ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES
TO CHILD SEXUAL ABUSE
AT SYDNEY
STATE OF NEW SOUTH WALES

ROYAL COMMISSIONS ACT 1923 (NSW)

PUBLIC INQUIRY INTO

THE RESPONSE OF THE DIOCESE OF GRAFTON OF THE ANGLICAN CHURCH TO CLAIMS OF CHILD
SEXUAL ABUSE AT THE NORTH COAST CHILDREN’S HOME

SUBMISSIONS OF COUNSEL ASSISTING THE ROYAL COMMISSION

Contents

INTRODUCTION .................................................................................................................................. 3
THE STRUCTURE OF THE ANGLICAN CHURCH OF AUSTRALIA ......................................................... 4
RESPONSES TO CHILD SEXUAL ABUSE IN THE ANGLICAN CHURCH .................................................. 6
PRIMARY INSTRUMENTS FOR DEALING WITH CHILD SEXUAL ABUSE IN THE DIOCESE OF GRAFTON 9
DISCIPLINE IN THE DIOCESES OF GRAFTON AND NEWCASTLE ....................................................... 14
OTHER SAFEGUARDS FOR CHILDREN IN THE ANGLICAN CHURCH ................................................... 17
  Faithfulness in Service ..................................................................................................................... 17
  Parish Safety ................................................................................................................................... 18
  Clergy and Employment Screening ............................................................................................... 19
INTRODUCTION

1. The third public hearing of the Royal Commission examined the way in which claims of child sexual abuse arising from the North Coast Children’s Home (“the Home”) were handled by the Diocese of Grafton of the Anglican Church.

2. The scope and purpose for the public hearing was as follows:
   a. The response of the Anglican Diocese of Grafton to claims of child sexual abuse by persons previously resident at the North Coast Children’s Home in Lismore, New South Wales.
   b. The policies and procedures adopted and applied by the Diocese of Grafton for the handling of such claims.
   c. The response of the Dioceses of Grafton and Newcastle to allegations of child sexual abuse by Allan Kitchingman and related acts and offences.
   d. Any other related matters.

3. The public hearing was held from 18 to 27 November. During the public hearing, the Royal Commission heard from 21 witnesses including seven former residents of the Home and 10 volumes of witness statements and documents were tendered.

4. The first part of this case study considered the way in which the Diocese of Grafton handled a group claim of over 40 former residents of the Home, 20 of whom had suffered child sexual abuse while resident there (called the “group claims”). The second part of the case study concerned how later claims of child sexual abuse by former residents were handled after the group claim had been completed (called the “post-group claims”).

5. The case study examined the principal policies and procedures which govern the handling of claims of child sexual abuse within both an individual diocese of the Anglican Church and at the national level. The Royal Commission also heard evidence of the interaction between the Primate of the Anglican Church and the Bishop of the regional diocese and the degree of influence the former had over the latter.

6. The evidence heard by the Royal Commission can be grouped into the following questions:
   a. What was the Diocese of Grafton’s response to the claims of the former residents?
   b. Why did the Diocese respond in the way it did?
c. What measures of redress did the Diocese of Grafton provide to the claimants?
d. Were allegations that may have concerned criminal conduct referred to the police?
e. Were disciplinary proceedings commenced against persons alleged to have been involved in child sexual abuse and what was the outcome?
f. What risk management processes were adopted?
g. What findings might the Royal Commission make?

THE STRUCTURE OF THE ANGLICAN CHURCH OF AUSTRALIA

7. The Anglican Church of Australia has its origins in the Church of England and the involvement of its clergy in the early days of the Australian colonies. The Anglican Church of Australia Constitution Act 1961 (NSW) (“the Constitution”) annexes the Constitution of the Anglican Church in its schedule which is, by force of statute, binding upon all Bishops, clergy and laity of the “Church of England in Australia”. Comparable legislation was passed in all the other Australian States. The Anglican Church became the “Anglican Church of Australia” (rather than the “Church of England in Australia”) by operation of the Anglican Church of Australia Act 1976, at least in New South Wales.

8. The Anglican Church of Australia is properly characterised as a “national voluntary religious association”¹. Clause 5 of the Constitution provides the Church with plenary authority and power to make canons, ordinances and rules for the order and good government of the Church. The diocese is expressed to be the “unit of organisation of this Church”² and the Anglican Church is comprised of 23 dioceses. The Anglican Church is also divided into five Provinces each of which has its own Archbishop or ‘Metropolitan’ and roughly mirror the geographical area of Australian States. For example, the Province of New South Wales includes the Dioceses of Sydney, Newcastle, Goulburn and Canberra, Armidale, Bathurst, Riverina and Grafton. The Archbishop of Sydney is the Metropolitan of the Province of New South Wales. The Archbishop of Brisbane is the Metropolitan for those dioceses located in Queensland and the Northern Territory.

9. The supreme body of the Anglican Church is the General Synod which meets every 3-4 years. The General Synod is divided into three houses: the House of Bishops, the House of Clergy and

¹ Ex 3-2 Tab 152B, at ANG.0017.001.0007, [2.2]
² Anglican Church of Australia Constitution Act 1961 sch. 1 cl. 7
the House of Laity. Each diocesan Bishop may sit in the House of Bishops at General Synod and the Primate of the Anglican Church presides at sessions of the General Synod. The position of Primate is currently occupied by the Archbishop of Brisbane, Dr Phillip Aspinall. In his role as Primate he chairs the General Synod Standing Committee as well as the Executive Committee of the Standing Committee.

10. The Professional Standards Commission of the Anglican Church was established to examine questions of professional standards, safe ministry practices and training referred to it by the Primate, the Standing Committee, or the General Synod. The Professional Standards Commission does not, however, administer the implementation of professional standards because such matters are left to individual dioceses.

11. The important role played by a diocese within the structure of the Anglican Church is reflected in the precedence provided to the diocese in the adoption of “canons, rules and regulations”. The General Synod may enact such instruments for the order and good government of the Church “including canons in respect of ritual, ceremonial and discipline”. However, s. 30 of the Constitution provides that any canon passed by the General Synod affecting the ritual, ceremonial or discipline of the Church shall not come into force unless and until a diocese, by ordinance, adopts the canon. Each diocese has the power to make ordinances for the order and good government of the Church in accordance with the constitution of the diocese. The Constitution also establishes a tribunal in each diocese presided over by the Bishop and which may hear and determine breaches of faith, ritual, ceremonial, discipline or offences. The Constitution also establishes provincial tribunals, a Special Tribunal and an Appellate Tribunal.

12. The 23 dioceses in Australia are diverse, varying not only in geographical size and population but also in their resources and theological and ecclesiological outlook. Some dioceses are incorporated and others, such as the Diocese of Grafton, are not. Each diocese has its own

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3 Anglican Church of Australia Constitution Act 1961 sch. 1 cl. 15
4 Anglican Church of Australia Constitution Act 1961 sch. 1 cl. 16
5 Anglican Church of Australia Constitution Act 1961 sch. 1 cl. 20
6 Ex 3-2 Tab 152B, at ANG.0017.001.0016, [3.6]
7 Anglican Church of Australia Constitution Act 1961 sch. 1 cl. 26
8 Anglican Church of Australia Constitution Act 1961 sch. 1 cl. 30
9 Anglican Church of Australia Constitution Act 1961 sch. 1 cl. 51
10 Anglican Church of Australia Constitution Act 1961 sch. 1 cl. 53, 54(1), (2)
11 Anglican Church of Australia Constitution Act 1961 sch. 1 cl. 55, 56 and 57 respectively
12 Ex 3-2 Tab 152B, at ANG.0017.001.0019, [4]
bishop, synod, diocesan council, parishes and tribunal. 13 The bishop may be appointed by the
diocesan synod or a committee or board established for the task. 14 The bishop exercises the
primary leadership role in the diocese both pastorally and temporally. 15 The bishop chairs
meetings of the diocesan synod and Bishop-in-Council. 16 He or she may license clergy or laity to
minister in parishes, may appoint persons to membership of diocesan bodies and implement
recommendations of disciplinary bodies. 17

13. A person may be consecrated as a bishop or ordained as a priest or deacon but may not function
in those capacities unless licensed by the bishop. 18 In addition many lay persons are licensed by
the bishop so as to work as youth workers or pastoral workers. 19 While a licence may indicate
that a priest is an office holder of the Church he or she may also be an employee of the Church,
especially where working within a diocesan organisation. 20

RESPONSES TO CHILD SEXUAL ABUSE IN THE ANGLICAN CHURCH

14. On 15 March 2002, the General Synod Standing Committee of the Anglican Church made a
public apology to all those who had suffered child sexual abuse. At the same time the Standing
Committee established a Sexual Abuse Working Group to report and bring forward appropriate
recommendations for structural change within the Church. These included the development of
benchmarks for protocols to deal with sexual abuse, screening procedures, discipline guidelines
and model legislation (canons). 21

15. In 2003, the Sexual Abuse Working Group brought forward a Work in Progress report and
recommendations. The report drew particular attention to failings in the handling of claims of
child sexual abuse to date by the Anglican Church. More specifically, the Working Group stated
that there was “clear recognition” in the Church and wider community that the Church “had not
been but should be”: 22

13 Ex 3-2 Tab 152B, at ANG.0017.001.0019, [4]
14 Ex 3-2 Tab 152B, at ANG.0017.001.0020, [4.1.1]
15 Ex 3-2 Tab 152B, at ANG.0017.001.0019, [4]
16 Ex 3-2 Tab 152B, at ANG.0017.001.0020, [4.1.3], also known as a diocesan council.
17 Ex 3-2 Tab 152B, at ANG.0017.001.0020, [4.1.3]
18 Ex 3-2 Tab 152B, at ANG.0017.001.0033, [12.3]
19 Ex 3-2 Tab 152B, at ANG.0017.001.0033, [12.2]
20 Ex 3-2 Tab 152B, at ANG.0017.001.0033, [12.1]
21 Ex 3-1 Gerber, Annexure PG2, [1.7]
22 Ex 3-1 Gerber, Annexure PG2, [1.5] amongst other matters.
a. Dealing empathetically, professionally, respectfully, fairly and in a timely way with the needs of complainants and respondents;

b. Open, transparent and accountable;

c. Consistent from diocese to diocese;

d. Reporting to the police all allegations of misconduct;

e. Adequately resourcing Church systems for dealing with complaints;

f. Taking of all reasonable steps to protect the public from abuse;

g. Ensuring Bishops do not exercise conflicting roles such as pastoral care as well as determination of compensation, handling litigation and disciplining clergy.

16. The Working Group recommended the development of model diocesan legislation establishing a Professional Standards Committee, a Professional Standards Director and a Professional Standards Board in each diocese. In addition a national protocol was proposed to include procedures for contact persons dealing with a complainant, dealing with respondents, investigation and disclosure, financial assistance and compensation.

17. The General Synod met in 2004 and adopted a suite of measures to deal with sexual abuse, including child sexual abuse. It resolved to adopt the following apology:

“That this General Synod and we as members of it acknowledge with deep regret and repentance the past failings of the Church and its members. On behalf of the whole Anglican Church in this country we apologise unreservedly to those who have been harmed by sexual abuse perpetrated by people holding positions of power and trust in the Church. We apologise for the shameful way we actively worked against and discouraged those who came to us and reported abuse. We are ashamed to acknowledge that we only took notice when the survivors of abuse became a threat to us. We apologise and ask forgiveness for the Church’s failure at many levels to listen to and acknowledge the plight of those who have been abused, to take adequate steps to assist them, and to prevent abuse from happening or recurring. We commit the Church to listen to survivors of abuse to respond with compassion to all those who have been harmed, both to those who have come forward and to those who may choose to do so in the future, and to deal appropriately, transparently and fairly with those accused of abuse and negligence.”

18. The General Synod resolved to urge all dioceses to pass the model Professional Standards Ordinance (“the Model Ordinance”) and to approve “Faithfulness in Service” as the code of

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23 Ex 3-1 Gerber Annexure PG2, [6.10]
24 Ex 3-1 Gerber Annexure PG2, [3.11], [3.12], [3.13] and [3.15].
25 Resolution 38/04, Proceedings of the 13th General Synod, Perth 2004
26 See Ex 3-3 Tabs 4 and 4C, at ANG.9320.01804.3546 and ANG.0006.002.0010
conduct for observance not just by clergy but also by bishops.\textsuperscript{27} It also recommended that each diocese, parish and church organisation adopt the Church’s “Safe Ministry Policy Statement” to address issues of risk management concerning both screening of clergy and laity and also management of those who have offended and wish to maintain involvement in Church related activities.\textsuperscript{28}

19. The Model Ordinance adopted by General Synod incorporated the recommendations of the Working Group and established a Professional Standards Committee, a Professional Standards Director and a Professional Standards Board. The Professional Standards Committee is responsible for receiving and processing of complaints. The Professional Standards Director makes recommendations to the Professional Standards Committee and is the primary contact between a complainant and the Professional Standards Committee. The Professional Standards Board deals with disciplinary matters and is usually engaged after an investigation has been concluded and the claim resolved.\textsuperscript{29} An implied principle adopted in the Model Ordinance is that the professional standards bodies should operate, to a reasonable degree, independently of the governing organs of the diocese.\textsuperscript{30}

20. At the national level, a protocol was also adopted to supplement the Model Ordinance.\textsuperscript{31} The role of the protocol is to set out the nature of the professional standards process including the way in which complaints, complainants and respondents are to be handled including discipline. Specifically it sets out in some detail the role of the Professional Standards Committee, the Professional Standards Director and the Professional Standards Board. Although the protocol may vary from diocese to diocese the protocol may set out the specific roles of the Registrar or General Manager of the diocese and the Bishop.

21. The Royal Commission heard evidence that a number of dioceses have adopted a third level of procedures to assist with the processing of claims, aimed primarily at claimants. In addition to an ordinance and the protocol the Dioceses of Sydney and Grafton adopted a “Pastoral Care and Assistance”\textsuperscript{32} procedure in 2005. A similar procedure called “Healing Steps” was adopted in the Diocese of Adelaide.\textsuperscript{33} In Sydney and Grafton the Pastoral Care and Assistance Scheme –

\textsuperscript{27} Resolution 54/04 and 59/04, Proceedings of the 13\textsuperscript{th} General Synod, Perth 2004
\textsuperscript{28} Resolution 35/04, Proceedings of the 13\textsuperscript{th} General Synod, Perth 2004
\textsuperscript{29} Gerber T1942:36 – T1943:2
\textsuperscript{30} See, for example, Ex 3-2 Tab 152B, at ANG.0017.001.0005, [1.5], at ANG.0017.001.0020, [4.1]
\textsuperscript{31} The national protocol was not in evidence but was referred to by Mr Gerber Ex 3-1 Gerber [20]
\textsuperscript{32} Ex 3-3 Tab 4A, at ANG.0003.003.0001
\textsuperscript{33} Ex 3-1 Hywood, [16]
often referred to as a ‘package’ – included a specified financial assistance component of up to $75,000 for a claimant.\(^{34}\) However, in Adelaide the Diocese determined not to specify an upper limit to financial assistance given the variations amongst victims’ experiences.\(^{35}\)

**PRIMARY INSTRUMENTS FOR DEALING WITH CHILD SEXUAL ABUSE IN THE DIOCESE OF GRAFTON**

22. In 2004, the Synod of the Diocese of Grafton adopted its *Professional Standards Ordinance 2004* ("the 2004 Ordinance"). Bishop Keith Slater, the Bishop of Grafton, pointed out in his oral evidence this was in advance of the recommendation to do so by the General Synod but was based on the Model Ordinance.\(^{36}\) In 2004 the body providing primary oversight of the management of the Diocese of Grafton, Bishop-in-Council,\(^{37}\) adopted the *Protocol for Dealing with Complaints of Sexual Abuse*. The protocol was based on the protocol adopted in the Diocese of Brisbane and Bishop Slater wrote the foreword.\(^{38}\) In November 2005 Bishop-in-Council of the Diocese of Grafton adopted the Diocese of Sydney’s *Pastoral Care and Assistance Scheme* (2005) unchanged.\(^{39}\)

23. The 2004 Ordinance establishes a Professional Standards Committee, a Professional Standards Director and a Professional Standards Board in the Diocese of Grafton. Clause 2 of the 2004 Ordinance sets out a number of important definitions. “Church” is the Anglican Church of Australia. A “church body” is expressed in non-exclusive terms and includes a parish school, any body corporate, organisation or association that “exercises ministry” within or on behalf of the church. A “church worker” is a person who is or was a member of clergy, a person employed by a church body, a person performing a function with the actual or apparent authority of a church authority or church body.\(^{40}\) “Examinable conduct” is information concerning conduct whenever or wherever occurring that might call into question the fitness of a church worker to hold a particular office, licence or position of responsibility in the church, to “remain in Holy Orders” or to be in the employ of a church body. “Information” itself has a specific definition and

\(^{34}\) Ex 3-3 Tab 4A, at ANG.0003.003.0011 – ANG.0003.003.0012; Ex 3-1 Gerber, Annexure PG16
\(^{35}\) Ex 3-1 Hywood, [17]
\(^{36}\) Slater T2252:21-36
\(^{37}\) The Synod of the Diocese of Grafton meets yearly whereas the Bishop-in-Council meets, on average every two months. The Bishop presides at both the Synod and at Bishop-in-Council.
\(^{38}\) Ex 3-3 Tab 2, at ANG.9320.01806.0547
\(^{39}\) Ex 3-2 Tab 23C, at ANG.0003.004.0002
\(^{40}\) The definition does not include a bishop subject to the jurisdiction of the Special Tribunal of the church.
includes alleged conduct involving “sexual harassment or assault or sexually inappropriate behaviour” including inappropriate or unreasonable conduct or omission by a church worker involving knowledge of sexual harassment or assault or sexually inappropriate behaviour by another church worker.

24. Section 418 of Part 4 of the 2004 Ordinance establishes the Professional Standards Committee (“PSC”). The PSC comprises at least three members appointed by Bishop-in-Council and is convened but not chaired by the Professional Standards Director (“PSD”). The PSD is the executive officer of the PSC and is responsible for managing the implementation of the protocol. The PSC has the following powers and duties:

a. To implement the protocol;

b. To act on information received in accordance with the Ordinance and the protocol;

c. To investigate information in a timely and appropriate manner;

d. To arrange for conciliation or mediation;

e. To authorise expenditure necessary to implement the Ordinance and the protocol, subject to limits imposed by Bishop-in-Council;

f. To refer any information received to the police, prosecution or child protection authority;

g. To advise the Bishop or other church body of any possible legal proceedings that may arise out of the information received.

25. Section 20(2) of the 2004 Ordinance imposes both a power and a duty on the PSC to exercise its functions which fall within its jurisdiction. That jurisdiction includes: conduct or omissions of a church worker resident or licensed in the diocese wherever the act is alleged to have occurred;
conduct which is alleged to have occurred within the diocese wherever the church worker resides; and conduct wherever occurring but where the affected person resides in the diocese.  

26. Part 6 of the 2004 Ordinance (Examinable Conduct) contains important obligations for clergy and the PSC. All clergy including the bishop are required to refer any information received to a member of the PSC. Where the PSC considers the information “examinable conduct” it is required to investigate. Where there is a dispute between different dioceses as to which diocese should investigate the information then the applicable PSDs are to decide. If the PSDs cannot agree then the Primate or a person nominated by the Primate may decide. The PSC may refrain from further investigation if the matter is the subject of investigation by some other competent person or body or is the subject of legal proceedings.

27. Part 7 of the Ordinance establishes a Professional Standards Board (“PSB”). Members of the PSB are appointed by Bishop-in-Council and include a President and Deputy President eligible for appointment to the Appellate Tribunal and members of clergy of seven years standing and lay persons who are members of the Church. The function of the PSB is to inquire into and determine a question referred to it under s. 54 of the 2004 Ordinance. Referral may be made by a PSC once it has concluded its investigation referred to above. The question referred may include: the fitness of the church worker concerned to hold a particular office, licence or position of responsibility in the church or to remain in Holy Orders or in the employment of the Church. The 2004 Ordinance sets out detailed provision to ensure that the church worker is afforded natural justice including affording the person the right to be represented by a legal practitioner at any proceedings of the PSB. After making due inquiry in the manner set out in Part 8 and having determined that the person is unfit, the PSB may make any one or more recommendations which include: counselling of the church worker; suspension from the office held; revocation of licence or authority; termination of the contract of employment; imposition of conditions or restrictions; suspension from Holy Orders; and any other recommendation as

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51 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0529, s. 20(2)(a)-(d).
52 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0530, s. 24(1)
53 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0530, s. 25
54 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0530-0531, s. 26(2)
55 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0531, s. 26(2), (3)
56 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0531, s. 27(b)
57 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0531, s. 35
58 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0533, s. 39, 40
59 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0534, s. 39, 40
60 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0537, s. 54(1)
61 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0538, s. 63(a)
the Board sees fit. The bishop, or other relevant church authority, is empowered by s. 71 to give effect to the recommendation(s). Any determination by the PSB and recommendation, together with the decision of the Bishop shall be forwarded for entry in the national register of the Anglican Church as well as the registry of the diocese.

28. Part 3 of the 2004 Ordinance requires that Bishop-in-Council shall adopt a protocol for the implementation of the Ordinance and must include those matters specified at s. 6(2). The Diocese of Grafton adopted its Protocol for Dealing with Complaints of Sexual Abuse in 2004 ("the Protocol"). The Protocol sets out in some detail the relevant duties and responsibilities of the PSD, the PSC, the Registrar, the Bishop and the PSB. The PSD is responsible for reporting sexual abuse that constitutes a criminal offence to police. On receiving a complaint the PSD is required to appoint a pastoral person to “make contact and provide pastoral support” and to inform the alleged perpetrator of the allegations and appoint a pastoral support person to support him or her. PSDs are warned not to interfere with any police investigation and may have to suspend investigation or assessment. Once the investigation or assessment is complete then the PSD may make recommendations to the PSC.

29. On receiving allegations the PSD is to determine whether the church has a “moral duty” to pay for counselling of the victim. If the PSD thinks there is such a duty then funding can be arranged with the Registrar or arrangements made to see a psychologist or psychiatrist. Once the investigation or assessment is complete the PSD may propose that the PSC consider the matter for redress including recommendations that redress include therapy, financial assistance, acknowledgement or apology or other relevant matters.

30. The PSC reports, under the Protocol, to the Bishop and to the Registrar. Its duties follow those set out in the Ordinance and includes receiving recommendations from the PSD and directing the PSD generally. It also reviews investigations and keeps the Bishop informed of all matters under the Protocol. It prepares reports into any investigations and refers disciplinary questions under s. 54 of the 2004 Ordinance to the PSB.

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62 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0540, s. 69
63 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0541, s. 71
64 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0541 to ANG.9320.01806.0542, ss. 70, 73(2)(d), 74
65 Ex 3-3 Tab 1, 2004 Ordinance, at ANG.9320.01806.0542, s. 73(2)(a) but only where the person is deposed from Holy Orders.
68 Protocol for Dealing with Complaints of Sexual Abuse (2004), cl 17.2-17.4
31. The Registrar reports to Bishop-in-Council and to the Bishop and is charged with liaising with the Property and Finance Board, instructing internal lawyers, proposing the budget for the PSD and complying with insurance obligations. The Bishop in turns reports to both Bishop-in-Council and to the Synod and has the role of overseeing the Protocol and ensuring “it is working properly” and taking disciplinary action “where a licensed person is involved”. The Bishop also has a duty to received regular reports from the PSC, initiate disciplinary action against licensed persons and may also initiate action under the Canons of the General Synod or any other diocese within the Anglican Communion.69

32. The Pastoral Care and Assistance Scheme of the Diocese of Sydney was adopted in the Diocese of Grafton in November 2005 and contained some important departures from the Protocol. Under the Scheme, once a person informs the church of sexual abuse, counselling will be offered with an independent practitioner.70 A general acknowledgement that all child or sexual abuse is wrong is given immediately and “if the substance of the allegation is established” a specific apology, without qualification, is given by a senior Church office holder.71

33. Where a claim is made for financial assistance then the “claims counsellor” attempts to reach an agreement with the claimant.72 Where agreement is not reached then the claimant may lodge an application for “Pastoral Care and Assistance” and such applications are referred to a panel comprising a senior psychiatrist or clinical psychologist and a senior legal practitioner.73 The panel assesses the facts to establish whether there was child abuse and which category of the annexed schedule of financial assistance the person might fall.74 Matters that may be included in determining the recommended amount include the needs, age and any disability of the victim together with the facts surrounding the abuse, the relationship between perpetrator and victim, and the effect of the child abuse upon the victim but the amount may not exceed $75,000.75 The schedule of financial assistance distinguishes between various acts. As an example, harassment and indecent assault fall within Category 1; an unlawful act of sexual intercourse falls within Category 2; and sustained patterns of child abuse involving sustained Category 1 or 2 acts fall within Category 3.76 Each Category is ascribed an amount of financial assistance.

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69 Protocol for Dealing with Complaints of Sexual Abuse (2004), cl 21.2-22.4
70 Ex 3-3 Tab 4A, at ANG.0003.003.0003, [3]
71 Ex 3-3 Tab 4A, at ANG.0003.003.0004, [3]
72 Ex 3-3 Tab 4A, at ANG.0003.003.0005, [3]
73 Ex 3-3 Tab 4A, at ANG.0003.003.0005, [3]
74 Ex 3-3 Tab 4A, at ANG.0003.003.0006 – ANG.0003.003.0007, [4(i)](ii)
75 Ex 3-3 Tab 4A, at ANG.0003.003.0007 – ANG.0003.003.0008, [4(iii)]
76 Ex 3-3 Tab 4A, at ANG.0003.003.0011; see also Ex 3-1 Campion, Annexure RC5
assistance being up to $15 000, $35 000 and $75 000 respectively. The top amount of $75 000 may potentially also be achieved where there is chronic psychological or psychiatric disorder which is severely disabling.  

34. As the Scheme is said to be “an alternative to litigation” the claimant is asked to sign a deed releasing the diocese from liability. The deed states that it is not to prevent the victims telling their story and any confidentiality clause included shall only relate to the amount of financial assistance.

35. The public hearing into the Diocese of Grafton’s response to child sexual abuse in the North Coast Children’s Home considered the degree to which the Diocese of Grafton followed what is clearly a detailed and, at times, complex process.

**DISCIPLINE IN THE DIOCESES OF GRAFTON AND NEWCASTLE**

36. In order to properly understand the operation of disciplinary canons and procedures in the Anglican Church it is necessary to have regard to the disciplinary canons that pre-date and, to a degree, still operate alongside the professional standards ordinances.

37. The primary instrument for the administration of discipline for (child) sexual abuse in the Anglican Church of Australia is the professional standards ordinance adopted in the relevant diocese. Although the Grafton and Newcastle professional standards ordinances are not identical the primary provisions set out above with respect to the Diocese of Grafton Professional Standards Ordinance are the same. However, the Professional Standards Ordinances must be read alongside a set of general disciplinary ordinances which pre-date the professional standards ordinance and largely still operate. Schedule 2 to the Grafton ordinance makes clear that where an offence under the Clergy Discipline Ordinance is also a matter of examinable conduct under the Professional Standards Ordinance then the professional standards ordinance prevails.

38. The type of conduct that may lead to disciplinary action is very broadly defined under the Clergy Discipline Ordinance 1966-2003, authorised by the Diocesan Synod of Newcastle. The definition

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77 Ex 3-3 Tab 4A, at ANG.0003.003.0011
78 Ex 3-3 Tab 4A, at ANG.0003.003.0008 - ANG.0003.003.0009, [4(iv)]
79 Ex 3-1 Herft, Annexure RH18. The Professional Standards Ordinance 2005 (Newcastle) was further amended in 2006, 2007 and 2010 and is in evidence: Ex 3-3 Tab 4A, at ANG.0003.003.0001
80 Ex 3-3 Tab 1, at ANG.9320.01806.0522. The same clause seems not to be replicated in Newcastle.
of “offence” includes “breach of faith ritual ceremonial or discipline”, “conduct disgraceful in a member of the clergy and productive or likely to be productive of scandal or evil report”, or “any offence punishable by law being a malum in se.”

39. Chapter IX of the Constitution (ss. 53 to 63) provides for the establishment of diocesan tribunals to deal with disciplinary matters, provincial tribunals to hear and determine appeals from diocesan tribunals, a Special Tribunal to deal with disciplinary matters relating to diocesan bishops, and an Appellate Tribunal. Diocesan tribunals have jurisdiction over any person licensed by the bishop of the diocese, or any other person in holy orders resident in the diocese. They also have jurisdiction to hear a ‘charge’ against a member of clergy for an offence involving sexual misconduct, or a criminal offence punishable by 12 months or more, if the clergyman was resident in the diocese within two years before the charge was laid. Clauses 19 and 20 of the Clergy Discipline Ordinance 1966-2003 establishes a Tribunal in the Diocese of Newcastle.

40. Prior to the commencement of the Professional Standards Ordinance 2005 matters of clergy discipline in the Diocese of Newcastle could either be referred to a diocesan tribunal established under Chapter IX of the Constitution, or to a Board of Enquiry under the Clergy Discipline Ordinance 1966-2001. Diocesan tribunals have jurisdiction over any person licensed by the Diocesan bishop, or any other person in holy orders resident in the diocese. They also have jurisdiction to hear a “charge” against a member of clergy for an offence involving sexual misconduct, or a criminal offence punishable by 12 months or more, if the clergyman was resident in the diocese within two years before the charge was laid.

41. The Clergy Discipline Ordinance 1966-2003 was in effect in Newcastle well prior to 2005. The Ordinance works in conjunction with the Offences Canon 1962. The Ordinance applies to any

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81 Ex 3-1 Herft, Annexure RH16, cl. 3(1)(a)
82 Ex 3-1 Herft, Annexure RH16, cl. 3(1)(g)
83 Ex 3-1 Herft, Annexure RH16, cl. 3(1)(h); malum in se may be translated as ‘wrong in itself’.
84 Ex 3-1 Herft, Annexure RH17, Constitution s. 53
85 Ex 3-1 Herft, Annexure RH17, Constitution s. 54(2)
86 Ex 3-1 Herft, Annexure RH17, Constitution s. 54(2A)
87 Ex 3-1 Herft Annexure RH16
88 Ex 3-1 Herft, Annexure RH17, Constitution s. 54(2)
89 Ex 3-1 Herft, Annexure RH17, Constitution s. 54(2A)
90 Ex 3-1 Herft, Annexure RH16. It was amended in 2003 and 2011.
“member of the clergy to whom this Ordinance applies”91, which is defined as a person either “licensed by the Bishop or any other person in holy orders resident in the diocese”.92

42. Under the Clergy Discipline Ordinance 1966-2003, the bishop decides whether a charge for an offence under the Ordinance or under the Offences Canon 196293 will proceed to a “Board of Enquiry”.94 If an accused admits the commission of the offence charged, the bishop pronounces judgment and sentence without a hearing required.95 If the accused does not admit the charge, even following an enquiry by the Board, the matter is referred to the diocesan tribunal.96 The Tribunal then tries the case much the same as in a criminal trial, applying NSW rules of evidence,97 and makes recommendations about discipline.98 The bishop shall give effect to any recommendation made by the tribunal and may mitigate or suspend the recommended sanction.99

43. Until 2012, cl. 5 of the Clergy Discipline Ordinance 1966-2003 required that (1) where a clergyman is convicted of a criminal offence, no charge under the Ordinance may be made at any time after the lapse of six months after he has been convicted, and (2) subject to (1), no charge may be made more than two years after the offence has been committed. Clause 5 may be interpreted to allow for a charge to be laid under the Ordinance up to 6 months after a person has been convicted of a criminal offence, irrespective of when the criminal offence took place.

