were collecting around the Newcastle cathedral.

1
2 That came from a few sources. One of them was - there
3 was a person, whose name I did not know, who was seeing one
4 of our contact people and was not prepared to divulge their
5 name, who was alleging that there had been serious
6 misconduct by the dean of a cathedral at Newcastle in
7 previous times. He was not prepared to come forward
8 because he was afraid for the safety or the wellbeing of
9 members of his family, who still went to the cathedral.

10
11 That, at least, was one of the things, and there were
12 probably other general senses that you got that that was
13 a place where people who had less than savoury pasts were
14 congregating. I can't give you chapter and verse as to why
15 all that was in my mind. I was very uneasy, for example,
16 when the dean of the cathedral ended up - I couldn't
17 believe it, he ended up on the sexual abuse working group.
18 Dean Graeme Lawrence actually ended up on the working group
19 for a time. He only lasted one meeting, I think, and
20 resigned and didn't come back. I thought that was odd, but
21 I didn't have anything concrete to say or do about it.

22
23 There was a lot of sort of low-level information that
24 made me very uneasy about who and what was going on at the
25 cathedral of Newcastle.

26
27 MR BECKETT: Q. There are a number of elements there.
28 In terms of the working group, did you raise with the chair
29 of the working group as to what your concerns were?
30 A. No, I didn't really have anything concrete to raise.

31
32 Q. But even those rumours - did you raise that?

33 A. No, because, as I say, I didn't have anything
34 concrete. And also, the chair of that group was, if
35 I recall it, Richard Appleby, who had a very strong
36 connection with Newcastle, in any event. Was he the bishop
37 of Newcastle or an assistant in Newcastle? I just forget.
38 I think he might have been an assistant bishop in
39 Newcastle. Anyway, he had very strong Newcastle
40 connections, so that was probably a reason why I didn't
41 raise it with him.

42
43 Q. Are we talking 2003?

44 A. Yes.

45
46 Q. And in years after that as well, or mainly in 2003?

47 A. At the time of the sexual abuse working group,

1 whenever that was.

2

3 Q. Were you aware that Graeme Lawrence had provided
4 a reference for Reverend Kitchingman as part of his court
5 proceedings?

6 A. I don't think I was aware of that.

7

8 Q. Did you raise the issue with the bishop at the time,
9 Roger Herft?

10 A. No, I didn't.

11

12 Q. Mr Gerber, considering that it sounds like there were
13 serious concerns about a number of people who were
14 attending Christ Church Cathedral and some substantial
15 rumours, or at least the rumours were with respect to
16 serious conduct, namely, child sexual abuse - is that
17 correct?

18 A. Yes.

19

20 Q. Why didn't you raise that with the bishop?

21 A. Because I didn't have anything concrete to raise with
22 him.

23

24 Q. You didn't raise the fact that you had received
25 certain pieces of information, that you weren't aware of
26 the veracity of them, that they were rumours, or that you
27 had heard rumblings or missives; you didn't raise that with
28 him?

29 A. No, no, I didn't, because I just didn't feel like
30 I had enough concrete to be able to say to Bishop Herft,
31 "This is the information I have got and" - I just didn't
32 have anything concrete that I could raise.

33

34 Q. Did you raise it either with Dean Lawrence or with -
35 is it Reverend Appleby?

36 A. No, again, because I didn't have anything concrete.

37

38 Q. I don't know the workings of Christ Church Cathedral,
39 but I presume you knew that children would attend the
40 cathedral from time to time?

41 A. I have never been there to a service, but, yes, that's
42 a reasonable assumption.

43

44 Q. Presumably there are altar boys and there are children
45 involved in the choir at the cathedral?

46 A. Yes, yes. As I say, I had concerns about it, but
47 I didn't have anything concrete that I could tell anybody.

1 That was the problem.

2

3 Q. Just returning to paragraph 26, in terms of
4 disciplinary action, you set out there that the
5 jurisdiction with respect to disciplinary matters can rest
6 with often a number of dioceses, because, for example, the
7 act may have been perpetrated in a particular diocese, but
8 the clergy member involved may live elsewhere; is that
9 correct?

10 A. Yes.

11

12 Q. Or it may be the case that the member of clergy lives
13 in a particular diocese, but the act occurred elsewhere?

14 A. Yes.

15

16 Q. It may also be the case that - I may incorrect in
17 this - if the victim was resident in the particular
18 diocese, but both the act and the member of clergy resided
19 elsewhere - would that also give you jurisdiction?

20 A. My understanding is that it wouldn't, that a diocese
21 would - if their jurisdiction was challenged by
22 a perpetrator - sorry, by a respondent or an accused, that
23 that would be a valid challenge. Now, I'm not an expert in
24 this, but my understanding is that the fact that a victim
25 was in a diocese, but the actions and the alleged
26 perpetrator had no connection, would mean that the diocese
27 wouldn't have jurisdiction.

28

29 Q. Let's explore the issue about Reverend Kitchingman in
30 terms of obligations to pursue disciplinary proceedings.
31 With respect to Reverend Kitchingman, by 2002 we had
32 Reverend Kitchingman resident within the Diocese of
33 Newcastle?

34 A. Well, I know that now.

35

36 Q. You know that now?

37 A. Yes.

38

39 Q. But charged and convicted of acts which took place in
40 the Diocese of Grafton some many years ago?

41 A. Yes.

42

43 Q. On the basis of residence of Reverend Kitchingman in
44 Newcastle and the act having occurred in Grafton, both of
45 those dioceses had jurisdiction?

46 A. Yes.

47

1 Q. Back at that time, in the 2002 to 2004 time, prior to
2 the ordinance - and I will ask you about the position after
3 the ordinance - how was that sorted out between dioceses as
4 to who would take action?

5 A. If it arose, it would probably be essentially by
6 agreement that one diocese would say, "We will take the
7 action." I think Mr McLary gave the example of the
8 Shearman case yesterday. Because Shearman, by the time he
9 was dealt with, happened to live in Deception Bay in
10 Brisbane, there was a willingness from the archbishop of
11 Brisbane's part to take the action that he did. Now, that
12 could have been taken in Bathurst, where the events
13 happened, and it could have been taken - and where he was
14 licensed. It probably could have been taken in Grafton,
15 because he had been the Bishop of Grafton.

16
17 Really, apart from the fact that he then lived in
18 Brisbane, there was no other connection with Brisbane in
19 relation to either the offender or - no, actually, I think,
20 sorry, the informant, the victim, she may have lived up in
21 Brisbane at some stage. But, anyway, it was essentially
22 the Diocese of Brisbane saying, "We will take this action
23 because it has to be taken."
24

25 Q. After the ordinance came into force, effectively the
26 position didn't change, did it; that is to say, for
27 example, with respect to Reverend Kitchingman, either
28 Grafton or Newcastle could have theoretically taken
29 disciplinary action against him?

30 A. Yes.

31
32 Q. We haven't been able to discover any communication
33 between the two bishops on the issue of disciplinary
34 matters. Are you able to shed any light as to why,
35 apparently, that issue was not discussed between the two
36 bishops?

37 A. No. Only that - and this is only an opinion and it
38 could be completely off the mark - my sense of it was that
39 Dean Graeme Lawrence was a very powerful man and he
40 protected people that were in his cathedral and his parish
41 or his congregation and exercised a power, and again this
42 is only a sense that I have, that he was quite a powerful
43 person who exercised influence over even bishops.
44

45 In fact, he was a candidate for the position of the
46 bishop of Newcastle at one stage, and I understand the
47 archbishop of Sydney stepped in and said, "You are not" -

1 the archbishop at the time stepped in and said, "You are
2 not - you know, I won't stand for that." So it was known
3 by people other than myself that there were concerns about
4 Dean Lawrence and his past.

5
6 Q. Specifically with respect to Reverend Kitchingman, did
7 you receive any information that Dean Lawrence had
8 influenced or attempted to influence Bishop Herft with
9 respect to the disciplining of Reverend Kitchingman?

10 A. No, no, and so that's why it's - I don't have
11 information to that effect, no.

12
13 Q. I understand that one of the ways in which, at least
14 certainly prior to the establishment of the national
15 register, you say at paragraph 27 of your statement that
16 there was effectively an informal process - if concerns
17 were raised about a particular member of clergy, or,
18 I presume, also any other church worker, the process was
19 for the bishop or at least the relevant officer of the
20 diocese to write to all the other dioceses, or perhaps all
21 the other bishops, to alert them to that particular fact;
22 is that right?

23 A. That's correct. I think that informal protocol really
24 only operated in relation to clergy. I don't ever recall
25 seeing any lay church - non-clergy, church workers, letters
26 written in that informal protocol. It may very well be
27 that that is in fact - there may have been a letter written
28 in relation to Kitchingman to Sydney. I'm not saying that
29 is the case, but it would be consistent with what the
30 practice was.

31
32 Q. What was the practice in Grafton about receipt of
33 those letters? Were they kept somewhere? Was there
34 a list? Was there a register? How did it operate?

35 A. I don't know, because I never operated in the office
36 of Grafton - I never was situated in the office of Grafton
37 or worked from the office of Grafton, so I can't answer
38 your question. I don't know what they did with letters.

39
40 Q. So even though you were the professional standards
41 director, or at least performing those services, between
42 2004 and 2007, you were not aware of how the practice
43 operated within Grafton?

44 A. No. I didn't have access to any files or to the
45 office of Grafton.

46
47 Q. You didn't consider that part of your duties, as

- 1 professional standards director, to know about those sorts
2 of things?
- 3 A. Are you asking me now?
4
- 5 Q. Yes, I'm asking you now.
- 6 A. Now, I regret deeply that I didn't insist that I have
7 access to everything in the diocesan office and go up there
8 and go through everything that was up there.
9
- 10 Q. And then? Why was the position --
- 11 A. At the time, I was trying to assist them and reacting
12 as best I could to information that they gave me.
13
- 14 Q. Mr Gerber, I wonder if I could take you to a document
15 in exhibit 3-2. It is tab 154A. You will see that this is
16 an email from Bishop Peter Stuart at the Diocese of
17 Newcastle, dated 7 June this year. It is sent to, amongst
18 other people, the professional standards director at both
19 Newcastle and Armidale, Michael Elliott; do you see that?
- 20 A. Yes. Alison Dalmazzone - who is that? I don't know
21 who that is.
22
- 23 Q. If you go down, you will see that Bishop Peter is
24 forwarding an email below, which says:
25
- 26 *Subject: Private and Confidential*
27
- 28 *Dear Bishops*
29
- 30 *If you are approached by the following*
31 *persons regarding employment in ministry,*
32 *please contact the Registry of Sydney*
33 *Diocese.*
34
- 35 Then there were four names there that we have redacted.
- 36 A. Yes.
37
- 38 Q. Is that a reasonable example of the practice that you
39 said previously applied?
- 40 A. Yes.
41
- 42 Q. Are you surprised that that particular mode of
43 communication is still being utilised, apparently, in 2013?
- 44 A. Surprised? No, not really, in the sense that I think
45 bishops - it's an example of bishops wanting to run the
46 show, as it were. Yes, so I'm not surprised, because you
47 will see there it goes to - I am sorry, is that - oh, so

1 that's an email that's gone from the diocesan registrar of
2 Sydney, isn't it, to other people?

