SUBMISSIONS IN REPLY

ANGLICAN DIOCESE OF NEWCASTLE

1. The Diocese is grateful for the opportunity to provide submissions in reply to the Submissions of Counsel Assisting the Royal Commission (the Submissions) with respect to the North Coast Children’s Home case study.

2. The Diocese of Newcastle (the Diocese) wishes to make submissions with respect to four of the Available Findings outlined in the Submissions. It is however convenient to firstly make some preliminary observations with respect to certain matters for which evidence was adduced at the case study public hearings.

The Reverend Campbell Brown

3. Evidence adduced at the Royal Commission revealed that Mr Phillip Gerber, in his capacity as PSD for the Diocese, was notified of allegations with respect to Mr Brown’s conduct during the course of a Grafton Diocese PSC meeting on 21 November 2006\(^1\).

4. The evidence also indicates that Mr Gerber did not initiate any action with respect to such allegations in his capacity as PSD for the Diocese\(^2\). The Diocese has no record of Mr Gerber conveying such information to any Diocesan personnel\(^3\).

5. Otherwise, the Diocese first became aware of the allegations relating to Mr Brown in 2013\(^4\).

6. [Redacted]

The Reverend Winston Morgan

7. Mr Morgan never served nor resided in the Diocese.

8. No evidence was adduced in the course of the Royal Commission case study hearings that indicated the Diocese knew, or ought to have known, of any matters that would enliven the Diocese’s jurisdiction to commence or maintain disciplinary proceedings with respect to Mr Morgan.

The Development of Diocesan Parish Safety Policies

9. The Submissions have sought to summarise the state of evidence with respect to the Diocese’s parish safety policies\(^5\). In particular, reference is made to paragraphs [81] to [83] of the Newcastle PSD’s statement dated 25 October 2013\(^6\).

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\(^1\) Referenced in paragraph 332 of the Submissions
\(^2\) Referenced in paragraph 335 of the Submissions
\(^3\) TB tab 161A, at ANG.0019.001.0001_R
\(^4\) SUBM.1003.004.0001_R
10. Paragraph 51 of the Submissions does not reference the evidence that the document entitled:

"Safe Ministry with Persons who have been convicted of a sexual offence the subject of a negative finding by a board or tribunal of sexual misconduct involving a person under the age of consent"

was amended by the Diocesan Council on 21 November 2013, postdating the Newcastle’s PSD’s statement referenced in that paragraph of the Submissions.

Comments about proposed “Available Findings”

11. The Diocese makes the following submissions with respect to certain proposed Available Findings outlined in the Submissions:

Available Finding 49

12. The wording of this proposed “Available Finding” seeks to group the conduct of the Diocese with the Diocese of Grafton in relation to the Messrs Brown and Morgan matters.

13. As outlined above, at no time has the Diocese had jurisdiction with respect to any allegations against Mr Morgan.

14. With respect to Mr Brown, it is submitted:

14.1 The Diocese only became aware of the allegations against him on 21 November 2006 (through the notification to Mr Gerber when he was attending a Grafton PSC meeting in his capacity as Grafton PSD);

14.2 Apart from this notification, which was not conveyed to any other Diocesan personnel, the Diocese had no knowledge of the allegations until 2013;

14.3 Upon such notification, the Newcastle PSD notified the NSW Police and provided the Diocese’s full cooperation.

15. There is no evidence before the Commission that, once informed of the allegations against Mr Brown in 2013, the Diocese avoided or delayed commencing disciplinary processes.

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5 Paragraph 51 of the Submissions
6 Statement of Michael Elliott - STAT.0062.001.0001_R
7 Ex 3-0020 at ANG.0035.001.0013
9 Ex 3-0001 at STAT.0063.001.0206_R
10 Ex 3-0002 at ANG.0019.001.0001_R
11 Ex 3-0001 at STAT.0062.001.0145_R
12 Ex 3-0001 at STAT.0062.001.0145_R
16. On this basis, it is submitted that insofar as the Diocese is concerned, the proposed “Available Finding” is not open to be made by the Royal Commission.

Available Finding 50

17. The wording of this proposed “Available Finding” revolves around a purported “reluctance” to commence disciplinary proceedings against members of clergy who did not hold a licence to officiate within the period 2002 to 2013.