44. The General Synod Holy Orders Relinquishment and Deposition Canon 2004100 was adopted by the Diocese of Newcastle on 15 October 2005, and is cited as the “General Synod Holy Orders, Relinquishment and Deposition Canon 2004 Adoption Ordinance 2005”. The Canon sets out the administrative process for a bishop to depose a member of clergy from Holy Orders, or arrange for a member of clergy’s relinquishment of Holy Orders. The Ordinance applies to any person in Holy Orders who is resident in the diocese.101 The Canon provides that a bishop can order that

91 Ex 3-1 Herft, Annexure RH16, at STAT.0073.001.0070, cl. 3(1)
92 Ex 3-1 Herft, Annexure RH16, at STAT.0073.001.0070, cl. 3(1)
93 A national canon which was adopted in its entirety by the Diocese of Newcastle: cl. 1A Clergy Discipline Ordinance 1966-2003.
94 Ex 3-1 Herft, Annexure RH16, at STAT.0073.001.0074, cl. 11(2)
95 Ex 3-1 Herft, Annexure RH16, at STAT.0073.001.0075, cl. 16(3)
96 Ex 3-1 Herft, Annexure RH16, at STAT.0073.001.0076, cl. 17(1)
97 Ex 3-1 Herft, Annexure RH16, at STAT.0073.001.0079, cl. 23(2)
98 Ex 3-1 Herft, Annexure RH16, at STAT.0073.001.0080, cl. 29
99 Ex 3-1 Herft, Annexure RH16, at STAT.0073.001.0082, cl. 36(1), (2)
100 Ex 3-3 Tab3A, at ANG.0016.001.0001
101 Ex 3-3 Tab3A, at ANG.0016.001.0001, [2]
a person’s exercise of Holy Orders can be relinquished,\textsuperscript{102} deposed by consent,\textsuperscript{103} or deposed after sentence of a tribunal established in accordance with Chapter IX of the Constitution.\textsuperscript{104}

OTHER SAFEGUARDS FOR CHILDREN IN THE ANGLICAN CHURCH

45. There are a number of other related instruments and practices which were adopted in the Dioceses of Grafton and Newcastle and nationally by the Anglican Church and were relevant to the matters presented at the public hearing. The following are set out in this section: the Diocese of Grafton’s Code of Conduct also known as \textit{Faithfulness in Service: A national code for personal behaviour and practice of pastoral ministry by clergy and church workers};\textsuperscript{105} the process for communicating persons of concern to other dioceses; the National Register of the Anglican Church; the Anglican Directory and Safe Ministry a policy for addressing parish safety issues concerning known sex offenders.

\textit{Faithfulness in Service}

46. The General Synod adopted \textit{Faithfulness in Service} in 2004 following the report of the Sexual Abuse Working Group.\textsuperscript{106} The policy contains a detailed set of relevant criteria for clergy and church workers to follow including the protection of children.\textsuperscript{107} It was adopted by the Diocese of Grafton in 2005.\textsuperscript{108} The Code includes a requirement that clergy who know or reasonable suspect that a child is at risk of harm from child abuse report it to the \textit{appropriate civil authorities}.\textsuperscript{109} There are related parts of the code that assist with the recognition of child abuse generally, recognition sexual offending, screening and selection of personnel, supervision of children, disciplining and transporting children and physical contact with children.\textsuperscript{110} There are particular exhortations to avoid any physical contact with children that is sexually stimulating or may be construed as such.\textsuperscript{111}

\begin{footnotes}
\item[102] Ex 3-3 Tab3A, at ANG.0016.001.0001, [3]
\item[103] Ex 3-3 Tab3A, at ANG.0016.001.0002, [4]
\item[104] Ex 3-3 Tab3A, at ANG.0016.001.0002, [6]
\item[105] Ex 3-3 Tab 4, at ANG.9320.01804.3546
\item[106] Ex 3-1 Gerber, [60]
\item[107] Ex 3-3 Tab 4, cl. 4 at ANG.9320.01804.3562 – .3570
\item[108] Ex 3-3 Tab 4, see ANG.9320.01804.3546
\item[109] Ex 3-3 Tab 4, cl. 4.14 at ANG.9320.01804.3563
\item[110] See Ex 3-3 Tab 4, cl. 4.16-4.43 at ANG.9320.01804.3563 – ANG.9320.01804.3570
\item[111] Ex 3-3 Tab 4, cl. 4.43 at ANG.9320.01804.3570
\end{footnotes}
47. Unlike other ordinances of the Anglican Church *Faithfulness in Service* does not specifically require that clergy and other church workers comply with its terms. Clause 2.4 sets out the requirements concerning compliance:

>“2.4 Failure to meet the standards of this Code will indicate an area where clergy and church workers require guidance and specialised help. Such failures may result in formal disciplinary action if the conduct infringes an applicable disciplinary rule of the Church or is a breach of an employment contract.””

*Parish Safety*

48. An important component of the Anglican Church responding to complaints of child sexual abuse is ensuring that alleged and convicted offenders are not at risk of offending in Church related activities. The general approach of the Anglican Church is that such persons should be free to worship but that, where necessary, appropriate safeguards are imposed to ensure that offending does not recur in Church activities. This aspect was explored in the public hearing in relation to the way in which the Diocese of Newcastle responded to the conviction of Reverend Allan Kitchingman in 2002 of five counts of indecent assault.

49. On 11 September 2009, the Anglican Church of Australia’s Professional Standards Commission produced the document *Guidelines for parish safety where there is a risk of sexual abuse by a person of concern*. At its meeting on 16-18 October 2009, the General Synod Standing Committee resolved to recommend these guidelines, and the document was circulated to the dioceses on 26 October 2009, as a non-binding resource.

50. The 2009 guidelines provide extensive detail on how a parish can safely manage the involvement of a person of concern in parish activities. For example, the guidelines attach a draft memorandum of understanding between the parish and the person of concern setting out when the person is permitted on church grounds, whether the person must be accompanied to the bathroom, and other conditions. The guidelines seek to strike a balance between providing pastoral support for persons of concern, while also ensuring parish safety.

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112 Ex 3-3 Tab 4, at ANG.9320.01804.3556
113 Ex 3-1 Elliott, [31]
114 Ex 3-1 Elliott, Annexure ME10
115 Ex 3-1 Elliott, Annexure ME11
116 Ex 3-1 Elliott, ME10 Appendix 6 at STAT.0062.001.0061
51. In or about October 2013 the Diocesan Council of the Diocese of Newcastle adopted its own *Safe Ministry with persons who have been convicted of a serious sexual offence etc.* The Newcastle PSD expressed concerns in his evidence to the Royal Commission that the policy was a ‘watered down’ version of the policy proposed by the Professional Standards Commission.

**Clergy and Employment Screening**

52. One of the recommendations of the Sexual Abuse Working Group was that a national register should be established so that there would be a central registry which recorded concerns about the behaviour of bishops, members of clergy or other church workers. Concern had been raised that in the absence of such an instrument there would be poor communication between dioceses of any concerns about current or former clergy and church workers who might wish to apply for a licence to officiate, a position or employment in a diocese other than where they were known.

53. Evidence was adduced at the public hearing that historically bishops had generally shared with each other any concerns they may have had about a member of clergy in writing or by telephone, setting out the nature of the concern. The receiving bishop would then take appropriate action and store the information either in an informal register or sealed file. In his evidence to the Royal Commission, Archbishop Herft indicated that the words used between bishops on such occasions was whether a person was “safe to receive”. Archbishop Herft said that when he was in Newcastle from 1993-2005 he kept files which were sealed with sealing wax and marked “Concern” alongside the person’s name.

54. The initial National Register Canon 2004 was replaced by the National Register Canon 2007. The National Register commenced operation on 1 June 2009. The General Synod office oversees the operation of the National Register and is headed by Mr Martin Drevikovsky, the General Secretary of the General Synod. In a statement provided to the Royal Commission Mr

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117 Ex 3-20
118 Ex 3-1 Elliott, [81], [83]
119 Gerber T1953:23-30
120 Ex 3-1 Herft, [10], the this practice had been adopted in 1968 between the Bishops of Newcastle and Grafton as concerned Reverend Kitchingman: see Ex 3-2 Tab 9, at ANG.9340.01002.0007; Tab 10, at ANG.9340.01002.0009; Tab 11, at ANG.9340.01001.0007
121 Ex 3-1 Herft, [12]
122 Ex 3-1 Herft, [13]
123 Ex 3-1 Elliott, Annexure ME18
124 Ex 3-1 Drevikovsky (11 November 2013), [14]
Drevikovsky indicated that the National register contains information which relates to child abuse and sexual misconduct of clergy or laity, including where a notifiable complaint or a notifiable charge has been made. A notifiable complaint means a complaint of sexual misconduct or child abuse which has been communicated to the person alleged to have engaged in such conduct. A notifiable charge is the charging of a person with commission of a criminal offence or professional misconduct arising out of alleged sexual misconduct or child abuse.

55. Mr Drevikovsky indicated that a PSD will typically notify the national register of the name and details of the person and the nature of the information. Each PSD is required to notify the General Secretary of any information received within one month of receipt. The General Secretary is then required to write back to the PSD to verify the information received. Once verified, the information is entered on the National Register by the General Secretary. Once a matter has been entered on the National Register then the person with respect to whom the entry has been made is notified of the fact of the entry. That person can apply for details of the information and for the entry to be amended.

56. The information on the register is intended to be available on enquiry to authorised persons, such as a bishop or PSD, as a tool to assist in determining whether or not to issue a licence to or to employ a person in a relevant role. Reports are also sought from the National Register in relation to candidates for election to the role of Primate, membership of the Appellate Tribunal, membership of the Special Tribunal, membership of the Episcopal Standards Board and appointment to the role of General Secretary of the General Synod.

**Anglican Directory**

57. An Australian Anglican Directory is published on an annual basis. It contains the names of all licensed clergy with an abbreviated biography or service history, current position, whether

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125 Ex 3-1 Drevikovsky (11 November 2013), [9].
126 Ex 3-3 Tab 5, National Register Canon Second Schedule, at ANG.9310.01001.0593
127 Ex 3-3 Tab 5, National Register Canon Second Schedule, at ANG.9310.01001.0593
128 Ex 3-3 Tab 5, National Register Canon 2007, at ANG.9310.01001.0586, s. 8(1)
129 Ex 3-1 Drevikovsky (11 November 2013), [13]
130 Ex 3-1 Drevikovsky (11 November 2013), [16]; Ex 3-3 Tab 5, National Register Canon 2007, at ANG.9310.01001.0588, s. 9
131 Ex 3-1 Drevikovsky (11 November 2013), [17]
132 But also the General Secretary, the bishop of the Defence Force or delegate, any person assisting the General Secretary and other persons as determined by the Standing Committee of the General Synod: Ex 3-1 Drevikovsky (11 November 2013), [23]
133 Ex 3-2 Tab 152B, at ANG.0017.001.0035, [13.5]; Ex 3-1 Gerber, [28]-[29]
retired, an address and phone number and the diocese in which the member of clergy is licensed or resides, and. Listings are provided of clergy in each diocese as well as an alphabetical listing of individual clergy. Mr Gerber told the Royal Commission that the Anglican Directory is a commercial operation and the copyright is held by Publishing Solutions Pty Ltd. The 2013 edition of the Anglican Directory contains a foreword from the Primate.

58. Mr Gerber gave evidence that the Anglican Directory is compiled on the basis of updates provided directly and voluntarily by each of the dioceses, and information sought from individual members of clergy usually on an annual basis. Mr Gerber said that he had in the past discovered members of clergy listed in the Anglican Directory who were not licensed. When this occurred, Mr Gerber stated his practice was to write to the Directory to request that the person be removed.

THE NORTH COAST CHILDREN’S HOME

59. The North Coast Children’s Home was established in 1919 and from its inception provided residential accommodation to children who were orphans, placed there by their parents, abandoned or children who were wards of the State. The Home was established by the Rector of Lismore of the then Church of England, along with others in Lismore, NSW. The Home’s Constitution states the primary aim of the Home is to care for “children of any denomination or religion who are either temporarily or permanently without homes or not under parental care”. The Home operated at a number of locations until 1936, when it moved to Keen Street Lismore. The land it occupied was held on trust by the Corporate Trustees of the Diocese of Grafton for the purpose of a children’s home.

60. The property at Keen Street was located in the middle of a number of church buildings. On one side the Home neighboured church offices and a residence for clergy some metres from the Home and on the other side of the offices and residence St Andrew’s Church, Lismore. In the opposite direction, there were gardens and grounds and then the Archdeacon’s Residence, which also from time to time as the Rectory. Simon Harrison described that collection of buildings as a ‘complex’ of church buildings and that is a reasonable description. Archdeacon

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134 Ex 3-1 Gerber, [30]
135 Ex 3-1 Gerber, [30]
136 Roland T2051:35-43
137 Campion T1648:39-43
138 Ex 3-1 Harrison, Annexure SJH 14, at STAT.0066.001.0055_R; Campion T1648:24-27
Greg Ezzy told the Royal Commission that the children moved freely between the Home and the various church buildings.\textsuperscript{139}

61. In 1951, a further constitution was agreed upon and replaced the original constitution (\textit{"the 1951 Constitution"}).\textsuperscript{140} As both constitutions pre-dated associations incorporation legislation the effect of each instrument was to form an unincorporated association, although governed by those rules.

62. The 1951 Constitution provides important details about the operation of the Home. The first object of the Home was to \textit{"provide and carry on a home within the Diocese of Grafton in connection with the Church of England"} who are without homes, or parental control where they may be \textit{"trained spiritually, morally, mentally and physically"}.\textsuperscript{141} The President (and Chaplain) of the Home was to be the Rector of St Andrew’s Lismore ex officio.\textsuperscript{142} The Home was under the control and management of an executive\textsuperscript{143} of which the Rector is the President. Two thirds of the members of the executive were members of the Church of England.\textsuperscript{144} The executive was empowered to employ and control such officers for the working of the Home.\textsuperscript{145} Further, the land occupied by the Home was to be held in trust by the Corporate Trustees of the Diocese of Grafton\textsuperscript{146} to permit the land to be used for the benefit of the Home.\textsuperscript{147} Finally, the 1951 Constitution any amendment of the constitution which severs the connection of the Home with the Church of England was prohibited.\textsuperscript{148}

63. The Home operated under licences issued annually under the \textit{Child Welfare Act 1923 ("the 1923 Act")} and the \textit{Child Welfare Act 1939 ("the 1939 Act")}. The few licences available to the Royal Commission indicate that they were issued in the name of the Matron or the name of North Coast Children’s Home.\textsuperscript{149} Those said to control the Home under the 1923 Act are described as

\begin{itemize}
\item \textsuperscript{139} CK T1636:27 – T1637:11; Campion T1648:29-43; Ezzy T2323:41-2324:03
\item \textsuperscript{140} Ex 3-1 Harrison, Annexure SJH19, Appendix 17
\item \textsuperscript{141} Ex 3-1 Harrison, Annexure SJH19, Appendix 17, cl. 2(a)
\item \textsuperscript{142} Ex 3-1 Harrison, Annexure SJH19, Appendix 17, cl. 4, 5
\item \textsuperscript{143} Ex 3-1 Harrison, Annexure SJH19, Appendix 17, cl. 6(a)
\item \textsuperscript{144} Ex 3-1 Harrison Annexure SJH19 Appendix 17, cl. 6(a)(ii)
\item \textsuperscript{145} Ex 3-1 Harrison Annexure SJH19 Appendix 17, cl. 15
\item \textsuperscript{146} Ex 3-1 Harrison Annexure SJH19 Appendix 17, cl. 18
\item \textsuperscript{147} Ex 3-1 Harrison Annexure SJH19 Appendix 17, cl. 19
\item \textsuperscript{148} Ex 3-1 Harrison Annexure SJH19 Appendix 17, cl. 28
\item \textsuperscript{149} Ex 3-2 Tabs 1-4. The NSW Department of Family and Community Services indicated that “Community Services’ predecessors routinely destroyed records: Ex 3-25. Licence applications were made available to the Royal Commission from 1936, 1937, 1938, two from 1940, 1949 (difficult to read): Ex 3-2 Tabs 1-7, at ANG.9320.01103.0401_R; ANG.9320.01103.0399; ANG.9320.01103.0397; ANG.9320.01103.0396; ANG.9320.01103.0394; ANG.9320.01103.0392; ANG.9320.01103.0391
\end{itemize}
the “Church of England”, “Committee of gentlemen members of the Church of England”, “Executive Committee which consists of Rector of Lismore and 11 Executive”, “Executive Committee [including] Chairman the Rector of St Andrew’s”. When the 1939 Act commenced the licence applications indicate that a “board of management” or the “Local Church of England Committee” are listed as controlling the Home.150

64. The evidence indicated the Home was held out to the local community as part of the Church of England (later the Anglican Church). One witness, Tommy Campion told the Royal Commission he remembers swinging on the 4 x 4m wrought iron gate bearing the name “Church of England North Coast Children’s Home” when he was there from 1949-1962.151 A number of the other former residents also called it the Church of England North Coast Children’s Home.152 In 1985 (now) Archdeacon Greg Ezzy took over as the Rector of Lismore, based at St Andrew’s Church. He said he became President of the board of management of the Home because that was “part and parcel of becoming the Rector of Lismore”.153 He gave evidence that there was, in his mind, “a very close connection between the North Coast Children’s Home and the church”.154 He also agreed that the community of Lismore considered there was a strong association between the Home and the church when he was resident there.155

65. Clergy were intimately involved in the running and operation of the Home. In addition to the Rector occupying the position of President of the executive committee, the clergy were in and out of the Home continually.156 Tommy Campion said his experience was that “[they] ran the place … they told you what to do”.157 Clergy ministered in the Chapel located in the Home and the children frequently attended St Andrew’s Church.158 Campion says he remembers Reverend Morgan conducting services in the Chapel and also Canon Robinson.159 Clergy taught children who were resident at the Home,160 taking them to the clergy’s residential quarters or away for conferences, excursions and camps.162 Clergy were involved, as will be seen below, in the

150 Ex 3-2 Tabs 5-7, at ANG.9320.01103.0394; ANG.9320.01103.0392; ANG.9320.01103.0391
151 Campion T1651:10-1652:1; Ezzy T2324:5-10; CK T1635:25-32
152 Ex 3-1 CA, [5]; Ex 3-1 CK, [13]; Ex 3-1 CN, [3], [24]; Ex 3-1 CD, [3]
153 Ezzy T2323:33-39
154 Ezzy T2324:36-40
155 Ezzy T2325:4-8
156 Campion T1649:5-11
157 Campion T1649:5-7
158 Campion T1649:31-33
159 Campion T1649:26
160 Ex 3-1 Gerber, Annexure PG3, at STAT.0063.001.0070_R – STAT.0063.001.0071_R
161 Ex 3-1 Campion, Annexure RC2, at STAT.0057.001.0033_R; Campion T1648:45-47; Campion T1655:7-11
162 Ex 3-1 CB, Annexure CB1, at STAT.0070.001.0009_R
disciplining of the children. At least during the period 1950-1980 senior members of the Anglican Church featured prominently in local media opening or chairing various public Home related activities like fetes and donation drives.\textsuperscript{163}

66. The limited number of financial records of the Home tendered in the public proceedings indicate that funding arose from a number of sources including government funding, donations and the Anglican Church. In 1946 one sixth of its receipts came from “Church of England Homes”, in 1964 the Diocese of Grafton provided 187 pounds monthly to the Home, in 1972 12.5\% of its funds came from the Diocese of Grafton. In 1973, $3,000 was withdrawn from the Diocesan Investment fund to be deposited in the Home’s working account, in 1979 the Home asked for an increase in its “annual allocation” from the Diocese to $10,000 and in 1983 the annual Diocese of Grafton grant is noted as $10,000.\textsuperscript{164} The majority of funding for the running of the Home came from the government and is variously described as child endowment, family allowance and the Department of Child Welfare.\textsuperscript{165} Reports were also made to the Synod of the Diocese of Grafton about the operations of the Home on an annual basis\textsuperscript{166} and funding of the Home featured annually in the financial statements of the Diocese.\textsuperscript{167}

67. In 1989 the Home was incorporated and subsequently became the Children and Adolescent Specialist Programs and Accommodation ("CASPA") facility which still operates from the site.

Available findings

1. At all relevant times the North Coast Children’s Home was strongly associated with the Anglican Church and its predecessor.

2. At all relevant times the North Coast Children’s Home was controlled by the Rector of St Andrew’s Church Lismore in the Diocese of Grafton of the Anglican Church or his nominee and members of the Anglican Church (and its predecessor).

2A At all relevant times the Anglican Diocese of Grafton had responsibility for the children in the North Coast Children’s Home.

\textsuperscript{163} Ex 3-1 Harrison, Annexure SJH19, Appendix 26, at STAT.0066.001.0255
\textsuperscript{164} Ex 3-2 Tab 15AA, IND.0001.019.0001\_R, ANG.0023.001.0001\_R
\textsuperscript{165} Ex 3-2 Tab 15AA, IND.0001.019.0001\_R, ANG.0023.001.0001\_R
\textsuperscript{166} Ex 3-1 Harrison, Annexure SJH19
\textsuperscript{167} Ex 3-1 Harrison, Annexure SJH19, Appendix 15, Appendix 24
CHILD SEXUAL AND PHYSICAL ABUSE AT THE HOME

68. The Royal Commission heard evidence of frequent acts of physical, psychological and sexual abuse which occurred at the Home in the period 1940-1985. First hand accounts were given by seven former residents who had experienced sexual and other abuse themselves and who had also seen others being similarly abused: Mr Campion, CA, CB, CD, CK, CM and CN. In addition there was detailed material to evidence the sexual abuse suffered by CC, CH and CL and limited material to evidence sexual abuse of a further 12 residents.

69. Before turning to the accounts of sexual abuse it is necessary to set out the evidence concerning the conditions of the Home and the nature of physical punishment used. The evidence ranged over some decades and involved a variety of residents, staff and clergy but was insufficient to indicate whether the experience was uniform for all residents. Indeed, there was evidence that some residents had a positive experience of life at the Home.168

70. The evidence provided by residents to the Royal Commission was that the conditions in the Home were harsh. In at least the 1950s and 1960s, the Home was clearly poorly funded by today’s standards and both food and clothing were extremely limited. Accounts given to the Royal Commission indicate that the children were often hungry and frequently stole food inside and outside the Home as a result.

71. CA (have noted above they were former residents) (resident 1951-1959), explained that:

“We stole a lot in those days. Mainly food from fruit trees on the way to school. The mulberries would leave this tell tale sign on our hands and faces which would ensure another beating on returning home, or we would steal from matron’s private room where we could always smell decaying hordes of food … Sometimes unable to eat and retching into our food, we would sit from meal to meal often into the night until it was eaten. I have seen children eat from the floor. The highlight of the meal always being a drink of milk or Actavite, delivered in a large metal jug, in two glasses, for 36 children”.169

72. Tommy Campion (resident 1949-1962) remembered:

“…stealing food from the kitchen because I was hungry. I was caught and punished. Because we were often punished by being refused food I would try and store food by hiding a bottle in the backyard. I would also beg for food at school. I would perform tricks so that other children would give me some of their food. I remember on one particular day I was looking

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168 See, for example Ex 3-16 Tab S, account provided by Bronwyn Coughran (nee Witchard) to the Northern Star newspaper. Tommy Campion had favourable things to say about Matron O’Neill, Ex 3-1 Campion, Annexure RC2, at STAT.0057.001.0038_R
169 Ex 3-1 CA, Annexure CA1, STAT.0059.001.0012_R
in the bin for food and the other children at the school pushed me head first in the bin with just my legs sticking up, and started laughing. I was completely humiliated but I was just so hungry”. 170

73. Meal time in itself was often used a form of severe punishment. Children were forced to eat off the floor, or eat food that had been vomited in to. CK (resident 1949-1958) told the Royal Commission:

“We had nothing. Okay, times were hard. It was after the war. We had no shoes. We had no clothes. And if not that, the food was atrocious. I remember one time that I must have sat at a table for 10 hours as punishment because I wouldn’t eat the food they had given me, because if you threw up, they would make you eat the vomit, and I wasn’t going to do that, so I didn’t eat”. 171

74. The physical conditions in the Home were described as filthy, unsanitary and unhygienic. 172 CN (resident 1959-1969) described arriving at the Home for the first time: “It smelt terrible, like faeces, and there was vomit on the ground. I could see about twenty odd children, all dirty. It was horrific.” 173

75. The children were exposed to infection and disease, and the treatment of common ailments among children such as lice, ringworm and constipation was particularly harsh. As described by Mr Campion:

“Because of the filthy environment at the Home children were riddled with painful rashes, boils, ringworms, sores and carbuncles and during bath time while sitting in freezing cold bath water they would have their wounds cruelly squeezed by staff to rid them of puss. The same filthy water was used for each child and the blood-curling screams of the poor children could be heard from the back yard – than they were left standing shivering from the cold with pain and fright while they waiting to be dried, sharing the same towel”.

“Because it was thought we had nits or head lice our heads were scraped by the staff, sometimes so hard the comb drew blood from the tender scalps of the young children. Then, to top it all off, dirty old rags, which had been soaked in Kerosene, were wrapped around the unfortunate children’s head’s causing gagging, sore eyes and burning sensations on the body, we had Epsom salts poured down our throats to keep our bowels moving – there wasn’t enough toilets to go around so there were many disasters. I experienced that like other children”. 174

76. Physical discipline was extremely rigorous, some would say brutal. The physical discipline was often coupled with cruel psychological abuse. Children were frequently humiliated for wetting

170 Ex 3-1 Campion, Annexure RC11, [50]-[53], at STAT.0057.001.0072_R
171 CK T1642:38-44
172 Ex 3-1 Campion, Annexure RC11, [55]-[57], at STAT.0057.001.0072_R
173 Ex 3-1 CN, [5]
174 Ex 3-1 Campion, Annexure RC2, at STAT.0057.001.0034_R
their beds or for various other infractions of the Home’s rules. At least three witnesses gave similar accounts that if children soiled their sheets, the sheets would be wrapped around the child’s head with the urine or excrement still on them, and that child would be paraded in front of the other children to the laundry to wash the linen themselves, or have to take a cold shower.175

77. In their evidence CA and Mr Campion referred to another form of rigorous punishment: being locked into the shower cubicles and being made to sleep on cement floors without a pillow or blanket.176

78. Mr Campion, CB and CD gave evidence about punishment involving standing in certain positions for long periods of time and being beaten if they failed to maintain the awkward position. Mr Campion recalled being made to stand on one leg and being flogged if he put his foot down.177 CB had an experience in which he was forced to stand upright and naked with his arms outwards “in the sign of the cross” with a bible in each hand for hours. Staff members and the older girls took shifts to watch him, and if he bent his elbows or his arms dropped below his shoulders he was hit.178 CD also gave evidence of the same form of punishment of holding the books for long periods and being caned for dropping the books.179

79. All seven former child residents of the Home who gave evidence to the Royal Commission reported being physically abused, or witnessed other children being physically abused by staff of the Home with fists or with implements such as a pony whip or a riding crop made of steel and covered in leather, a strap, an electrical cord, a cane, branches of trees or the leather belt and buckle from around a member of clergy’s cassock.180

80. From about 1945 to 1960, in the early period of the operation of the Home, Matron Ada Martin was in charge of the care of the children. Both CA and Mr Campion gave evidence about an incident in which Matron Martin flogged Mr Campion brutality with a pony whip for not being

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175 Campion T1650:31 – T1651:8; Ex 3-1, CA, Annexure CA1, STAT.0059.001.0013_R; CB Annexure CB1, STAT.0070.001.0009_R
176 Ex 3-1 CA, Annexure CA8, [22], at STAT.0059.001.0028_R; Ex 3-1, Campion, Annexure RC2, STAT.0057.001.0036_R
177 Ex 3-1 Campion, Annexure RC2, STAT.0057.001.0035
178 Ex 3-1 CB, Annexure CB1, STAT.0070.001.0008
179 Ex 3-1 CD, [6]
180 Ex 3-1 CA, Annexure CA1, at STAT.0059.001.0011_R; Ex 3-1, Campion, Annexure RC11, [26], at STAT.0057.001.0070_R; Ex 3-1, CN [7]-[9]; Ex 3-1, CM [5]-[7]; Ex 3-1, CB, Annexure CB1, at STAT.0070.001.0007_R; Ex 3-1, CD, [5]-[6], [8], CK T1642:8-23; Campion T1649:46 – 1650:15
able to recite the Apostles Creed.\textsuperscript{181} Mr Campion said he was flogged until the skin on his back spilt open, and he still bears the scars.

81. CK told the Royal Commission about an incident when he was sick in bed with the mumps. He was in a wrought iron bed with other children and during play, he got his head caught in the bars of the bed. Matron Martin came in with a plank of wood and “bashed” CK with it because of the noise they were making.\textsuperscript{182}

82. CK also told the Royal Commission that he had been thrashed with pick sticks from a peach tree which stung and left scars.\textsuperscript{183} Mr Campion also described being beaten with twigs:

> “When beaten with the twig from a tree you would suffer an intense stinging pain. Often the bark from the twig would become embedded in my skin. The beating would sometimes draw blood and it left red welts on my skin. The marks would take weeks to heal.”\textsuperscript{184}

83. Over about the same period Reverend Winston Morgan, who was involved in the operation of the Home and conducted services in the Chapel located in the Home was said by the former residents to have beaten children with the belt from around his cassock.\textsuperscript{185} Mr Campion gave evidence that Reverend Morgan used this thick leather belt and “at times when he was angry, and when a child didn’t respond, he would reverse and he’d use the buckle on the child until the child was screaming”.\textsuperscript{186}

84. Matron Jean O’Neill took over from Matron Martin in November 1960.\textsuperscript{187} CM (resident 1959-1969) was beaten by Matron O’Neill with a riding crop on the back of her legs.\textsuperscript{188} In 2005-2007, other members of the group claim reported being flogged by Matron O’Neill with a pony whip, hands or a strap.\textsuperscript{189} CB (resident late 1970s to 1980) said that Matron O’Neill had three riding crops in her office but never used one on him. When he was called into her office “her hand would hover over it threateningly but then she would always say something to the effect of don’t worry, I actually like you, and then she would beat me with a cane”.\textsuperscript{190} CB witnessed a girl of

\begin{table}
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181 & Ex 3-1 Campion, Annexure RC11, [34], at STAT.0057.001.0070_R; Ex 3-1, CA, Annexure CA 1, STAT.0059.001.0012_R \\
182 & CK, T1642:8-18 \\
183 & CK, T1642:20-23 \\
184 & Ex 3-1 Campion, Annexure RC11, [29] at STAT.0057.001.0070_R \\
185 & Ex 3-1 CN, [9]; Ex 3-1, CM, [5] \\
186 & Campion, T1650:5-15 \\
187 & Ex 3-1 Campion, RC2, STAT.0057.001.0038_R \\
188 & Ex 3-1 CM, [5] \\
189 & Ex3-2 Tab 39, at ANG.9320.01802.0601, ANG.9320.01802.0602_R \\
190 & Ex 3-1 CB, Annexure CB1, STAT.0070.001.0007_R -- STAT.0070.001.0008_R \\
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four years of age leave Matron O’Neill’s office naked and bleeding from the back of her neck to the back of her ankles.\textsuperscript{191}

85. CB also gave evidence of being physically abused and sexually humiliated by other children in the Home, who were sometimes led to do so by the staff. CB was stripped naked and beaten in front of the other children in two separate incidents. On one of those occasions, CB was dragged out of bed, stripped naked and forced into the girl’s dormitory where he “\textit{was beaten mercilessly with a riding crop in front of all the girls. On this occasion he said I remember nothing but complete pain and degradation}”.\textsuperscript{192}

86. Beatings not infrequently drew blood and left the child covered with welts which took some time to heal. In his oral evidence, CK gave a graphic account of chasing a ball into the shower area where he heard crying and screaming. When he went to retrieve his ball he saw blood all over the floor and children being “bashed”. CK directly links this incident with being unable to wear the colour red or be “involved with anything red”.\textsuperscript{193}

87. It was in that context that the Royal Commission heard accounts from former child residents of the Home about the sexual abuse they suffered over the period 1940-1985. Some evidence was given that former child residents were less fearful about the sexual abuse when compared to the severity of the physical abuse inflicted on them at the time.\textsuperscript{194}

88. The Royal Commission heard evidence that the sexual abuse was perpetrated by members of the clergy, by employees of the Home and their relatives, and by other child residents of the Home. All seven former residents of the Home who gave statements and made claims for compensation from the Diocese of Grafton stated that they were sexually abused at the Home. CA said that she was sexually abused by a Minister who chanted prayers while fondling her and kissing her.\textsuperscript{195} Mr Campion said that he taken alone into a room of the Clergy’s residential quarters by Reverend Campbell Brown where he was sexually abused.\textsuperscript{196}

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\textsuperscript{191} Ex 3-1 CB, Annexure CB1, STAT.0070.001.0008_R
\textsuperscript{192} Ex 3-1 CB, Annexure CB1, STAT.0070.001.0009_R
\textsuperscript{193} CK, T1644:6-14
\textsuperscript{194} Ex 3-1 CD, [8] 
\textsuperscript{195} Ex 3-1 CA, Annexure CA1, STAT.0059.001.0011_R
\textsuperscript{196} Campion, T1655:7-31
\end{flushleft}
89. Other members of the group claim also gave evidence of the sexual abuse to the Diocese of Grafton. For example, two members of the group claim described being forced to perform oral sex on adult males when they were about 5 or 6 years of age.

90. Former resident, CK gave oral evidence on the opening day of the public hearing of being sexually abused by clergy in the bell tower:

“After church on Sundays, I was taken up there and I suppose I thought it was affection or love, and he would touch my body where [he] shouldn’t have been and, as far as I can remember, there was no form of penetration, but there was a lot of cuddling and fondling, and he would continually shake, and this went on for a number of years, but the vibration and the shaking, I assume, was masturbation.”