3

4 Q. It is addressed to bishops.

5 A. Yes, addressed to bishops. So Dr Philip Selden has
6 acted on behalf of the archbishop of Sydney to send out
7 names. No, that doesn't surprise me.

8

9 Q. From 2004, the Anglican Church established something
10 called a national register; is that correct?

11 A. Yes.

12

13 Q. On that national register is every member of clergy;
14 is that also correct, to your knowledge, at least?

15 A. Sorry, I was reading that and I didn't concentrate on
16 your question, I'm sorry.

17

18 Q. No, not at all. The national register - you are aware
19 of the national register?

20 A. Yes.

21

22 Q. That was also one of the related suggestions from the
23 standing committee and, before that, the working group?

24 A. Yes.

25

26 Q. The idea of a national register is so that, I presume,
27 relevant members of the Anglican Church can access
28 a register which sets out, amongst other things, any
29 professional standards concerns about a particular member
30 of clergy?

31 A. Yes.

32

33 Q. That would include sexual abuse convictions as well as
34 allegations?

35 A. Yes - yes. I can't remember the exact definition, but
36 I think it does enable, if I remember rightly, information
37 which is not yet substantiated to get a person's name on
38 that register.

39

40 Q. We will receive some further evidence shortly about
41 that, but can I just ask you this: wasn't one of the ideas
42 behind the establishment of a national register to
43 supplant, if you like, the ad hoc process that we can see
44 in the letter in front of you being provided to bishops
45 across the country?

46 A. Yes, yes, that's right, yes. So it may very well be -
47 and I don't know the four names, obviously; they have been

1 redacted, but it may very well be that people are still not
2 having confidence that what might be called soft
3 information about people is not getting on to the register
4 and they still want to - so out of a concern for protecting
5 people, children or vulnerable people, and again the term
6 "belts and braces" comes to mind, they are saying, "We will
7 also give people information which didn't make its way on
8 to the national register so that people we have concerns
9 about don't end up getting licensed in another diocese."

10
11 Q. Let's go forward, if you could, to paragraph 36 of
12 your statement and a meeting of the Grafton professional
13 standards committee in 2004.

14 A. Yes.

15
16 Q. Mr Gerber, by this stage, as I understand it, you were
17 a member of the professional standards committee; is that
18 correct?

19 A. That's correct.

20
21 Q. And you were also the professional standards director
22 for the Diocese of Grafton; is that correct?

23 A. I would describe myself, when I think about it, as the
24 titular professional standards director, because I did not
25 have the capacity to act as professional standards director
26 that I did in Sydney, but, yes, I was described as the
27 professional standards --

28
29 Q. Was that because of a geographical issue or was that
30 because of arrangements made at the Diocese of Grafton?

31 A. A combination of both - both that I was geographically
32 remote, but also I'm not convinced that I was being told
33 everything that I needed to be told.

34
35 Q. Is it not the case that under the ordinance and the
36 protocol, the director of professional standards is the one
37 who actually convenes but does not chair the professional
38 standards committee?

39 A. That's what the ordinance says, but in fact in the
40 case of Grafton, they were being convened by people in the
41 diocesan office.

42
43 Q. Can we have a look at PG-7, if page 1 of that could be
44 brought up, please. You will see that of the people who
45 were present, there is Dr Peter Catt, Reverend Comben,
46 Col Pritchard, Ann Skamp, yourself and apologies from
47 Ms Cripps Clark.

- 1 A. Yes.
2
- 3 Q. I think Ms Cripps Clark was in fact the chair at about
4 that time; is that correct?
5 A. I don't recall Aniko. I have never met Aniko.
6 I don't think I have, anyway. I don't have a recollection
7 of her ever being the chair. I thought it was Ann Skamp,
8 but you could be right.
9
- 10 Q. Clearly elected as a result of that particular
11 meeting?
12 A. Do you think she might have been the first convenor?
13
- 14 Q. I was asking you the question.
15 A. I don't have a recollection of that. It might be
16 true, but I don't have a recollection.
17
- 18 Q. Mr Gerber, the issue I want to ask you about is that
19 it says Dr Pat Comben was there and present. Presumably,
20 he was sitting on the committee on that particular day?
21 A. He was certainly recorded as being present. I was in
22 Sydney, so I was on the telephone; I was at the end of
23 a telephone, and I think - I'm not sure, some of the others
24 may have been at the end of a telephone, too, and some of
25 them were in the office at Grafton, as I understand it.
26 I don't know whether Pat was a member of the committee or
27 not.
28
- 29 Q. Mr Gerber, the issue I want to ask you about is that
30 Mr Comben was there; we have minutes where he was present
31 at the professional standards committee at least on
32 29 September 2004 - that is this one, on 1 November 2004,
33 on 26 April 2005, and then on a number of subsequent
34 professional standards committee meetings. Was that his
35 practice, to attend and participate in those committee
36 meetings?
37 A. Yes.
38
- 39 Q. And did he vote in those meetings?
40 A. He certainly expressed his views. I don't think we
41 ever got to any formal voting. It tended to be, "Does
42 everybody agree with that?", "Yes", and probably Pat said
43 "Yes" as well.
44
- 45 Q. I take it that he was an influential member of the
46 committee?
47 A. Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. Did it concern you at the time that this may have been a breach of the independence requirements established by the ordinance, that is to say, that a member of the executive was sitting on the professional standards committee when he was in fact to be the person who received recommendations, particularly for financial compensation, for example, from the committee?

A. It didn't at the time.

Q. Does it appear to you now that that was a problem with his involvement in the committee?

A. Yes.

Q. Was that raised by anybody on the committee?

A. No.

Q. Was it raised by you to him personally or to the committee?

A. No.

Q. Was it raised with the bishop?

A. No - well, not that I'm aware.

Q. Going over to paragraph 39 of your statement, you say at the end of that:

To the best of my knowledge, the Grafton Diocese did not initiate any internal disciplinary action against Allan Kitchingman at any time following his conviction in 2002.

I would like to ask you perhaps the same questions I asked you with respect to the Diocese of Newcastle. At any stage during your time as the professional standards director, did the name Allan Kitchingman come up for discussion at the professional standards committee meeting?

A. Well, I would have to go to the records to see that. I mean, looking at PG-9, my best recollection is that his name probably did come up when it was talked about as the matter of [CH] on the second page of PG-9.

Q. With respect to that, you knew, didn't you, by this stage, I think, that proceedings were being considered by [CH] through his lawyers; was that the case?

A. I'm not - well, I may have known that from - I mean,

1 I am relying on records a bit. I don't have an independent
2 recollection. I probably knew that from the discussion at
3 the meeting of 26 April 2005.

4
5 Q. Did you, at the time - that is, 26 April 2005 -
6 appreciate the nature of Reverend Kitchingman's conduct
7 towards [CH]?

8 A. I'm not sure. [CH] - I can't recall, did [CH] -
9 I know I can't ask you questions, but did he at some stage
10 go to a contact person in Sydney and make a report? Oh,
11 yes, it's in the same paragraph. Yes, so I would have been
12 aware of what [CH] had disclosed to the contact person in
13 Sydney, the Sydney contact person, in December 2004.

14
15 Q. Sorry, I missed that last bit?

16 A. Sorry, I would have been aware - as a matter of
17 course, I would see reports that come in from contact
18 people, and so I would have been aware from about December
19 2004 what of [CH] disclosed to the contact person in
20 Sydney.

21
22 Q. I was going to come to this later, but I think I will
23 do it now. I wonder if PG-30 could be brought up, please.
24 It is annexure PG-30 to your statement. Do you see that is
25 a statement of claim against Mr Kitchingman and the second
26 defendant, being the Diocese of Sydney; do you see that?

27 A. Yes.

28
29 Q. You received this, I think, on or about the time that
30 it was served?

31 A. Yes.

32
33 Q. Because it was, in fact, served on the Diocese of
34 Sydney and not on the Diocese of Grafton?

35 A. That's correct. Yes, I think it was served on us on
36 25 July, and there was a date for appearance of 27 July.

37
38 Q. Could I take you to page 25, which is the third
39 page of the pleadings. You will see at paragraph (b) it
40 says:

41
42 *The plaintiff has provided detailed*
43 *statements to the police setting out the*
44 *nature of the assaults which were used by*
45 *the police in the criminal prosecution of*
46 *the first defendant to which he entered*
47 *a guilty plea and the plaintiff will refer*

1 to those particulars ...

2

3 Et cetera, et cetera.

4 A. Yes.

5

6 Q. Do I take it that you read these pleadings when they
7 were served on the Diocese of Sydney?

8 A. Yes.

9

10 Q. And that you knew, as a result, that
11 Reverend Kitchingman had been convicted of those assaults?

12 A. Yes.

13

14 Q. I think you indicated earlier that you were in fact
15 aware from other bases, that you knew about the conviction;
16 is that correct?

17 A. That's my recollection, that I was aware that
18 Kitchingman was a convicted person.

19

20 Q. Those were received by you, I think you said, on
21 21 July 2006. Did you take any steps at that stage to
22 commence any form of disciplinary proceedings against
23 Reverend Kitchingman in the Diocese of Grafton?

24 A. No.

25

26 Q. Why is that?

27 A. I think probably for the reason that I have given you,
28 that I didn't - he was not on my radar as someone that was
29 still actively practising as a clergy person. So it was
30 a combination of that and the fact that it was Grafton
31 rather than Sydney that put it lower on my priority. I'm
32 very regretful of that. In retrospect, looking back,
33 certainly if it had been a Sydney person, I would have
34 acted differently and acted more decisively or
35 deliberately, but, in a sense, the Grafton matters - and
36 I am being quite frank with you - were being dealt with by
37 Grafton rather than by me.

38

39 Q. Did you raise the issue with Reverend Comben or with
40 Bishop Slater at or about the time that you received those
41 pleadings?

42 A. I don't think so, but --

43

44 Q. Did they raise it with you at about that time?

45 A. I don't think so.

46

47 Q. At the PSC meeting, going back to April 2005, do you

1 think there was general understanding by the other
2 committee members that Reverend Kitchingman had been
3 convicted of particular offences?