18. The case study hearing examined the circumstances surrounding the conduct of Messrs Kitchingman and Brown and the response from the Diocese.

19. It is submitted that the case study did not more widely explore the circumstances of disciplinary proceedings against other members of the clergy within the Diocese so as to support a finding that the Diocese had a “reluctance” to take such action during the nominated period.

20. The Diocese certainly does not submit that its commencement and conduct of disciplinary proceedings has been without fault or criticism. However, it is submitted that the proposed “Available Finding” and the characterisation of “reluctance” during the timeframe nominated has not been established from the evidence adduced during the case study public hearing.

21. Although no evidence was adduced about such matters, since the adoption of the Diocese’s Professional Standards Ordinance in 2005:

21.1 One priest not holding a current licence has been deposed of Holy Orders;

21.2 Three priests holding a current licence have been deposed of Holy Orders;

21.3 One priest has been suspended for five years, and

21.4 At least three other priests have been suspended for lesser periods (including one priest for non child related matters).

22. Further, the proposed “Available Finding 48” already references the Diocese’s regrettable inaction with respect to Mr Kitchingman. The Diocese’s conduct with respect to Mr Brown has been addressed above.

23. For these reasons, it is submitted that this proposed “Available Finding” in the form as framed by Counsel Assisting is not open to be made by the Royal Commission.

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13 Ex 3-0003 at ANG.0006.002.0010
14 Andrew Duncan
15 Graeme Lawrence, Bruce Hoare and John Gumley
16 Graeme Sturt
Available Finding 51

24. The wording of this proposed “Available Finding” suggests that the Diocese had “reluctance” to commence disciplinary processes against Messrs Kitchingman and Brown (at least in part) as such processes were “cumbersome”, “legalistic” and “expensive”.

25. The Diocese’s progress with the disciplinary process against Mr Brown has been outlined above. The Diocese submits that such progress does not support a finding that the disciplinary processes are “cumbersome”, “legalistic” and “expensive”.

26. Further, the Diocese submits there was no evidence adduced in the case study public hearing that supports a conclusion that disciplinary processes were not commenced against Mr Kitchingman because the process was “cumbersome”, “legalistic” and “expensive”.

27. On this basis, it is submitted that with reference to the Diocese, the “Available Finding” insofar as it references the Diocese is not open to be made by the Royal Commission.

Available Finding 55

28. The wording of this proposed “Available Finding” suggests that the Diocese did not have any guidelines for safe ministry or parish safety for four years after the General Synod model policy for parish safety was released.

29. Evidence was adduced in the course of the case study public hearing that the Diocese only adopted the formal:

   “Safe Ministry with Persons who have been convicted of a sexual offence the subject of a negative finding by a board or tribunal of sexual misconduct involving a person under the age of consent”,

   in September 2013 (which was revised in November 2013 as outlined above).

30. However it is submitted that does not mean that, prior to the adoption of the policy, the Diocese had no parish safety or other risk management practices and procedures.

31. This point was the subject of oral evidence from the Newcastle PSD during the case study public hearing\(^\text{17}\).

32. Other Diocesan records produced under Summons to the Royal Commission reveal consideration of safe ministry and risk management issues at various times (including prior to the release of the General Synod model policy in 2009), particularly as

\(^{17}\) Elliott: T2358: [27] to [40]
evidenced by the efforts of the Newcastle PSD\textsuperscript{18} since his appointment and matters minuted in Diocesan Council meetings\textsuperscript{19}.

33. The Diocese submits that the proposed Available Finding in its current form does not reflect the available evidence, but the following wording would be appropriate:

“The Diocese of Newcastle did not formalise its parish safety processes and procedures in a dedicated policy until 2013”.

Further Submissions

34. The Diocese remains available to provide any further assistance to the Royal Commission, including making further submissions if required.

DATED: 20 January 2014

JOHN CLEARY
Diocesan Business Manager
Anglican Diocese of Newcastle
(as authorised by Bishop Peter Stuart (Bishop Administrator))

\textsuperscript{18} For instance Ex 3-0002 at ANG.0012.001.0146

\textsuperscript{19} It is conceded that the Minutes were not produced under Summons nor tendered in the case study public hearings