91. CK gave further oral evidence of sexual abuse against him and confirmed that a member of clergy who sexually abused him in the Home included Canon John Robinson.

“The other time, I remember going to the rectory and I would be made [to] lay naked on the floor, and the minister would put this stuff on my chest, like a cross, and then he would lick it all off and right down to my genitals. This went on a number of times. That was called a cleansing process. That I could cope with. But I did the same thing to young kids. At night, I would take them out of bed, because I wanted to cleanse them, and I did the same to them. How could they forgive me? And this went on for years. At night-time, I knew he used to sit on the end of my bed and just stare at me. I used to lie there and could feel the weight on my feet and I would pretend to be asleep. But the fear turned into spasms when my back would arch, and this went on for years afterwards because of the fear of what went on and what could happen if I moved and I woke up.”

92. Another former resident of the Home, CB, described an incident at an Anglican camp by a priest from St Andrew’s Lismore:

“[The priest] led me through the dining hall and into the kitchen. The place was deserted and I remember how strange this felt and that something was wrong. He took my pants off as well as his and I performed fellatio on him. He then lifted me up and bent me face down on a kitchen bench and proceeded to rape me. I remember pain and then everything went black. ...”

197 Harrison, T1809:21-38; Ex3-2 Tab 39
198 Ex 3-2 Tab 39, at ANG.9320.01802.0601, ANG.9320.01802.0602_R
199 CK, T1632:17-24
200 CK, T1643:27-38
201 CK, T1643: 10-25
202 Ex 3-1 CB, Annexure CB1, STAT.0070.001.0009_R
93. CB was sexually abused by some of the older girls in the home and a female staff member and described one incident at night where his bed sheets were pulled down and he was masturbated with toothpaste.203

94. Other residents were also sexually abused by older children in the Home, or witnessed others being sexually abused by other children. CD witnessed five older boys in the home gang rape a younger girl.204 CD also described an incident when the older boys in the home held CD down and poked a mop handle up CD’s backside while telling CD to “shut up and just take it”.205 CN gave evidence of being raped three times by older boys who lived in the Home.206

95. CH (a person who had made a claim to the Diocese of Grafton in 2005 separate to the group claim) was sexually abused by Reverend Kitchingman in 1975 while he was resident at the Home. Reverend Kitchingman was then a priest based at St Andrew’s Church in Lismore and took CH and other for music and other lessons.207 On one occasion during a music rehearsal, after CH complained to Reverend Kitchingman of having a hurt muscle in his leg, Reverend Kitchingman began to massage CH’s leg before moving to the inner thigh and then stimulating CH by touching his genitals. During the course of 1975, Reverend Kitchingman took CH and other victims overnight to work at the Youth Conference Centre at East Ballina. While on at least three of these trips to the Conference Centre, Reverend Kitchingman woke CH in the middle of the night and masturbated him and performed oral sex on CH.208

96. Reverend Kitchingman was charged and, in 2002, convicted of five counts of indecent assault of a male and sentenced to a term of imprisonment.209

97. The Royal Commission invited Reverend Campbell Brown, Reverend Allan Kitchingman and Reverend Morgan who were alive and had allegations made against them to apply for leave to appear at the public hearing. None applied for leave to appear.

Available findings

203 Ex 3-1 CB, Annexure CB1, STAT.0070.001.0009_R
204 Ex 3-1 CD, [9]
205 Ex 3-1 Campion, Annexure RC45, STAT.0057.001.0172_R
206 Ex 3-1 CN, [6]
207 Ex 3-1 Gerber, Annexure PG3, at STAT.0063.001.0071_R
208 Ex 3-1 Gerber, Annexure PG3, STAT.0063.001.0071_R
209 Ex 3-1 Gerber, Annexure PG3, STAT.0063.001.0070_R; STAT.0063.001.0085 – STAT.0063.001.0086
3. Tommy Campion, CA, CB, CC, CD, CH, CK and CN were sexually abused by clergy, staff or other residents of the North Coast Children’s Home while they were resident at the Home.

4. During the period 1940-1985 there were frequent acts of psychological, physical and sexual abuse perpetrated on the children resident at the North Coast Children’s Home.

98. Many of the former child residents suffered extreme psychological effects and strain on personal and family life as a result of the physical, psychological and sexual abuse they endured during their residency at the Home. Some of the effects reported include difficulty forming relationships and broken down family relationships, nightmares and sleep problems; various forms of anxiety and depression; alcohol and drug abuse and being unable to sustain employment.

99. Particular experiences with the poor conditions of the Home, regimented routine and severe punishment have had direct impact on everyday aspects of the former residents’ lives. For example, Mr Campion has said that he is “now pedantic about hygiene and cleanliness” and buys fresh food every day and will not eat leftover food. He checks the kitchen when eating at friends places and asks them how old the food is.

100. The impact of the abuse has caused former residents of the Home to commit suicide, or attempt suicide. CN tried to kill herself when she recalled the rapes and abuses at the Home, and she recalls feeling worthless when she was called “dirty little heathen” and “filthy”. CK gave evidence to the Royal Commission that his brother, who also resided in the Home committed suicide. CK himself has also attempted suicide on more than one occasion. CK told the Royal Commission about the pain he felt from his experience at the Home and when he was recently diagnosed with pancreatic cancer he thought,

“That’s the best news I’ve ever had in my whole life. The pain will stop. That’s the effect that you have all your life from these events. It doesn’t go away. It holds you. All you hope for is death, just to stop the pain”.

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210 Ex 3-1 CA, Annexure CA3, [81] and [84] at STAT.0059.001.0032_R – STAT.0059.001.0033_R; Ex 3-1 CM, [9]; Ex 3-1 Campion, Annexure RC11, [127] at STAT.0057.001.0077_R
211 Ex 3-1 Campion, [25]
212 Ex 3-1 CB, Annexure CB1, STAT.0070.001.0010_R; Ex 3-1 Campion, Annexure RC11, [119] at STAT.0057.001.0077_R
213 Ex 3-1 Campion, Annexure RC11, [128] at STAT.0057.001.0077_R
214 Ex 3-1 CD, [14]; Ex 3-1, CB, [24]
215 Ex 3-1 Campion, Annexure RC11, [128] at STAT.0057.001.0077_R
216 Ex 3-1 CN, [20]
217 Ex 3-1 CN, [20]
218 CK T1640:21-23; Ex 3-1 CK, [6]
219 CK T1644:30-34
Available finding:

5. The physical, psychological and sexual abuse suffered by the former residents at the North Coast Children’s Home had profound and long-lasting effects on the lives and mental health of the former residents.

THE DIOCESE OF GRAFTON’S RESPONSE TO SINGLE CLAIMS AND OPERATION OF THE ‘SYDNEY’ CARE AND ASSISTANCE PACKAGE

101. The evidence Reverend Pat Comben wrote a memorandum to Bishop Slater on 9 December 2005 concerning a complaint of sexual abuse by a Rector in the Diocese of Grafton.220 The matter had been investigated by the PSC and referred to the PSB. The PSB had recommended that the member of clergy concerned be deposed from Holy Orders. Owing to the potential delay likely under the Sydney Care and Assistance package, the claimant had asked to negotiate a financial settlement outside of the process. Reverend Comben negotiated with the claimant and reached an agreed figure of $54 500 which he recommended for approval by Bishop Slater.221 Reverend Comben indicated that the person fell into Category 2 on the schedule to the Care and Assistance package and was worth no more than $57 500.222 The proposal was accepted and the claimant paid.223

102. In June 2006 the Diocese of Grafton reached a further financial settlement with a second person who said that she had been indecently and sexually assaulted by a member of clergy when she was 17 years old.224 The (draft) deed of release in evidence indicated that the claimant agreed to receive the sum of $37 500 in return for releasing the Diocese from any further action.225

220 Ex 3-2 Tab 24, at ANG.9320.01804.03783_R
221 Ex 3-2 Tab 24, at ANG.9320.01804.3784_R - ANG.9320.01804.3785_R
222 Ex 3-2 Tab 24, at ANG.9320.01804.3784_R
223 Ex 3-2 Tab 42, at ANG.9320.01806.0172
224 Ex 3-2 Tab 34, at ANG.9320.01804.3772_R, ANG.9320.01804.3768_R
225 Ex 3-2 Tab 34, at ANG.9320.01804.3769_R, cl. 1. The covering letter indicates that the settlement had been finalised.
A third claim was also resolved in about October 2006. The claimant had alleged that a “very serious sexual assault” against the person but there was some question as to whether the person was a “church worker” under the 2004 Ordinance as well as whether insurance covered the matter. The claim was dealt with by reference to the Care and Assistance package and a financial settlement was agreed by Bishop-in-Council at $45 000. In a note to the Bishop Reverend Comben described the agreement at $45 000 as a “horrendously difficult decision” for Bishop-in-Council but he considered that it was beneficial because it “cleared the decks … to concentrate on the North Coast Children’s Home matters.”

Available finding:


A fourth claim was being processed by the Diocese of Grafton’s insurers from 2005-2007 with respect to CH. While there is bare mention of a claim by CH in PSC meetings at Grafton in 2005, in July 2006 CH filed personal injury proceedings in the NSW Supreme Court relating to Reverend Kitchingman’s assaults on him. The Diocese of Grafton had been able to claim on an insurance policy which included “molestation cover” for claims made which included CH’s claim. However, that policy was no longer current by the time of the group claims in 2006 and the policy had been replaced with an ‘occurrence based’ policy which post-dated the group claims.

CH’s claim was settled with the insurer in September 2007 and a deed of release entered into with the releasees to pay CH $250 000 including legal costs. CH, who had joined Reverend Kitchingman in the proceedings, also settled with him for an additional payment of $40 000. CH therefore received a total of $290 000 less his legal costs and HIC payments.

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226 Ex 3-2 Tab 42, at ANG.9320.01806.0172
227 Ex 3-2 Tab 42, at ANG.9320.01806.0173
228 Ex 3-2 Tab 42, ANG.9320.01806.0173
229 Ex 3-1 Gerber, Annexure PG9, PG11, PG15
230 Ex 3-1 Santone, [6] - [8], Annexure CS2, CS3
231 Ex 3-2 Tab 27, at ANG.9320.01802.0230_R; Tab 28, at ANG.9320.01802.0235_R, ANG.9320.01802.0236
232 Ex 3-2 Tab 27, at ANG.9320.01802.0230_R; Tab 28, at ANG.9320.01802.0235_R, ANG.9320.01802.0236
233 Ex 3-1 Santone, Annexure CS18; Gerber, Annexure PG47; Ex 3-2 Tabs 101, 104
234 Ex 3-1 Gerber, Annexure PG46
107. Phillip Gerber was the PSD in the Diocese of Sydney from 2000 until 2009 and became the PSD for Grafton from about 2002. He was closely involved in the establishment of the Model Ordinance and related protocol having served on the Sexual Abuse Working Group which produced the 2003 report to the General Synod referred to above. In Sydney Mr Gerber was the head of the Professional Standards Unit of the Diocese of Sydney and was assisted by Chaplain, Ms Jenni Woodhouse, and a number of other ‘contact persons’ who dealt directly with the claimants and helped them through the process.

108. Mr Gerber’s practice was to open one new file with each claim which was referred to him for attention. So as to keep matters separate, one file was opened for the claimant and one for the church worker if there was a disciplinary matter to pursue. Mr Gerber said that claimants were referred to a panel consisting of a lawyer and a psychiatrist or psychologist as per the Sydney Care and Assistance package. He said the panel would,

“... relate to the person in an informal meeting, hear their story, would go through the papers, would marry that up with the schedule of possible suggested payments and make a recommendation with a figure.”

109. They could also recommend a meeting with the bishop or the archbishop, or other things “that would assist them in terms of their healing”. There was no evidence before the Royal Commission to indicate that any of the four abovementioned claims were ever referred to a panel for assessment and recommendation although they were monitored by the Grafton PSC. Ms Woodhouse did have some involvement with two claims which were received in August and October 2005 – those of Tommy Campion and CA. She co-ordinated the approach to them to make sure they were “supported”.

110. Mr Gerber gave evidence that he was never told that Bishop-in-Council of the Diocese of Grafton had adopted the Sydney Care and Assistance Package. When Ms Hywood took over

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235 Ex 3-1 Gerber, [6], [8]
236 Ex 3-1 Gerber, Annexure PG2
237 Ex 3-1 Gerber, [10]; Gerber T1972:41-1973:16
238 Ex 3-1 Gerber, [12]
239 Ex 3-1 Gerber, [12]
240 Gerber T1970:12-15
241 Gerber T1970:15-19
242 Gerber T1970:19-23
243 Ex 3-2 Tab 44A
244 Gerber T1972:41-1973:37
245 Gerber T1969:22-25
as Acting Registrar in January 2013 she was not told that Bishop-in-Council had adopted the Sydney Care and Assistance Package and, indeed, did not find out until the Royal Commission’s hearings commenced. It is unlikely that the Sydney Care and Assistance Package ever operated to its fullest extent from the date of its adoption in Grafton.

THE DIOCESE OF GRAFTON’S RESPONSE TO THE GROUP CLAIM 2005-2007

111. In 2006, over 40 former residents of the Home launched a “group claim” against the Diocese of Grafton claiming they were the subject of physical, psychological and sexual assault at the Home over a period from 1940 to 1985. Twenty of those claims involved child sexual abuse by clergy, employees, foster parents and other related persons. The evidence at the public hearing indicated that the group claims were dealt with differently by the Diocese to the other individual claims of sexual abuse, described above (paragraphs 86 to 91. The process of negotiation and settlement for the group claim was handled between lawyers – Simon Harrison of Nicol Robinson Halletts for the claimants and Peter Roland of Foot Law & Co for the Diocese. A global settlement for all claims was agreed in March 2007.

112. The group claims began with Tommy Campion’s letter of 29 August 2005 to the Anglican Church setting out the sexual, physical and psychological abuse he suffered at the Home.

113. Mr Campion named Matron Martin and Anglican Minister Reverend Brown as physical abusers (Mr Campion later provided a detailed account of the abuse he suffered in his statutory declaration given as part of the group claim process.) The letter was received and a prompt and sympathetic response was provided by Reverend Comben, Registrar of the Diocese of Grafton, on 2 September 2005. He said:

“I am unable to adequately express my personal feelings of revulsion, sorrow and helplessness which the letter raises in me. ... I have no hesitation in speaking on behalf of the Diocese in saying that we will do all that we can to assist you to move beyond the pain that was caused in an Anglican place that should have been safe, but was clearly not.”

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246 Hywood T1750:11-41
247 Ex 3-2 Tab 39, at ANG.9320.01802.0601, ANG.9320.01802.0602_R
248 Ex 3-1 Campion, Annexure RC11
249 Ex 3-1 Campion, Annexure RC3, at STAT.0057.001.0040_R
114. Reverend Comben offered Mr Campion counselling support and that the professional staff of
the Diocese of Sydney would respond on the Diocese of Grafton’s behalf. Mr Campion
accepted the counselling support.

115. On 2 October 2005 Reverend Comben wrote again providing Mr Campion with a cheque for
$500 to assist with travel to counselling appointments. At the same time he provided Mr
Campion with a copy of the Sydney Care and Assistance Package the adoption of which had
been mentioned at Bishop-in-Council in September 2005. Mr Gerber said that the direct
approach by the Registrar to a claimant was unusual and “would normally not be appropriate”
as it fell under the duties of the PSD. However, it was not inconsistent with the arrangements
in place between the Professional Standards Unit in Sydney and the Diocese of Grafton “where
they tended to do things locally.” In Reverend Comben’s letter he also flagged taking a more
detailed statement so that “at least internal discipline towards one of the clergy” could be
progressed.

116. On 20 October 2005 Mr Campion’s sister CA wrote to Reverend Comben setting out the abuse
she suffered at the Home:

“This is my sixth attempt to write and I have set this date as my last attempt. The panic is
setting in. My heart is racing and I am trying to breathe through this, as the pain in my gut
gets worse. ...

There were so many conflicting emotions and standards. Pray in the church, special prayers
in the home chapel ... Then have the minister fondle your little body. He would hear our
prayers in the dark dormitory at the top end of the home. A chair pulled to the chosen child’s
bed as all chanted the prayers, his hands would wander over the small budding body. His
mouth on lips that had never known a gentle human touch, while his tongue would explore
a mouth that needed to scream. We never told, for the beatings were to be feared more than
the violation of what we believed ourselves to be – worthless. ...”

117. Mr Campion said he was “ecstatic” at the news of the Care and Assistance Package being offered
by Reverend Comben and that he and CA might receive $70-80 000 each. There appears to
have been some discussion about financial settlement as Ms Woodhouse remembers Reverend

250 Ex 3-1 Campion, Annexure RC3, STAT.0057.001.0040_R
251 Ex 3-1 Campion, Annexure RC4. The Sydney Care and Assistance Package was adopted on 24 November
252 Ex 3-1 Gerber [53]
253 Ex 3-1 Gerber [53]
254 Ex 3-1 Campion, Annexure RC4
255 Ex 3-1 CA, Annexure CA1, at STAT.0059.001.0010_R
256 Ex 3-1 CA, Annexure CA1, at STAT.0059.001.0011_R
257 Ex 3-1 Campion, [31], [34]
Comben mentioning a figure of $45-50,000 in a telephone call with him\textsuperscript{258} although Mr Campion
does not give an account of any such offer being made to him. In any event, Mr Campion said
he decided not to accept the pay out at that time because he knew, “so many other children
who were abused in the Home ... [and he] felt that everyone who was abused should receive
something.”\textsuperscript{259}

118. Mr Campion, an experienced photo-journalist, spoke to the media about his experiences at the
Home on 8-9 November 2005.\textsuperscript{260} He indicated that he was “willing to fight for justice for myself
and the other kids” and that he had instructed a Brisbane based solicitor to act for him.\textsuperscript{261} The
then Bishop of Grafton Keith Slater responded with a press release indicating his sadness at the
claim and that a “recognised process” had been put in place to investigate the allegation.\textsuperscript{262} By
12 November 2005, there was mention in the media of Mr Campion being joined by nine other
people to pursue a group claim.\textsuperscript{263} Mr Harrison, an experienced solicitor in institutional abuse
matters, was quoted as saying that Mr Campion’s allegations “are the worst that I have come
across in terms of systemic abuse...”.\textsuperscript{264}

119. On 22 November 2005, Reverend Comben wrote back to CA expressing sympathy, offering
counselling and saying that the PSC would investigate the matter.\textsuperscript{265} He proposed that a meeting
take place where he and the Chair of the PSC would attend.\textsuperscript{266} Two days later Bishop-in-Council
met and formerly adopted the Sydney Care and Assistance Package.\textsuperscript{267} Nevertheless, Mr Gerber
gave evidence that CA’s matter was never referred to him as PSD.\textsuperscript{268}

120. By 5 January 2006, Mr Harrison had 20 former residents of the Home who were willing to
become part of the group claim.\textsuperscript{269} He wrote to Reverend Comben that day advising that he had
instructions from 20 former residents who were subject to sexual assaults, physical assaults,
degrading and inhuman treatment and psychological abuse.\textsuperscript{270} He sought assistance with the

\textsuperscript{258} Ex 3-1 Woodhouse, [29]; see also Woodhouse T2004:16-21
\textsuperscript{259} Ex 3-1 Campion, [35]
\textsuperscript{260} Ex 3-2 Tab 23, 23A, at ANG.9320.01800.0573, MED.0001.0055_R
\textsuperscript{261} Ex 3-2 Tab 23A, at MED.0001.0055_R
\textsuperscript{262} Ex 3-2 Tab 23, at ANG.9320.01800.0573
\textsuperscript{263} Ex 3-2 Tab 23B, at MED.0001.0056_R
\textsuperscript{264} Ex 3-2 Tab 23B, at MED.0001.0056_R
\textsuperscript{265} Ex 3-1 CA, Annexure CA2, at STAT.0059.001.0017_R
\textsuperscript{266} Ex 3-1 CA, Annexure CA2, at STAT.0059.001.0017_R
\textsuperscript{267} Ex 3-2 Tab 23C, at ANG.0003.004.0003 – ANG.0003.004.0004
\textsuperscript{268} Ex 3-1 Gerber, [57]
\textsuperscript{269} Mr Harrison made clear in oral evidence that the claim was a group claim and not a class claim because the
factual foundation for each act of abuse was different in each case: Harrison, T1790:24-37
\textsuperscript{270} Ex 3-1 Harrison, Annexure SJH1
identification of various former staff members and provision of documentation. Reverend Comben said that he was expecting the letter given the amount of publicity that had occurred.  

121. On 16 January 2006, he wrote to Peter Roland giving him instructions to act in the matter for the church. He was opposed to providing the information sought and said it was a “fishing expedition” and that he did not want to provide the claimants “honorary research assistance”. He sought advice from Mr Roland on whether to raise “the legal cases which deny the liability of an employer for the criminal acts of employees”. He asked him also to seek further details of the allegation so that “a Christian response” could be provided in addition to the legal response. Mr Roland then replied to Mr Harrison seeking additional details about the assaults and perpetrators and mentioning that a PSC had been established to deal with such matters. Mr Roland said that the Diocese of Grafton was not a separate legal entity and inquired as to which individuals they proposed to hold liable for the assaults and the basis for liability “given the time that has elapsed”. Reverend Comben said in oral evidence that the position of Bishop-in-Council was: “defend it”.

122. Reverend Comben said that he was “disappointed” that the matter was proceeding through lawyers. Nevertheless he did not at the early stage of the group claim or subsequently take steps to indicate that there was a care and assistance package which was available to the claimants. While there was mention from time to time of such a package the Diocese adopted a defensive position to the group claim. Reverend Comben said that he thought Bishop-in-Council were deeply worried by a potential group claim for $4m which had been mentioned in the media.

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271 Comben: T2126:44-46  
272 Ex 3-2 Tab 25, at ANG.9320.01802.0289  
273 Ex 3-2 Tab 25, at ANG.9320.01802.0289  
274 Ex 3-1 Harrison, Annexure SJH2  
275 Comben T2134:6  
276 Comben T2132:25-36  
277 Comben T2133:3-21  
278 Comben T2134:12-21
123. Mr Roland gave evidence that he was in frequent contact with Reverend Comben over issues concerning the group claims through 2006 and early 2007 and Reverend Comben provided all the instructions on behalf of the Diocese.279

124. At the same time there was direct communication between Reverend Comben and Mr Campion on the issue of funding for counselling. Reverend Comben wrote to Mr Campion directly on 15 February 2006 stating that there was no “open ended” commitment to counselling.280 He said that the Diocese of Grafton was a “small rural diocese that ... considered joining Newcastle because of its total lack of money”. He also indicated that money for counselling was seen by the PSC as “within the context of any overall claim being made...”281

125. Correspondence continued over the next six months between the two lawyers to clarify details for the claims, possible defendants and questions of liability. Mr Roland told Mr Harrison the claims were not covered by insurance.282 He also refused approaches by Simon Harrison to engage in an informal settlement conference “until the matters are better particularised”.283 Mr Harrison informed Mr Roland that he was gathering statements from his clients as well as psychiatric assessments.284 The number of clients grew to 34 by 10 March 2006 and later to 41.285 On 10 May 2006, Mr Roland indicated that he could not see how the Corporate Trustees of the Diocese of Grafton could be held liable in tort for the actions of persons at the Home unrelated to property matters.286

126. In a phone call that took place on 12 May 2006 between the two solicitors Mr Roland said that “the Diocese had a professional standards protocol and was prepared to deal with any matters where the Church could be deemed responsible in respect of counselling and pastoral care etc.”287 However, he indicated that on the question of liability the Home “was not under the supervision or control of the Church nor were the staff employed by the Church.” In oral evidence

279 Bishop Slater also provided instructions at various parts of the negotiations particularly in December 2006 to March 2007: Roland T2099:39 – T2100:5; Slater T2277:2-27
280 Ex 3-1 Campion, Annexure RC9
281 Ex 3-1 Campion, Annexure RC9
282 Ex 3-1 Harrison, Annexure SJH10, at STAT.0066.001.0045_R
283 Ex 3-1 Harrison, Annexure SJH4; Roland T2030:6-7
284 Ex 3-1 Harrison, Annexure SJH5, at STAT.0066.001.0037_R
285 The evidence on the exact number was equivocal. The numbers of 41 or 42 claimants appears frequently in the correspondence eg Ex 3-1 Harrison, Annexure SJH37. The table prepared by Reverend Comben in September 2006 at Ex 3-2 Tab 39, at ANG.9320.01802.0602_R, contains 40 names even though it refers to 41 in his summary of the claims. In June 2007 settlement sums were paid for 38 claimants not including Robert Sewell, Mr Campion or CA: see Ex 3-1 Harrison Annexure SJH71.
286 Ex 3-1 Harrison, Annexure SJH8
287 Ex 3-1 Harrison, Annexure SJH9

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Mr Roland confirmed that the Diocese’s position was that the pastoral care and assistance package was only triggered where the church had legal liability for the conduct. He said that the position taken was based on his reading of the ordinance and the protocol.\textsuperscript{288}

127. On 18 May 2006, Mr Roland confirmed in a further telephone conversation with Mr Harrison concerning the ordinance and protocol that the Diocese of Grafton does not “work the same way as the Sydney Diocese”. Mr Roland agreed with the record in the file note of the conversation that the Diocese of Grafton was willing to offer counselling and ancillary payments but not further compensation.\textsuperscript{289} In reply Mr Harrison said the claimants were looking for “proper compensation”.\textsuperscript{290}

128. On 1 June 2006, Mr Roland wrote again setting out the position of the Diocese of Grafton. Mr Roland said his instructions were that the Home was never run by clergymen and the staff were not employed by the Anglican Church.\textsuperscript{291} He also said there was no evidence that the Home was known as the “Church of England North Coast Children’s Home”. Clearly the investigation must have been limited because Bishop-in-Council member and then Chaplain Greg Ezzy knew of the 4 x 4m sign with that title when he was Rector of Lismore and President of the Home from 1985 to 1995.\textsuperscript{292}

129. On 27 July 2006, Bishop-in-Council considered a report that the claimants’ solicitors were yet to provide “any legally meaningful details of the claims or actions proposed” and resolved that the PSC continue to work with the General Manager, Reverend Comben and the Diocesan Advocate concerning the North Coast Children’s Home matters.\textsuperscript{293}

Available finding:

7. The response of the Diocese of Grafton to the group claims was that the Diocese of Grafton and its Corporate Trustees had no legal liability for sexual or physical abuse of a child by clergy, employee or other persons at or associated with the Home.

130. Mr Roland corresponded with Mr Harrison about Mr Campion’s counselling. He wrote to Mr Harrison on 30 June 2006 stating that Reverend Comben’s funding delegation for counselling had been exceeded and that Reverend Comben required material “to show the Church’s interest

\textsuperscript{288} Roland T2031:21 - 2032:8
\textsuperscript{289} Roland T2032:44-2033:6
\textsuperscript{290} Ex 3-1 Harrison, Annexure SJH10, at STAT.0066.001.0046_R
\textsuperscript{291} Ex 3-1 Harrison, SJH12, at STAT.0066.001.0049_R
\textsuperscript{292} Ezzy T2324:5-10
\textsuperscript{293} Ex 3-2 Tab 34AD, at ANG.9320.01804.0849_R
in the matter”. 294 Mr Roland said that this issue arose numerous times during the preceding 6 months and that Reverend Comben was seeking a basis for legal liability to justify payment of Mr Campion’s counselling fees. 295

131. On 15 September 2006, Mr Harrison provided Mr Roland with substantial material to substantiate the group claims. He provided a 14 page letter, similar to a position paper for mediation purposes, with a large number of annexures. 296 He also provided Mr Roland with statutory declarations for all of the claimants with associated medical reports. In a separate letter of the same date he proposed that the claimants be divided into 9 categories with an ascribed range for each. 297 Reverend Comben recalls receiving 450 pages of material. 298 The letter of 15 September 2006 set out the evidence gathered to substantiate that there was an association between the Home and the Diocese of Grafton. It also indicated that the group claim should be settled by an informal process. 299 Mr Harrison then set out submissions on the issue of liability bringing in relevant authority and legislative provisions. 300 Reverend Comben said that this provided the particularisation that he, on behalf of the Diocese, had been seeking. 301

132. The material was referred to by Bishop-in-Council at its next meeting on 21 September 2006. The minutes record that no resolution was passed but there was the following report from Mr Roland:

“The Diocesan Advocate is considering the position but it is likely that the Church will maintain its position of resisting and defending the allegations on the basis of:

- The Statute of Limitations;
- No vicarious liability for the illegal acts of a servant or officer
- The Home was not in law our responsibility
- Who in legal terms is the responsible legal entity

Legal and historical responses are being prepared by the Advocate and the Registrar.” 302

294 Ex 3-1 Harrison, SJH13
295 Roland T2037:47-2038:4
296 Ex 3-1 Harrison, SJH14
297 Ex 3-1 Harrison, Annexures SJH21, SJH25: band one was in the range $40 – 50,000, band nine was $140 – 150,000.
298 Comben T2148:1-30
299 Ex 3-1 Harrison, Annexure SJH14, at STAT.0066.001.0057_R
300 Ex 3-1 Harrison, Annexure SJH14, at STAT.0066.001.0058_R – STAT.0066.001.0063_R
301 Comben T2149:32-34
302 Ex 3-2 Tab 38A, at ANG.9320.01804.0811

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133. In oral evidence Reverend Comben was adamant that he had the support of Bishop-in-Council for the defensive position he had instructed Mr Roland to adopt. There were no resolutions of Bishop-in-Council which approved of the position adopted by Reverend Comben. However, it is clear that the stance of Reverend Comben and Mr Roland was reported to Bishop-in-Council and no apparent opposition to that approach was recorded.

134. After giving his oral evidence Reverend Comben was reported as saying to The Daily Telegraph that, "he took the tough line under orders from the church hierarchy and if he had not ‘I would have been sacked by the church’". Archdeacon Greg Ezzy was a member of Bishop-in-Council and present at the July and September 2006 meetings of Bishop-in-Council. In oral evidence he said that Bishop-in-Council had very little involvement in the group claim and looked to the Registrar and Diocesan Advocate for advice on the claim. When asked about the statement apparently made to The Daily Telegraph the Archdeacon said, "There is no way in the world that that was ever said, at any meeting I was ever at." Bishop Slater indicated in oral evidence that the legal position adopted was advocated by Reverend Comben at Bishop-in-Council and was accepted by it.

Available finding:


135. On receiving the extensive documentation from Mr Harrison on or after 15 September 2006, Reverend Comben set about the task of summarising the material. In a summary document which he provided to Mr Roland on 26 September 2006, which was later supplied to Bishop Slater, he set out the names of all the victims who were members of the group claims, the identity of known perpetrators, the dates of residence of the victim and dates of abuse and whether the abuse was sexual, physical or psychological. The summary document set out 40 victims and indicates at the end of the document that there were 20 claims involving sexual matters and 40 involving physical matters. The alleged physical, psychological and sexual

303 Comben T2135:28-30
304 Ex 3-18
305 Ezzy T2328:18-21; T2330:2-11
306 Ezzy T2335:18-32
307 Slater T2265:25-46
308 Ex 3-2 Tab 39, at ANG.9320.01802.0601 and ANG.9320.01802.0602_R
309 Slater T2284:23-29 Bishop Slater could not recall when he first saw the summary document.
310 Ex 3-2 Tab 39, at ANG.9320.01802.0602_R
abusers are also named and include clergy Reverend Campbell Brown, Reverend Morgan and Canon Robinson as well as Matrons Martin and O’Neill and some residents.

Available finding:

9. By 26 September 2006 Reverend Comben and Peter Roland knew of at least 20 instances of sexual abuse against former residents of the North Coast Children’s Home.

136. On or about the 26 September 2006, Reverend Comben issued a press release to the local paper known as the *Northern Star* after showing it to Bishop Slater.\(^{311}\) In it he indicated that there were “substantial hurdles to be overcome by the solicitors for the claimants”. He went on to say,

“Increasingly I see these matters as being a challenge to the very community of Lismore. ...

*Some of the matters may have been standard practice in Australia some decades ago.*

*Some of the complaints being raised are a potential affront to all those individuals who willingly gave their time and money to a home that in their eyes did an essential and great job.*”

137. Reverend Comben said that he was responding to an argumentative view, a very bullying view of the claimants’ solicitors and agreed that “once into the fight” he stayed in the fight.\(^{312}\) In oral evidence to the Royal Commission he admitted that the approach of the Diocese to the claim was wrong.\(^{313}\)

138. Mr Campion and some of the other claimants read the remarks\(^{314}\) and Campion said he was “disgusted”.\(^{315}\) They thought Reverend Comben was blaming the victims. They informed Mr Harrison who in turn wrote to Mr Roland threatening an injunction. The interview was “withdrawn” by the Diocese but had clearly already been published.