4 A. I think that would be right, yes. Yes, I think it was
5 well known that Kitchingman had been convicted.
6

7 Q. You say at paragraph 40 that there was discussion with
8 respect to [CH]'s matter. Again, we are back in 2005. You
9 say that you recall that the committee debated whether the
10 North Coast Children's Home was an Anglican Church home at
11 that stage?

12 A. Yes.
13

14 Q. I take it that this was in advance of receiving any
15 communication from Tommy Campion or any of the group
16 claims; is that correct?

17 A. I can't remember the chronology as to when I got or
18 I heard information from Tommy. I knew nothing about North
19 Coast Children's Home except information I had been given
20 by Pat Comben or people from Grafton, and the information
21 I was getting from them was that there was some sort of
22 informal arrangement where it had "Church of England" on
23 the entrance vestibule or a sign outside, but it wasn't in
24 fact a Church of England home. I didn't know whether that
25 was true or not.
26

27 Q. Mr Gerber, all of those matters seem to have arisen in
28 2006 --

29 A. That's probably right, yes.
30

31 Q. -- between the claimants and the Diocese of Grafton in
32 exchange of correspondence between those parties, including
33 a reference to the sign that you have just mentioned there.

34 A. Yes.
35

36 Q. What I am interested in is whether that was an issue -
37 that is to say, the association between the Anglican Church
38 and the North Coast Children's Home - prior to the group
39 claims, namely, when [CH]'s litigation was being discussed?

40 A. Yes, my best recollection was that it was always being
41 said by Grafton that it really wasn't their home, you know,
42 that it was not an Anglican home.
43

44 Q. In that period prior to Mr Campion's claim, who was
45 the main proponent, if you like, of that particular view?

46 A. Oh, Pat Comben.
47

- 1 Q. What about the bishop?
2 A. I don't think I ever had a conversation with him about
3 it.
4
5 Q. You came to receive the letter from Mr Campion dated
6 29 August 2005; is that correct? PG-12 to your statement.
7 A. Yes, I think that came into our office, yes.
8
9 Q. The address is to Sydney?
10 A. Yes.
11
12 Q. Is that the post office box of the Sydney Diocese?
13 A. That's correct.
14
15 Q. You received it, as such, then?
16 A. I think it came to me, yes, to the PSU - to me.
17
18 Q. You will see on the second page --
19 A. Sorry, perhaps I can qualify that. It may very well
20 have gone to - and this is one of the problems. Because it
21 was addressed in that way, it may very well have gone to
22 the registrar, Philip Selden, rather than to me, so I'm not
23 certain that it did actually come to me as professional
24 standards director. It may very well have gone to the
25 registrar, and he did have a habit of --
26
27 Q. Which registrar are you talking about?
28 A. This is the registrar of Sydney. He did have a habit
29 of dealing with correspondence from time to time which
30 should have more appropriately gone to the professional
31 standards unit, but it was dealt with by the registrar.
32
33 Q. Let's have a look at paragraphs 43 and 44 of your
34 statement. You say, first of all, that you recall seeing
35 this letter when it was received. Is that not your
36 evidence now?
37 A. That's my best recollection, yes.
38
39 Q. So irrespective of whether it went to the registrar
40 first, you received a copy and read it about that time?
41 A. I think so.
42
43 Q. In any event, by 2 September, you had had
44 a conversation with Reverend Comben about that?
45 A. Yes, yes.
46
47 Q. One of the things, as you will see from Mr Campion's

- 1 letter, particularly at page 2, if 1103.0707 could be
2 brought up, please - at the bottom of the page on the
3 screen, do you see the two underlined passages there in the
4 middle of the screen?
5 A. Yes.
6
7 Q. If you could just read those to yourself.
8 A. Yes.
9
10 Q. Is that underlining that you provided to the letter?
11 A. I couldn't tell you.
12
13 Q. You will see that at the bottom, the last sentence of
14 that paragraph, he says:
15
16 *There was also a clergyman by the name of*
17 *Reverend Brown, who, as I now know, was*
18 *a paedophile and took advantage of me from*
19 *time to time in the minister's residence*
20 *across from the Children's Home - and other*
21 *places.*
22
23 So I take it by that that you had an alleged perpetrator at
24 that stage?
25 A. Yes.
26
27 Q. And you had a victim in the name of Mr Campion, who
28 had provided that information?
29 A. That's correct.
30
31 Q. And you had contact details from Mr Campion at that
32 stage?
33 A. Sorry, contact details for Mr Campion?
34
35 Q. Yes, if we scroll back, please, to page 1.
36 A. Yes, yes, the answer is yes.
37
38 Q. Did you provide that information to the police at that
39 stage?
40 A. No.
41
42 Q. Why not?
43 A. I can't tell you at this stage why I didn't do it.
44 I don't have an answer for you.
45
46 Q. Mr Gerber, you were the professional standards
47 director at Sydney.

1 A. Yes.
2
3 Q. The Diocese of Sydney, or those operating within it,
4 were bound by its own ordinance, which required
5 professional standards directors to report matters to the
6 police; that's correct, isn't it?
7 A. Yes.
8
9 Q. And you knew at the time that it was your duty to
10 report such allegations of criminal conduct to the police?
11 A. Yes.
12
13 Q. But you didn't do it?
14 A. That's - it looks like that's the case, that I have
15 missed that one, yes.
16
17 Q. Did you speak to Mr Comben about that? In other
18 words, did you say to Mr Comben, "Can you take steps to
19 report these allegations to the police" - up in Grafton,
20 for example?
21 A. I don't have a recollection of doing that.
22
23 Q. By 2 September, you had provided Mr Comben - that is,
24 the then Reverend Comben - with a copy of Mr Campion's
25 letter of 29 August, hadn't you?
26 A. I think that's probably right.
27
28 Q. Could paragraph 44 of the statement be brought up,
29 please.
30 A. Yes.
31
32 Q. Did Mr Comben raise with you the issue of reporting to
33 police?
34 A. I don't think so at that stage. I don't have
35 a recollection of that being discussed at that stage.
36
37 Q. Well, at some later stage, was the issue of informing
38 the police about Reverend Brown brought up?
39 A. My recollection was that it came up at a subsequent
40 professional standards committee meeting, and we took steps
41 at that stage.
42
43 Q. Are you referring to - there was a professional
44 standards committee meeting in November 2006. Let me get
45 the exact date so that I don't mislead you. 21 November
46 2006. I will come to that chronologically, but is that the
47 professional standards committee meeting --

1 A. I think that's what I'm referring to, but I do -
2 I mean, I have a recollection that Mr Comben and I talked
3 about who Mr Brown was and where he was and whether people
4 knew where he was, and so on. I don't recall the
5 particulars of that conversation, but I have a vague
6 recollection that we did talk about whether his whereabouts
7 was known now and whether he was still alive, et cetera.

8
9 Q. Did you have a look in the Anglican directory to see
10 which diocese he might be associated with?

11 A. Well, I think - I don't recall doing that, but I think
12 the problem was that his clergyman name of Mr Brown,
13 Reverend Brown - you know, it's not an uncommon name.
14 It's, you know, "Brown". There was no first name given or
15 anything.

16
17 Q. But, Mr Gerber, you could have asked Mr Campion what
18 his first name was?

19 A. Yes, yes.

20
21 Q. It wouldn't have been much of a stretch, would it, to
22 have actually done some research to ascertain what his name
23 was and whether he had been licensed to officiate in the
24 Diocese of Grafton?

25 A. Yes, I'm not trying to defend myself. I'm just trying
26 to recall what we did at the time. When I look at it now,
27 I'm very unhappy with myself that I didn't take the sort of
28 steps that you are talking about and am quite embarrassed
29 and apologise that it might have potentially caused - put
30 other people at risk, children and other vulnerable people
31 at risk. I'm appalled that my actions might have caused
32 that. But that's looking at it now.

33
34 Q. Turning, then, to the steps that Mr Comben then took,
35 it appears that he responded first to Mr Campion rather
36 than you. I think you indicated in paragraph 45 that it
37 normally would be the role of professional standards
38 director and professional standards staff to offer this
39 support, not the registrar; is that correct?

40 A. Yes.

41
42 Q. So that was unusual, was it - the way in which
43 Mr Comben had responded directly to Mr Campion?

44 A. Yes, in the sense that normally, yes, it would be the
45 professional standards director that normally responded,
46 yes.

47

1 Q. Were you aware that that was the practice in Grafton
2 at that particular time, or was the practice emerging as of
3 the end of 2005 about the way in which professional
4 standards matters were dealt with there?

5 A. I think what you say about emerging is probably a good
6 way of describing it, that is, that things were being
7 handled by the Grafton office.

8

9 Q. By 20 September 2005 there was a further meeting of
10 the professional standards committee. If PG-15 could be
11 brought up. Just having a look at the first page there,
12 you will see there is a reference to "In the matter of
13 [CH]"?

14 A. Yes, yes.

15

16 Q. And potential counselling costs were being considered
17 at that particular stage. Do you recall whether the
18 Grafton Diocese was providing counselling for [CH]?

19 A. My best recollection is that they were paying for some
20 counselling, yes. My best recollection was that they were
21 paying for some counselling for [CH], yes.

22

23 Q. Then over the page, we have reference of Mr Campion's
24 complaint.

25 A. Yes.

26

27 Q. And that further investigation of the generalised
28 complaints against a cleric "will be made"; do you see
29 that?

30 A. Yes.

31

32 Q. Is the reference to "a cleric" a reference to
33 Reverend Brown or Reverend Morgan, or somebody else?

34 A. Oh, look, at this stage, I'm not sure who it was
35 particularly referring to, but certainly one of the clergy
36 that was at the North Coast Children's Home is my
37 understanding - one or more of the clergy there.

38

39 Q. Did you involve yourself in that further investigation
40 or who did that further investigation?

41 A. No.

42

43 Q. Was there an investigation, to the best of your
44 knowledge?

45 A. I think, from my end, the only action that we were
46 taking - that I was taking - was to put him in touch with
47 a contact person so that we could gather information and

1 document information through that process.

2

3 Q. And you then involved Jenni Woodhouse, is that
4 correct, as the contact person?

5 A. I can't remember who the contact person was. It would
6 have been either Jenni or one of the Sydney contact people.

7

8 Q. We certainly have evidence that she was involved in
9 providing those sorts of services to Mr Campion; that's
10 correct, isn't it?

11 A. I thought he saw another contact person, but, yes, she
12 was certainly involved in terms of supporting him and so
13 on, yes.

14

15 Q. At that stage, you, as professional standards director
16 for Grafton, were involved at least in the provision of
17 counselling and that sort of support to Mr Campion at that
18 stage?