139. On 10 October 2006, Mr Roland sent a detailed reply to Mr Harrison containing numerous annexures which Reverend Comben had gathered as part of his research. The defensive posture indicated to Bishop-in-Council was repeated in the letter and Mr Roland asserted that “the Anglican Church has never been vested with care control and management of the Home.”\(^{316}\) He went on to indicate that “our client remains of the opinion that your clients face insurmountable obstacles in the prosecution of litigation in this matter.”\(^{317}\) To confirm the position taken to

\(^{311}\) Comben T2159:2-6, 21-27; Ex 3-1 Campion Statement Annexure RC12; also Ex 3-1 Harrison, Annexure SJH15

\(^{312}\) Comben T2160:44 – T2161:2

\(^{313}\) Comben T2161:8-18

\(^{314}\) Ex 3-1 Campion, [48]

\(^{315}\) Campion T1664:9-45

\(^{316}\) Ex 3-1 SJH19, at STAT.0066.001.0191

\(^{317}\) Ex 3-1 SJH19, at STAT.0066.001.0191
date by the Diocese with regard to the application of the Ordinance and the Protocol Mr Roland stated that,

“Our client does not consider that the protocols set up by the Anglican Church are an appropriate procedure in the present case given the large number of allegations made by some 42 claimants as well as the highly complex evidentiary and legal issues involved.”

Available finding:


140. Mr Roland indicated that the legal position had been adopted after speaking with counsel. Over the preceding months Mr Roland had been corresponding with Diocesan Chancellor Justice Bill Windeyer about various matters concerning the liability of the Diocese for the abuse in the Home. Justice Windeyer had provided some short informal advice. Stephen Sheaffe was briefed on 27 September 2006 and Garth Blake SC was briefed on 15 November 2006.

141. An update on the group claims was provided to Bishop-in-Council members by Reverend Comben on 12 October 2006 but no meeting appears to have taken place then. In the update Reverend Comben reported that $155 000 had been spent on professional standards matters during 2006 (of which no more than $10 000 was due to the claims arising from the Home).

142. On 21 November 2006, the PSC met and considered the group claims. This was the first indication in PSC minutes of any detailed consideration of the group claim in 2006. Reverend Comben was not in attendance. The minutes record that the PSC dealt only with the disciplinary matters arising from the group claim and reporting to police. Disciplinary action was considered with respect to Reverend Winston Morgan, Reverend Campbell Brown and Canon John Robinson. Canon Robinson was noted to be dead, Reverend Morgan was noted to be visually impaired and 80 years old. As regards Reverend Brown, PSC member Peter Catt was to investigate whether he had a licence and whether it could be suspended. Also Mr Gerber as PSD for the Diocese of Newcastle was to be informed about Reverend Brown. The Police were to be informed by letter drafted by Mr Gerber for Reverend Comben and the Bishop was also to

318 An honorary position providing legal advice to the Bishop.
319 Ex 3-2 Tab 32 at ANG.9320.01802.0112_R; Tab 33 at ANG.9320.01802.0099_R
320 Ex 3-2 Tab 40 at ANG.9320.01802.0599_R; Tab 43 at ANG.9320.01802.0385
321 Ex 3-2 Tab 42, at ANG.9320.01806.0172
322 Ex 3-1 Gerber, Annexure PG35
323 Mr Gerber provided PSD services for the Dioceses of both Grafton and Newcastle in addition to fulfilling that role for the Diocese of Sydney.
be informed. Three letters were sent by Mr Gerber to the Child Protection and Sex State Crimes Squad of the NSW Police on 19 December 2006 referring the allegations of sexual assault against Reverend Campbell, Reverend Morgan and former resident CL.

Available finding:

11. The professional standards committee of the Diocese of Grafton played little or no part in providing pastoral care and assistance to the group claimants.

143. At the end of November 2006, Simon Harrison, with the assistance of Braveheart’s Hetty Johnston, approached the Primate of the Anglican Church, Archbishop Phillip Aspinall, to assist with resolution of the claim. The PSD at Brisbane who assisted the Primate, Rod McLary, spoke with Reverend Comben about the group claim. Mr McLary’s recorded a detailed note of the conversation. He said Reverend Comben indicated that the claim had no chance of legal success and there was no responsibility coming back to the Diocese. Reverend Comben indicated to Mr McLary that “he saw no reason for anyone else to be involved in the matter; it was all under control.” He formed the opinion that there was not any room for negotiation or conciliation.

144. On 6 December 2006 Reverend Comben and Mr Roland attended a conference in chambers with Garth Blake SC and Mr Sheaffe. In oral evidence Mr Roland agreed that his understanding of the legal advice received was that the executive of the Home was responsible for the residents and that the President was the Rector of Lismore and effectively ran the Home. However, he would not accept that the Church had the control and management of the Home at the relevant time as he said Garth Blake SC had advised that the executive committee was an independent group, not representing the Diocese of Grafton. He did agree that there were “links” between the Home and the Church.

145. The next day Mr Blake SC sent a short letter of advice indicating that he did not think either the Diocese or the Corporate Trustees were “liable to the alleged victims” and annexed two draft letters. One of the letters denied any liability in the Diocese or Corporate Trustees and the

324 McLary T1874:19-23
325 McLary T1875:33-35
326 McLary T1875:40-41
327 McLary T1875:46 – T1876:6
328 Roland T2052:42 – T2053:10
329 Roland T2053:35-42
330 Roland T2054:22-30
331 Ex 3-2 Tab 50, at ANG.9320.01802.1180
other was a ‘without prejudice letter’ inviting the claimants to participate “in the Pastoral Care and Assistance Scheme of the Diocese of Grafton”.

146. On 8 December 2006 the Primate wrote to Bishop Slater, hopeful of a more conciliatory approach to the dispute, suggesting consideration of the following principles:332

• “The timely provision of counselling and pastoral response to the victims;
• An offer of an opportunity to share their experiences with the bishop or senior clergy;
• An assurance that the victims will be heard;
• An assurance that they have recourse to legal advice and court processes at any time, and that the Diocese would do nothing to stand in their way;
• While they have a right to take unhindered legal action, the Church is open and willing to mediation and reconciliation processes; and
• When appropriate to do so, an offer of a formal apology for the harm done to them.”

147. On 14 December 2006, Mr Roland sent a letter denying liability and a redrafted ‘without prejudice’ letter to Mr Harrison. In the ‘without prejudice’ letter he said that the church is willing “to consider some limited pastoral care and assistance to your clients to assist them on their journey through the hurt that they feel … [but] this pastoral care and assistance will of necessity be limited in scope as the Church has limited resources”.333 There is no mention of the “Pastoral Care and Assistance Scheme of the Diocese of Grafton” mentioned in Mr Blake’s letter and no reference is made to the 2004 Protocol.

148. In oral evidence Mr Roland agreed that Reverend Comben had instructed that the letter drafted by Mr Blake be amended and that the Primate’s 6 principles be adopted but amended.334 The 6 principles were amended to remove the word “timely” with respect to counselling as well as access to court processes.335 One may conclude that those changes were made because no counselling had been offered to 39 of the 41 claimants and the Diocese wanted to maintain its limitations defence.

149. Two options were put to Mr Harrison as a structure for the upcoming settlement discussions. Both of the options were contingent upon the claimants entering into a deed of release for “all

332 Ex 3-1 Aspinall, Annexure AP2
333 Ex 3-1 Harrison, Annexure SJH31, at STAT.0066.001.0328
334 Roland T2060:5-14
335 Ex 3-1 Harrison, Annexure SJH31
Church persons in any way connected with the operation of the North Coast Children’s Home other than the alleged perpetrator of abuse”. The first option was that the claimants accept counselling, acknowledgement of hurt, payment of past medical expenses, reasonable legal costs and a modest ex gratia payment “for the clients’ inconvenience in those matters”. In oral evidence Mr Roland indicated that the word “inconvenience” was not intended to refer to abuse but instead to the “question of negotiations”. In any event it was clear that the Diocese did not wish to offer much in the way of financial compensation at that time.

150. The second option was a “pastoral care and assistance proposal to be developed over the coming months” but involving facilitation of an outcome by two facilitators who would consider all aspects of the claim including prospects of the claim’s success, the delay in making the claim and “may include” counselling, past medical expenses, reasonable legal costs and a “constrained” financial settlement.

Available finding

12. The Diocese of Grafton required that the group claimants sign a deed of release before counselling, acknowledgement, apology or financial settlement would be provided.

151. An informal settlement conference was arranged for 19 and 20 December 2006 at the Diocesan Centre between the lawyers. Reverend Comben and Mr Roland were there first and were subsequently joined by Mr Harrison and a junior lawyer. Mr Harrison described the start of the negotiations,

“The Reverend Comben, as I recall, when I walked into the room, was sitting on a chair with his hands behind his head and with his feet up, which I interpreted as being something of a machismo role that he was trying to play out. I put my hand across the table and shook hands with him, although the orphanage boy and the Celt in me felt like kicking the chair from underneath him, quite frankly. He was showing a level of disrespect that I’d not come across in negotiations previously. Certainly I was there representing 41 people who were in various states of decompensation, and to be met with that level of what I perceived as ignorance.”

152. Reverend Comben gives a not dissimilar account of his approach to the negotiations:

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336 Roland T2062:12-25
337 Ex 3-1 Harrison, Annexure SJH31
338 Save for Mr Campion who was already receiving counselling from time to time.
339 A term Mr Harrison used to describe the adverse effect that may be experienced by claimants as part of litigation and pre-litigation steps.
340 Harrison T1828:45 – T1829:11
“I had told Mr Roland that I did not want to be part of the liability questions, but I wanted to be there eventually for the quantum questions. The seating was in a stepped system, so that I was actually seated probably at that door away, but I could hear. My legs on a chair were under the table. I had a book with me, and I was turned away, so I could hear but not be part of it.”

153. Comben agreed that he was contemptuous of Mr Harrison and that there was a “considerable degree of antipathy” between him and Mr Harrison.341

154. Mr Harrison described the negotiations as involving a degree of ‘poker playing’. At one stage an offer of $10 000 per claimant was made and that of the claimants would not settle Reverend Comben said, “bring it on” which Mr Harrison interpreted as requiring the claimants to go to court and face a limitations defence.342 Mr Harrison also used his own (self-described) “political play” in involving the Primate in the negotiations by speaking with Rod McLary during the negotiations.343

155. Bishop Slater revealed that the approach taken by the Diocese was that an amount would be negotiated at the conference and any agreed figure would be taken before Bishop-in-Council for approval. During the settlement conference Bishop Slater was in touch with the negotiators for the Diocese and at one stage encouraged them to move from $500 000 to $600 000.344 In the end the claimants had offered a global figure of $1.2m to settle all claims and the Diocese had moved up to $750 000 and the parties had not reached an agreement.345

156. On 9 January 2007 Mr Harrison wrote to his clients setting out the hostile and combative nature of the negotiations which occurred on 19-20 December 2006.346

Available finding:

13. The settlement negotiations on 19-20 December 2006 were conducted in a commercial and hostile manner.

157. Negotiations continued throughout January and February and into March 2007. By 24 January 2007, Mr Harrison had dropped the claimants offer to $950 000 but that too was rejected by the Diocese.347 On 22 February 2007 Mr Roland provided a counter offer of $800 000 to settle

341 Comben T2180:1-4
342 Harrison T1830:29 – T1831:3
343 Harrison T1831:5-30
344 Slater T2278:2-9
345 Ex 3-1 Harrison, [48]
346 See for example: Ex 3-1 CA, Annexure CA9
347 Ex 3-1 Harrison, Annexure SJH41
41 claims.  Mr Roland interpreted the resolution as meaning that the amount was to be minimized and that, if possible, a lower amount should be achieved.

158. Notwithstanding the new ceiling on 26 February 2007 Mr Roland, on Reverend Comben’s instructions, withdrew all financial offers from the table. Mr Roland agreed in oral evidence that this was a commercial tactic aimed at forcing agreement. Bishop Slater said the tactic used “must have been” with his approval. A week later the previous offer of $800 000 was restored on Reverend Comben’s instructions. Mr Roland rejected further offers from Mr Harrison which included $800 000 plus $70 000 in legal fees.

159. Reverend Comben instructed Mr Roland to make an offer at $825 000 and “not a penny more”. A counter offer from Harrison of $825 000 plus $15 000 in HIC payments was also rejected. Finally an agreement was reached at $825 000 for all 41 claimants by 19 March 2007.

160. Mr Harrison communicated the final agreement to his clients on or about 19 March 2007. By that stage the initial none groups had been reduced to three and the apportionment means that those in Group A were offered $16 658.54, those in Group B were offered $20 658.54 and those in the worst category, Group C, were offered $22 658.54. It is impossible to say with precision what amount might have been achieved if each the claims had proceeded under the Care and Assistance package. However, there was evidence that CA was offered an amount of $75 000 by the Diocese of Grafton in 2013 under the same financial settlement schedule.

Available finding:

14. The Diocese of Grafton misled claimants that the Care and Assistance Package adopted in November 2005 would be followed and then negotiated financial settlements that were significantly below those indicated in the Care and Assistance Package.

348 Ex 3-1 Harrison, Annexure SJH51
349 Ex 3-2 Tab 66, at ANG.0018.001.0002
350 Roland T2067:31-34
351 Ex 3-1 Harrison, Annexure SJH54
352 Roland T2068:1-22
353 Slater T2278:43-47
354 Comben T2205:22-25
355 Ex 3-1 Harrison, Annexure SJH58
356 A claimant who receives damages for a personal injury matter is required to repay the Health Insurance Commission for any Medicare services provided to him or her.
357 Ex 3-1 Campion, Annexure RC17
358 Ex 3-19 Tab 5, at ANG.0026.001.0011_R
161. Mr Campion, CA and CK were all in the worst category and all rejected the offer, at least initially. The exact responses of the claimants to the offers are discussed below. Mr Campion and CA went on to negotiate their own compensation which took some years more (2010 and 2013 respectively) and is discussed in the next section. CK received a letter from Mr Harrison setting out his options\(^\text{359}\) and on the basis of that advice decided to agree to settle.

162. Reverend Comben was concerned on receiving the news that Mr Campion and CA were unlikely to accept the offer, no doubt on the basis that he hoped all the group claims could be resolved at once. He wrote to Mr Roland on 28 March 2007\(^\text{360}\) saying that it is the Diocese’s intention to treat this as “a one-off ex gratia payment”. He instructed that if the current claimants did not agree to the settlement then Mr Roland was to close his file until a summons was issued. He asked that all enquiries be passed to the Diocese “and we will respond pastorally, but not with further settlement negotiations”.

163. On about 12 April 2007 Mr Campion told the media of his disappointment with the offer and the Australian Newspaper covered the story under the headline “Anglican abuse payout ‘an insult’”.\(^\text{361}\) In the article Reverend Comben is quoted as saying:

> “We have made that offer on the basis that the church is a church of compassion and wants to make a passable approach to people who had apparently been damaged in a place that had some sort of connections with some church people.”

164. There were two further elements to the settlement that needed resolution: the making of an apology by the Bishop and the terms of the deed of release. On 15 May 2007 Mr Harrison wrote to Mr Roland asking for written apologies to be given to 29 claimants with a further three requesting apologies in person from the Bishop, two of which were requested to be at a St Andrew’s Sunday service. Ten complainants did not want any apology.\(^\text{362}\)

165. Mr Roland rejected the request for apologies at a Sunday service on the ground that it was inappropriate and “a form of disparagement” which the parties had prohibited under the (draft) deed of settlement.\(^\text{363}\) He said the Bishop was willing to meet personally with the claimants. Deeds of settlement for 38 claimants were agreed and returned signed to Mr Harrison on 19

\(^{359}\) The letter is set out in greater length below.

\(^{360}\) Ex 3-2 Tab 71, at ANG.9320.01802.0887

\(^{361}\) Ex 3-1 Campion, Annexure RC23

\(^{362}\) Ex 3-1 Harrison, Annexure SJH69

\(^{363}\) Ex 3-1 Harrison, Annexure SJH 70
June 2007. CK’s deed of release was in evidence. In the recitals to the agreement the denial of liability by the Diocese and released parties for “management of the Children’s Home or the actions of members of staff or clergy at the Home”. The deed contains a mutual non-disparagement clause but no confidentiality clause. The deed also sets out that an apology has been offered and “other support including counselling, pastoral care and assistance”. Notwithstanding this clause there was no evidence that the Diocese had offered those matters outside the confines of the settlement package negotiated.

**The Residents’ Experience of the Group Claims Process**

166. The former residents of the Home represented by Simon Harrison had no direct involvement with the Diocese during the group claim process. Negotiations were handled entirely by Mr Harrison generally by correspondence and telephone conversations with Mr Roland. As mentioned, proposals by Mr Harrison to meet Mr Roland for informal negotiations were rejected on numerous occasions on instructions. The settlement negotiations at the Diocesan Centre on 19-20 December 2006 were not attended by any of the claimants. Mr Harrison entered into fee agreements with each of the claimants, took a detailed record of their experiences which were then recorded in a statutory declaration to be provided to the Diocese and arranged for psychiatric and psychological assessment as necessary. Mr Harrison kept the claimants up to date by corresponding with them. From time to time he also spoke with them by telephone or had staff members do so.

167. CK joined the group claim after reading an article by Mr Campion in the newspaper looking for former residents of the Home to come forward. Generally, CK received communication from Mr Harrison’s office by mail advising of the progress of the case. CK gave evidence that he received many letters from Mr Harrison and every time he got a letter he “went into a fit of depression”.

168. CK’s understanding of the position of the Diocese of Grafton during the negotiations about the ownership of the Home was that the Diocese was “disowning” the Home as much as it could so that the Diocese did not have to accept financial responsibility. CK stated that this reaction

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364 Ex 3-2 Tab 78A, at ANG.9320.01802.2148_R
365 Ex 3-2 Tab 78A, at ANG.9320.01802.2151_R, cl. 8
366 Ex 3-2 Tab 78A, at ANG.9320.01802.2152_R, cl. 18
367 CK T1632:36-44
368 CK T1633:46 – T1634:1
369 CK T1634:33-35
caused much hurt because the residents knew the truth, and that the church taking
responsibility and ownership was important to him and the former residents of the Home.370

169. On 29 March 2007, CK received a letter from Mr Harrison setting out the risks and legal costs
involved if he did not settle his claim.371 Mr Harrison indicated that his firm would not take the
matter on a “speculative basis” (i.e. no win no fee) as he had to date. He indicated that in order
to continue with formal civil court proceedings, they would first have to succeed on a limitation
action and convince the court to exercise its discretion in CK’s favour, “something it does
extremely sparingly it has to be said”. The amount required to pursue just the limitation period
litigation was in the region of $16 000 to $27 000 on a private paying basis. If the limitation
point was successful, and the Church did not want to negotiate further, the next step would be
to proceed to a trial of the matter which could cost in the region of a further $20 000 to $30
000. If CK was to lose at any stage whether that be at the limitation hearing or the final hearing
then there would be a risk of an adverse costs order being made for CK to pay the legal costs of
the Diocese which could be in the region of $20 000 to $30 000 or more. CK gave evidence of
feeling like he and the claimants were put in a very difficult position, and that they had no choice
but to settle because they could not afford the ongoing legal costs which had to be paid up
front.372 CK stated that the “final outcome was devastating” and that he felt let down by the
solicitors.373

170. Another group claimant, CN also felt that Mr Harrison “didn’t push issues, and didn’t fight hard
enough for [CN] and the other victims”.374 CN also described there being a lack of
communication with Mr Harrison or the church during the legal process.375

171. CN was disappointed with the settlement of the group claim and the denial of liability by the
Diocese of Grafton CN stated:

“I was advised through letters from Mr Harrison that the Church denied that they were
responsible for the Children’s Home. I thought this was odd because it was always named the
“Church of England North Coast Children’s Home”. For some reason, the Church rejected that
they were responsible at all. The Church said the Home was not part of the Church... I just

370 CK T1635:34 – T1636:6
371 Ex 3-2 Tab 71A, at IND.0003.001.0011_R
372 CK T1639:17-23
373 Ex 3-1 CK, [10]
374 Ex 3-1 CN, [25]
375 Ex 3-1 CN, [23]
couldn’t believe they were denying that they were liable, and I felt like the amount they offered was a pittance.”$^{376}$

172. CN said that she “felt it wasn’t worth fighting on” and decide to take the settlement of about $11,000 after payment of legal fees.$^{377}$ CN described the legal process overall as being very distressing. She stated “at the end of the case, it was like being raped all over again. So it made me feel just like I felt when I was in the Home, like I was lying and worthless”.$^{378}$

173. In contrast, another former resident and member of the group claim, CM, who accepted an offer of $7,000 believed the offer to her “indicated that at last the Church recognised that they had done the wrong thing by all the children who had been at the Home”. CM noted that she did not receive an apology or counselling from the church.$^{379}$ Simon Harrison on behalf of some of the claimants had requested an apology on their behalves, including CM in a letter to Peter Roland of 15 May 2007.$^{380}$

174. On 9 January 2007 Simon Harrison wrote to the group claimants to update them on the informal settlement conference that took place on 19 and 20 December 2006 in Grafton.$^{381}$ Mr Harrison reported, among other things, that “in our view the Reverend Comben conducted himself in a less than positive manner and indeed no more than five minutes into the conference he walked out saying he would not return. The reason he gave was our quite proper reference to the open communication the Reverend had had with one of our clients about the home being “an Anglican place” yet the Church still chose to argue throughout that this was not a Church home”.$^{382}$

175. Mr Harrison noted that, in response to Mr Harrison’s comment that his clients would have to issue Court proceedings in the event that the Committee voted against Reverend Comben’s recommendation to try and settle matters, Reverend Comben said “bring it on”. Mr Harrison wrote “to give you some indication of the Reverend’s attitude throughout the course of the first day the Reverend was seated on one chair with his feet up on another chair.”$^{383}$

176. Mr Harrison noted that,

$^{376}$ Ex 3-1 CN, [24] – [25]  
$^{377}$ Ex 3-1 CN, [27], [29]  
$^{378}$ Ex 3-1 CN, [31]  
$^{379}$ Ex 3-1 CM, [10]  
$^{380}$ Ex 3-1 Harrison, Annexure SJH69, at STAT.0066.001.0398  
$^{381}$ Ex 3-1 CA, Annexure CA9, at STAT.0059.001.0035_R  
$^{382}$ Ex 3-1 CA, Annexure CA9, at STAT.0059.001.0036_R  
$^{383}$ Ex 3-1 CA, Annexure CA9, at STAT.0059.001.0036_R
“... during the course of the second day of conferencing we were appalled at two offensive remarks that were made both by the Reverend and his lawyer during the course of that day. The comments related to the nature of ‘discipline in those days’ and a suggestion that implied that any abuses that occurred had to be placed in the context of the fact that at least the children were given a home”.

177. Mr Harrison walked out of the conference at that stage having communicated his disgust at the comments made. Mr Harrison sought and received unequivocal apologies from the Reverend and his lawyer.384

178. Tommy Campion’s response to Mr Harrison’s report, particularly Reverend Campion’s comments during the settlement conference was:

“I was ropeable... I screamed. This bloke’s a fool to say this. How cruel can you get. “At least these children had a roof over their heads.” I mean, it’s pretty simple that one. I mean, that’s quite amazing. “At least they had somewhere to stay, this is a roof over their heads.” Cruel as cruel.”385

179. Other claimants were upset by the comments made by Reverend Comben and his behaviour reported by Mr Harrison in the letters, for example CN stated:

“I understand at one point he had his feet up on a chair and was very blasé, saying ‘Bring it on’. Hearing that Reverend Comben behaved like that really annoyed me because it’s not right, it seemed to me that Mr Comben was running the matter solely on his own. I’m sure that someone above him must have been able to dictate to him how to react in these circumstances, but obviously he did whatever he wanted.”386

180. After a settlement offer had been reached in early March 2007 Mr Harrison wrote to the group claimants advising of their individual settlement offers. On 19 March 2007, Mr Harrison wrote a letter to Tommy Campion informing him that based on the nature and extent of the assault and trauma caused, Mr Campion and 12 other clients were offered the highest Band C offer of $22 658.54. As fifty percent of that sum was to be paid to Mr Harrison for legal fees, the net amount payable to Tommy Campion was $10 326.64.387

181. Other claimants also received similar amount at the settlement of the group claim. In his oral evidence, CK recalled he ultimately received around $10 000.388 CN signed a deed of release settling for around $22 000 but received a net amount of around $11 000 after paying the same

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384 Ex 3-1 CA, Annexure CA9, at STAT.0059.001.0037_R
385 Campion T1666:24-29
386 Ex 3-1 CN, [26]
387 Ex 3-1 Campion, Annexure RC17, at STAT.0057.001.0097_R
388 CK T1639:1-4
amount to Mr Harrison for legal fees. Evidence has indicated that approximately 50% was deducted from the individual settlement offer of each claimants in the group claim. Each settlement offer was inclusive of both legal fees and ‘Medicare’ or Health Insurance Commission payments.

182. In relation to the legal fees payable and the amount offered by the Diocese, Tommy Campion gave evidence that:

“I was upset. I mean, the amount of abuse that I suffered was pretty bad, I just thought that settlement was – the church had schemed a bit to get out of paying the correct amount of money. I was pretty heartbroken that he only offered that much... All these people had gone through hell and then you get the situation where you have the lawyers telling you what to have, without asking beforehand, and knowing that [the claimants] had to pay half of what they got. I just didn’t think it was fair.”

183. Mr Campion responded to Mr Harrison by letter dated 22 March 207 and stated:

“Simon, you have got to be joking – there is no way in the world I would accept the dismal amount offered by Comben and the Diocese of Grafton for injuries sustained as a result of abuses perpetrated against me whilst a resident at the Church of England North Coast Children’s Home at Lismore in New South Wales... This entire case has been a tragedy for the victim’s. I am sad for them all, and I must accept some of the blame for what has happened.”

184. Mr Campion gave evidence that he felt that the “children deserved more” and he thought he had some responsibility for the disappointing outcome.

185. Tommy’s sister CA said:

“The offer and conditions were unacceptable, and did not feel that what they called the ‘compassionate payment’ was genuine. I was devastated. Other people decided to take what they could get. I couldn’t believe people could take the money for what was done to their life. I felt they wanted it all wrapped up and forgotten about”.

186. Both Tommy Campion and CA rejected the offer made as part of the group claim. The others accepted it.

187. One may conclude that the group claim was dealt with in an efficient way as far as resolution of a legal dispute is concerned which produced a negotiated outcome for over 40 claimants within a 16 month period. The negotiations were, as is set out above, tough and protracted because

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389 Ex 3-1 CN, [29]
390 Ex 3-1 CM, [10]
391 Campion T1669:11-21
392 Ex 3-1 Campion, Annexure RC18
393 Campion T1670:27-38
394 Ex 3-1 CA, [31]
the Diocese of Grafton refused to move beyond $825,000 for 41 claimants. The claimants and
the Diocese of Grafton remained at arm’s length from each other during those negotiations.
The result of this approach to the negotiations was that there was no direct contact by the
claimants with the Bishop or other senior members of the Diocese, no pastoral response and
no counselling provided to the claimants other than Mr Campion.395 The provisions of the
Ordinance and Protocol which provide for direct interaction with a ‘contact person’, the PSD
and a process of facilitation and other direct contact with senior clerics were simply put to one
side by the Diocese. The only direct acknowledgement of abuse came through a letter of
apology from Bishop Slater, if one had been sought and received. The result was that the
settlement of the claims in this way had an adverse rather than a beneficial effect on the
majority of the claimants.396

Available findings:

15. The denial of liability by the Diocese of Grafton on the basis that the Home was not
controlled by the Diocese of Grafton had a detrimental effect upon abused former
residents who should have been provided with acknowledgement that the North Coast
Children’s Home was the responsibility of the Church.

16. The lack of a pastoral response by the Diocese in handling the group claims had a
detrimental effect upon abused former residents.

17. The amounts offered to Mr Campion CA, CK, CL, CM and CN as part of the group claim
were substantially smaller than if the claim had been resolved under the Care and

Application of the Ordinance and the Protocol

188. The summary of the evidence set out above indicates that the group claims were dealt with
predominantly between the two lawyers. Mr Roland handled correspondence with Mr Harrison
and received his instructions from the Registrar, Reverend Comben. Bishop Slater became more
closely involved, when decisions needed to be made about allocation of funds to meet the
claims.

189. While a pastoral response was mentioned in the correspondence in the early period of the
group claim (January to August 2006)397 Mr Roland was clearly of the view that there was no
obligation to follow the 2004 Ordinance and its Protocol because there was no legal liability in

395 CA had refused counselling. Ex 3-1 Campion, [35]
396 The Royal Commission heard from the following group claimants: Mr Campion, CA, CK, CL, CM and CN.
397 Slater T2283:9-47
the Diocese of Grafton. Mr Harrison agreed that no invitation had been made by Mr Roland to make application to the PSD for any of his clients. The lack of engagement with the 2004 Ordinance and the Protocol is evident from other matters: none of the group claims were ever referred to the PSD for the Diocese of Grafton Phillip Gerber; there was no pastoral person or “contact person” appointed to any of the 41 claimants (save for Mr Campion); there was no acknowledgement provided and no counselling was offered outside of the provision of a monetary amount to cover counselling as part of the settlement negotiated.

190. Mr Gerber’s services as PSD were clearly not engaged by the Diocese. He had no files provided to him by Grafton and, in fact, never went to the offices of the Diocese in Grafton. In oral evidence Mr Gerber said that he became aware of the group claims through *inter alia* the PSC meeting of 25 April 2006. Reverend Comben attended those meetings and, although in hindsight Mr Gerber agreed this was a conflict, he said nothing at the time. In any event, it is clear that Reverend Comben had carriage of the matters and not the PSC. When the very substantial documentation arrived from Mr Harrison in September 2006 it was not referred to the PSC until November 2006. Reverend Comben accepted that he did not provide the schedule of claimants and the abuse suffered to the PSD. When the PSC did consider the group claim, it was only to refer a limited number of allegations to the police.

191. By 10 October 2006, any application of the Protocol had been abandoned and was stated expressly by Mr Roland in his letter to Mr Harrison. When Garth Blake SC attempted to steer the Diocese back towards an application of the process under the protocol Reverend Comben intervened to ensure that any such offer of facilitation was brought within the settlement negotiations. Mr Harrison was suspicious that such a process would compromise later court proceedings and proceeded to deal with the matter as if it was a common law claim.

192. The approach taken by the Diocese of Grafton meant that the PSC was not performing or not properly performing the following functions under s. 20(1) of the Professional Standards Ordinance 2004: investigation, arranging conciliation or mediation, authorising expenditure to

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398 Harrison T1796:41-1797:25
399 Harrison T1796:41-1797:25
400 Gerber T1978:3-12
401 Gerber T1957:18-1958:16
402 Ex 3-2 Tab 39; Comben T2157:3-34
403 Ex 3-1 Gerber, Annexure PG35
404 Ex 3-1 Harrison, Annexure SJH19; Comben T2151:23-43
405 Harrison T1825:36-47
implement the Ordinance or protocol including the provision of funding for counselling, referring matters to the police.

193. The approach also compromised the operation of the Protocol especially as concerned the PSD. As the PSD was not appropriately engaged in the process he was unable to make contact and provide pastoral support to each claimant, he was unable to inform the alleged perpetrator of the allegations, he was unable to provide recommendations to the PSC, he was unable to determine whether the church had a moral duty to pay for counselling and he was unable to make recommendations as to whether to offer redress to the claimants including financial assistance, acknowledgement and/or apology. 406

194. Somewhat presciently for this Case Study the Sexual Abuse Working Group had considered and reached a conclusion in 2003 that it can be counterproductive for a diocese to rely on strict legal rights when considering financial assistance to a person who claims to have been sexually abused:

“It must always be borne in mind that reliance on technical legal defences may well be perceived as avoidance by the Church of its obligations and of its responsibility to injured victims”. 407

Available findings:

18. The Diocese of Grafton failed to properly apply the Professional Standards Ordinance 2004 or the Protocol for Dealing with Complaints of Sexual Abuse to the group claimants.

19. The Diocese of Grafton’s failure to properly apply the relevant Ordinance and Protocol compromised the ability of the Diocese to provide a sympathetic and proportionate pastoral response to the group claimants.