19 A. That's correct.

20

21 Q. Did you continue in that role of providing counselling
22 support to Mr Campion?

23 A. Well, I didn't have any direct contact with - I mean,
24 I may have met Mr Campion and spoken to him, but I didn't
25 have any ongoing contact with him, really.

26 Ms Jenni Woodhouse was providing that ongoing contact and
27 support.

28

29 Q. You say in paragraph 50, and it is also in the second
30 page, if we could scroll down a bit, that consideration was
31 being given in Grafton to the adoption of the Diocese of
32 Sydney's care and assistance package?

33 A. Yes, that was my understanding.

34

35 Q. Just to short-circuit matters, we have a paper signed
36 by Ms Skamp that was taken to Bishop-in-Council in
37 September 2006, suggesting that that be adopted.

38 A. Yes.

39

40 Q. Then in November 2006 there was a further
41 Bishop-in-Council meeting where there was a motion to
42 accept the Sydney Diocese care and assistance package as
43 the package to be implemented in Grafton; were you aware of
44 that?

45 A. Only recently.

46

47 Q. Only recently?

1 A. I wasn't aware of what the Bishop-in-Council resolved,
2 but I read it just the other day, and the wording was
3 different to the recommendation and I thought there was
4 some significance in the different wording; that is, that
5 there seemed to be some pulling back from the package, to
6 some extent. I would have to look at the wording to tell
7 you what I mean.

8

9 MR BECKETT: Maybe we can come to that after the break.
10 Is that a suitable time?

11

12 THE CHAIR: Yes, we will take the morning adjournment.

13

14 **SHORT ADJOURNMENT**

15

16 HIS HONOUR: Yes, Mr Beckett.

17

18 MR BECKETT: Perhaps Mr Gerber can come back into the box.

19

20 Q. Could tab 23C of exhibit 3-2 be brought up on the
21 screen, please. Mr Gerber, these are the minutes of the
22 Bishop-in-Council meeting for 24 November 2005. Presumably
23 you haven't seen a copy of these. Your name is not
24 mentioned as being in attendance there.

25

26 If we could scroll down to the second page, ending
27 003, and to the bottom of that page, if we keep scrolling
28 down, we might be able to see the resolution also. Would
29 you read that resolution, please, Mr Gerber?

30 A. Just the highlighted part?

31

32 Q. Excuse me?

33 A. I have read the resolution, yes.

34

35 Q. In any event, I was asking you before the break about
36 a resolution by Bishop-in-Council to accept the Sydney
37 diocesan care and assistance appraisal program, as it is
38 called here?

39 A. I think that's just terminology, but I think that's
40 the bit that I thought - I saw this just the other day, and
41 that surprised me, because I got the impression from that
42 that they were considering becoming part of what we were
43 doing in Sydney, whereas my understanding was that the
44 proposal was that they set up their own scheme, and either
45 could have worked.

46

47 Q. I will ask you about that in a moment. I will just

1 show you a document. Could the witness be shown volume 3,
2 tab 4A. You will see that is a document entitled "Pastoral
3 Care and Assistance", and it has "Anglican Church Diocese
4 of Sydney" at the bottom?

5 A. Yes.

6
7 Q. I presume I don't need to take you through it. This
8 is the relevant care and assistance scheme that operated in
9 the Diocese of Sydney when you were there as professional
10 standards director?

11 A. I am fairly familiar with it. I was basically the
12 author of it.

13
14 Q. Sorry, I didn't hear you?

15 A. I am fairly familiar with it. I was basically the
16 author of it.

17
18 Q. In any event, we appear to have a resolution of
19 Bishop-in-Council adopting that care and assistance policy.
20 You say that your memory is not of that but of something
21 else - if you could please explain that?

22 A. I was not aware that they had decided to adopt a care
23 and assistance process - either adopt the Sydney process or
24 adopt their own process in a similar way. I wasn't aware
25 that they had done that.

26
27 Q. You didn't receive any communication from the bishop
28 or from Reverend Comben saying that Bishop-in-Council had
29 adopted this particular policy and that you, as
30 professional standards director, were to follow its terms?

31 A. Yes, I don't think I received that communication.
32 I don't have any recollection of receiving that
33 communication.

34
35 Q. You said just a moment ago that there was some other
36 package or some other method by which the Diocese of
37 Grafton was to operate. What was that?

38 A. Oh, I'm sorry, I was only referring there to the fact
39 that there were two ways they could have gone, was to set
40 up their own panels and adopt their own process in Grafton,
41 or, which seems to be what they were heading towards, that
42 they approach Sydney and say, "We will prepare our cases
43 and they will go before the Sydney panels." I think that's
44 the only distinction I was making. And that would have
45 been doable, but it would have had to have been negotiated
46 and paid for.

1 Q. It sounds like, from your evidence, that request never
2 came?

3 A. That's correct.
4

5 Q. Just to clarify something about the use of panels, is
6 that the panel that a claimant goes before --

7 A. Yes.
8

9 Q. -- to set out the nature of their claim, any evidence
10 they have, and to seek redress in whatever form it might
11 be?

12 A. Yes. The panel usually consisted, typically, of
13 a lawyer and probably one other expert - I think we had
14 a psychologist or a psychiatrist, or someone in that field,
15 anyway, in the behavioural sciences field. They would
16 relate to the person in an informal meeting, hear their
17 story, would go through the papers, would marry that up
18 with the schedule of possible suggested payments and make
19 a recommendation with a figure. They also made other
20 recommendations, like this person would like to have
21 a meeting with the bishop or the archbishop, or this
22 person - you know, any other things that the person was
23 saying would assist them in terms of their healing.
24

25 Q. Just turning, then, to paragraph 52 of your statement,
26 and particularly PG-17 - if PG-17 could be brought up,
27 please, and if we could have the whole document on the
28 screen, to begin with. Mr Gerber, is this a document that
29 you have seen before?

30 A. Yes. I mean, I don't have a particular recollection
31 of it, but as a matter of course, I would see those reports
32 when they came in from the contact people.
33

34 Q. A contact person's report on initial telephone
35 contact - is this the start of the process under the care
36 and assistance package?

37 A. Not really. A person participating in the care and
38 assistance package would - it would depend on when the
39 person indicated - they would be told about it, and then
40 they would indicate that they wanted to participate in
41 that. So Mr Elms has used this form, but it really
42 wasn't - he was just using the form for the sake of giving
43 us information. It probably wasn't the appropriate format.
44

45 Q. Did a process start within the Diocese of Sydney to
46 deal with Mr Champion's matter as a result of this?

47 A. No. No, my recollection was that we had a contact

1 person in touch with Mr Campion because he - because of the
2 letter that we got and then the conversations with
3 Mr Comben and we were trying to get more information from
4 Mr Campion.

5
6 Q. If we could enlarge the handwritten box about
7 two-thirds of the way down the page, you will see at the
8 second paragraph:

9
10 *Richard C states Grafton have offered to*
11 *pay for counselling and to arrange*
12 *a meeting with the Bishop.*

13
14 Do you see that?

15 A. Yes.

16
17 Q. Were you ever aware of any meeting that was arranged
18 between Mr Campion and the bishop in 2005 or, indeed, in
19 2006?

20 A. I don't have a clear recollection of it now, but I'm
21 not saying that I wasn't aware of it at the time. I just
22 don't recall whether - I may very well have been aware of
23 it at the time.

24
25 Q. If we go to PG-18, this is an indication, is it not,
26 that Mr Comben was stepping into the breach, if you like,
27 and providing, directly from the registry at Grafton, not
28 only assistance for travel arrangements but also payments
29 for counselling?

30 A. Yes.

31
32 Q. In the way that things operated in Sydney at that time
33 under the care and assistance package, those are the kinds
34 of things that would be undertaken by a contact person or,
35 indeed, by you as professional standards director?

36 A. Myself, Jenni Woodhouse or a contact person, yes.

37
38 Q. Did you have any concerns at that particular time that
39 effectively he was performing your role and that there
40 wasn't a role for you, not the normal role, at least, that
41 you enjoyed at Sydney?

42 A. I wouldn't say that I had concerns at the time,
43 because - because of the relationship that I had with
44 Grafton, where I was remote, Mr Comben was handling things,
45 and in the nature of that arrangement, it, at the time,
46 didn't seem completely inappropriate to me, and with the
47 workload that I had in Sydney, in any event.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. Just going to the last sentence of the last paragraph, it says:

This will let me progress matters towards at least internal discipline towards one of the clergy you mentioned.

A. Yes.

Q. I think I asked you about this earlier, or at least a related question: are you aware of what internal disciplinary steps were taken against any clergy with respect to Mr Campion?

A. No. No, and I was kept out of that loop. That's my recollection.

Q. Do I take it from that answer and some of the other ones that you have earlier given about your role as professional standards director that essentially the main parts of your role, or, should I say, the role of a professional standards director, were in fact being utilised or expressed by the registrar up in Grafton rather than you?

A. I think that would be a fair comment, yes.

Q. You say at the end of paragraph 53 of your statement that the way in which Mr Comben had "done this", in the sense of involving himself in the payment of counselling fees and dealing directly with Mr Campion, avoided double handling?

A. That's correct.

Q. It is certainly the case, is it not, that it crossed the boundary of independence of a professional standards director that would normally apply, by him intervening at that stage in the process?

A. Looking at it with the benefit of hindsight, I would agree with you.

Q. What was the involvement, to your understanding, of Jenni Woodhouse, who was a member of the professional standards unit with you in the Diocese of Sydney, with Mr Campion?

A. Jenni's role - she was described variously as a support person or the chaplain to victims, or terms like that. Her role was to really be a - the point where

1 a victim could remain in contact with the church, because
2 obviously both because of time and because of my training
3 as a lawyer, I probably wasn't the best person to be doing
4 that. You know, I didn't have the time to do it, and also
5 you needed people, really, that had training in human
6 services and the like.

7
8 So her role was to be the person that a victim could
9 continue to be in contact with, and she initiated contact
10 back to them as well, to see how they were going, to see
11 how their counselling was going and generally to keep in
12 touch with them, because that was one of the criticisms
13 that we had early on, that people would come to the church
14 and then there would be this silence for months and they
15 wouldn't hear from us. It was a fair criticism, so we
16 appointed someone like Jenni.

17
18 Q. She was your subordinate in the sense that she
19 reported, in the structure, to you?

20 A. Effectively, yes. We worked as a team, but --

21
22 Q. How did she come to have involvement with Mr Champion?

23 A. In all likelihood, I probably said to her, "Look,
24 there's this person that has come with a complaint in
25 relation to issues in Grafton Diocese. Can you keep in
26 touch with him?", or it would be something like that.

27
28 Q. Was she tasked with taking over counselling, the
29 coordination of counselling?

30 A. The second, coordination. She didn't really - she
31 provided counsel in a general sense, but she didn't - her
32 role was, and she quite deliberately saw her role as not
33 providing in-depth counselling but making sure that people
34 felt supported, felt that they were in contact and that if
35 they needed counselling, she made sure that they got that
36 with a counsellor of their choice, or if they didn't have
37 someone --

38
39 Q. And with respect to Mr Champion specifically?

40 A. You would have to ask Jenni about that. You know, she
41 reacted to what each person's needs were - what needs were
42 expressed. So if they already had a counsellor and they
43 wanted to keep seeing that counsellor, she would facilitate
44 that, or she would try to assist them to find a counsellor
45 if they didn't have one.

46
47 Q. In any event, at all stages, as far as you were aware,

1 counselling was being paid for, at least, from the Diocese
2 of Grafton and not through the offices of the Sydney
3 Diocese?

4 A. Yes, that's my understanding.

5
6 Q. In paragraph 57 of your statement - if we could go to
7 that, please - you will see there is a reference there to
8 a letter that [CA] wrote to Mr Comben dated 20 October
9 2005. PG-20. You say that you do not recall seeing either
10 of these two letters - that is, that one and PG-21, which
11 was the reply from Mr Comben.

12 A. Yes.

13
14 Q. You say that at no stage did you open a new file in
15 the Sydney office, as was your practice with respect to new
16 complaints; is that correct?

17 A. Yes. So I'm really relying on the evidence - sorry,
18 on the documents there to sort of do a count-back and say,
19 well, I mustn't have seen those. I don't have
20 a recollection of them, but that's possible even though
21 I had seen them. But given that I didn't open a file, my
22 best recollection is that I probably didn't see them. That
23 confirms the recollection that I have.

24
25 Q. Can I show you a particular provision in exhibit 3-3,
26 tab 1. Could we turn to clause 24. Do you see that
27 obligation at subclause (1) of clause 24?

28 A. Yes.

29
30 Q. That is a requirement on clergy to report to the
31 professional standards committee any information that comes
32 into his or her possession?

33 A. Yes.

34
35 Q. That word "information" is in fact defined in the
36 ordinance as including any alleged conduct of a church
37 worker involving sexual harassment or assault or sexually
38 inappropriate behaviour, and also allegations of similar
39 matters?

40 A. Yes.

41
42 Q. The process is that whoever that clergy member might
43 be, they should report to the committee and presumably also
44 to the professional standards director; is that correct?

45 A. Yes.

46
47 Q. Am I correct in saying that you, in your position

1 either as a member of the professional standards committee
2 or as professional standards director, did not receive the
3 information contained in that letter, PG-20?

4 A. That's my recollection.

5
6 Q. At some later stage, did you become aware of [CA]'s
7 claim?

8 A. At some point, I became aware that - I mean, I was
9 aware of Mr Champion's story, and at some point, and I can't
10 tell you exactly when, I became aware that there was more
11 than one, and I think I probably - I have a vague
12 recollection that I was also aware of the particular ones -
13 is it [CH] that you are referring to?

14
15 Q. [CA] is the one.

16 A. Sorry, [CA], I mean, [CA]. Yes.

17
18 Q. At paragraph 58, returning to the issue of the
19 appropriate care and assistance scheme, you say at least at
20 the stage when you completed this statement in October of
21 this year:

22
23 *I do not recall whether the*
24 *Bishop-in-Council approved this action, but*
25 *I do not think it did.*

26
27 A. Yes.

28
29 Q. Is it reasonable, then, to assume that certainly as
30 recently as last month, you were of the position that the
31 care and assistance package had not been adopted at all?

32 A. Yes. When I signed this statement, which was
33 31 October, I was still of the understanding that they had
34 not adopted it, and I saw the Bishop-in-Council minute
35 after the 31st, in fact I think this week or late last week
36 or something.

37
38 Q. I will take you to paragraph 61 of your statement, but
39 before I do so, in the period of time in between the
40 Bishop-in-Council meeting of November 2005 and March 2006,
41 which is addressed in your statement, were you aware during
42 that period of the approaches by Simon Harrison,
43 a Brisbane-based solicitor, on behalf of a number of
44 claimants who had been former residents of the North Coast
45 Children's Home?

46 A. I think I was aware that it was happening, but I knew
47 no details or particulars about it and wasn't being told

1 anything about it in detail. I was probably getting some
2 information, via Jenni Woodhouse, from Mr Campion.

3
4 Q. Did you have any conversations with Mr Campion in that
5 four-or-so month period concerning those particular claims?

6 A. I wouldn't swear that he didn't tell me that it was
7 happening, because I think he probably did indicate to me
8 that they were dealing with a number of claims in relation
9 to North Coast Children's Home, but I do recall that it was
10 made quite plain to me, either explicitly or implicitly,
11 that that was being dealt with by him and the diocesan
12 solicitors.

13
14 Q. Did you know that Mr Roland from Foott Law & Co was
15 handling the claims on behalf of the Diocese of Grafton?

16 A. I can't remember now whether I knew the name, but
17 I knew that they had a solicitor acting for them at the
18 time.

19
20 Q. Did you speak with him directly?

21 A. I don't think so, no.

22
23 Q. Did he refer any of the matters to you?

24 A. No, not that I - no, I don't think so.

25
26 Q. His position was as diocesan advocate. To your
27 knowledge, is that a member of Bishop-in-Council?

28 A. I don't know the Grafton legislation. It's a position
29 that relates to the old tribunal system that I was talking
30 about, so it's the person in the old tribunal system that
31 essentially prosecutes charges under the old tribunal
32 system. I would be surprised if he's on Bishop-in-Council
33 by virtue of that office. He may have been.

34
35 Q. During the first six months of 2006, I presume the
36 professional standards committee met at some stage during
37 that period, did it not?

38 A. Sorry, which period are you referring to?

39
40 Q. The first six months of 2006.

41 A. I would have to rely on any records that are there.

42
43 Q. We have one dated 25 April 2006. I think you were
44 concerned, in your statement, that it may not have actually
45 occurred on Anzac Day. In any event, it was appropriate,
46 was it not, that if there were claims, whether made through
47 a solicitor or otherwise, to the Diocese of Grafton, that

1 they be put before the professional standards committee for
2 its consideration?
3 A. Sorry?
4
5 Q. Is that correct?
6 A. I was concerned back then?
7
8 Q. No, was it appropriate --
9 A. Oh, yes. Sorry, I will let you finish.
10
11 Q. Was it appropriate that such matters be put before the
12 professional standards committee for consideration by it if
13 there had been one, two or any number of complaints of
14 child sexual abuse against the diocese?
15 A. Yes.
16
17 Q. Could we just go to that meeting, at PG-28. You will
18 see on the second page reference to Mr Campion.
19 A. Yes.
20
21 Q. We have on the notes that you were in attendance,
22 Ms Skamp was presiding as chair and Reverend Comben was
23 also there.
24 A. Was this the meeting dated 25 April 2006?
25
26 Q. That's correct.
27 A. Oh, yes, yes, he was, yes.
28
29 Q. Do you recall this meeting at all?
30 A. Not without looking at the minutes.
31
32 Q. Yes, well, you are looking at the minutes now.
33 A. Correct.
34
35 Q. Does that assist with your recollection?
36 A. It's consistent with what memory I do have, yes.
37
38 Q. You were in a teleconference meeting, so I presume you
39 were attending by telephone from Sydney?
40 A. Yes.
41
42 Q. You will see on the second page:
43
44 *No further particulars have been received*
45 *by the Diocesan Solicitor.*
46
47 Do you see that?

1 A. Yes.

2

3 Q. In any event, we know that by this stage at least
4 34 claims had been made through Mr Harrison to the diocese,
5 and I presume, on the basis of the absence of that from the
6 committee minutes, that the issue was not raised, the group
7 claims were not raised at all with the committee at that
8 point in time?

9 A. I think that is right. I was aware that there were
10 a number of claims, but I'm pretty sure I didn't know how
11 many there were. I just knew there were a number of
12 claims.

13

14 Q. I will take you to a couple of documents. Would you
15 look at the first volume of the tender bundle, exhibit 3-2,
16 tab 39. Could we have the first page on the screen,
17 please. You will see that that is a letter from
18 Reverend Comben to Foott Law & Co, enclosing a summary of
19 statements made about the home by those who wished to bring
20 an action.

21

22 Then if we scroll down to the next page, you will see
23 that there is a table there. If we continual scrolling,
24 you will see that there are further entries in that
25 schedule going all the way through to an analysis, at the
26 bottom of that eighth page, and then a further table
27 summarising the information that was provided above -
28 alleged abusers, setting out staff and clergy who were
29 involved in the abuse?

30 A. Yes.

31

32 Q. And who the residents were, where they were involved
33 in the abuse. This came about, as I think we will see,
34 from a very substantial amount of documentation that was
35 provided to Mr Roland by Mr Harrison, that is, from the
36 claimants' solicitors to the diocesan solicitors. Were you
37 aware in September 2006 that such information had been
38 provided to the Diocese of Grafton?

39 A. I may have been aware that information had been
40 provided, but that's as far as it went. I had no access to
41 the information and didn't know what it contained.

42

43 Q. You will need to speak up little bit.

44 A. I had no - I may have been aware that information had
45 been provided but only in a very general sense. I didn't
46 see the information or have access to it.

47

1 Q. Did you receive at that stage, in September 2006, any
2 copies of the 41-odd statutory declarations that had been
3 provided by Mr Harrison?

4 A. I didn't receive them and I didn't see them.

5

6 Q. Did you see a 15-page statement setting out the basis
7 upon which the claimants said, amongst other things, the
8 diocese had liability for the abuse that occurred in the
9 home?

10 A. Was that a statement by Mr Campion, because I have
11 a vague memory that I saw a long statement by Mr Campion?

12

13 Q. I will show you the documents. No. It is in fact
14 a letter from Mr Harrison to Mr Roland. I will show it to
15 you.

16 A. I mean, I'm happy to look at it, but I'm pretty sure
17 I didn't see it.

18

19 Q. Just to clarify, SJH-14 is the document. That's
20 a 14-page letter. I don't suggest you read all of it, but
21 perhaps you can at least read the first page and see
22 whether it is a document that you saw in September 2006, or
23 afterwards?

24 A. I'm certain - well, I'm as certain as I can be with
25 recollection - that I didn't see that letter. In fact,
26 I think today is the first time I have seen it.

27

28 Q. Then returning, if I could, to tender bundle 39, the
29 schedule which was provided to Mr Roland in September
30 2006 - if that can be brought up, please?