195. When asked why the Protocol had been abandoned Reverend Comben said,

“The church, when it was dealing with the first claims apart from these, dealt with them exactly as you have described using the Sydney protocol. I don’t think there is any doubt that there was fear around Bishop-in-Council table when 41 came and the figure of $4 million-plus was being bandied around, and when it was raised that there was a suggestion that these matters could be defended, that was accepted.” 408

196. Bishop Slater said that he was aware that the group claims had been referred to the PSC and assumed the matter had been referred to the PSD. While he knew that he had a PSD serving in
that role and that he was the sensible person to refer the group claims to, when asked why the
group claimants had not been referred to Mr Gerber he said “I have no answer to that”. Bishop Slater said that he knew enough about the handling of the group claims through Bishop-in-Council to know that the Protocol was not being followed. In oral evidence Reverend Comben indicated that he hoped that:

“the good that will come out of these proceedings is that that sort of process will now be able
to be adopted and bring closure, but ... we got it wrong at the time.”

197. Aside from the technicalities of the application of the Ordinance and the Protocol, the public hearing also heard evidence about whether the approach adopted was appropriate from a moral or human perspective. Mr Harrison was convinced that there was no acknowledgement of a moral obligation to the claimants:

“Q. Leaving aside the technicalities of the legal dispute, did any question of moral obligation emerge in those discussions?
A. None whatsoever. Quite the opposite, as I think we’ll see in the course of the mediation. This was a thorn in their side that they wanted to go away. There was no intention by the diocese to do good in these matters. I was absolutely convinced of that.”

198. Mr Roland said that although the Diocese was denying legal liability it was accepting some form of moral responsibility by proposing to settle the claim. However, he did agree in questioning by the Chair of the Royal Commission that at an early stage both sides should have been frank and open about what their respective positions were both in terms of legal responsibility and moral obligation.

199. Bishop Slater indicated in his evidence that there really was no acknowledgement of the moral dimension of the claims at the time that the settlement was being negotiated:

“Q. Did it strike you at the time - that is, in those first three months of 2007 - that the commercial approach that was being taken to negotiations might be at odds with a moral approach to respond to the claims?
A. No, but I can see, on reflection, yes.

409 Slater T2264:1-42
410 Slater T2268:2-37
411 Comben T2184:4-7
412 Harrison T1812:7-23
413 Roland T2048:5-22
414 Roland T2055:40 – T2056:24
Q. You can see why some people might now say that the approach taken was unduly harsh, given the nature of the abuse that these people had sustained?

A. True. 

Available finding:

20. The Bishop of Grafton failed to appreciate that the Diocese of Grafton had a moral obligation to provide redress to those abused at the North Coast Children’s Home.

THE DIOCESE OF GRAFTON’S RESPONSE TO POST-GROUP CLAIMS 2007-2012

200. Following the resolution of the group claim in 2007 the Diocese of Grafton received further claims from former residents from the North Coast Children’s Home where the abuse was similar in nature to those which had been considered as part of the group process. As is set out below, the Diocese dealt with the claims in ways which were both different to the process under the Ordinance and the Protocol and, in the latter period, different to the way in which the group claims had been handled.

The Claim of CD

201. CD contacted Mr Campion in early 2007 and subsequently wrote to him about the abuse that he had suffered in the Home. In a letter to the Primate of 23 May 2007, Mr Campion informed him that a person had informed him he had witnessed the gang rape of a young girl in a room inside the Home and that the complaint had also been raped with a broom in the shower room. The informant was not identified in the letter but Mr Campion informed the Royal Commission that the person was, in fact, CD. On 30 May 2007, the Primate wrote back saying that he had asked the PSD of Brisbane, Rod McLary, to inform the police of the allegations. The Primate indicated that he had written to Bishop Slater asking him to take appropriate action.

202. On 12 August 2007 Mr Campion wrote to Bishop Slater identifying CD and annexing a number of letters sent to Mr Campion and recording an address for CD. The abuse indicated in the first annexure indicates that it was the same abuse referred to in Mr Campion’s letter to the

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415 Slater T2279:28-37
416 Ex 3-1 Campion Annexure RC29 at STAT.0057.001.0140_R
417 Ex 3-1 Campion Annexure RC32
418 Ex 3-1 Campion, Annexure RC45. Mr Campion also raised CD’s matter directly with Bishop Slater at a meeting on 3 July 2007: Ex 3-1 Campion, [81]
Primate of 23 May 2007. In early 2008 CD told Mr Campion that he had heard nothing from the Diocese. Concerned at the delay Mr Campion wrote to Bishop Slater, the Primate and the Brisbane PSD Mr McLary. On 29 January 2008 the Bishop’s Commissary Greg Ezzy wrote back saying that Mr Campion did not apparently have authority to act for him and stating the church was reluctant to “enter this area” without a direct request for assistance for CD. The Commissary encouraged him to call the Sexual Misconduct Hotline or to write directly to the Bishop. No mention was made of any delay in replying to the August 2007 letter. Bishop Slater indicated to Rod McLary that he could not take any action under the Grafton Protocol until a received a letter directly from CD. On 5 February 2008 CD wrote to the Bishop and his Commissary authorising Mr Campion and stating, “I have waited eight months for you to answer my letter of complaint and I am deeply hurt that you have not acknowledged me. Please act in the appropriate manner.”

203. On 13 February 2008 CD told the Bishop that he wished to be compensated for the abuse but did not want counselling as he was getting support through his family. He also set out in some detail the nature of the abuse he had suffered in two further letters sent to the Bishop that day. On 21 February 2008 the Bishop wrote back to CD acknowledging his anger to the church and indicating he was “deeply sorry for all the hurt you have been through”. He indicated that he would not refer the matter to the new PSD (in Newcastle) because CD had said he did not want counselling. He then offered the three levels of payment negotiated during the group claim subject to CD entering into a deed of release.

204. CD accepted the offer of $22,658 (the highest category) on 26 February 2008. CD told the Royal Commission he accepted the amount because he needed the money, however did not feel the amount was fair compared to the impact the abuse had on him for nearly thirty years of his life. CD wanted “someone to be held responsible for it, to be accountable.” He felt

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419 Ex 3-1 Campion, Annexure RC29, STAT.0057.001.0140_R
420 Ex 3-1 Campion, [101]
421 Ex 3-1 Campion, Annexures RC59, RC60, RC61
422 Ex 3-1 Campion, Annexure RC62
423 Ex 3-1 Campion, Annexure RC67
424 Ex 3-2 Tab 106, at ANG.9320.01108.0018_R
425 Ex 3-2 Tab 107, at ANG.9320.01108.0028_R
426 Ex 3-2 Tabs 108, at ANG.9320.01108.0014_R; Tab 109, at ANG.9320.01108.0007_R
427 Ex 3-2 Tab 112, at ANG.9320.01103.0339
428 Ex 3-2 Tab 114, at ANG.9320.01108.0029_R
429 Ex 3-1 CD, [19]
430 Ex 3-1 CD, [19]
“like the Church has given me money and told me to shut up and go away, it’s not good enough”.\textsuperscript{431} CD indicated he was considering suing the Church again. It is apparent from the correspondence that no apology was offered to CD save for the comments set out in the letter of 21 February 2008.

\textbf{Available finding:}

\textbf{21.} CD’s claim was processed in a manner similar to the group claims but without any pastoral assistance.

\textit{Tommy Campion’s Claim}

205. In March 2007 Mr Campion had rejected the offer made by the Diocese for all group claimants and in April 2007 he had appeared in newspaper articles criticising the offer made to the group claimants. Together with his sister CA he continued to negotiate with the Diocese to achieve settlement of his claim. Mr Campion’s claim was not settled until 2010 and CA’s not until the Royal Commission’s public hearing. During the period 2007-2010 Mr Campion conducted a letter writing campaign with the Bishop of Grafton, the Primate of the Anglican Church, the PSD at Brisbane and the Archbishop of Sydney. He continued to write expressing his concerns about his claim and that of other former residents even after the settlement in 2010. He estimated that as at May 2010 he had written over 250 letters to the various parties.\textsuperscript{432}

206. Mr Campion indicated to Bishop Slater that he did not wish to deal further with Reverend Comben in the resolution of his claim.\textsuperscript{433} On 3 July 2007 a meeting was held between the Bishop, Mr Campion and CA with Jenni Woodhouse from the Diocese of Sydney’s Professional Standards Unit in attendance. Mr Campion said he told Bishop Slater he was looking for acknowledgement that the Anglican Church was involved in the running of the Home and they owed a duty of care to the children who were resident there. On 10 July 2007 Bishop Slater wrote to both Mr Campion and CA asking them, “\textit{What would be helpful for you to move on from these things of the past}?”\textsuperscript{434} Mr Campion replied saying that he needed more extensive counselling and that he was seeking payment of compensation in line with the Care and Assistance Package provided in the order of $75 000.\textsuperscript{435}

\begin{itemize}
\item \textsuperscript{431} Ex 3-1 CD, [19]
\item \textsuperscript{432} Ex 3-1 Campion, [126]
\item \textsuperscript{433} Ex 3-1 Campion, [79]
\item \textsuperscript{434} Ex 3-1 Campion, Annexure RC40
\item \textsuperscript{435} Ex 3-1 Campion, Annexure RC42, at STAT.0057.001.0162_R
\end{itemize}
207. Bishop Slater agreed that if he had referred the matter to the PSD at that time then the processing of Mr Campion’s claim could have been dealt with at arm’s length. 436

208. On 14 August 2007 Bishop Slater wrote to both Mr Campion and CA responding to Mr Campion’s letter seeking compensation. 437 The Bishop reminded Mr Campion of the group claim process and then said:

“It seems to me that you are now asking in relation to a Care package would actually be a betrayal of all of those whom you encouraged to make a claim with you through your lawyer. If the Diocese now proceeded to renegotiate with you at a significantly higher level of recompense then it would actually impinge upon your integrity, and be viewed by others as a betrayal”. 438

209. Bishop Slater then repeated the same monetary offer which had been provided to the group claimants: $22,000 plus continuation of current ten sessions of counselling. Mr Campion was clearly shocked by the letter: “… I could not believe it. I thought it was a shocking thing to say that I would betray the other children. I thought it was despicable”. 439 CA responded in similar terms on 16 October 2007. 440 Bishop Slater agreed in his oral evidence that the letter was an inappropriate reply to Mr Campion. 441 He agreed that the letter confused the interests of the complainant, the Bishop, the financial interests of the Diocese and the interests of other members of the group claim. 442

Available findings:

22. Bishop Slater reacted with hostility to Mr Campion’s insistence that he be afforded a financial settlement in line with the Care and Assistance Package adopted by the Diocese in November 2005.

23. Bishop Slater’s letter to Mr Campion of 14 August 2008 indicated a substantial conflict of the interests of the claimant, the Bishop, the Diocese and the other group claimants.

210. Negotiations continued between the Bishop and Mr Campion. On 24 December 2007 the Bishop write to Mr Campion indicating the legal advice received from Garth Blake SC including that “neither the Bishop of Grafton nor the Corporate Trustees … had any control or responsibility for the management of the North Coast Children’s Home.” 443 The Bishop offered Mr Campion an

436 Slater T2288:31-35
437 Ex 3-1 Campion, Annexure RC46
438 Ex 3-1 Campion, Annexure RC46, at STAT.0057.001.0180_R
439 Ex 3-1 Campion, [89]
440 Ex 3-2 Tab 96, at ANG.9310.01001.0826_R
441 Slater T2288:43 – T2289:2
442 Slater T2289:23-40
443 Ex 3-1 Campion, Annexure RC58, at STAT.0057.001.0196_R
apology in the same terms as had been offered to the group claimants. The apology described
the Home as a “community based facility” and reiterated legal advice that the Home “was not
our responsibility”. Mr Campion soundly rejected the apology by letter of 4 January 2008:

“I refuse to accept the ‘apology’ because most of what is written are lies.

The ‘apology’ is hollow, characterless and could refer to my neighbour’s goldfish …

You made no mention that I was horribly and cowardly abused by members of the Anglican
clergy

You made no mention of my welfare and the hurt I am going through today. …”

211. Throughout 2008 and 2009 Mr Campion continued to correspond with Bishop Slater and, from
time to time the Primate, on the issues of responsibility for the residents in the Home, the terms
of any apology from the Bishop and Reverend Comben and the terms of the deed of release
proposed by Bishop Slater.

212. Finally on 14 June 2010 Mr Campion yielded to the Diocese’s offer, “due to a desperate need to
regain my sanity, my health, pay the rent and electricity and purchase decent food to keep that
health, I will now accept every cent due to me for the physical, sexual and psychological abuse I
suffered [at the home].” On 4 August 2010 Peter Roland wrote back to Mr Campion offering
him the same settlement amount for the group claim (with interest), a lump sum for counselling
of $5 000 and a Medicare reimbursement valued at $7 730. The total amount to be received
by Mr Campion was estimated at $32 881.

Available finding:

24. Mr Campion’s claim was dealt with in an ad hoc manner combining the approach
adopted for the group claimants with additional payments for counselling and
Medicare reimbursement.

25. Mr Campion was never offered a financial settlement component which reflected the
process under the Care and Assistance Package.

213. Mr Campion had some correspondence with Michael Elliott, the new PSD for Grafton, but the
negotiation of the settlement package was dealt with between Mr , the Bishop and Mr Roland.

444 Ex 3-2 Tab 105, at ANG.9320.01103.0367; CA also sent a similar letter to the Bishop rejecting the apology:
Ex 3-2 Tab 113, at ANG.9320.01104.0009
445 Ex 3-1 Campion, [108]-[117], [119]-[120]
446 Ex 3-2 Tab 126, at ANG.9320.01803.0426_R
447 Ex 3-2 Tab 126A, at ANG.9320.01103.0045
Mr Campion also negotiated two apologies – one from the Bishop and one from Reverend Comben. The apology from Bishop Slater which was substantially different from that provided to the group claimants was broadly acceptable to Mr Campion.448

In the apology from Reverend Comben dated 24 August 2010 he said,

“... I apologise sincerely for treating Richard ‘Tommy’ Campion and CA with contempt in respect to the aftermath of the abuse they suffered as children while living in an Anglican place ... As I am a member of the Anglican Clergy and you a victim of abuse I should not have made the many accusations of deceit that I did”.

Mr Campion said that Reverend Comben, “had treated us like rubbish ... like he was putting his feet up on the table ... He was just nasty ... He just didn’t do the right thing”.449 Mr Campion negotiated the terms of the apology and thought the apology “wasn’t too bad actually”.450

In fact the apology was false. In oral evidence Reverend Comben said,

“But does it mean in my heart that I believe I made any accusations of deceit? No, I do not. ... I could have argued a point. I chose to give Mr Campion some comfort and I hope some closure. It that is my crime, I plead guilty. ...

I lied in that”.451

Available finding:

26. When Reverend Pat Comben was asked to provide an apology to Tommy Campion about the way Mr Campion had been treated by him, Reverend Comben provided an apology which was false and he knew was false.

The Claims of CB, CC and CA

On 2 October 2008 Simon Harrison wrote to Peter Roland concerning three new claimants, CE, CF and CG, all of whom said they had suffered physical abuse at the Home.452 Mr Harrison sought to rely on the same process adopted by the Diocese of Grafton in the group claims but that approach was rejected by Mr Roland.454 On 19 November 2008 he indicated that the group claims were not the subject of any determination or agreement, that the Diocese was not a juridical entity and that neither the Diocese nor the Corporate Trustees were responsible for

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448 Campion T1690:12 – T1691:9. Mr Campion said that Bishop Slater accepted there was a “duty of care” but not that the Church had a duty of care.
449 Campion T1691:35-47
450 Campion T1692:4-5
451 Comben T2230:5-6, T2230:36-38, T2230:46
452 Ex 3-1 Harrison, Annexure SJH75
453 Ex 3-1 Harrison, Annexure SJH76
454 Ex 3-1 Harrison, Annexure SJH77
the management of the Home. He relied on the decision of the NSW Court Appeal in *Trustees of the Roman Catholic Church v Ellis* [2007] NSWCA 117. 455 In oral evidence Mr Harrison said that neither he nor Mr Roland had indicated that the group claim was a ‘once and for all’ settlement of all claims arising from the Home. 456

219. As he had done before, Mr Harrison wrote to the Primate to indicate that the Diocese of Grafton was treating the new claims in a different and unjust manner compared to the group claims. 457 The Primate wrote back reiterating that “each diocese of the Anglican Church is autonomous and as Primate I do not have authority to intervene in matters which are the proper responsibility of another diocese.” 458

220. In about February 2011 CC sent two handwritten letters to the Anglican Diocese of Grafton setting out a complaint of sexual abuse that CC had received while a resident in the Home. 459 The first undated letter went unacknowledged but on 28 February 2011 the Bishop wrote back to CC acknowledging her letters and expressing his sadness. 460 He suggested that he could put her in touch with a priest in the area where she lived. The Bishop did not refer CC to the PSD Mr Elliott, nor did he indicate the existence of the Protocol or the Care and Assistance package. On 7 March 2011 CC replied saying she did not want anything to do with a priest given she had been abused by one and that she was seeking compensation. 461

221. Meanwhile on 5 March 2011 former resident CB wrote to Bishop Slater detailing his experience in the Home and the impact on his life. 462 He provided graphic accounts of having another resident perform oral sex on him, of being masturbated by a female staff member and of performing fellatio on a priest and then having the priest rape him. 463

222. As set out above, cl. 24(1) of the 2004 Ordinance requires that any clergy or Bishop that receives information including allegations of sexual assault is to report it to the PSC. Neither CC nor CB’s letters were referred to the PSC or to the PSD, Mr Elliott.

455 Ex 3-1 Harrison, Annexure SJH77
456 Harrison T1843:2-11
457 Ex 3-1 Harrison, Annexure SJH82
458 Ex 3-1 Harrison, Annexure SJH82, at STAT.0066.001.0426_R
459 Ex 3-1 Newby, Annexures AN4 and AN5
460 Ex 3-2 Tab 128, at ANG.9320.01117.0010_R
461 Ex 3-2 Tab 129, at ANG.9320.01802.1356_R
462 Ex 3-1 CB, Annexure CB1
463 Ex 3-1 CB, Annexure CB1
223. On 4 April 2011, Mr Roland wrote to both CC and CB denying any liability on the part of the Diocese and refusing any financial compensation.\textsuperscript{464} In the letter a “pastoral support package” was offered to both which included the appointment of a support person “to meet with you and seek to assist you to move towards wholeness”.\textsuperscript{465} Mr Roland said he received instructions to do so from the Bishop.\textsuperscript{466}

224. In oral evidence Bishop Slater said that he agreed “absolutely” that the letters of 4 April 2011 were an unduly harsh way to respond to a person who had complained of sexual abuse in the Home.\textsuperscript{467} He agreed that he should have referred both CB and CC to the PSD for pastoral support including counselling, facilitation of the claim and proper redress.\textsuperscript{468}

225. CB accepted the offer of pastoral support.\textsuperscript{469} As CB was living outside of the Diocese of Grafton the Bishop undertook to approach someone in the Diocese in which he lived.\textsuperscript{470} On 1 June 2011 CC was offered a named pastoral support person by Bishop Slater.\textsuperscript{471}

226. However, CB discovered from other sources that a financial settlement package had been paid to former residents of the Home as part of the group claim process. On 14 July 2011 he wrote to Bishop Slater,

“I am appalled at your behaviour towards me concerning the abuse I suffered in the Church of England North Coast Children’s Home. I have become aware that the Diocese of Grafton supported 41 victims of abuse with a compassionate payout as part of ‘the support package’ ...

Even though you haven’t advised me, it appears that you do not intend to support me with the financial component that other victims of abuse from the same home have received in the past”.\textsuperscript{472}

227. Two weeks later the Bishop replied saying that the Diocese was proceeding with the pastoral support package and, as a support person had not been found in CB’s diocese, he asked whether

\textsuperscript{464} Ex 3-1 Hywood, Annexures AH13 and AH14  
\textsuperscript{465} Ex 3-1 Hywood, Annexures AH13, AH14  
\textsuperscript{466} Roland T2087:15-20  
\textsuperscript{467} Slater T2295:2-6  
\textsuperscript{468} Slater T2295:8-25  
\textsuperscript{469} Ex 3-2 Tab 129, at ANG.9320.01802.1356_R  
\textsuperscript{470} Ex 3-2 Tab 131, at ANG.9320.01116.0012_R; Tab 133, at ANG.9320.01116.0011_R  
\textsuperscript{471} Ex 3-2 Tab 134, at ANG.9320.01117.0003_R  
\textsuperscript{472} Ex 3-1 Newby, Annexure AN11, at STAT.0058.001.0037_R
CB would like him to continue the line of inquiry.\textsuperscript{473} In fact CB had to consult a lawyer as to whether he had a further claim against the Diocese of Grafton.\textsuperscript{474}

228. Anthony Newby assumed the position of Registrar on 1 September 2010\textsuperscript{475} after Reverend Comben resigned. His work at the Diocese focused primarily on management of the financial ‘crisis’ caused by the Clarence Valley Anglican School debt. However, he did indicate in his oral evidence that he was troubled by the way in which CB and CC’s claims were handled. He said the approach of the Diocese to those claims from former residents of the Home were handled in stark contrast to another professional standards matter referred to by Mr Newby as the “Wauchope matter”. The Wauchope matter was dealt with together with the PSD in accordance with the Protocol and Mr Newby thought this was handled effectively.\textsuperscript{476} He was unclear as to why CB and CC were being treated in a different way to the Wauchope matter and raised it with the Bishop and Mr Roland. He was informed that a “pastoral approach” was preferred and that did not involve a financial settlement.\textsuperscript{477} Mr Newby said that his definition of pastoral support was much wider than that and provided practical assistance to the person.\textsuperscript{478} However, the Bishop had indicated the approach to be adopted to former residents of the Home.\textsuperscript{479} Mr Newby said that the Bishop’s approach was problematic because, in CB’s case, a support person could not be found in CB’s diocese.\textsuperscript{480}

\textbf{Available finding:}

27. The Bishop of Grafton failed to refer either CB or CC’s claims to the Professional Standards Committee in breach of clause 24(1) of the Professional Standards Ordinance 2004.

229. Mr Newby said that the attitude to the claims arising from the Home was influenced by financial considerations. He was told by the Bishop that, “the Diocese had no money to meet additional ex gratia payments”.\textsuperscript{481} Mr Newby said that there was no provisioning in the budget for those claims and that there was no additional funding for any additional provisioning.\textsuperscript{482} However, he said that the Diocese had determined to service the Clarence Valley Anglican

\textsuperscript{473} Ex 3-2 Tab 135, at ANG.9320.01116.0009_R 
\textsuperscript{474} Ex 3-1 CB, [20]. The litigation was not pursued: [21].
\textsuperscript{475} Ex 3-1 Newby, [3]
\textsuperscript{476} Newby T1899:23 – T1900:11
\textsuperscript{477} Newby T1901:23-45
\textsuperscript{478} Newby T1902:23-24
\textsuperscript{480} Newby T1902:38-42
\textsuperscript{481} Ex 3-1 Newby, [33]
\textsuperscript{482} Newby T1901:1-13
School debt and precedence was given to that debt over claims of compensation by former residents of the Home.\textsuperscript{483}

230. Bishop Slater said that by April-May 2010 the Diocese knew it was in “deep financial trouble” and he raised the debt issue with Primate at General Synod. A number of people were drawn together to assist the Diocese develop a three year plan including the establishment of an independent oversight committee.\textsuperscript{484} The proposal included a program to sell assets and an extension of the bishop’s appeal.\textsuperscript{485} In the Bishop’s mind there was “no money left” for professional standards as “all of our financial resources, cash resources ... had been drained”.\textsuperscript{486} When asked why a similar approach to the Clarence Valley Anglican School debt was not taken with respect to the claims arising from the Home the Bishop said “we were totally distracted and focused upon the school situation”.\textsuperscript{487} He agreed that priority was given to the school situation over the payment of claims for professional standards matters.\textsuperscript{488}

Available findings:

28. The Diocese of Grafton refused to pay financial settlements to CA, CB and CC because the Diocese considered it did not have financial reserves to pay such claims.

29. The Diocese of Grafton had not made any financial provision for professional standards because it had prioritised the Clarence Valley Anglican School debt over its financial obligations under the Protocol and Care and Assistance Scheme to pay abused former residents of the North Coast Children’s Home.

231. On 21 February 2012 CA decided, like her brother Mr Campion, to accept the compensation offered in 2007 by writing to Mr Roland at Foott Law and Co.\textsuperscript{489} Mr Roland replied immediately saying that no settlement had been agreed to in relation to her “former claim” and that her file had been closed. The approach accorded with Reverend Comben’s instructions of 28 March 2007.

232. CA wrote back to Mr Roland objecting to his “dismissive tone”, stating that no time limit had been set for acceptance and asking that the church honour its commitment.\textsuperscript{490} On 27 April

\textsuperscript{483} Newby T1901:15-24
\textsuperscript{484} Slater T2291:3-15
\textsuperscript{485} Slater T2291:21-24
\textsuperscript{486} Slater T2291:39-40
\textsuperscript{487} Slater T2291:4-7
\textsuperscript{488} Slater T2292:9-16
\textsuperscript{489} Ex 3-1 CA, [47]
\textsuperscript{490} Ex 3-1 CA, [48]
2012 Mr Roland replied in similar terms to that of CB and CC. He denied liability in the
Diocese of Grafton and the Corporate Trustees and said that the Diocese was prepared to
offer the appointment of a support person to “meet with you and seek to assist you to move
towards wholeness”.

233. In November 2012 Bishop-in-Council called for an audit into the complaints of child sexual abuse
of the diocese in anticipation of the child sexual abuse inquiry by the Royal Commission. Due
to the illness of Mr Anthony Newby, then Registrar of Diocese of Grafton, the PSC was not
officially advised by Bishop-in-Council as to the audit process.

234. In January 2013, Anne Hywood was appointed as Acting Registrar of Diocese of Grafton. She
had a long history of having acted in professional discipline matters at the Diocese of Adelaide
where she had helped with the conception and implementation of *Healing Steps*, a scheme
similar to the Grafton and Sydney care and assistance packages.

235. Upon her appointment to the role of Acting Registrar, Anne Hywood began following up on the
audit process and discovered all relevant professional standards file were kept in the Registry
rather than passed to the PSD. She thought this was inappropriate because the PSD did not have
access to them and it potentially compromised the independence of the professional standards
process. On 21 January 2013, Anne Hywood wrote to Mr Elliott and referred CB and CC’s
claims to him. Anne Hywood said it was clear that the letters from CB and CC to the Bishop
and Registrar had not been referred to the PSD. Mr Elliott himself also confirmed that at no
stage during 2009 to January 2013, were CB or CC referred to him by the Diocese of Grafton for
his attention.

236. Both Ms Hywood and Mr Elliott were furious that complaints of child sexual abuse, which were
clearly the responsibility of the PSD, were not referred to Mr Elliott. Anne Hywood expressed
her view on the failure in adopting the professional standards process:

“I was particularly furious, I had worked very hard in my role as executive officer in the
Diocese of Adelaide on a number of sexual abuse claims and matters and working with

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491 Ex 3-1 CA, [49]
492 Hywood T1739:15-24; Ex 3-1 Hywood, Annexure AH5, at STAT.0061.001.0048
493 Hywood T1739:34-44
494 Ex 3-1 Hywood, [16]
495 Hywood T1740:7-34
496 Ex 3-1, Hywood, Annexure AH8
497 Elliott T2351:10-17
498 Ex 3-1 Hywood, [50]; Hywood T1748:10
others to develop Healing Steps. I had been elected as a member of the general standing committee on the national church, the Anglican Church of Australia, and had dedicated a lot of my time, effort and energy to ensuring that the Anglican Church in Australia had appropriate protocols. And I really believed after 2004, when the dioceses throughout Australia adopted these ordinances and protocols, that this type of problem wouldn’t happen again.” 499

237. Ms Hywood was particularly concerned because the whole process for handling such claims had been compromised:

“It’s not just that we didn’t follow our own process, but these people did not have the benefit of the support that a professional standards director is there to provide.

We talked before about their ability to set up counselling, to provide immediate financial assistance and support, to appoint a support person to them. So the diocese had known of these claims for 18 months and these people did not have the benefit of being referred to the professional standards director and having that support and assistance.” 500

238. When Ms Hywood raised the failure to refer CB and CC to the PSD with the Bishop he replied, "Well, we just managed them the same way that we managed the other claims", which was through the lawyers. 501 She was surprised the Bishop was not more familiar with the protocols and role of the PSD. 502

239. In the same letter sent to Mr Elliott on 21 January 2013, Anne Hywood enclosed Reverend Comben’s schedule of claims in relation to physical, psychological and sexual abuse to Mr Elliott, who received it for the first time. 503 Michael Elliott sought further communication with CB and CC, and subsequently referred their claims as well as claims in the schedule relative to criminal act to the police. 504

240. Ms Hywood also asked the Bishop why CB and CC were not being offered financial settlements. The Bishop replied, "Well, we are in the middle of a financial crisis". She understood the reference to be the substantial debt being carried out by the Diocese to ‘bail out’ the Clarence Valley Anglican School. Ms Hywood told the Bishop that “it’s not possible to turn the tap off” to financial compensation. She said there was a sense in the Diocese that these people had “missed the boat”. 505 She thought that the Bishop’s approach,

499 Hywood T1748:31-41
500 Hywood T1751:9-22
501 Hywood T1749:41-46
502 Hywood T1749:46-1750:2
503 Elliott T2356:5-13
504 Elliott T2355:45-T2356:3
505 Hywood T1752:10-11
“... Showed a lack of understanding, that people will come to terms with the abuse they suffered at various times in their life, and the Diocese of Grafton may continue to receive claims relating to abuse at the North Coast Children’s Home for some years to come”.  

241. As is set out below, the claims of CA, CB and CC were not progressed further until 2013 when CB and CC’s claims were referred to the PSD Mr Elliott by Anne Hywood. At the commencement of the public hearing in this case study emergency payments of $5 000 had been paid to CA and CC.

Available finding:

30. The Bishop and Diocese of Grafton treated CA, CB and CC unfairly and in a way different to the group claimants and which had a detrimental effect upon CA, CB and CC.

INTERVENTION OF THE PRIMATE

242. The Primate of the Anglican Church, Archbishop Phillip Aspinall, was involved at various stages and at different levels of intensity during both the group and post-group claims. Although he took an active interest in the claims arising from the Home and being handled by the Diocese of Grafton he considered himself constrained by the position of Primate to providing advice and counsel. The evidence revealed that he did this repeatedly with Bishop Slater sometimes in very strong terms. The Primate expressed to the Royal Commission in his statement and in oral evidence that he was not in an analogous position to the chief executive officer of a large corporation and that he could not command a Bishop to act in a particular way, at least with respect to professional standards matters. He said that this was a product of the autonomous nature of the 23 dioceses that comprise the Anglican Church of Australia. Notwithstanding that position, the Primate remains the titular head of what most Australians, unaware of the niceties of the structure, would take to be a national church.