31 A. Yes, I first saw that in the last couple of weeks.
32 I hadn't seen it before then.

33

34 Q. You hadn't seen it before; it wasn't referred to you
35 in September?

36 A. Sorry, September 2006?

37

38 Q. Correct.

39 A. Yes, no. The first time I saw that document is just
40 a week or two ago.

41

42 Q. If we can go, then, to annexure PG-35 to your
43 statement, the minutes of the professional standards
44 committee of 21 November 2006. I see again Ms Skamp is
45 presiding and that you are in attendance. Do I presume
46 that you were in attendance by teleconference again?

47 A. Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. But Reverend Comben is not there; he is an apology for the meeting?

A. Yes.

Q. In any event, somebody seems to have briefed the professional standards committee about the North Coast Children's Home group claims?

A. Yes.

Q. Do you remember that meeting?

A. Only from the minutes. I don't have a separate recollection of it.

Q. Can you assist us, perhaps, by indicating who briefed the committee about the North Coast Children's Home?

A. I honestly can't recall who gave us all that information that was noted down. I have seen - I have thought about this before today, and I can't - it sounded more like information we'd get - that's why I'm surprised that Mr Comben is an apology, because it sounds like the sort of information he would normally report, and I can't remember who reported it to us.

Q. A number of matters are raised there. It says three priests are alleged to have been involved: Reverend Winston Morgan, Reverend Campbell Brown, and the third member of clergy is an archdeacon, John Robinson, now deceased. Are those the three priests that are described there?

A. I assume that from the minutes.

Q. Technically speaking, an archdeacon is not a priest; is that correct?

A. Oh, no, an archdeacon is a priest - oh, sorry, no, technically he may not be; he may be a deacon. But mostly, archdeacons were priests. Archdeacon is a position rather than an ordained - it is a role rather than an ordained position.

Q. In italics at about two-thirds of the way down the page, if we could just scroll down a little bit, please, it says:

Peter to check if Rev'd Brown has applied for licence, if so, can this be suspended pending an enquiry.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Do you see that?

A. Yes.

Q. The reference to "Peter" is to Peter Catt; is that correct?

A. I would think so, yes.

Q. I presume that means that the committee had asked him, or he had volunteered, to check if Reverend Brown currently had a licence?

A. Yes.

Q. Was that an inquiry that was to go beyond Grafton, so, for example, to Newcastle, where he had apparently recently moved?

A. I'm not sure. I took it, reading it, to mean that he would check only in Grafton, but it may have meant Newcastle as well.

Q. Then various steps were taken. If we go to the bottom, there is a reference to referring matters to the police?

A. Yes.

Q. It says "Pat" - I presume that is Pat Comben; is that correct?

A. Yes.

Q.

Pat to write to police using standard letter provided by Philip.

A. Yes.

Q. So the standard letter that you used in the Diocese of Sydney about how you reported allegations of child sexual abuse to the police; is that correct?

A. Yes.

Q. Did you provide such a standard letter to Mr Comben?

A. I think so, but I only conclude that from the fact of what happened after that.

Q. What happened after that is, in fact, you wrote letters rather than he wrote letters?

A. Yes. I do have a vague recollection that I had

1 a conversation with Pat and we decided that I would do it,
2 so it got done, and I can't remember the reasoning for
3 that. It may have been because it was just more convenient
4 or I had more time or something like that, but, you know,
5 both Pat and myself, after this meeting, were committed
6 that we had to do this, and we got it done, and I think the
7 letter that I wrote is the outcome of that.

8
9 Q. There was an indication about referring the matter to
10 the bishop at the bottom of that page. Then over the page,
11 it says:

12
13 *Pat to inform the bishop?*

14
15 Do you recall whether Bishop Slater was informed of the
16 referrals or proposed referrals to the police at that
17 stage?

18 A. I have no knowledge of that. I don't know.

19
20 Q. Then "c. Newcastle Diocese". I presume Newcastle was
21 relevant because Reverend Brown at least was resident in
22 Newcastle; is that a reasonable assumption?

23 A. Looking at the minutes, yes.

24
25 Q. Then it says:

26
27 *Philip is also the Director of PSC in*
28 *Newcastle and is informed of the matter.*

29
30 So do I take it, by that, that means that you became
31 informed of the allegations against Reverend Brown as
32 a result of this meeting of the professional standards
33 committee at Grafton?

34 A. I think that's what it means, yes.

35
36 Q. What did you do with that information with respect to
37 Reverend Brown, in your capacity as the professional
38 standards director at Newcastle?

39 A. My recollection - I don't recall doing anything in
40 relation to it after we got the letters from the - the
41 response from the police saying to take no action.

42
43 Q. I will come to that in a moment, because clearly you
44 moved on to write letters to the police about
45 Reverend Brown and some other clergy as well. I just want
46 to ask you about disciplinary matters - whether you
47 determined to commence or seek the commencement of

1 disciplinary proceedings in the Diocese of Newcastle with
2 respect to Reverend Brown?

3 A. My - I don't have any recollection of doing that.

4

5 Q. Do you recall now whether any action was taken by you,
6 as professional standards director, to the Diocese of
7 Newcastle with respect to Reverend Brown?

8 A. My best recollection is that there was no action
9 taken.

10

11 Q. We have directory notes that, in 2007 and
12 subsequently, Reverend Brown was listed in the directory of
13 Newcastle, so you would have been able to establish that he
14 had a permission to officiate at that stage; is that
15 correct?

16 A. Yes.

17

18 Q. I will take you to exhibit 3-2, tab 60. We have been
19 able to obtain copies of the internal directories of the
20 Diocese of Newcastle for 2007.

21 A. Yes.

22

23 Q. The one you have on the screen is for 12 January 2007.
24 If you can accept from me that we also have, at tab 79,
25 a directory with Reverend Brown's name in it for 31 May
26 2007, and for 28 September 2007 at tab 94, so it appears to
27 be clear from the record that at least the directory
28 indicated that Reverend Brown was licensed to officiate in
29 Newcastle as at those dates. Is that an inquiry that you
30 made, that is, as to whether he had a licence to officiate
31 in Newcastle?

32 A. I don't recall making that inquiry and I didn't have
33 access to this document at the time.

34

35 Q. Could you have called the registry at Newcastle and
36 asked them to inform you as to whether Reverend
37 Campbell Brown had a licence to officiate in 2006 or 2007?

38 A. Yes.

39

40 Q. You didn't do that?

41 A. No.

42

43 Q. Why is that?

44 A. I think it was the same issue, that I was juggling
45 a lot of balls. My main focus was on my Sydney work, which
46 was my nine-to-five, seven days a week, or six or seven
47 days a week, focus, and I was doing effectively the Grafton

1 and the Newcastle work on a part-time basis and I regret
2 that I wasn't giving it the attention that I was giving my
3 principal job, which I was being paid for.
4

5 Q. Unlike a retired member of clergy, who does not have
6 a licence to officiate, where a member of clergy does have
7 a licence to officiate, it's a well-trodden path, if I can
8 use that term, for a bishop to be able to remove the
9 licence of that particular member of clergy, isn't it?

10 A. Mostly it is a fairly straightforward procedure, yes.
11

12 Q. It is less cumbersome, if you like, than trying to
13 depose somebody from holy orders?

14 A. Depending on the terms of the permission to officiate,
15 it can generally be done fairly quickly, promptly.
16

17 Q. If I could just come, then, to the references to the
18 police. It is reasonable to assume that you took over that
19 particular task from Reverend Comben and determined that
20 you needed to write to the police about that?

21 A. I have a recollection that Pat and I talked about it
22 on the phone and we agreed that I would do it. I can't
23 remember the reasons for that, but I do have a recollection
24 that that's what happened.
25

26 Q. You have annexed three letters to your statement,
27 PG-36, PG-37 and PG-38. Could PG-36 please be brought up.
28 Would you just read that to yourself.

29 A. Yes.
30

31 Q. This was one of the three letters that you wrote to
32 "The Commander, Child Protection & Sex State Crime Squad"
33 on 19 December 2006?

34 A. Yes.
35

36 Q. Do I take it from that that you had been provided with
37 a copy of a statutory declaration of Mr Campion which
38 revealed certain allegations with respect to
39 Reverend Brown; is that correct?

40 A. Yes.
41

42 Q. And similarly for PG-37, you had received a further
43 two statutory declarations of two further people, [CM] and
44 [CL]. Similarly, you conveyed those allegations of sexual
45 assaults to the same police officer; is that correct?

46 A. Yes.
47

1 Q. Then the third letter, PG-38, you had a further
2 statutory declaration of [CN] against one of the former
3 residents, [CL], and that was also referred to the police;
4 is that correct?

5 A. Yes.

6

7 Q. Do I take it that by 19 December, you had received
8 a copy of the statutory declarations of those particular
9 people?

10 A. Yes.

11

12 Q. Had you received any other statutory declarations?

13 A. Not that I recall.

14

15 Q. The question I have for you, Mr Gerber, is that the
16 evidence, certainly what is indicated in the September
17 schedule, tab 39 - please accept, if you would, from me
18 that that indicates that there were in fact 20 individual
19 victims and approximately about 10 perpetrators, some
20 identified, some not identified there?

21 A. Yes.

22

23 Q. Was any indication given to you at the professional
24 standards committee meeting in November 2006 that there
25 may, in fact, be additional allegations against additional
26 perpetrators apart from the three that you had referred to
27 the police?

28 A. I can't recall being given that sort of specific
29 information.

30

31 Q. Is it simply the fact that you weren't given that
32 information?

33 A. I mean, I can't recall being given it, so I'm assuming
34 from that that I wasn't given it.

35

36 Q. Allegations against additional members, serious
37 allegations of sexual and other indecent assaults against
38 children, is something that would have stuck in your mind,
39 isn't it?

40 A. Yes. My best recollection is - and I think I said
41 this before - that I was aware that there were other
42 allegations, but I didn't have any particulars either of
43 the numbers or what the allegations involved.

44

45 Q. Was there any discussion, to your memory, at the
46 professional standards committee in November 2006 about
47 a differentiation between allegations against clergy and

1 allegations against non-clergy?

2 A. No.

3

4 Q. Was there any issue taken about whether a particular
5 person against whom allegations were made was a church
6 worker or not?

7 A. I don't recall that.

8

9 Q. In any event, I think one of the allegations,
10 particularly PG-38, is actually an allegation against
11 a former resident and isn't an allegation against a member
12 of clergy.

13 A. Yes.

14

15 Q. Did that stand out to you, in the sense that you
16 wanted more information about any other allegations that
17 related to non-members of clergy?