243. Towards the end of November 2006 Mr Harrison approached the Primate in Brisbane about the group claim and spoke with the PSD for Brisbane, Rod McLary. There was communication between Mr McLary and Reverend Comben about the group claim process. Reverend Comben indicated to Mr McLary that Mr Harrison had “consistently taken a bullying attitude towards

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506 Hywood T1752:13-17
507 Ezzy T2339:34-42
508 The Primate has occupied the position of Archbishop of Brisbane since 2001 and became Primate in 2007.
the Diocese and the Diocese is refusing to ‘roll over’\textsuperscript{509} but indicated to Mr McLary that the Diocese was open to discussions with Mr Harrison.\textsuperscript{510}

244. It was in this context that the Primate called Bishop Slater on 24 November 2006.\textsuperscript{511} He asked Bishop Slater to check to make sure that Reverend Comben had not “dug his toes in” and was not “playing hard ball” with the group claim.\textsuperscript{512} Prompted by a further letter from Mr Harrison, the Primate wrote to Bishop Slater outlining the 6 principles set out above,\textsuperscript{513} which he believed the Diocese ought to follow in resolving claims of child abuse.\textsuperscript{514}

245. In a letter of 21 December 2006, the Primate informed Mr Harrison that he did not have the jurisdiction or authority to intervene in a matter “\textit{which is the proper responsibility of the Diocese of Grafton}.\textsuperscript{515}” Undeterred, Mr Harrison called the Primate’s office and requested that the Primate use his influence in the Diocese of the Brisbane to intervene and contribute to the settlement figure offered by the Diocese of Grafton.\textsuperscript{516} The Primate advised Mr Harrison that the Diocese of Brisbane was not in a position to meet the abuse claims that were properly the responsibility of another diocese.\textsuperscript{517}

246. By April 2007, Tommy Campion began forwarding any correspondence he had with Archbishop Jensen at the Diocese of Sydney and Reverend Comben to the Primate. In a letter to Archbishop Jensen, dated 3 April 2007, Mr Campion first put the Archbishop on notice of his concerns about Reverend Comben being involved in his negotiations.\textsuperscript{518} In a letter to Reverend Comben, which was also sent to the Primate, Mr Campion expressed his concern that the Primate had sent a “crisp and clear message that [he] would not help the 42 victim’s [sic]”.\textsuperscript{519} In response to these letters, the Primate emphasised the importance of the victims sharing their stories with senior clergy members; victims receiving personal apologies; actively seeking out other victims to

\textsuperscript{509} Ex 3-1 McLary, Annexure RM2, at STAT.0056.001.0016
\textsuperscript{510} Ex 3-1 McLary, Annexure RM2, at STAT.0056.001.0016
\textsuperscript{511} Ex 3-1 Aspinall, Annexure AP1
\textsuperscript{512} Ex 3-1 Aspinall, Annexure AP1; Slater T2275:35-39
\textsuperscript{513} See paragraphs 145 above
\textsuperscript{514} Ex 3-1 Aspinall, Annexure AP2
\textsuperscript{515} Ex 3-1 Aspinall, Annexure AP3
\textsuperscript{516} Ex 3-1 McLary, Annexure RM5
\textsuperscript{517} McLary T1911:6-12
\textsuperscript{518} Ex 3-1 McLary, Annexure RC21, at STAT.0057.001.0121
\textsuperscript{519} Ex 3-1 McLary, Annexure RC22, at STAT.0057.001.0125
allow them to have their complaints properly heard;\textsuperscript{520} and encouraged him to separate the pastoral response of the Diocese from the negotiation of settlements.\textsuperscript{521}

247. The evidence showed that on 6 May 2007, Mr Campion wrote again to the Primate requesting and outlining his “desperate” need for counselling and questioning why the Diocese of Grafton had taken it away.\textsuperscript{522} In response to this letter, the Primate wrote to Bishop Slater expressing his concern about the withdrawal of counselling.\textsuperscript{523} The Primate offered the services of the PSD in Brisbane, Rod McLary, to assist with counselling.\textsuperscript{524}

248. By the end of May 2007 Mr Campion had heard from CD. Mr Campion wrote to the Primate describing the “appalling happenings” of abuse suffered by CD.\textsuperscript{525} Mr Campion was primarily concerned about the treatment of the group claimants and asked the Primate for assistance in dealing with this claim.\textsuperscript{526} The Primate wrote to Bishop Slater on 29 May 2007 in response to Mr Campion’s letter. In the letter the Primate emphasised for the second time that the Diocese should be proactively seeking out “other victims of abuse in the Children’s Home” and inviting “them to come forward so that they can be given the opportunity to have their complaints properly heard and be offered counselling and pastoral support.”\textsuperscript{527}

249. The Primate strongly encouraged Bishop Slater and the Diocese of Grafton to “appoint an independent professional mediator” to assist with the resolution of the claims. He indicated he thought that such a mediator would be able to provide proper consideration to the victims’ concerns about the previous processes used by the Diocese.\textsuperscript{528}

250. Moreover, the Archbishop described the abuse described by Mr Campion as “criminal offences of a most serious kind” and informed Bishop Slater that they should be reported to the police immediately.\textsuperscript{529} Rod McLary forwarded the letter received by Mr Campion to the Queensland Police Service on 31 May 2007.\textsuperscript{530} In his evidence Mr McLary stated that because the

\textsuperscript{520} Ex 3-1 Aspinall, Annexure AP8, at STAT.0078.001.0052
\textsuperscript{521} Ex 3-1 Aspinall, Annexure AP8, at STAT.0078.001.0053
\textsuperscript{522} Ex 3-1 Aspinall, Annexure AP9, at STAT.0078.001.0057_R
\textsuperscript{523} Ex 3-1 Aspinall, Annexure AP10
\textsuperscript{524} Ex 3-1 Aspinall, Annexure AP10
\textsuperscript{525} Ex 3-1 Aspinall, Annexure AP11, at STAT.0078.001.0060
\textsuperscript{526} Ex 3-1 Aspinall, Annexure AP11, at STAT.0078.001.0061
\textsuperscript{527} Ex 3-1 Aspinall, Annexure AP12
\textsuperscript{528} Ex 3-1 Aspinall, Annexure AP12
\textsuperscript{529} Ex 3-1 Aspinall, Annexure AP12
\textsuperscript{530} Ex 3-1 McLary, Annexure RM18
information was raised in a letter to the Primate and was therefore in their office “there was an obligation, consistent with [their] policy” to report the information to the police.\textsuperscript{531}

251. At the start of 2008, Mr Campion wrote again to the Primate about Bishop Slater’s lack of responsiveness, particularly in relation to CD.\textsuperscript{532} Mr Campion reminded the Primate that it had been 8 months since the initial letter from the Primate to Bishop Slater encouraging him to take action.\textsuperscript{533} On 1 February 2008 the Primate replied to Mr Campion telling him that he was unable to discuss matters which relate to another person. The Primate told Tommy that Bishop Slater had advised him that in the absence of a complaint directly from CD, the Bishop was unable to act. The Primate encouraged Mr Campion to get CD to write directly to the Bishop.\textsuperscript{534} (could we link this to the above as it repeats parts of the earlier story)

252. For 12 months Mr Campion wrote to the Primate seeking a meeting and explanations from the Archbishop.\textsuperscript{535} By February 2012 he staged a protest outside St John’s Anglican Cathedral, Brisbane.\textsuperscript{536} Eventually, Mr McLary came out of the building to meet with Mr Campion and a few hours later the Primate agreed to meet with Mr Campion. Although, the Primate agreed to the meeting, he did not, however, think that it was appropriate that Mr Campion was protesting outside the Cathedral in Brisbane.\textsuperscript{537} In his evidence, the Primate stated that he “considered this [the sign] to be misleading and untrue because it implied that Brisbane was covering up child sexual abuse”.\textsuperscript{538}

253. On 22 February 2012 the Primate met with Mr Campion and Tony Madden.\textsuperscript{539} The meeting was recorded by Mr Campion and the Primate undertook to “try to get to the bottom” of his questions about the duty of care.\textsuperscript{540} The Archbishop wrote to Bishop Slater and even though he accepted the limitations of his position as Primate\textsuperscript{541}, he agitated the issue of the duty of care\textsuperscript{542} and asked Bishop Slater to provide Mr Campion with a copy of the Constitution for the Home

\textsuperscript{531} McLary T1916:12-16
\textsuperscript{532} Ex 3-1 Aspinall, Annexure AP18A
\textsuperscript{533} Ex 3-1 Aspinall, Annexure AP18A
\textsuperscript{534} Ex 3-1 Aspinall, Annexure AP19
\textsuperscript{535} Campion T1695:20-23; Ex 3-1 Campion, [143]
\textsuperscript{536} Ex 3-1 Aspinall, [66]
\textsuperscript{537} Ex 3-1 Aspinall, [67]
\textsuperscript{538} Ex 3-1 Aspinall, [67]
\textsuperscript{539} Ex 3-1 Aspinall, Annexure AP20, at STAT.0078.001.0073
\textsuperscript{540} Ex 3-1 Aspinall, [68]
\textsuperscript{541} Ex 3-1 Aspinall, Annexure AP20, at STAT.0078.001.0074
\textsuperscript{542} Ex 3-1 Aspinall, Annexure AP20, at STAT.0078.001.0073
and other such documents.\textsuperscript{543} The Primate said that no information was forthcoming from Bishop Slater.\textsuperscript{544}

254. Even though the Primate regretted his actions and considered them “tantamount to interposing” himself in the situation,\textsuperscript{545} the Primate wrote to Bishop Slater again on 29 March 2012.\textsuperscript{546} Whilst the Primate appeared somewhat annoyed,\textsuperscript{547} he thanked Bishop Slater for the continuing discussions even though his “views were at odds with [Bishop Slater’s] own”.\textsuperscript{548} The Primate thanked Bishop Slater for agreeing to attend a meeting with Garth Blake SC and Tommy Campion so that the legal position adopted by the Diocese of Grafton could be explained to him.\textsuperscript{549} In his oral evidence Bishop Slater said that the Primate \textit{“was seeking to have a key profile legal person to present the case”} present at the meeting.\textsuperscript{550} The independent person suggested by the Primate was Tony Fitzgerald QC.\textsuperscript{551} The Primate also indicated to Bishop Slater that in his mind “the home was closely, publicly and at times explicitly identified with the Diocese of Grafton” and this was enough to establish “\textit{a continuing pastoral obligation ... to assist Tommy}”.\textsuperscript{552}

255. Bishop Slater was concerned at this time that Mr Campion would take further legal action including against the members of the executive of the Home, personally.\textsuperscript{553} He and the Chancellor told the Primate that one former committee member of the Home was elderly and they were concerned that giving Mr Campion material, like the constitution, would assist legal action. The Chancellor, Tom Blackburn SC, thought that doing so would \textit{“throw her to the wolves”}.\textsuperscript{554} He rejected the proposal to have Tony Fitzgerald participate.\textsuperscript{555} In the public hearing, when asked whether he was putting the former committee’s interest above that of Mr Campion, Bishop Slater replied, \textit{“In the reading of it yes”}.\textsuperscript{556}

\textsuperscript{543} Ex 3-1 Aspinall, Annexure AP20, at STAT.0078.001.0074
\textsuperscript{544} Ex 3-1 Aspinall, [70]
\textsuperscript{545} Ex 3-1 Aspinall, [70]
\textsuperscript{546} Ex 3-1 Aspinall, Annexure AP21
\textsuperscript{547} Slater T2298:17-27
\textsuperscript{548} Ex 3-1 Aspinall, Annexure AP21, at STAT.0078.001.0075
\textsuperscript{549} Ex 3-1 Aspinall, Annexure AP21, at STAT.0078.001.0076
\textsuperscript{550} Slater T2297:17-45
\textsuperscript{551} Ex 3-1 Aspinall, Annexure AP22, at STAT.0078.001.0077
\textsuperscript{552} Ex 3-1 Aspinall, Annexure AP 21, at STAT.0078.001.0078
\textsuperscript{553} Slater T2298:29-34
\textsuperscript{554} Ex 3-1 Aspinall, [74]; Annexure AP22, at STAT.0078.001.0078
\textsuperscript{555} Ex 3-1 Aspinall, Annexure AP22, at STAT.0078.001.0079
\textsuperscript{556} Slater T2301:42

77
256. The Primate met again with Mr Campion and Mr Madden on 9 May 2012. During the meeting, the Primate maintained the position that he can only “persuade and encourage and advise and suggest things to people in other Dioceses”. Nevertheless, Mr Campion once again reiterated that he would like to be provided with a copy of the Constitution of the Home. Mr Campion was informed by the Diocese that he was not allowed a lawyer at the meeting, was not allowed to record the meeting and he was not allowed to ask any questions at the meeting other than those about the ownership of the Home and responsibility for the children.

257. On 14 August 2012 the meeting between Garth Blake SC and Mr Campion took place. Bishop Slater and Mr Madden also attended. Afterwards Mr Campion said he did not understand what was said and that because of the restrictions the meeting was unbalanced and unfair.

Available findings:

31. In 2012 Bishop Slater preferred the interest of an elderly former member of the Home’s committee over the interests of providing a supportive and pastoral response to Tommy Campion.

32. The Primate advised the Bishop of Grafton between 2006 and 2012 that the group claimants should have their complaints properly heard and be offered counselling and pastoral support.

33. The Primate advised the Bishop of Grafton between 2006 and 2012 that he should seek out further persons who had been abused at the North Coast Children’s Home but the Bishop did not do so.

34. The Primate advised the Bishop of Grafton between 2006 and 2012 that he should inform the police of all criminal allegations which came to his attention arising out of the North Coast Children’s Home but he did not do so.

35. The Primate took steps to advise the police of criminal allegations which he was aware of having arisen from the North Coast Children’s Home.

Circumstances of the Bishop’s Resignation

258. In April 2013, Ms Hywood telephoned the Primate as she was “really concerned with what [she] had discovered about the way some of the matters” with relation to the Home had been

557 A complete transcript of the meeting appears at Ex 3-1 Campion, Annexure RC95; Ex 3-1 Aspinall, Annexure AP23
558 Ex 3-1 Aspinall, Annexure AP23, at STAT.0078.001.0086
559 Ex 3-1 Aspinall, Annexure AP23, at STAT.0078.001.0105
560 Campion [149] – [150]
561 Campion [153]
562 Ex 3-1 Campion, Annexure RC96, at STAT.0057.001.0300_R
handled. Ms Hywood thought that the Primate should “be aware of those before he responded” to the media article which Mr Campion had initiated with the Daily Telegraph. On 26 April 2013, Anne Hywood, then Acting Registrar of the Diocese of Grafton, met with the Primate in Sydney and discussed the handling of claims from former residents by the Diocese of Grafton. The Primate asked Anne Hywood to provide him with a written document outlining her concerns on the handling of claims by the Diocese of Grafton.

259. In response to the Primate’s request, Anne Hywood wrote to him on 1 May 2013 providing a detailed report and a 3 page timeline outlining the handling of child sexual abuse by the Diocese of Grafton over the last 6 years. In her report, Anne Hywood said that the Diocese’s response to child sexual abuse claims had been,

“... overly legalistic, has not been focused on the pastoral care and on-going support of survivors, has incorporated processes and responses that have incurred additional damage to individuals and. At times, has not been managed in accordance with the Professional Standards Ordinance and Protocols in place in the Diocese since 2004”.

260. Ms Hywood raised a large number of issues in her letter which have been traversed in evidence but which included: the maintenance of professional standards files in the Registry; a failure to note whether the police had been informed of allegations of sexual abuse arising out of the group claims; that post-group claimants had been advised that the Diocese was denying liability and was not prepared to offer settlements on the same basis as earlier settlements; the pastoral care package offered to CB and CC in 2011 did not mention counselling, mediation or any financial assistance; matters of sexual abuse had not been referred to the PSD Mr Elliott; and the circumstances of the meeting with Richard Campion’s meeting with Garth Blake SC and Bishop Slater were poorly negotiated and caused additional distress to Mr Campion.

261. The Primate was incensed:

“I felt a sense of anger and disbelief that after years of interacting with Grafton they had never once disclosed to me the serious matters Ms Hywood identified, nor had they accepted my offers of help”.

563 Hywood T1760:3-8
564 Ex 3-1 Hywood, [72].
565 Ex 3-1 Hywood [73]; Annexure AH18.
566 Ex 3-1 Hywood, Annexure AH18, at STAT.0061.001.0092.
567 Ex 3-1 Hywood, Annexure AH18, at STAT.0061.001.0093 to STAT.0061.001.0094; Hywood T1762:28-35
568 Ex 3-1 Aspinall [82]
262. On 8 May 2013, Primate wrote to Bishop Slater requesting a meeting. A meeting was held on 10 May 2013 between the Primate, Bishop Slater and General Secretary, Martin Drevikovsky. The Primate showed Anne Hywood’s report of 1 May 2013 to Bishop Slater and identified a number of failings relating to the Diocese’s adherence to Professional Standards Canon and Protocol, as well as Bishop Slater’s repeated failures in pastoral responsibilities. During the meeting, the Primate stated Bishop Slater’s continuance as Bishop of Grafton is “untenable”. He suggested that one of the avenues to address these failings was for Bishop Slater to resign as Bishop of Grafton.

263. On 11 May 2013, a teleconference was held between Anne Hywood, Bishop Slater, Archdeacon Greg Ezzy, Archdeacon Gail Hagon and Father Donald Kirk regarding Ms Hywood’s report of 1 May 2013. On 14 May 2013, Anne Hywood wrote to Primate of Australia clarifying some factual matters of the 1 May 2013 Report raised in the meeting of 11 May 2013 with Bishop Slater. Despite these clarifications, Anne Hywood confirmed in her oral evidence that her view on the handling of claims and whether the protocol was complied with did not change.

264. On 17 May 2013, Bishop Slater issued a media statement responding to the management of claims of abuse by the Diocese of Grafton. He said:

“I acknowledge that I was responsible for ensuring full compliance with the Protocol and that I failed in this duty. Some matters dealing with sexual abuse at the North Coast Children’s Home were not referred to the Professional Standards Director as they should have been.”

265. Bishop Slater then went on to address the failure of CB’s and CC’s matters referred to the professional standards director:

“I apologise to those complainants who were not given access to the Professional Standards Director. I also acknowledge that, by not referring these matters, the Professional Standards Director was not provided with information that could have assisted ongoing internal and Police Investigations.”

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569 Ex 3-1 Aspinall, Annexure AP26
570 Ex 3-1 Aspinall, [84]
571 Ex 3-1 Aspinall, Annexure AP27, at STAT.0078.001.0125_R to STAT.0078.001.0126_R
572 Ex 3-1 Aspinall, Annexure AP27, at STAT.0078.001.0129_R
573 Ex 3-1 Hywood, [76]
574 Ex 3-1 Hywood [76]-[77]
575 Ex 3-1 Hywood [78]; Hywood 1773:2-14
576 Ex 3-1 Hywood, Annexure AH22
577 Ex 3-1 Hywood, Annexure AH22, at STAT.0061.001.0109
578 Slater T2311:33-46
579 Ex 3-1 Hywood, Annexure AH22, at STAT.0061.001.0109
266. Bishop Slater acknowledged the different position taken with respect to the claims of CB, CC, the group claim:\(^{580}\)

“... I acknowledge that the Diocese of Grafton should have received and investigated each new claim put before it and that there was no justification for the decision that new claims would not have access to the same financial settlement process made available to the earlier claims ...” \(^{581}\)

267. Anne Hywood, who assisted in drafting the media statement, said that even if a legalistic approach is taken with respect to these matters, it is also important that they are properly dealt with through the Professional Standards Ordinance and Protocol.\(^{582}\) Bishop Slater went on in his media release to say,

“As the claimants were represented by a solicitor the Diocese engaged a solicitor to facilitate the process. This set a precedent of responding to all subsequent claims with the supports and advice of a Diocesan solicitor. This does not excuse the failings I have detailed as, even though the financial settlements were being negotiated through the solicitors, those claims alleging sexual abuse, should have been concurrently managed in accordance with the Professional Standards”.\(^{583}\)

268. Bishop Slater then addressed the inadequate response through the pastoral care and support package, and resigned accordingly as Bishop of Grafton:\(^{584}\)

“...I acknowledge that our offer of a pastoral care package was poorly communicated and did not provide an adequate response to meet the immediate needs of the complainants. I acknowledge my pastoral failings in adopting this approach”.\(^{585}\)

269. Upon Bishop Slater’s resignation on 17 May 2013, Archdeacon Greg Ezzy was automatically installed by ordinance as Diocesan Administrator.\(^{586}\) Anne Hywood continued as Registrar of Diocese of Grafton until 14 October 2013.\(^{587}\)

Available findings:

36. The Bishop of Grafton, Keith Slater, failed to refer allegations of sexual abuse at the Home to the Professional Standards Director that could have assisted ongoing internal and police investigations

\(^{580}\) Slater T2312:1-20
\(^{581}\) Ex 3-1 Hywood, Annexure AH22, at STAT.0061.001.0109
\(^{582}\) Hywood T1776:13-23
\(^{583}\) Ex 3-1 Hywood, Annexure AH22, at STAT.0061.001.0110
\(^{584}\) Slater T2312:22-32
\(^{585}\) Ex 3-1 Hywood, Annexure AH22, at STAT.0061.001.0109
\(^{586}\) Ex 3-1 Ezzy, [33]
\(^{587}\) Hywood T1776:28-44
37. The Bishop of Grafton and the Diocese of Grafton should have managed the process under the Protocol at the same time as the group claim was being handled between the Diocesan solicitor and the claimants’ solicitor.

FINANCIAL POSITION OF THE DIOCESE OF GRAFTON

270. As mentioned above, representatives of the Diocese including the Bishop and the Registrar restricted or refused financial settlements for those abused as children at the Home on the grounds of inadequate financial resources. First, early in 2006 Mr Campion was told that there were insufficient funds for the counselling he was then undertaking. Second, the amount agreed on to settle the group claims was agreed on the basis that the Diocese wanted to minimise the financial impost on it\(^{588}\) and not what was a fair and reasonable financial component to provide redress for the abused former residents. Third, post-group claimants were denied a financial component because the Diocese could no longer afford such claims having incurred the significant Clarence Valley Anglican School debt.

271. The Royal Commission heard substantial evidence about the financial state of the Diocese and the Corporate Trustees of the Diocese of Grafton including from the then Bishop, Registrars Reverend Comben, Newby and Hywood who had primary responsibility for the finances as well as financial records.

The two entities: the Diocese of Grafton and the Corporate Trustees of the Diocese of Grafton

272. The Diocese of Grafton (“the Diocese”) is a separate entity to the Corporate Trustees of the Diocese of Grafton (“the Corporate Trustees”). The Diocese of Grafton is an unincorporated association whereas the Corporate Trustees is a corporation constituted pursuant to s. 5 of the Anglican Church of Australia Trust Property Act 1917 ("the Trust Property Act").\(^ {589}\) Mr Roland and Garth Blake SC both maintained throughout the group claim that that the Diocese is not a “juridical person” and, although it was not strictly necessary to determine that fact in the public hearing, it may be accepted as a matter of fact and law that was correct.\(^ {590}\) Absence of legal personality was, of course, a primary argument the Diocese relied on to defend the claims of abuse at the Home.

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\(^{588}\) Roland T2067:25-34  
\(^{589}\) Ex 3-2 Tab 123, at ANG.9320.01103.0152_R  
\(^{590}\) Roland T2025:19; Comben T2133:43; see Trustees of the Roman Catholic Church v Ellis [2007] NSWCA 117 at [47] per Mason P
273. Substantial assets are held on trust for the Diocese by the Corporate Trustees under the *Trust Property Act*. It is worth noting that s. 26(1) of the *Trust Property Act* allows the diocesan synod to direct that property held by the Trustees be sold, exchanged, mortgaged etc where the synod determines it is “expedient by reason of circumstances subsequent to the creation of the trust”.

274. The Corporate Trustees also operate an investment fund, the Grafton Diocese Investment Fund, which seeks charitable contributions as well as investments from investors. Investors include parishioners and the Diocese. The Fund contributes toward Diocesan projects, including through the provision of funds through loans to the Diocese.

275. The finances of the Diocese are reported annually through two sets of financial records which reflect the separation between the Diocese and the Corporate Trustees.

**Financial records 2005 - 2013**

**Financial position of the Diocese 2005 – 2007 (Group claim period)**

276. The financial records of the Diocese and of the Corporate Trustees show that at the end of 2005, the net assets of the Diocese and of the Corporate Trustees were $2.8 million and $11.6 million respectively.

277. The net assets of the Diocese were relatively stable across 2005 - 2007, and the Diocese reported having total current assets of $1.3 million, $950 000 and $1.4 million in the years 2005, 2006 and 2007 respectively.

278. However, the net assets of the Corporate Trustees were reported as having significantly increased from $11.6 million in 2006 to over $181 million, rising again in 2007 to almost $209 million. Reverend Comben gave evidence that this increase was the result of changing audit practice to ensure that all real estate assets were accounted for on the balance sheet.

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591 Ex 3-13; Comben T2217:34-35
592 Newby T1888:32-44; Newby T1889:18-27
593 Ex 3-13
594 Ex 3-13
595 Ex 3-13
596 Ex 3-13
597 Comben T2214:3-15
Financial position of the Diocese 2008 – 2011 (post-group claim period)

279. At the end of 2008, the Diocese reported an operating loss of almost $850 000, but net assets of $3.2 million. This trend continued in 2009, with an operating loss of about $1.1 million, but net assets of $5 million.

280. The Corporate Trustees reported a loss in net assets in 2008 and 2009, but still had almost $180 million and $140 million in equity in those years respectively. Reverend Comben speculated that the drop was the result of re-valuation of property in the wake of the global financial crisis.598

281. In 2010 and 2011, the Diocese again reported operating losses of $160 000 and $75 000, but maintained net assets in both years of $4.9 million and $4.4 million respectively. The financial records for the Corporate Trustees were not produced for these years.

Figure 1 -Summary of financial statements: 2005 - 2012

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<tr>
<td>Net profit/loss</td>
<td>-85,020</td>
<td>837,977</td>
<td>149,119</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>283,009</td>
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<tr>
<td>Total current assets</td>
<td>1,330,830</td>
<td>954,042</td>
<td>1,491,628</td>
<td>778,710</td>
<td>696,911</td>
<td>1,532,321</td>
<td>607,123</td>
<td>837,444</td>
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<tr>
<td>Total non-current assets</td>
<td>1,859,653</td>
<td>2,702,261</td>
<td>2,037,787</td>
<td>3,161,093</td>
<td>5,384,353</td>
<td>5,523,428</td>
<td>5,107,727</td>
<td>5,133,620</td>
</tr>
<tr>
<td>Net assets (total equity)</td>
<td>2,833,190</td>
<td>2,427,698</td>
<td>2,675,459</td>
<td>3,213,312</td>
<td>5,053,126</td>
<td>5,034,120</td>
<td>4,918,814</td>
<td>4,409,689</td>
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</table>

598 Comben T2218:35-47; T2219:1-2
599 The financial papers indicate that a correction was made to account for a previous error. The ‘Extraordinary item’ reported, valued at $496 962, resulted in Diocese reporting a net loss. Otherwise, the Diocese would have reported a profit of around $400 000.
600 The Diocese was able to report a profit after other items (‘Synod plan reserve’ and ‘transfer from trust reserves’) totalling $381 956 were added to the bottom line figure, which was originally -$98 947.
Corporate Trustees of the Diocese of Grafton

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total current assets</td>
<td>12,075,502</td>
<td>13,027,642</td>
<td>6,359,799</td>
<td>7,430,049</td>
<td>9,629,344</td>
<td>-</td>
<td>-</td>
<td>13,343,856</td>
</tr>
<tr>
<td>Total non-current assets</td>
<td>5,228,360</td>
<td>196,211,280</td>
<td>229,751,195</td>
<td>191,211,404</td>
<td>158,534,975</td>
<td>-</td>
<td>-</td>
<td>187,082,237</td>
</tr>
<tr>
<td>Net assets (total equity)</td>
<td>11,633,822</td>
<td>181,725,901</td>
<td>208,958,118</td>
<td>178,065,447</td>
<td>140,860,463</td>
<td>-</td>
<td>-</td>
<td>154,937,155</td>
</tr>
</tbody>
</table>

**The impact of financial considerations on the approach taken by the Diocese to claims arising from allegations of sexual abuse**

282. The Royal Commission did not receive financial records for years prior to 2005. However, there is some evidence that in 2004, the Diocese had substantial funds available to it which were sitting in a number of internal accounts. This was despite the Registrar being informed around that time that the Diocese was “poor”. By 2005, Reverend Comben gave evidence that the Diocese had cash reserves in the region of a “couple of million dollars”. 604

283. However, by mid-February 2006, Reverend Comben asserted in correspondence to Mr Campion that the Diocese was in a tight financial position in terms of its ability to pay claims or to provide financial assistance arising from allegations of abuse at the North Coast Children’s Home. That the Diocese was in a difficult position was reiterated by Reverend Comben to Ms Woodhouse in March 2006, and Reverend Comben gave evidence that it was early that year that he became aware of debts owed by the Diocese to the Grafton Diocese Investment Fund.

284. Reverend Comben said that by the middle of 2006, he had become aware of a substantial debt carried by Clarence Valley Anglican School. Reverend Comben’s successor, Mr Newby, gave evidence that the debt was incurred in the early to mid-1990s, and that the Diocese had attempted to implement ‘rescue packages’ in the early 2000s to provide debt relief for the
School. This was achieved through a program of mortgaging Diocesan assets to provide debt relief.609

285. Further, by the end of 2006, Reverend Comben advised that the financial position of the Diocese had taken a significant hit as a result of property speculation that had resulted in the Diocese bearing a loss of about $1 million.610

286. As noted at paragraph [278], the 2006 financial statements recorded a significant increase in the equity of the Corporate Trustees from the previous year.

287. In his evidence Reverend Comben conceded that the Diocese had “very substantial” assets, comprising non-current assets in the region of $190 million and current assets of $13 million, at the end of 2006.611 However, he disagreed that the Diocese was in a healthy financial position, suggesting it was “asset rich and cash poor”.612 No steps appear to have been taken until late 2007 to address the school debt.

288. By the end of 2007, the financial strain arising from the debt carried by Clarence Valley Anglican School resulted in a motion by Bishop-in-Council to provide the Board of the Grafton Diocese Investment Fund, which had extended loan monies to Clarence Valley Anglican School, with an “irrevocable guarantee” for the loans, which totalled approximately $12 million.613

289. The evidence shows that Bishop Slater chaired the meeting of Bishop-in-Council held on 6 December 2007 at which the decision was taken to guarantee the loans of the School. Reverend Comben participated in the meeting by teleconference in respect of the agenda item relating to the Clarence Valley Anglican School.614

290. The evidence suggests that the Bishop, Bishop-in-Council and Reverend Comben adopted a legalistic and ‘hard line’ approach to the group claims as a strategy to manage the potentially “calamitous” financial impact that the group claims could have had on the Diocese had they been successfully litigated.

609 Newby T1884:47; T1885:1-13
610 Comben T2112:3-4
611 Comben T2215:1-9
612 Comben T2215:1-9
613 Ex 3-2 Tab 101A, at ANG.9320.01804.0633 – ANG.9320.01804.0633
614 Ex 3-2 Tab 101A, at ANG.9320.01804.0631_E
615 Roland T2049:43
However, the evidence also shows that the Diocese was in fact able to identify and realise assets to respond to other financial pressures, most notably the guaranteeing of the loans to the Grafton Diocese Investment Fund incurred by the Clarence Valley Anglican School. The Corporate Trustees provided evidence that they had sold property in the years 2006 and 2007 which resulted in over $3 million being realised.\textsuperscript{616}

Mr Newby took on the role of Registrar in the Diocese of Grafton on or about 1 September 2010,\textsuperscript{617} and reported that he was at first unaware of the financial trouble facing the Diocese, which was largely attributable to the debt of the Clarence Valley Anglican School.\textsuperscript{618}

Mr Newby said that the school debt alone required finding funds in the region of about $10 million, and that the strategy would require the sale of Diocesan assets.\textsuperscript{619} To develop a strategy to enable the Diocese to sell assets, Mr Newby established an independent oversight committee (‘IOC’).\textsuperscript{620}

At a meeting held at the offices of the General Secretary of the General Synod, Mr Drevikovsky, nominations were put forward by some of the larger dioceses in the country. Members of the Committee were drawn from the Anglican Dioceses of Perth, Sydney and Adelaide, and each member brought experience from various corporate backgrounds, including in commercial and corporate law, and corporate executives.\textsuperscript{621} The Committee was chaired by Mr Allan Perryman.\textsuperscript{622}

Mr Newby told the Commission that the Committee was focused on how to ‘shore up’ lines of credit which had been in place to manage the unsecured loans to the school from the Grafton Diocese Investment Fund.\textsuperscript{623} This was achieved through additional lines of credit provided to the Grafton Diocese by the Dioceses of Adelaide and Perth on a commercial basis.\textsuperscript{624}

The establishment of the Committee was supported through the involvement of the General Secretary of the General Synod in Sydney. The Committee, and the strategies it developed, also

\textsuperscript{616} Ex 3-2 Tab 125E at ANG.0013.001.0002, Corporate Trustees schedule of asset sales 2006-2009
\textsuperscript{617} Ex 3-1 Newby, [12]; Newby T1884:2-5
\textsuperscript{618} Ex 3-1 Newby, [12]; Newby T1884:31-33
\textsuperscript{619} Ex 3-1 Newby, [12], [13]
\textsuperscript{620} Ex 3-1 Newby, [14]; Newby T1887:46-47; T1888:1-2.
\textsuperscript{621} Ex 3-1 Newby, [14]
\textsuperscript{622} Newby T1888:4-16.
\textsuperscript{623} Newby T1888:30-36.
\textsuperscript{624} Newby T1888:38-44.
had the support and resources of three of the largest Dioceses in the country, which were
designed to assist Grafton to meet its financial obligations arising from the Clarence Valley
Anglican School debt from early 2010.

297. In contrast to the efforts made to meet that debt no such efforts were made to sell assets or
establish additional lines of credit in 2006-2012 to service the claims of those who had come
forward complaining of abuse at the Home. Provisioning for professional standards liabilities
was made on the basis of incurred liabilities.625

298. When senior officers of the Diocese said there was “no money” or little funds for compensating
the former residents of the Home who had been abused they, in fact, meant that there was no
available pool of funds or allocated budget for such matters. There were clearly sufficient assets
to meet such claims, even if they reached $4m as Reverend Comben argued they could. The
primary reason for the Diocese’s position was that they were asset rich but cash poor626 but had
not taken steps to liquidate assets to meet the Diocese’s obligations to pay financial settlements
to former residents of the Home who had been abused.

Available findings:

38. The Diocese of Grafton failed to make provision for the settling of claims of child sexual

39. The Diocese of Grafton gave precedence to the debt arising from the Clarence Valley
Anglican School over the settling of claims of child sexual abuse during the period 2007-
2012.

40. The Diocese of Grafton had sufficient assets either in its name or the Corporate Trustees
of the Diocese of Grafton to meet the financial component needed to settle claims of
child sexual abuse.

41. The Diocese of Grafton put the interests of the Anglican Church ahead of providing
financial compensation to victims of child sexual abuse.

DIOCESE OF GRAFTON CHANGES ITS APPROACH

299. The approach of the Diocese of Grafton to the handling of complaints of sexual abuse changed
following the commencement of Anne Hywood as acting Registrar in January 2013. As set out
above, after receiving Ms Hywood’s letter in January 2013 Michael Elliott sought further

625 Comben T2217:3-14
626 Hywood T1758:39; Comben T2219:4-9
communication with CB and CC, and subsequently referred their claims of sexual abuse as well as the claims in the detailed schedule to the police.627

300. From 2009 Michael Elliott had been engaged on an hourly basis to perform the role of the PSD in the Diocese of Grafton. While based in Newcastle he performed the role of PSD for the Dioceses of Newcastle and Armidale. After he discovered that the claims of CB and CC had not been referred to him he threatened to resign.628 He later changed his mind and through Ms Hywood was able to renegotiate his contract with the Diocese of Grafton. The Diocese now pays $20 000 per annum for Michael Elliott’s services as PSD629 and he is no longer the PSD for Armidale.630 Mr Elliott’s location in the Diocese of Newcastle and the “on call” relationship up until 2013 compounded problems of communications with the senior members of the Diocese including, as have seen, how the claims of CB and CC were handled. If such arrangements are to be adopted then particular emphasis needs to be given to ensuring that channels of reporting and communication are both robust and regularly reviewed to ensure appropriate assistance in professional standards matters and independence of the PSD.

301. On 27 June 2013, Anne Hywood presented a paper to Bishop-in-Council proposing a revised pastoral and care assistance package adapted from that adopted in Diocese of Sydney. She was unaware that Bishop-in-Council had adopted the Sydney Care and Assistance package in November 2005. On 26 September 2013 a draft pastoral care and assistance scheme was put to Bishop-in-Council and was resolved that more work needed to be done on the draft.631 A new pastoral care and assistance package was eventually passed at the Bishop-in-Council meeting on or around October 2013.632

302. The new pastoral care and assistance package is a truncated version of the Pastoral Care and Assistance Scheme of the Diocese of Sydney 2005 and does not contain the detailed processes set out in the Sydney Care and Assistance Package. The scheme has a financial cap with a maximum amount of $75 000 under a Schedule of Financial Assistance, in contrast to Anne Hywood’s proposal of an open ended financial component similar to the Diocese of Adelaide’s program Healing Steps. (Whether a cap on financial settlement of claims was preferable was

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627 Elliott T2355:45 – T2356:21
628 Ex 3-1 Elliott, Annexure ME32
629 Hywood T1741:7-22; Hywood T1742:6-11
630 Ex 3-1 Elliott, [59]
631 Ex 3-1 Hywood, [93]
632 Ezzy T2341:10-12; Hywood T1786:1-4; Ezzy T2342:1-7

89
not a matter explored during this case study but is likely to be the subject of further examination by the Royal Commission.)

303. On or around May 2013, Archdeacon Greg Ezzy, the newly appointed Administrator of the Diocese, asked the PSD and the PSC to review all abuse claims that were not investigated through the normal protocol, including the 41 claims of the North Coast Children’s Home.\(^{633}\) The PSD and PSC provided the Diocese with a recommendation that each claimant should be paid at the level requested by the PSC.\(^{634}\) Archdeacon Ezzy told the Royal Commission that the new pastoral care and assistance scheme will apply retrospectively to all 41 claimants at North Coast Children’s Home.\(^{635}\)

304. In or around June 2013, Reverend David Hanger was appointed as Chair of the PSC. By then the PSD had already started the process of re-engaging with CB and CC and following initial assessment an emergency payment of $5 000 was sent to each, in recognition of acute financial need, and in anticipation of a full assessment.\(^{636}\) On 16 November 2013, with the approval of Greg Ezzy, Reverend Hanger wrote to CA, CB and CC and offered each of them a financial settlement of $75 000 being an amount recommended by the PSC.\(^{637}\) Archdeacon Ezzy gave evidence that the Diocese would take out a commercial loan to pay for any financial settlements until assets could be found that are saleable.\(^{638}\)

305. Archdeacon Ezzy said that the PSC had advised him that there may be additional claims in the future and that this may involve substantial compensation.\(^{639}\)

306. On 5 September 2013, a public apology was published in the a number of newspapers including the Sydney Morning Herald addressed to the North Coast Children’s Home abuse victims at the Administrator’s request:

“The Anglican Diocese of Grafton apologises unreservedly to children who, in the past, suffered from sexual abuse, harsh punishment or a lack of appropriate and nurturing care while resident at the North Coast Children’s Home.

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\(^{633}\) Ex 3-1 Ezzy, [54]  
\(^{634}\) Ezzy T2340:13-22  
\(^{635}\) Ezzy T2342:20-32  
\(^{636}\) Ex 3-19 Tabs 5 and 6 :ANG.0026.001.0011_R; ANG.0026.001.0009_R  
\(^{637}\) Ezzy T2340:13-36; Ex 3-19 Tabs 4, 5, and 6, ANG.0026.001.008_R, ANG.0026.001.0011_R; ANG.0026.001.0009_R  
\(^{638}\) Ex 3-1 Ezzy, [58]  
\(^{639}\) Ezzy T2340:40-43
We also apologise, and ask forgiveness, for the unacceptable manner in which those in recent years reported their abuse were hindered by church leaders.

Our Diocese acknowledges with sadness the serious and long term effects of such abuse. We are committed to assist in the provision of appropriate support and assistance for those who were harmed and who continue to suffer.

Survivors of abuse from the North Coast Children’s Home are invited and encouraged to make contact with the Director of Professional Standards, to enable the church to assist in providing support that might facilitate healing and to deal fairly and appropriately with those accused of causing harm”.

307. As a victim of child sexual abuse, Richard Campion responded to the public apology:

“Yes, they apologised, but, yes, the duty of care went out the door. They say, you know, ‘people who suffered from sexual abuse, harsh punishment’, and all that, but of course they won’t admit themselves that the church were to blame and in having the duty of care or the responsibility to protect the children. However, that’s already been done.”

Available recommendation:

1. That the Diocese of Grafton develop a detailed care and assistance package to supplement the Professional Standards Ordinance 2004 and its Protocol to ensure that both the members of the Diocese of Grafton and any claimants may properly understand the operation of the care and assistance package.

2. That the Diocese of Grafton regularly review the operation of its professional standards processes to ensure that the both the Professional Standards Ordinance 2004 and its Protocol are fully complied with and the professional standards director and professional standards committee are appraised of all outstanding claims of sexual abuse.

DISCIPLINE OF CLERGY

308. An integral part of the professional standards process within the dioceses of the Anglican Church is the disciplining of clergy and other church workers. The public hearing considered whether those who were alleged to or had been found to have engaged in child sexual abuse were disciplined by the relevant bodies established to undertake those tasks. The hearing focussed on the former Rev Allan Kitchingman who had sexually abused CH at the Home and was convicted of 5 counts of indecent assault in 2002. It also considered what disciplinary action, if any, had been taken against Rev Brown and Rev Morgan both of whom were accused of having sexually abused children at the Home.

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640 Ex 3-1 Ezzy, GE20.
641 Campion T1703:1-7
Reverend Kitchingman

309. Reverend Allan Kitchingman was ordained in 1963 and spent the next five years serving as a priest in parishes in the Diocese of Newcastle. In 1968 Reverend Kitchingman was charged with indecent assault of a 16-year-old boy. Bishop James Housden of Newcastle provided a reference for Reverend Kitchingman to the Newcastle Court of Quarter Sessions. On 12 December 1968 Rev Kitchingman was convicted and placed on a bond for two years in his own recognisance for $300.

310. Bishop Housden arranged for Rev Kitchingman to be transferred to the Parish of Lismore, in the Diocese of Grafton to work closely with Archdeacon John Robinson, the Rector of Lismore and the chair of the North Coast Children’s Home. After his position as Curate and Assistant Priest at the Home from 1969-70, Rev Kitchingman moved between parishes within the Dioceses of Grafton, Armidale and the Northern Territory becoming the Administrator of the Northern Territory, until he retired to the Diocese of Newcastle in 2000.

311. In 2002 Reverend Kitchingman was convicted of 5 counts of indecent assault of a male in or about 1975 and was sentenced to a term of imprisonment. In 1975 the victim, CH, was a resident of the Home and Reverend Kitchingman provided pastoral care to the children at the Home including teaching them music. Relevantly for the question of jurisdiction Rev Kitchingman was resident within the Diocese of Newcastle before and after he was imprisoned. He was charged and convicted of acts which took place in the Home in the Diocese of Grafton which also gave the Diocese of Grafton jurisdiction over his discipline.

312. In 2002 clergy discipline in Newcastle came under the Clergy Discipline Ordinance 1966-2003. As described in more detail above, the Bishop could ‘charge’ a member of clergy for an

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642 Ex 3-2 Tab 57
643 Ex 3-2 Tab 158. Such an act is no longer an offence in NSW following the decriminalisation of homosexuality and the lowering of the age of consent to 16 years.
644 Ex 3-2 Tab 9A
645 Ex 3-2 Tab 10
646 Ex 3-2 Tab 9, 10
647 Ex 3-2 Tab 11
648 TB tab 57 ANG.0002.001.0048
649 Ex 3-1, Gerber, Annexure PG3, STAT.0063.001.0070_R; STAT.0063.001.0085 – STAT.0063.001.0086
651 Gerber T1951:39-41
652 Herft [27], Annexure RH16
653 See section entitled Discipline in the Dioceses of Grafton and Newcastle
offence (defined broadly under the Ordinance) and refer the matter to a diocesan tribunal to hear the matter and inform the Bishop of its recommendations. The diocesan tribunal has jurisdiction to hear a ‘charge’ against a member of clergy for an offence involving sexual misconduct, or a criminal offence punishable by 12 months or more, if the clergyman was resident in the diocese within two years before the charge was laid.654 The Bishop may give effect to any recommendation made by the tribunal or, in certain circumstances, exercise his prerogative to mitigate and/or suspend the sanction.

313. Mr Gerber gave evidence that, in the period of 2002 to 2004 there was usually an informal agreement between the Dioceses as to which would take responsibility for disciplinary action.655

314. In 2002 the current Archbishop of Perth, Roger Herft was the Bishop of Newcastle.656 On 20 August 2002, Archbishop Herft received a media release and an article dated 6 August 2002 about Mr Kitchingman’s conviction.657 Archbishop Herft said that he knew prior to the statement in 20 August 2002 that Kitchingman had in 1968 pleaded guilty to certain offences as he was told by Dean Lawrence.658 When he discovered that the 1968 offence had not been put to the sentencing judge he took legal advice and caused the apparent omission to be referred to the DPP.659

315. Archbishop Herft gave evidence that he also contacted the Bishop of Grafton, Reverend Philip Huggins, who told him that the matter was in relation to a Home in Lismore and was proceeding to compensation.660 When asked if there had been any discussion with the Bishop of Grafton as to what should be done given that Reverend Kitchingman was ordained as a priest, Archbishop Herft said that he did not discuss it and he thought the Bishop of Grafton would take appropriate action.661

316. In his statement, Archbishop Herft said that as a Bishop under canonical law he could only “defrock” or relinquish the licence of a member of the clergy if that person had a licence. He said that Kitchingman did not have an official function in the life of the Diocese of Newcastle

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654 Ex 3-1 Herft, Annexure RH17, Constitution s. 54(2A), at STAT.0073.001.0088
655 Gerber T1952:1-15
656 Ex 3-1 Herft, [4]
657 Ex 3-1 Herft, [9]
658 Ex 3-1 Herft, [9]
659 Ex 3-1 Herft Annexure RH10
660 Herft T2412:15-32
661 Herft T2412:34-45
and the defrocking was not relevant because he was not licensed. This statement differed from his oral evidence.

317. Archbishop Herft gave oral evidence that in 2002 deposing a person from holy orders was, as he understood, rarely, if ever used and a process he could not do on his own. He understood that in the Diocese of Newcastle at the time it would have to go through disciplinary tribunals, and then as a consequence of the tribunal’s determination, he could receive a recommendation to depose that clergy from holy orders. Archbishop Herft agreed he could have initiated the process in 2002, but did not. This was due to, on the one hand, not having the knowledge of the powers that were available to him at the time and, secondly, he was under the impression that Grafton had gone further down the track on Kitchingman’s matter and that Grafton would complete the process. He agreed that he could have sought advice about his powers to discipline Rev Kitchingman but did not do so. He also agreed that he did not confirm that the Diocese of Grafton would initiate the necessary disciplinary action against Rev Kitchingman.

318. Archbishop Herft said that his current view was that if the conviction was brought to his attention now, he would seek ways and means of deposing Kitchingman from his position as an ordained person of the church.

319. As described above, Section 20(2) of the Professional Standards Ordinance 2004 imposes both a power and a duty on the Professional Standards Committee to exercise its functions which fall within its jurisdiction. Phillip Gerber acknowledged that on the basis of Mr Kitchingman’s residence and where the offence took place, both the Newcastle and Grafton Dioceses had jurisdiction to take disciplinary action.

320. Bishop Slater gave evidence that he knew that Rev Kitchingman had been gaol ed and that Grafton had jurisdiction over Reverend Kitchingman’s offending conduct as it had occurred in the Diocese. However, between his commencement as Bishop of Grafton in 2003 and when

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662 Ex 3-1 Herft, [26]
663 Herft T2414:34-44
664 Herft T2414:46-2415:2
665 Herft T2415:8-20
666 Herft T2412:15-20
667 Herft T2415:13-27
668 Herft T2414:26-30
669 Gerber T1951:43-46
670 Slater T2308:47-2309:5
671 Slater T2309: 17-20
he resigned in 2013 he conceded he did not take any steps to commence disciplinary proceedings at all against Rev Kitchingman.672 He said that the failure to refer Rev Kitchingman for disciplinary proceedings was “an oversight”.673

321. Reverend Comben gave evidence that he did not become aware of Rev Kitchingman’s conviction until the end of 2004 and that he did not take any steps to pursue any form of disciplinary charges against him between 2004 (when he first became aware) and 2009 (when he ceased to be Registrar).674 Reverend Comben gave evidence that he drew the matter of Rev Kitchingman to Bishop Slater’s attention when he was pursuing the matter of Reverend Brown and when he became aware that Reverend Kitchingman’s name still appeared (as clergy) in the Anglican directory.675 Reverend Comben also gave evidence that he believed Bishop Slater told him to tell the Newcastle Diocese, so he phoned Phillip Gerber who he thought then wrote to Newcastle more formally.676

322. Mr Gerber also gave evidence that during his time as Professional Standards Director for the various dioceses (April 2000 to mid-2009)677 he did not take any steps to commence disciplinary proceedings against Rev Kitchingman.678 Mr Gerber was certainly aware of the criminal offences committed by Rev Kitchingman because in July 2006 CH filed personal injury proceedings in the NSW Supreme Court specifically referring to the conviction with respect to the assaults on CH and those pleadings were received by Mr Gerber.679 Mr Gerber did not take action to commence disciplinary proceedings even after receiving the pleadings.680

323. Mr Gerber stated that the reasons he did not act included “reacting to what Newcastle Diocese wanted me to do, for better or worse” and “in my mind, [Reverend Kitchingman] had been convicted and he was now no longer practising... [W]e were focussing on .... protecting children ... [and] that was a case that didn’t require proactive action at the time”.681 Further, in oral evidence Mr Gerber agreed that he was effectively hampered by being in Sydney and not being

672 Slater T2309:7-15
673 Slater T2309: 22-27
674 Comben T2201:34 - T2202:10
675 Comben T2202:12-30
676 Comben T2202:33-36. The document, if it exists, was not produced to the Royal Commission.
677 Ex 3-1 Gerber, [6]
678 Gerber T1946:8-14
679 Ex 3-1 Santone, [6] - [8]; Annexure CS2, CS3; Ex 3-1 Gerber, PG9, PG11, PG15
681 Gerber T1946:16-35
able to be in touch with people within the Diocese of Newcastle to be able to understand the nature of Kitchingman’s involvement with the Diocese during that time.682

324. The current Diocesan Administrator for the Diocese of Grafton, Gregory Ezzy (who commenced in the role in May 2013)683 informed the Royal Commission that,

“... as the Professional Standards Committee was not called upon to undertake its role to any appropriate degree following the revelations in 2006 and Allan Kitchingman’s conviction, that the procedures for disciplinary action that can arise from that Committee, have not been acted upon”684

325. As set out above, the Diocese of Newcastle adopted its Professional Standards Ordinance in 2005685 which although not identical to that adopted in Grafton in 2004 provides the Diocese of Newcastle with powers to commence disciplinary proceedings against a member of clergy resident in the diocese. Kitchingman retired to the Newcastle Diocese in 2000 and lives there currently.686

326. In November 2013, the Bishop Administrator of the Anglican Diocese of Newcastle Dr Peter Stuart confirmed that no disciplinary proceedings had been commenced in the Diocese of Newcastle with regard to Mr Kitchingman at any time after 2002.687

327. Michael Elliott, PSD for both Grafton and Newcastle, informed the Royal Commission that Rev Kitchingman has been referred to the Grafton PSC for appropriate disciplinary action.688

Available findings:

42. In 2002 then Bishop of Newcastle, Roger Herft, became aware that Reverend Allan Kitchingman had been convicted of five counts of indecent assault of a child at an Anglican home in the Diocese of Grafton.

43. In the period 2002-2004,689 then Bishop Herft failed to take any disciplinary proceedings against Reverend Kitchingman.

44. From 2002 the Diocese of Grafton had both jurisdiction and authority to discipline Reverend Kitchingman but did not do so.

682 Gerber T1948:23-28
683 Ex 3-1 Ezzy, [3]
684 Ex 3-2 Tab 161, at ANG.0002.001.0047
685 Ex 3-1 Herft, Annexure RH18. The ordinance was further amended in 2006, 2007 and 2010 and is in evidence: Ex 3-3 Tab 4A.
686 Ex 3-2 Tab 57
687 Ex 3-2 tab161A, at ANG.0019.001.0001_R
688 Elliott T2356:29-36
689 Archbishop Herft ceased being Bishop of Newcastle in February 2004.
45. From 2006 Phillip Gerber, as professional standards director of Grafton and Newcastle, was aware that Reverend Kitchingman had been convicted of sexual offences against a child but failed to commence disciplinary proceedings against Reverend Kitchingman.

46. From 2002 the Bishop of the Diocese of Grafton was aware that Reverend Kitchingman had been convicted of sexual offences against a child but failed to commence disciplinary proceedings against him.

47. From 2004 the Registrar of the Diocese of Grafton, Reverend Comben, was aware that Reverend Kitchingman had been convicted of sexual offences against a child but failed to cause disciplinary proceedings to be commenced against Reverend Kitchingman.

48. From the date of Reverend Kitchingman’s conviction in 2002 to 2013, no disciplinary action was taken against Reverend Kitchingman by either the Diocese of Newcastle or the Diocese of Grafton.

Reverends Brown and Morgan

328. On 29 August 2005, Tommy Campion wrote a letter to the Anglican Church of Australia’s Sydney address in which he named Reverend Campbell Brown as a perpetrator who sexually abused him, and Reverend Winston Morgan as a perpetrator of physical abuse against Mr Campion while was a resident at the Home. 690

329. In the minutes of a meeting of the Diocese of Grafton PSC on 20 September 2005, Mr Campion’s complaint was noted and the minutes stated that “Further investigation of the generalized complaints against a cleric will be made.” 691 When referred to those minutes in evidence, Mr Gerber said that the only action he took was to put Mr Campion in touch with one of the contact people in Sydney and that he did not investigate the matter. 692

330. In a letter to Mr Campion dated 2 October 2005, Mr Comben suggested that he might take a detailed statement from Mr Campion in relation to the allegations in Mr Campion’s letter of 29 August 2005 and that this “will let me progress matters towards at least internal discipline towards one of the clergy you mentioned”. 693 In relation to the discipline of either Reverend Brown or Reverend Morgan Mr Campion gave evidence that he has heard nothing further from Mr Comben or the Anglican Church about the issue of discipline. 694

690 Ex 3-1 Gerber, Annexure PG12, at STAT.0663.001.0100_R; Ex 3-1 Campion, Annexure RC2, at STAT.0057.001.0033_R
691 Ex 3-1 Gerber, Annexure PG15, at STAT.0063.001.0011_R
693 Ex 3-1 Campion, Annexure RC4
694 Campion T1674:10-24
331. In Mr Comben summary schedule of allegations compiled in September 2006 Reverend Brown and Reverend Morgan are named as sexual offenders by the claimants and there are details of the alleged sexual abuse. Mr Gerber gave evidence that he had not seen that summary until about a week or two before giving his oral evidence to the Royal Commission.

332. On 21 November 2006 the PSC met, with Mr Gerber in attendance (Reverend Comben was an apology). The PSC were briefed on the group claim in relation to sexual abuse and it was noted that Reverend Morgan had no involvement with the church since the ordination of women, was nearly 80 years old, was visually impaired, and had no licence from the Bishop. Campbell Brown was noted to have recently moved to the Newcastle Diocese and had resigned his licence in Grafton. It was decided that the best course of action was to refer the matters involving clergy to the Sex Crime Squad in Sydney with a request to be notified by the police within three months as to whether any police action would occur so that the church could take disciplinary action if required. In the minutes it was noted that Mr Gerber was informed in his role as PSD for the Diocese of Newcastle. Mr Gerber in oral evidence had no recollection of informing Bishop Slater of the referrals to the police. In the minutes of the meeting Reverend Comben was allocated to write to the police. Mr Gerber had a vague collection of discussing that with Reverend Comben and deciding that he would write to the police.

333. On 19 December 2006, Mr Gerber wrote letters to the New South Wales Child Protection and Sex State Crimes Squad enclosing the statutory declaration of Mr Campion in relation to allegations against Reverend Brown and a the statutory declarations of CL and CM in relation to allegations against Reverend Morgan. Both letters stated:

“\textbf{It is the intention of the Church to continue to investigate and deal with these matters as a matter of church discipline. However, we would not want to continue the investigation if it would in any way interfere with any potential Police investigation. Accordingly, could you please indicate within thirty (30) days whether you wish to take any further action in relation to the matter. If we have not heard anything within thirty days we will continue to undertake our investigations with a view to finalising the matter under church disciplinary procedures.}”

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695 Ex 3-2 Tab 39
696 Ex 3-2 Tab 39, at ANG.9320.01802.0601 and ANG.9320.01802.0602
697 Gerber T1979:28-40
698 Ex 3-1 Gerber, Annexure PG35
699 Gerber T1982:15-18
701 Ex 3-1 Gerber, Annexure PG36
702 Ex 3-1 Gerber, Annexure PG37
334. On 16 January 2007 Rev Comben received an email from Wayne Armstrong of the NSW Police which advised that they were still considering whether a police investigation of those matters should occur, and that the preference was for the Diocese not to take further action to investigate if it could interfere with the potential police investigation.703

335. Mr Gerber confirmed that any contemplated disciplinary proceedings in the Diocese of Grafton were suspended as a result of this letter.704 Mr Gerber also gave evidence that since January 2007 no disciplinary action has been commenced Reverends Rev Brown705 or Morgan. He said that he did not commence disciplinary proceedings against Reverend Brown because he was “juggling a lot of balls” and could not effectively perform his full time role at Sydney and his part time roles at Grafton and Newcastle.706

336. Reverend Comben gave evidence that he took no steps after this information was conveyed to the NSW Police and that he did not follow up the NSW Police to get a status report on the investigation.707 Reverend Comben had a conversation with Reverend Brown which he took to be an implied admission of guilt. However, he did not inform the police or make a file note of the conversation.708

337. In relation to Reverend Morgan, Reverend Comben gave evidence that he didn’t think about further contact with the NSW Police in relation to the investigation against him because by that time he was told that Reverend Morgan had Alzheimer’s disease.709 Archdeacon Gregory Ezzy also gave evidence that following the matter being deferred by police, no further steps were taken to recommence the disciplinary process in relation to Reverend Brown.710

338. Bishop Slater was approached by Reverend Brown on 26 March 2006 and asked about the status of the allegations against him.711 Bishop Slater agreed in oral evidence that no steps were taken

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703 Ex 3-1 Gerber, Annexure PG39
704 Gerber T1987:8-16
705 Gerber T1983:5-9
706 Gerber T1983:44-1984:3
707 Comben T2198:2-17
708 Comben T2201:6-15
709 Comben T2198:32-38
710 Ezzy T2344:14-21
711 Ex 3-15
to discipline Rev Brown after the police had requested a suspension of the Diocese’s investigation. 712 Bishop Slater said “we were distracted in other ways”. 713

339. From 2001, Reverend Brown had an ‘Authority to Officiate’ in the Anglican Diocese of Bathurst714 and appeared as clergy in the Diocese of Bathurst in the Australian Anglican Directory 2012. 715 On 12 June 2013, Reverend Brown wrote to the Bishop of Bathurst and requested his Authority to Officiate be cancelled as he had retired from priestly duties in 2006716 and the Bishop of Bathurst instructed the Registrar of the Bathurst Diocese to do so. 717

340. On 14 November 2013, Dr Peter Stuart, Administrator of the Anglican Diocese of Newcastle confirmed that there was no record of Mr Gerber communicating the conduct of Reverend Brown to the PSC of the Diocese of Newcastle and that it was not clear whether the information the Diocese had at the time would be sufficient to initiate “disciplinary proceedings”. 718

Available findings:

49. From 2005 to the present no disciplinary action has been taken against Reverend Brown or Reverend Morgan by either the Diocese of Grafton or the Diocese of Newcastle.

50. From 2002 to 2013 there was a reluctance in the Dioceses of Grafton and Newcastle to commence disciplinary proceedings against a member of clergy who did not hold a licence to officiate.

51. The disciplinary processes adopted within the dioceses of Grafton and Newcastle are cumbersome, legalistic and expensive and this contributed to reluctance in the Dioceses of Grafton and Newcastle to commence the disciplinary process with regard to Reverend Kitchingman and Reverend Brown.

52. Where the Dioceses of Grafton and Newcastle both had jurisdiction over the professional standards matters concerning Reverend Kitchingman, including his discipline, there was no clear system in place to determine which diocese would assume responsibility.

Available recommendations:

3. That the General Synod of the Anglican Church give consideration to the best ways in which greater guidance might be given to determine which diocese has jurisdiction

712 Slater T2308:18-21
713 Slater T2308:16
714 TB tab 15A, at ANG.0012.001.0001
715 TB tab 136A, at ANG.0021.001.0001
716 TB tab 155, at ANG.0011.002.0009
717 TB tab 156A, at ANG.0012.001.0157
718 TB tab 161A, at ANG.0019.001.0001_R
over a particular professional standards matter where multiple dioceses have jurisdiction.

4. That the Diocese of Grafton refer Reverend Morgan and Reverend Brown to its Professional Standards Committee for determination as to whether to initiate disciplinary proceedings against each person.

Other Reporting to Police

341. As mentioned, the schedule prepared by Reverend Comben in September 2006 revealed a number of acts which could be characterised as criminal offences. Mr Gerber referred allegations of assault against Reverends Brown and Morgan and CL to the NSW Police. When Rev Comben was asked why he had not referred other allegations of criminal conduct to the police he said he had “no idea”. It remains unclear why only a limited number of people were referred to the NSW Police.

342. As mentioned above with respect to Bishop Slater, allegations of criminal conduct against CB and CC were not referred to the NSW Police by him. Bishop Slater had chosen to handle their matters entirely himself and this meant that the services of the PSD, who would normally refer matter to the police, were not engaged.

343. After Mr Elliott received relevant material from Ms Hywood, including the files for CB and CC and the schedule of 41 claims he provided scanned copies of the files to the police.719

Available findings:

53. From September 2006 Reverend Comben failed to take steps to refer all allegations of criminal conduct against children formerly resident at the North Coast Children’s Home to the NSW Police.

54. In 2011-2013 the Bishop of Grafton, Keith Slater, failed to refer allegations of criminal conduct made by CB and CC to the police for investigation.

RISK MANAGEMENT

Safe Ministry

344. The issue of safe ministry arose with respect to Reverends Kitchingman and Brown. In about July 2013 Mr Elliott had a meeting with Bishop Stuart, the Acting Bishop of Newcastle, in which he informed Mr Elliott that Reverend Kitchingman was currently residing in the Diocese

719 Elliott T2355:45-2356:3
of Newcastle and was an active parishioner in the Newcastle Cathedral. Bishop Stuart did not indicate to Mr Elliott that any risk management plan was in place in the Newcastle Cathedral in relation to Reverend Kitchingman. On 25 October 2013 the Bishop Administrator of Newcastle, Dr Peter Stuart, directed the Dean of the Cathedral to apply the safety policy to Reverend Kitchingman. On 14 November 2013 Bishop Stuart confirmed that no memorandum of understanding had been entered into between the Diocese of Newcastle and Allan Kitchingman concerning his attendance at Christ Church Cathedral, Newcastle.

345. The disciplinary proceedings against Reverend Brown in the Diocese of Grafton were suspended from about 16 January 2007 due to the police investigation and Mr Gerber did not communicate the allegations against Reverend Brown to the PSC of the Diocese of Newcastle.

346. On 30 May 2013, Ms Hywood emailed Mr Elliott to advise that Reverend Brown was listed in the 2012 Anglican Directory as having an Authority to officiate in the Diocese of Bathurst. Reverend Brown also appeared as clergy in the Diocese of Bathurst in the 2013 Anglican Directory. In June 2013 Mr Elliott telephoned and emailed Reverend Peter Barnett, PSD for the Diocese of Bathurst in relation to instigating a confidential interim risk management strategy for Reverend Brown. On 14 August 2013, Reverend Barnett informed Mr Elliott that Reverend Brown relinquished his Authority to Officiate on 12 June 2013 and that no one in the Bathurst Diocese had spoken to Reverend Brown.

Available findings:

55. The Diocese of Newcastle did not adopt its own guidelines for safe ministry until 4 years after the General Synod had recommended guidelines for parish safety.

56. The Diocese of Newcastle failed to take action under the principles of ‘safe ministry’ to manage any risk posed by the involvement of Reverend Kitchingman at Christ Church Cathedral until October 2013.

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720 Ex 3-1 Elliott, [72]
721 Ibid
722 Ex 3-2 Tab 161A, at ANG.0019.001.0001_R
723 Ex 3-2 Tab 161A, at ANG.0019.001.0001_R
724 Ex 3-1, Elliott [68], ME40, TB tab 136A
725 Ex 3-1, Elliott [68], ME40, TB tab 136A
726 Ex 3-1 Tab 142A, at ANG.0012.001.0153
727 Ex 3-1 Elliott [68], [70]
728 Ex 3-1 Elliott, [76]
**National Register**

347. On 17 October 2013, the Royal Commission sought by way of summons all information maintained on the National Register in relation to Reverends Kitchingman, Brown, Morgan, Robinson and one other.\(^{729}\) On 23 October 2013, Mr Drevikovsky responded to the summons and informed the Royal Commission that there was no information on the National Register concerning any of the five persons named in the summons.\(^{730}\) The public hearing explored why that was the case.

348. The evidence revealed that there was a history of problems with the implementation of the National Register which had been communicated to Mr Drevikovsky. Some of the problems related to technical matters for placing entries on the register, a significant backlog of files which needed to be reviewed and others concerned procedural matters. The PSD at Grafton and Newcastle, Michael Elliott, gave evidence that there were difficulties with some of the historical files in ascertaining whether the alleged perpetrators of sexual abuse fit the criteria for their names to be entered onto the National Register, particularly where procedural fairness has not been afforded or the matter have not been investigated properly or the file may be compromised or incomplete.\(^{731}\)

349. Mr Drevikovsky was informed by Mr Elliott, Ms Chambers-Clark and Mr Douglas Marr (Acting PSD in the Diocese of Sydney) that they had a significant number of historical files to review relating to child sexual abuse on advice given by the Royal Commission Working Group established by the General Synod Standing Committee when the Royal Commission was announced.\(^{732}\)

350. Pursuant to the National Register Canon 2007, the General Secretary must notify the member of clergy or lay person whose name has been entered on the National Register.\(^{733}\) Mr Elliott said that there was concern about logging matters on the National Register when there was an ongoing police investigation because that person would be notified of the complaint and the

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\(^{729}\) Ex 3-2 Tab 160, at ANG.0002.001.0033_R

\(^{730}\) Ex 3-2 Tab 160, at ANG.0002.001.0033_R

\(^{731}\) Elliott T2368:15-20

\(^{732}\) Ex 3-1 Drevikovsky (25 Nov 2013), [4]

\(^{733}\) Ex 3-3 Tab 5, at ANG.9310.01001.0584
nature of it which may compromise a current police investigation. Other PSDs shared this concern, for example, Ms Claire Sargent (PSD for Dioceses of Melbourne, Wangaratta, Bendigo and Ballarat) indicated to Mr Drevikovsky in late 2013 that she was aware of about five persons to be entered on the National Register but to not expect notification of those five persons of interest because some of them are experiencing “police interest” (which Mr Drevikovsky understood to signify that the police did not wish to put the persons of interest on notice).