18 A. No, because I didn't have - I don't think I had enough
19 information to start to formulate those questions in my
20 mind and ask them. I mean, I was just given the names of
21 these three people, or I became aware of those three names
22 through the processes that are apparent from the minutes
23 and given those three statutory declarations and not given
24 any further particulars as to whether they were church
25 workers or not.

26

27 Q. I think I asked you about disciplinary proceedings
28 with respect to Campbell Brown in Newcastle. Similarly,
29 were any steps taken to commence disciplinary action with
30 respect to Reverend Campbell Brown in Grafton?

31 A. No, not that I'm aware.

32

33 Q. I think you subsequently received a reply from
34 a police officer?

35 A. I was copied in to that, yes.

36

37 Q. PG-39 is an email from Wayne Armstrong, inspector and
38 intelligence coordinator at the Child Protection & Sex
39 Crimes Squad. He emailed you, it appears, on 16 January
40 2007, so just under a month from when you had written to
41 the Sex Crimes Squad, and he asked:

42

43 *At present we would prefer that the Diocese*
44 *does not take further action to investigate*
45 *if it could interfere with any potential*
46 *police investigation.*

47

1 Do you see that?

2 A. Yes.

3

4 Q. Do you recall that that's what you did - that you took
5 no further action on that basis?

6 A. Yes.

7

8 Q. I presume, from the terms of the letters that you
9 wrote on 19 December and that reply, that some form of
10 disciplinary proceedings were contemplated at least in the
11 Diocese of Grafton?

12 A. Yes.

13

14 Q. And that they were effectively suspended as a result
15 of this particular letter?

16 A. Yes.

17

18 Q. Let's start with Reverend Brown. I will come to
19 Reverend Morgan in a moment. Have any disciplinary
20 proceedings with respect to Reverend Brown been commenced
21 since the suspension of disciplinary proceedings in January
22 2007?

23 A. Not that I'm aware.

24

25 Q. Did you keep in contact with the police officer to see
26 how the police investigation was going?

27 A. I don't think I did. He indicated:

28

29 *We will inform you in due course what*
30 *action NSW Police propose to take ...*

31

32 Q. Did you consider it your role or Reverend Comben's
33 role to be the main point of contact between the Diocese of
34 Grafton and the police?

35 A. Looking at it now, it would have been my role.
36 I think probably at the time, I might have expected
37 Mr Comben to contact - but that was - yes.

38

39 Q. Mr Gerber, I think you were in that position of
40 professional standards director to Grafton until the end of
41 2007?

42 A. That's correct.

43

44 Q. Then you ceased providing those services to Grafton?

45 A. That's correct.

46

47 Q. Did you take any action between January 2007 and the

1 end of 2007 to contact the police or Inspector Armstrong to
2 determine whether, and how, that particular investigation
3 was progressing?

4 A. Not that I'm aware.

5
6 Q. Why not?

7 A. Having said that, I haven't been able to have access
8 to my emails that I had at the diocese, that I sent and
9 received at the Diocese of Sydney, so there could be some
10 contact there. I'm not saying there is - I don't have
11 a recollection of it - but there may be some email contact.
12 Given that he contacted us by email, I would more than
13 likely have contacted him back by email.

14
15 Q. Mr Gerber, we haven't been able to obtain any such
16 correspondence.

17 A. No, no, I'm not saying it is there. I'm just saying
18 I haven't had a chance to check, and it's possible that
19 I did contact him by email. I'm not saying I did, because
20 I don't have a recollection of it.

21
22 Q. But the appropriate course, when the diocese is in
23 such a position, that is to say, where a matter has been
24 referred to police and you have suspended disciplinary
25 matters within the diocese, it's reasonable to presume that
26 you would keep in contact with the police --

27 A. Yes.

28
29 Q. -- so as to ascertain whether the police investigation
30 has concluded and so that any disciplinary action inside
31 the diocese can be resumed?

32 A. Yes.

33
34 Q. It appears from at least the evidence that we have
35 been able to gather that no attempt seems to have been made
36 to contact the police to ascertain the status of that
37 particular investigation, at least in 2007?

38 A. That would seem to be the case.

39
40 Q. Going further, then, to paragraph 78 of your
41 statement, we are moving into January 2007. First of all,
42 I should ask you, at about that time were you aware of
43 settlement negotiations which were occurring in the Diocese
44 of Grafton, particularly in the diocesan centre, on 19 and
45 20 December 2006?

46 A. I may have been aware of them through information
47 I was getting from Jenni Woodhouse.

- 1
2 Q. Effectively, the information you were receiving was
3 filtered and indirect about what was happening with the
4 group claim in Grafton; is that correct?
5 A. I think that's right.
6
7 Q. You weren't directly involved, were you?
8 A. I was completely excluded from it, yes.
9
10 Q. Were you involved in any way in the negotiations up
11 to March 2007, when it appears that a sum, at least, was
12 agreed on between the claimants' solicitors and the
13 diocese's solicitors?
14 A. No, I had no involvement in that at all.
15
16 Q. Knowing what you do now about the way in which the
17 Diocese of Grafton was operating, particularly I want to
18 ask you about counselling. Am I correct in saying that
19 your evidence is that the issue of counselling,
20 particularly of Mr Campion, was being handled by the
21 Diocese of Grafton and not by Sydney, save that
22 Ms Woodhouse was providing some assistance?
23 A. Yes. Typically if the victim was saying that they
24 wanted to continue counselling or get counselling,
25 Ms Woodhouse would have been strongly recommending, as she
26 did to Sydney, recommending to Grafton that that either
27 continue or be obtained.
28
29 Q. As you are aware, the group claim included Mr Campion
30 and also [CA], but, in addition, there were 39 other
31 claimants; you were aware that the number was about 40 or
32 so?
33 A. Oh, I'm not sure that I was ever aware that there was
34 40. I was just aware that there were a number.
35
36 Q. A number of five or at least in the tens?
37 A. My recollection is that I did not know how many there
38 were, just that there were a number.
39
40 Q. Were you ever contacted by Reverend Comben,
41 Bishop Slater or anybody else, for that matter, at the
42 Diocese of Grafton to arrange or at least coordinate
43 counselling for any of the group claimants from the North
44 Coast Children's Home?
45 A. No.
46
47 Q. Given the arrangement that you and Ms Woodhouse had

1 with supporting Mr Campion and his arrangements for
2 counselling, would you have expected to be involved, if
3 such counselling was to be provided by Grafton?

4 A. That would be reasonable, yes. That would be what
5 I would reasonably expect, yes.

6
7 Q. You say at paragraph 78, in the last sentence there,
8 that Mr Comben and Mr Roland kept the progress of the
9 negotiations close to their chests. I presume that is
10 a reference to what you have just told us, namely, that
11 those negotiations between the diocesan solicitors and the
12 claimants' solicitors were basically handled, as far as you
13 knew, by Mr Comben and Mr Roland; is that correct?

14 A. That's correct.

15
16 Q. Were you concerned by March 2007 that the absence of
17 reporting of the group claimants to the professional
18 standards committee may have been a breach of the ordinance
19 which Grafton had adopted?

20 A. I'm not sure that my concern was that specific, but
21 I certainly had a concern that it was being handled
22 in-house, as it were, by Grafton.

23
24 Q. What were your concerns about that?

25 A. Well, that Mr Comben and the diocesan office of
26 Grafton were simply handling this matter without involving
27 the PSC or myself, as the titular professional standards
28 director.

29
30 Q. Did you raise that with Mr Comben?

31 A. No, I didn't.

32
33 Q. Is there any particular reason why you didn't?

34 A. My sense of it was that it was made pretty clear to me
35 that they were getting on with it and I was excluded.

36
37 Q. As far as you could see - and it appears that you were
38 receiving scant pieces of information about the
39 negotiations, but at least you knew that they were
40 occurring; is that correct?

41 A. Mmm.

42
43 Q. Did you have any specific concerns about the way in
44 which it was being handled at Grafton?

45 A. It may have been - yes. The short answer is yes,
46 I did have concerns.

47

1 Q. What were those concerns?

2 A. That the Diocese of Grafton was trying to handle these
3 as sort of a mass litigation, a response to mass
4 litigation, without trying to get it directed towards
5 a scheme like the care and assistance scheme, where there
6 would be some sort of logical and helpful process of
7 letting people relate to the church, tell their story, get
8 assessed as to an amount, not be charged exorbitant amounts
9 by lawyers to go through that process, because going
10 through that process you really cut out the lawyers, and so
11 if they were assessed as being worth \$75,000 and accepted
12 that, they got the full \$75,000; none of it went to
13 lawyers. And those were really my concerns, that they were
14 going off on this sort of - I don't know whose fault it
15 was, but they were going off on a litigation process which
16 ultimately would not have been helpful for claimants.

17
18 Q. Apart from the issue of legal costs to the claimants
19 as a result of going through the process represented by
20 lawyers, what other concerns did you have for the claimants
21 being put through the sort of process that was engaged in
22 by Grafton?

23 A. That issues like statute of limitations, liability
24 issues, who was the proper defendant - all those sorts of
25 issues which come up in litigation - would come up in that
26 process, whereas none of those really arose in a care and
27 assistance process.

28
29 Q. What about in terms of the pastoral care, the support,
30 the counselling, acknowledgment, apology, all those sorts
31 of issues?

32 A. Yes, all that would also be cut out as well, because
33 you would be dealing second hand with a lawyer, and no
34 matter how good the lawyer was, you wouldn't be getting
35 first-hand - you wouldn't be relating first hand to the
36 victims and really getting from them a response as to what
37 their felt needs were so you could respond to them, and
38 so - you know, it would be effectively counterproductive
39 both to the claimant and, indeed, to the church, in terms
40 of the relationship that they had with these claimants.

41
42 Q. The last thing I want to ask you about is the
43 operation of the national register, particularly at the
44 stage in 2005 through to the end of 2007, when you were the
45 professional standards director at Grafton. Did you take
46 any steps to refer the claims that you knew about,
47 particularly that with respect to Reverend Brown and

1 Reverend Morgan, to the national register?

2 A. No, and I'm not sure when the national register
3 actually came to a point where it was starting to receive
4 information.

5

6 Q. Is there a particular point when you understand that
7 the national register was up and running, or can you
8 remember, by the end of 2007, was the national register in
9 operation as far as you were concerned?

10 A. I know it became operational, in the sense that it was
11 able to receive information from dioceses, at a particular
12 point, but I can't recall when that point was.

13

14 Q. Is that the sort of knowledge you were likely to have
15 obtained prior to leaving as professional standards
16 director at Grafton?

17 A. I can't remember when it was, I'm sorry, I just -
18 I can't recall when the date was that we were told that the
19 register is now able to receive the notifications. I do
20 remember a process that we went through, certainly in
21 Sydney, of going through all our files and putting
22 information on to the register, but I can't recall when
23 that was.