351. Mr Peter Caporaso, the PSD for the Dioceses of Adelaide and The Murray informed Mr Drevikovsky that he had between 20 and 50 files that had not yet finally processed (most related to deceased persons). Mr Caporaso said he had not finished the processing because he had a bad experience with the National Register when he first commenced to notify information in about October 2008 due to difficulties operating the system, and that he was waiting for the system to be upgraded before he completed the task (this was despite offers for training made by Mr Drevikovsky).

352. In an email exchange between some of the PSDs in relation to updating the backlog, Ms Tracie Chambers-Clark, PSD for the Diocese of Western Australia complained about trying to connect the notebook to a wireless system, and others in the email chain expressed their concerns with the National Register. Mr Elliott was aware of some other PSDs having difficulty with the system, however not all dioceses were experiencing those problems, for example the Brisbane PSD had managed to get all his matters listed effectively.

353. Mr Elliott gave evidence of some of the technical difficulties being experienced with the current National Register system including there being a requirement to enter a number of lengthy computer generated passwords to start up the system, difficulty interpreting what data was required when entering data, difficulty using the separate netbook (laptop), and difficulty with searching names (as the exact name is required and partial names are not accepted).
Elliott told the Royal Commission that in his experience there was a general lack of confidence in the Register among the PSDs.\(^{743}\)

354. On 19 July 2010, Mr Caporaso wrote to Mr Drevikovsky about the National Register on behalf of the PSDs and expressed some of the concerns they had about the system.\(^{744}\) He stated that the main concern the PSDs had was the reliability of the National Register as a record because, among other reasons, it does not contain all the professional standards information that is available about church workers. The PSDs were not entering all the relevant information because of a lack of resources to meet the administrative requirements of entering available information, difficulties in using the software and a decision by some to opt out of the Register.\(^{745}\)

355. Mr Drevikovsky gave evidence that a large proportion of the difficulties which the PSDs were experiencing with the software could be addressed by training and consulting the user manual. The assistance was offered in 2011, but not accepted by the PSDs.\(^{746}\) Because of the difficulties experienced by the PSDs with the National Register software and complex security arrangements, it was determined in 2011 to investigate improving the system.\(^{747}\) The upgrade of the National Register software has been in progress for about 18 months to simplify security and address ease of use of the application and expected to be implemented by approximately February 2014.\(^{748}\) Details of the changes were not provided to the Royal Commission.

356. In the letter dated 19 July 2010 from Mr Caporaso the PSDs proposed several actions to improve the credibility of the register including,

“... simplification of the software and processes associated with entering and retrieving information; a risk assessment that seeks to redress the apparent imbalance between the high security and the relatively low sensitivity of the information, especially given that only a very limited number of individuals may access it and a review of what is recorded on the Register - whether a simple 'red flag'/caveat style annotation that simply alerts the inquirer that a particular DPS needs to be contacted for case particulars - thus diminishing the sensitivity of the information and therefore the security required, and providing administrative and other resources to dioceses who have been unable to enter all historical information".\(^{749}\)

\(^{743}\) Elliot T2362:19-20

\(^{744}\) Ex 3-1 Elliott, Annexure ME19, at STAT.0062.001.0093

\(^{745}\) Ex 3-1 Elliott, Annexure ME19, at STAT.0062.001.0093

\(^{746}\) Ex 3-1 Drevikovsky (25 November 2013), [22]-[23]

\(^{747}\) Ex 3-1 Drevikovsky (25 November 2013), [24]

\(^{748}\) Ex 3-1 Drevikovsky (25 November 2013), [25]

\(^{749}\) Ex 3-1 Elliott, Annexure ME19
357. In April 2013, the General Synod Standing Committee requested that Mr Drevikovsky identify dioceses which had outstanding information for entry on the National Register. The National Register Officer, Ms Susan Harvey was asked by him to liaise with the various PSDs of the Dioceses to obtain this information.\(^{750}\) During October 2013, Ms Harvey informed him four PSDs had said that between them they estimated they had information concerning somewhere between 110 and 180 new persons to be identified to the National Register.\(^{751}\)

358. In his statement, Mr Drevikovsky included a table setting out the number of files to be reviewed to ascertain whether names were to be added to the National Register (145 to 215 files) and reported approximately 18 new persons to be added to the National Register who were in a position to apply for a licence.\(^{752}\) Mr Drevikovsky then presented an amended table in his statement of 26 November 2013 in he reported approximately 145 to 210 files to be reviewed, 41 to 46 persons to be notified and 10 plus persons in a position to apply for a licence.\(^{753}\) The numbers entered by Mr Drevikovsky in the table were inconsistent with those contained in his statement and from other sources. In the table Mr Drevikovsky indicated that the Diocese of Sydney had 70-100 files to review when his statement indicated there were approximately 600 to be reviewed.\(^{754}\) In the table he also represented that the Diocese of Brisbane had no files to review whereas the Primate had indicated that there were just under 300 such files to review.\(^{755}\)

359. It may be concluded that there are still a very substantial number of files to be reviewed in a number of Anglican dioceses before the National Register can be complete and up to date. It was clear that additional resources will need to be directed to such work if the National Register is to approach a comprehensive register of entries with respect to clergy.

360. A number of PSDs have proposed a simple “red flag” system as they have been disappointed with the technical and cumbersome nature of the National Register. The idea is that the National Register simply contains a red flag for a given individual and a contact name for the person who has raised the red flag. A person wishing to find out more with respect to such an individual would simply ring the PSD or Bishop and enquire as to the nature of the red flag.

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\(^{750}\) Ex 3-1 Drevikovsky (25 November 2013), [4]
\(^{751}\) Ex 3-1 Drevikovsky (25 November 2013), [5]
\(^{752}\) Ex 3-1 Drevikovsky (25 November 2013), [18]; Annexure MJD 4
\(^{753}\) Ex 3-1 Drevikovsky (25 November 2013), [18]; Annexure MJD 4
\(^{754}\) Ex 3-1 Drevikovsky (25 November 2013), [12]
\(^{755}\) Aspinall T2445:37-38

106
361. The “red flag” system was explained further by Michael Elliott in his oral evidence: “I understand that that’s a procedural fairness issue, but the directors need a flag for people who may be under current police investigation but without necessarily that respondent being made aware of that”. He said that a red flag system would achieve the aim of alerting other PSDs to concerns about a particular person and it would be appropriate to integrate it into the National Register system. Mr Elliott acknowledged that there presently is a provision for a ‘warning’ or ‘caution’ which lasts for 30 days but it has to be continuously renewed and was technically problematic and difficult to use.

362. Mr Drevikovsky accepted in his oral evidence that the red flag process was a sensible suggestion but was not sure whether it would be workable because of issues with accuracy and consistency of the information entered. He also raised issues of procedural fairness to the candidate:

“I think the advantage of something like a system like the national register is that you have a central repository of minimum information which somebody ought to be interested in when they are considering appointing someone to a position. You have consistency and you have consistent access to it”.

363. In his oral evidence, Mr Drevikovsky did not accept the criticism by the PSDs in the letter dated 19 July 2010 that “… the Register may be given too much credence by those who may not understand the reality of its operational shortcomings” and that “this may in turn be creating a false and potentially dangerous sense of confidence in the decisions made using information on the Register …” He said that the National Register was not designed to replace all the usual risk management processes that are undertaken when they are engaging people such as police checks.

364. In a letter to the Royal Commission dated 14 November 2013, Bishop Peter Stuart advised that it was “a matter of deep regret” and only as a result of the Royal Commission that the current office bearers have been appraised of the facts, matters and circumstances in relation to Reverends Kitchingman and Brown. He indicated that Reverend Kitchingman’s name had been

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756 Elliott T2363:4-7
757 Elliott T2376: 28-40
758 Elliott T2361:4-7
759 Drevikovsky T2394:34-47; T2395:1-14
760 Drevikovsky T2396:11-16
761 Ex 3-1 Elliott, Annexure ME19
762 Drevikovsky T2389:41-47; T2390:2-36
sent for entry on the National Register.\textsuperscript{763} At the time of the hearing (two weeks later) it was evident that Reverend Kitchingman’s name had still not been placed on the National Register. Mr Drevikovsky thought that may have been the case because it had not been verified by the Diocese of Newcastle.\textsuperscript{764} The example reinforced the description by a number of PSDs that the process was slow and difficult to operate.

Available findings:

57. The National Register of the Anglican Church does not record the names of all persons that may be required to be registered because various dioceses have been unable to review all their files to determine whether an entry on the national register should be made.

58. The general Secretary of the General Synod, Martin Drevikovsky, was unsure in his evidence as to how many files were still to be reviewed to determine entry on the National Register.

59. The professional standards directors of a number of dioceses have had difficulty operating and entering information into the National Register on a timely basis.

Available recommendation:

5. That consideration be given by General Synod to the incorporation of a “red flag” system of notifications into the National Register.

STRUCTURAL ISSUES CONCERNING THE HANDLING OF COMPLAINTS OF CHILD SEXUAL ABUSE

365. The Primate of the Anglican Church provided a detailed statement to the Royal Commission setting out his recollection of his involvement in the handling of claims by the Diocese of Grafton and also addressing structural issues within the Anglican Church which may impede the handling of claims.\textsuperscript{765} This section looks at some of those structural issues and follows, to some degree from the comments made about the structure of the Anglican Church at the start of these submissions.

366. The Primate stated that the General Synod is severely constrained from making church law which will bind the 23 dioceses which comprise the Anglican Church.\textsuperscript{766} The General Synod may

\textsuperscript{763} He advised that it was not possible to place Mr Brown’s name on the National Register: Ex 3-2 Tab 161A
\textsuperscript{764} Drevikovsky T2406:25-2407:13
\textsuperscript{765} Ex 3-1 Aspinall
\textsuperscript{766} Aspinall T2420:1-11
not make canon laws which affect the “order and good government” of the church in that
diocese. Accordingly it is only on very rare occasions that the law making power may be used.
In most cases any law passed by the General Synod must be separately adopted by the diocese
in which it applies.

367. The Primate accepted that the Church represents itself as a unified national body but said that
the Anglican Church did not operate in a unified way and it should not be assumed that there
was a corporate like board with a chief executive officer who could make decisions about the
restructuring of the Anglican Church. The Primate said that he chairs the General Synod and
its Standing Committee, that he has powers to appoint people certain national commissions,
that he may pronounce a sentence of a bishop and that he may implement the
recommendations of the episcopal standards board. However,

“A primate has no power to direct the bishop of a diocese or a diocesan council in a diocese
to do anything. In effect, what that means is that when the primate makes a request or makes
a suggestion or a proposal or extends an invitation, effectively another bishop can tell the
primate, ‘Thank you very much, but get lost.’”

368. It was abundantly clear from the Primate’s evidence that Bishop Slater had not adopted the
Primate’s advice in the handling of the group claims and particularly in approaching issues raised
by Tommy Campion. The Primate though that Mr Campion’s questions about the responsibility
for the Home, who managed it and who was involved “were entirely reasonable”. The
Primate tried to influence Bishop Slater in his handling of such questions but ultimately “with
no success” at least initially. The Primate requested copies of the Home’s constitutions and
legal advice even those were denied to the Primate.

369. The structural impediment clearly has ramifications for uniformity across the Anglican Church
including in the area of “professional standards”. The evidence led revealed a high degree of
dissimilarity between the dioceses concerned. Putting the adoption of the model Professional
Standards Ordinance to one side it was evident that the Protocols which operated in Grafton,
Newcastle and Sydney were different. It was also the case that the care and assistance package
in Sydney was different to that adopted (at least formally) in Grafton in 2005 and different also

767 Aspinall T2420:13-24
768 Aspinall T2420:22-24
769 Aspinall T2421:13-23; T2422:8-14
770 Aspinall T2442:30-37
771 Aspinall T2442:39-45
772 Aspinall T2442:45 – T2443:3
to that adopted in 2013. In the Diocese of Adelaide *Healing Steps* had some important differences from the procedure adopted in Sydney and Grafton.\textsuperscript{773} The Primate also pointed to a lack of uniformity on reporting allegations of sexual abuse to the police. In some dioceses such as Brisbane it is a procedural requirement whereas in others, so as not to further traumatize the victim, reporting is dependent upon the consent of the victim.\textsuperscript{774} The Primate indicated that he is looking for advice from the Royal Commission as to how the Anglican Church might best proceed on that issue.

370. The Primate was pessimistic about there being structural reform of the Anglican Church so that a central body could be established with powers to require bishops to act in certain ways.\textsuperscript{775} He said that he could not see such changes occurring in the foreseeable future.\textsuperscript{776}

371. As mentioned the Diocese of Grafton considered that it was financially constrained from paying for counselling in 2006, in settling the amount of the group claim and then in meeting additional claims for financial compensation from former residents of the Home after 2007. The financial position of the Diocese of Grafton during that time was also set out above. The Primate was asked whether he, the General Synod or other dioceses could contribute to a diocese in financial hardship. He was also asked whether the Bishop of Grafton had taken steps to have him, as Primate, the General Synod or other bishops assist with Grafton’s financial position.

372. The Primate said that the General Synod and related bodies had a number of very limited funds: the statutory fund which levies dioceses on the basis of the number of representatives on General Synod and funds the General Synod, the General Secretary and his assistant, a business manager and some other clerical positions; the special fund which comprises funds for membership of a number of ecumenical organisations; the indigenous ministry endowment fund used for offsetting the costs of an indigenous bishop; and a reserve fund of about $2m comprising funds for a house for the General Secretary and $1.2m from royalties which funds special projects.\textsuperscript{777}

\textsuperscript{773} Such as the absence of a financial ceiling for settlement.
\textsuperscript{774} Aspinall T2426:2-17
\textsuperscript{775} Aspinall T2443:19-28
\textsuperscript{776} Ibid.
\textsuperscript{777} Aspinall T2429:3 – T2430:23
373. The Primate indicated that his discretionary funding is very limited and if he had been asked by the Bishop to contribute to settling of the claims arising from the Home, which he was not, he would have declined. He said, “the resources of the Anglican Church are really in the dioceses. That’s where the property assets and other assets are vested.”

374. The Primate was aware of the financial situation at Grafton because the Bishop came to him during General Synod in 2010 to ask the archbishops to be brought together so that he could indicate to them the financial position of the Diocese. As a result of that meeting the Independent Oversight Committee was established to assist with appropriate financial structuring to service the Clarence Valley Anglican School debt. No such process occurred with respect to either the group claim settlement or provisioning for other claims arising from the Home and the Bishop did not request such assistance from the Primate.

375. The Primate indicated that while dioceses are often asset rich the liquidity of such assets is often constrained. The constraints are due to the assets comprising churches, church halls, and residential facilities for clergy. The sale of such assets must be approved at the parish level and parishes are often reluctant to sell assets which the parish and its members had funded.

376. The Primate indicated that the Anglican Church had organized a national insurance program on a bulk buying basis. However, insurance is not required by the Anglican Church to be obtained by a diocese and the General Synod is unable to enforce such risk management measures. (The evidence in this case study revealed that the Diocese of Grafton had let its molestation cover lapse by the time the group claims were commenced.) The Primate said he was not averse to the imposition of insurance obligations upon the Anglican Church in the nature of professional liability insurance obtained by legal and medical professionals.

377. The Primate provided a number possible ways forward which he thought might prove worthy of investigation. He did not indicate whether such matters were endorsed by the General Synod or individual dioceses. The first of those was the imposition of a uniform mandatory

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778 The financial circumstances of the Diocese of Grafton was not directly raised with the Primate by the Bishop of Grafton: Aspinall T2435:24-28
779 Aspinall T2430:25-27
780 Aspinall T2435:27-40
781 Aspinall T2437:7-14
782 Aspinall T2436:37 – T2437:1
compensation scheme by the Commonwealth (or State and territory) governments. He said two models were worthy of investigation:

- A national insurance scheme whereby all relevant bodies (both religious, non-government and government) are required to contribute; or
- A statutory authority to determine liability and damages and then direct those organisations to meet the obligation.⁷⁸³

378. The Primate indicated it would be very difficult indeed for the Anglican Church to implement such a process.⁷⁸⁴

379. The Primate also indicated that there were some other measures which the Anglican Church itself could implement within current constraints: the greater use of mediators and an internal audit of professional standards procedures. The Primate indicated he had tried to encourage both Bishop Slater and Mr Harrison to use an experienced, independent and professional mediator but to no avail.⁷⁸⁵ Secondly, the Primate considered that an auditing scheme might be used to assist uniformity and efficacy across dioceses in the area of professional standards.⁷⁸⁶ He did not think that all dioceses would accept such a proposal but there were sufficient numbers who would accept an audit body as long as it reported to the diocese.⁷⁸⁷

Available recommendation:

6. That each diocese and the General Synod establish procedures for the use of experienced and independent mediators in professional standards matters.

CONCLUSION

380. This case study has highlighted the following systemic issues:

- Systems and policies for the handling of historic claims of child sexual abuse.
- The implementation of relevant policies and procedures.
- The effect on claimants of adopting a legalistic response to the handling of historic claims of child sexual abuse.

⁷⁸³ Aspinall T2437:17 – T2438:5
⁷⁸⁴ Aspinall T2437:33-36
⁷⁸⁵ Aspinall T2438:29-39
⁷⁸⁶ Aspinall T2443:39 – T2444:33
⁷⁸⁷ Aspinall T2444:5-12
d. Systems and policies for reporting to the police historic allegations of child sexual abuse.

e. Systems and policies for disciplining clergy and church workers arising from historic allegations of child sexual abuse.

f. Budgetary systems and policies to meet anticipated claims of historic child sexual abuse.

g. Systems and policies regarding risk management arising from historic allegations of child sexual abuse.

381. The Diocese of Grafton comprehensively failed to treat former residents of the North Coast Children’s Home who had been sexually and physically abused in a way which was sympathetic to their needs, fair and provided appropriate redress. Many of the former residents who informed the Diocese of Grafton of the abuse they had suffered at an Anglican Home for which the Diocese had responsibility were treated so poorly that the effect of what should have been a redress scheme, in fact, did more damage to them.

382. The Diocese of Grafton adopted an approach to the claim which was driven by a desire to protect the finances of the Diocese over and above the interests of the abused former residents. The Diocese of Grafton had sufficient assets to meet the (financial) claims of the abused former residents.

383. The Diocese of Grafton failed to properly follow its Professional Standards Ordinance, Protocol and Care and Assistance scheme to the detriment of the former residents who had made claims. The structure of the Anglican Church and the power of the Primate is such that the Church and the Primate were unable to direct a Bishop and Diocese to act in a manner which was likely to ensure a fairer and more compassionate approach to those former residents.

384. The manner in which clergy are disciplined within the Anglican Church is such that clergy are likely to escape effective enforcement if they retire or relinquish the licence to officiate that they hold. The process for disciplining clergy is so legalistic and cumbersome that some senior members of the Anglican Church are reluctant to depose a member of clergy even where the person has been convicted of serious sexual offences against a child.

385. The Diocese of Grafton has taken some steps to improve responses to historic claims of child sexual abuse following the resignation of the then Bishop of Grafton, Keith Slater. The Diocese has re-evaluated past assessments of financial redress due to claimants and has made new offers of financial settlement to them. The group claims are being reviewed under the Diocese’s
new care and assistance package and at least one member of clergy has been referred for consideration of disciplinary action. All matters received to date have been referred to the police. It is too early to tell whether the changes will be sustained and effective to meet the needs of persons who have suffered child sexual abuse.

Simeon Beckett
Counsel Assisting

23 December 2013
SUMMARY OF AVAILABLE FINDINGS

Available Finding 01

At all relevant times the North Coast Children’s Home was strongly associated with the Anglican Church and its predecessor................................................................. 25

Available Finding 02

At all relevant times the North Coast Children’s Home was controlled by the Rector of St Andrew’s Church Lismore in the Diocese of Grafton of the Anglican Church or his nominee and members of the Anglican Church (and its predecessor) .............................................................................. 25

Available Finding 02A

At all relevant times the Anglican Diocese of Grafton had responsibility for the children in the North Coast Children’s Home .................................................................................. 25

Available Finding 03

Tommy Campion, CA, CB, CC, CD, CH, CK and CN were sexually abused by clergy, staff or other residents of the North Coast Children’s Home while they were resident at the Home........ 32

Available Finding 04

During the period 1940-1985 there were frequent acts of psychological, physical and sexual abuse perpetrated on the children resident at the North Coast Children’s Home............................. 33

Available Finding 05

The physical, psychological and sexual abuse suffered by the former residents at the North Coast Children’s Home had profound and long-lasting effects on the lives and mental health of the former residents .................................................. 34

Available Finding 06

During 2005 and 2006 the Diocese of Grafton agreed financial settlements for child sexual abuse and sexual abuse with claimants under its Care and Assistance Package.............................. 35

Available Finding 07

The response of the Diocese of Grafton to the group claims was that the Diocese of Grafton and its Corporate Trustees had no legal liability for sexual or physical abuse of a child by clergy, employee or other persons at or associated with the Home ......................................................... 42

Available Finding 08

Bishop-in-Council of the Diocese of Grafton adopted a defensive legal position to the group claim as advocated by Reverend Comben and the Diocesan Advocate ....................................................... 44
Available Finding 09

By 26 September 2006 Rev Pat Comben and Peter Roland knew of at least 20 instances of sexual abuse against former residents of the North Coast Children’s Home.

Available Finding 10


Available Finding 11

The professional standards committee of the Diocese of Grafton played little or no part in providing pastoral care and assistance to the group claimants.

Available Finding 12

The Diocese of Grafton required that the group claimants sign a deed of release before counselling, acknowledgement, apology or financial settlement would be provided.

Available Finding 13

The settlement negotiations on 19-20 December 2006 were conducted in a commercial and hostile manner.

Available Finding 14

The Diocese of Grafton misled claimants that the Care and Assistance Package adopted in November 2005 would be followed and then negotiated financial settlements that were significantly below those indicated in the Care and Assistance Package.

Available Finding 15

The denial of liability by the Diocese of Grafton on the basis that the Home was not controlled by the Diocese of Grafton had a detrimental effect upon abused former residents who should have been provided with acknowledgement that the North Coast Children’s Home was the responsibility of the Church.

Available Finding 16

The lack of a pastoral response by the Diocese in handling the group claims had a detrimental effect upon abused former residents.

Available Finding 17

The amounts offered to Mr Campion CA, CK, CL, CM and CN as part of the group claim were substantially smaller than if the claim had been resolved under the Care and Assistance Package adopted by the Diocese in November 2005.

Available Finding 18

The Diocese of Grafton failed to properly apply the Professional Standards Ordinance 2004 or the Protocol for Dealing with Complaints of Sexual Abuse to the group claimants.
Available Finding 19

The Diocese of Grafton’s failure to properly apply the relevant Ordinance and Protocol compromised the ability of the Diocese to provide a sympathetic and proportionate pastoral response to the group claimants .................................................................................................. 61

Available Finding 20

The Bishop of Grafton failed to appreciate that the Diocese of Grafton had a moral obligation to provide redress to those abused at the North Coast Children’s Home .................................................. 63

Available Finding 21

CD’s claim was processed in a manner similar to the group claims but without any pastoral assistance ...................................................................................................................................... 65

Available Finding 22

Bishop Slater reacted with hostility to Mr Campion’s insistence that he be afforded a financial settlement in line with the Care and Assistance Package adopted by the Diocese in November 2005 .............................................................................................................................................. 66

Available Finding 24

Bishop Slater’s letter to Mr Campion of 14 August 2008 indicated a substantial conflict of the interests of the claimant, the Bishop, the Diocese and the other group claimants .......................... 67

Mr Campion’s claim was dealt with in an ad hoc manner combining the approach adopted for the group claimants with additional payments for counselling and Medicare reimbursement .... 68

Available Finding 25

Mr Campion was never offered a financial settlement component which reflected the process under the Care and Assistance Package .......................................................................................................... 68

Available Finding 26

When Reverend Pat Comben was asked to provide an apology to Tommy Campion about the way Mr Campion had been treated by him, Reverend Comben provided an apology which was false and he knew was false .................................................................................................................. 69

Available Finding 27

The Bishop of Grafton failed to refer either CB or CC’s claims to the Professional Standards Committee in breach of clause 24(1) of the Professional Standards Ordinance 2004 ................. 72

Available Finding 28

The Diocese of Grafton refused to pay financial settlements to CA, CB and CC because the Diocese considered it did not have financial reserves to pay such claims .................................................. 73
Available Finding 29
The Diocese of Grafton had not made any financial provision for professional standards because it had prioritised the Clarence Valley Anglican School debt over its financial obligations under the Protocol and Care and Assistance Scheme to pay abused former residents of the North Coast Children’s Home .................................................................................................................................................. 73

Available Finding 30
The Bishop and Diocese of Grafton treated CA, CB and CC unfairly and in a way different to the group claimants which had a detrimental effect upon CA, CB and CC .................................................. 76

Available Finding 31
In 2012 Bishop Slater preferred the interest of an elderly former member of the Home’s committee over the interests of providing a supportive and pastoral response to Tommy Campion ............................................................................................................................... 81

Available Finding 32
The Primate advised the Bishop of Grafton between 2006 and 2012 that the group claimants should have their complaints properly heard and be offered counselling and pastoral support 81

Available Finding 33
The Primate advised the Bishop of Grafton between 2006 and 2012 that he should seek out further persons who had been abused at the North Coast Children’s Home but the Bishop did not do so ........................................................................................................... 81

Available Finding 34
The Primate advised the Bishop of Grafton between 2006 and 2012 that he should inform the police of all criminal allegations which came to his attention arising out of the North Coast Children’s Home but he did not do so ........................................................................................................... 81

Available Finding 35
The Primate took steps to advise the police of criminal allegations which he was aware of having arisen from the North Coast Children’s Home ........................................................................................................... 81

Available Finding 36
The Bishop of Grafton, Keith Slater, failed to refer allegations of sexual abuse at the Home to the Professional Standards Director that could have assisted ongoing internal and police investigations .................................................................................................................................................. 84

Available Finding 37
The Bishop of Grafton and the Diocese of Grafton should have managed the process under the Protocol at the same time as the group claim was being handled between the Diocesan solicitor and the claimants’ solicitor .................................................................................................................................................. 85
Available Finding 38

The Diocese of Grafton failed to make provision for the settling of claims of child sexual abuse in its annual budgets for 2005, 2006, 2008-2012 ................................................................. 91

Available Finding 39

The Diocese of Grafton gave precedence to the debt arising from the Clarence Valley Anglican School over the settling of claims of child sexual abuse during the period 2007-2012 .......... 91

Available Finding 40

The Diocese of Grafton had sufficient assets either in its name or the Corporate Trustees of the Diocese of Grafton to meet the financial component needed to settle claims of child sexual abuse .................................................................................................................... 91

Available Finding 41

The Diocese of Grafton put the interests of the Anglican Church ahead of providing financial compensation to victims of child sexual abuse ................................................................. 91

Available Finding 42

In 2002 then Bishop of Newcastle, Roger Herft, became aware that Reverend Allan Kitchingman had been convicted of five counts of indecent assault of a child at an Anglican home in the Diocese of Grafton .................................................................................................................. 100

Available Finding 43

In the period 2002-2004, then Bishop Herft failed to take any disciplinary proceedings against Reverend Kitchingman .................................................................................................................. 100

Available Finding 44

From 2002 the Diocese of Grafton had both jurisdiction and authority to discipline Reverend Kitchingman but did not do so .................................................................................................................. 100

Available Finding 45

From 2006 Phillip Gerber, as professional standards director of Grafton and Newcastle, was aware that Reverend Kitchingman had been convicted of sexual offences against a child but failed to commence disciplinary proceedings against Reverend Kitchingman .................................................................................................................. 100

Available Finding 46

From 2002 the Bishop of the Diocese of Grafton was aware that Reverend Kitchingman had been convicted of sexual offences against a child but failed to commence disciplinary proceedings against him .................................................................................................................. 100
Available Finding 47

From 2004 the Registrar of the Diocese of Grafton, Reverend Comben, was aware that Reverend Kitchingman had been convicted of sexual offences against a child but failed to cause disciplinary proceedings to be commenced against Reverend Kitchingman ............................. 100

Available Finding 48

From the date of Reverend Kitchingman’s conviction in 2002 to 2013, no disciplinary action was taken against Reverend Kitchingman by either the Diocese of Newcastle or the Diocese of Grafton ........................................................................................................................................ 100

Available Finding 49

From 2005 to the present no disciplinary action has been taken against Reverend Brown or Reverend Morgan by either the Diocese of Grafton or the Diocese of Newcastle ....................... 104

Available Finding 50

From 2002 to 2013 there was a reluctance in the Dioceses of Grafton and Newcastle to commence disciplinary proceedings against a member of clergy who did not hold a licence to officiate...

Available Finding 51

The disciplinary processes adopted within the dioceses of Grafton and Newcastle are cumbersome, legalistic and expensive and this contributed to reluctance in the Dioceses of Grafton and Newcastle to commence the disciplinary process with regard to Reverend Kitchingman and Reverend Brown ........................................................................................................................................ 104

Available Finding 52

Where the Dioceses of Grafton and Newcastle both had jurisdiction over the professional standards matters concerning Reverend Kitchingman, including his discipline, there was no clear system in place to determine which diocese would assume responsibility ....................... 104

Available Finding 53

From September 2006 Reverend Comben failed to take steps to refer all allegations of criminal conduct against children formerly resident at the North Coast Children’s Home to the NSW Police ........................................................................................................................................ 105

Available Finding 54

In 2011-2013 the Bishop of Grafton, Keith Slater, failed to refer allegations of criminal conduct made by CB and CC to the police for investigation ........................................................................................................................................ 105

Available Finding 55

The Diocese of Newcastle did not adopt its own guidelines for safe ministry until 4 years after the General Synod had recommended guidelines for parish safety ............................... 107
Available Finding 56
The Diocese of Newcastle failed to take action under the principles of ‘safe ministry’ to manage any risk posed by the involvement of Reverend Kitchingman at Christ Church Cathedral until October 2013 .............................................................................................................................. 107

Available Finding 57
The National Register of the Anglican Church does not record the all names of persons that may be required to be registered because various dioceses have been unable to review all their files to determine whether an entry on the national register should be made ................................. 112

Available Finding 58
The general Secretary of the General Synod, Martin Drevikovsky, was unsure in his evidence as to how many files were still to be reviewed to determine entry on the National Register ........ 112

Available Finding 59
The professional standards directors of a number of dioceses have had difficulty operating and entering information into the National Register on a timely basis .......................................................... 112
SUMMARY OF AVAILABLE RECOMMENDATIONS

Available Recommendation 01

That the Diocese of Grafton develop a detailed care and assistance package to supplement the Professional Standards Ordinance 2004 and its Protocol to ensure that both the members of the Diocese of Grafton and any claimants may properly understand the operation of the care and assistance package ................................................................. 94

Available Recommendation 02

That the Diocese of Grafton regularly review the operation of its professional standards processes to ensure that the both the Professional Standards Ordinance 2004 and its Protocol are fully complied with and the professional standards director and professional standards committee are appraised of all outstanding claims of sexual abuse ................................................................. 94

Available Recommendation 03

That the General Synod of the Anglican Church give consideration to the best ways in which greater guidance might be given to determine which diocese has jurisdiction over a particular professional standards matter where multiple dioceses have jurisdiction ................................. 104

Available Recommendation 04

That the Diocese of Grafton refer Reverend Morgan and Reverend Brown to its Professional Standards Committee for determination as to whether to initiate disciplinary proceedings against each person .................................................................................................................... 105

Available Recommendation 05

That consideration be given by General Synod to the incorporation of a “red flag” system of notifications into the National Register ................................................................................................................................. 112

Available Recommendation 06

That each diocese and the General Synod establish procedures for the use of experienced and independent mediators in professional standards matters ........................................................................................................ 116