24

25 Q. I will just take you back, then, to the professional
26 standards committee meeting of November 21, 2006, PG-35,
27 and the second page of that document. You will see there
28 is a note about an update provided by you about the
29 national register, and that there is the prospect of a new
30 canon for the national register?

31 A. Yes.

32

33 Q. In fact, there had been a 2004 canon, had there not,
34 establishing the national register?

35 A. I think that's right, and I don't think it was
36 activated as a result of that canon. My recollection was
37 that the next General Synod, which was probably 2006, was a
38 point at which there were significant amendments to the
39 national register canon, and so it was probably some time
40 after 2006 that it finally got up and running.

41

42 Q. I think I can simply ask you this: while you were
43 professional standards director at Sydney or at Grafton,
44 did you take any steps to place information with respect to
45 Reverend Kitchingman, Reverend Brown or Reverend Morgan
46 upon that register?

47 A. I don't have any recollection of doing it in relation

1 to those three particular people.

2

3 Q. We have searched the register and we have been unable
4 to find any entries with respect to those three people?

5 A. Yes.

6

7 Q. Is it reasonable to assume that you did not take any
8 steps to have those names placed upon the register in 2007?

9 A. I think that's right. And, as I say, I don't know
10 when the national register actually was in a position to
11 start receiving information.

12

13 MR BECKETT: Is that a suitable time?

14

15 THE CHAIR: Yes, very well. We will take the luncheon
16 adjournment.

17

18 **LUNCHEON ADJOURNMENT**

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

1 **UPON RESUMPTION:**

2

3 MR BECKETT: If Mr Gerber could come back into the witness
4 box, please.

5

6 Q. Mr Gerber, I have a few brief matters to conclude
7 with. I wonder if the witness could be shown exhibit 3-3,
8 page 528, clause 20. Mr Gerber, you will see this is
9 clause 20 of the Grafton Professional Standards Ordinance
10 of 2004.

11 A. Yes.

12

13 Q. And that clause 20 sets out at subclause (1) a number
14 of powers and duties of the PSC. Do you see that?

15 A. Yes.

16

17 Q. If you go over the page, you'll see at the top
18 paragraph (j) says the PSC has the power and duty:

19

20 *To refer any information in its possession*
21 *to a member of a law enforcement,*
22 *prosecution or child protection authority*
23 *of a State or Territory or of the*
24 *Commonwealth of Australia to which the*
25 *information is or may be relevant.*

26

27 Do you see that?

28 A. Yes.

29

30 Q. So do I take it from that that the professional
31 standards committee which is in receipt of that
32 information, which includes, as we've been over,
33 convictions or allegations of child sexual abuse, is under
34 an obligation to refer those matters to the police.

35 A. Well, not convictions, because how would that assist?

36

37 Q. Yes, fair point.

38 A. But certainly other information, allegations and so
39 on. Look, yes, I was well aware of that responsibility
40 both in terms of the criminal law and in terms of the
41 requirements under the ordinance, and I systematically
42 tried to comply with that, particularly in relation to my
43 Sydney duties, and we've already - you've already
44 identified that that didn't happen in relation to some of
45 the Grafton - two of the Grafton matters.

46

47 Q. I just want to ask you about the procedures, but

1 before I do that, if you could also look at the next
2 document, that's tab 2 in exhibit 3-3, particularly 14.6.
3 I think it's Ringtail 056. You will see there that under
4 the provisions that relate to the professional standards
5 director, there is a particular paragraph that concerns
6 reporting to State authorities, and the fourth of those
7 paragraphs set out there indicates that:

8
9 *If the Organisation is not a school and the*
10 *Sexual Abuse is a criminal offence then*
11 *report the Allegations to a police officer.*

12
13 Do I take it from that that it was also an obligation on
14 a professional standards director to report such matters to
15 police; is that correct?

16 A. I don't quite understand the question, in the sense
17 that - yes, that's an obligation that's there, I will -
18 yes.

19
20 Q. Just in terms of the procedure that applied,
21 particularly in both the diocese of Sydney and the Diocese
22 of Grafton when you were the professional standards
23 director, was there a practice in terms of seeking the
24 consent from the complainant before referring a matter to
25 police?

26 A. My invariable practice was to explain to the
27 complainant, if I had any contact with them, or get the
28 contact persons to explain to the complainant that we took
29 that obligation seriously and we would report it. However,
30 we would also explain to them that whether or not they
31 assisted the police or chose to assist the police was up to
32 them, but that we really understood our obligation to
33 report, in any event, and then the police would be in
34 touch - may be in touch with them, and they would have to -
35 and we also, from time to time, gave assistance to
36 complainants to go to the police themselves, if they needed
37 that, in terms of support people and the like.

38
39 Q. And if the complainant said that they didn't want to
40 go to the police or they didn't want it reported to the
41 police, what was the practice at Sydney, first, and then
42 Grafton?

43 A. Well, in terms of Sydney, we would indicate that we
44 took that obligation seriously and we would report it, and
45 we would probably include the information that the
46 complainant - we would probably tell the police that the
47 complainant is unwilling or unable or not wanting to make

1 a complaint to the police, and then let the police decide
2 what they would do about it.

3
4 Q. It sounds like it was an advisable practice to speak
5 with the complainant before you indicated that you were
6 going to advise the police, so that at least they were
7 forewarned?

8 A. We tried to make that our practice in Sydney, yes.

9
10 Q. What was the practice in Grafton during the time that
11 you were professional standards director about reporting to
12 police?

13 A. I think that was the difficulty. There was not really
14 an established practice. We were working out - I mean,
15 from 2000 through to - you know, we were in the early
16 stages of dealing with these matters in ways which they
17 hadn't been appropriately dealt with in the past and we
18 were working out what we should and shouldn't do. But
19 certainly what I described in terms of Sydney became our
20 practice, and I can't tell you exactly when we got into
21 those fixed practices. But that didn't happen in relation
22 to Grafton because of all the reasons I've already stated -
23 that I was only part time. I'm not trying to excuse it,
24 but I'm just trying to explain how it came about that we
25 didn't really develop those practices in Grafton in the
26 same way that we did where I was full time.

27
28 Q. When you say "develop the practice", it's quite patent
29 on the face of the ordinance what the obligation of the
30 professional standards committee is, that is, to report
31 such allegations to the police.

32 A. Oh, I'm referring to the way we handled it with the
33 complainant - explain to them, and so on - that sort of
34 part of the practice. We developed those practices rather
35 than simply just shooting off a letter to the police, which
36 obviously ticks the box in terms of the legalities. But we
37 wanted to do more than that - we wanted to do what was
38 helpful to the complainant and, more importantly, what
39 protected, if it was able to, people going forward,
40 children and vulnerable people going forward.

41
42 Q. The letters you sent on 19 December 2006 to the police
43 with respect to the three alleged perpetrators - did you or
44 somebody at the Diocese of Grafton speak with the
45 complainants prior to referring those matters to the
46 police?

47 A. I didn't, and I'm not aware of whether anybody else

1 did.

2

3 Q. Did you take any steps to ask Reverend Comben or
4 somebody else whether that had occurred?

5 A. No, no. And the reason for that is that I was at
6 a distance and I was assuming that Grafton was handling
7 things. In retrospect --

8

9 Q. Are you aware that Mr Harrison wrote to the Diocese of
10 Grafton, or at least their solicitors, to indicate his
11 objection to those statutory declarations particularly,
12 that had been provided as part of the group claim, being
13 referred in that form to the police?

14 A. I wasn't aware of that.

15

16 Q. I wonder if you could go to, and if it could be
17 brought up on the screen, annexure PG-41.

18 A. Incidentally, that's an example of why we were keen
19 always to deal with complainants directly, so that we could
20 work with them as to how we fulfilled our obligations in
21 terms of police reporting, and so on. That was the very
22 reason why we adopted the approach we did in Sydney -
23 because, you know, there are very many different
24 expectations or desires from complainants depending on
25 where they're at. So having to work second-hand through
26 a lawyer is unsatisfactory in those circumstances.

27

28 Q. Just going to PG-41, then, we have evidence that this
29 is a file note made by Bishop Slater with respect to at
30 least a telephone call with you, 5 July 2007, which you in
31 your statement have adopted as being accurate.

32 A. Yes.

33

34 Q. Just in terms of the chronology, first of all, if
35 you could please assume that there was a meeting between
36 Bishop Slater, Mr Campion and [CA], as well as
37 Jenni Woodhouse on 3 July 2007?

38 A. Yes.

39

40 Q. And this telephone call seems to have occurred in the
41 context of that.

42 A. Right. I was certainly aware that Jenni Woodhouse had
43 gone up there for a meeting. I didn't know the contents of
44 the meeting in detail, although I think Jenni probably
45 would have told me in general terms that they were
46 discussing Mr Campion's concerns, claims, and so on.

47

1 Q. Was any concern raised about the involvement of
2 Ms Woodhouse by Bishop Slater in that telephone call or
3 subsequently?

4 A. No, I don't recall. I didn't have many - this is
5 probably the only phone conversation I ever had with
6 Bishop Slater. I don't recall having conversations with
7 him, apart from this one. I think I had a conversation
8 with him when we went up to do the training, but that was
9 more informal and not about particular issues. I think
10 they were the only two times I really met him.

11
12 Q. Do you remember any concerns about Ms Woodhouse being
13 involved in liaison between the Diocese of Grafton and
14 Mr Champion?

15 A. No.

16
17 Q. Do you recall Ms Woodhouse being asked not to involve
18 herself with Mr Champion on or about that particular date?

19 A. I have a recollection of Jenni Woodhouse telling me
20 that, but I can't recall when it was - whether it was
21 before or after the meeting.

22
23 MR BECKETT: Those are the questions for this witness.

24
25 THE CHAIR: Mr Griffin?

26
27 MR GRIFFIN: No, thank you, your Honour.

28
29 THE CHAIR: You may be excused.

30
31 **<THE WITNESS WITHDREW**

32
33 MR GRIFFIN: Your Honour, I had a discussion with counsel
34 assisting about two matters I want to raise briefly, with
35 your leave.

36
37 Firstly, I seek leave to appear for Martin Drevikovsky
38 in these proceedings. Mr Drevikovsky was the general
39 secretary of the General Synod of the Anglican Church of
40 Australia from the middle of 2008 onwards, and it seems
41 clear that there are a number of issues that will be of
42 interest to the Commission when he gives evidence.

43
44 THE CHAIR: Mr Beckett, do you have anything to say about
45 that?

46
47 MR BECKETT: Yes. The application is not opposed.