THE CHAIR: Yes, Mr Beckett.

MR BECKETT: Your Honour, just a housekeeping matter to begin with. We are expecting at 2pm to take evidence from a Mr Anthony Newby, who was the registrar after the Reverend Pat Comben.

We only have a limited window, I'm told, in which that evidence can be taken because it is remote from somewhere on the north coast. So depending on how we go this morning, it may be the case that I'll have to ask to interpose a witness at 2 o'clock.

THE CHAIR: We'll manage that in due course.

MR BECKETT: Thank you.

<SIMON JOHN HARRISON, on former oath: [10am]

<EXAMINATION BY MR BECKETT CONTINUING:

MR BECKETT: Q. Mr Harrison, yesterday I think we concluded with you indicating the contents of the weighty document provided to the Diocese of Grafton on 15 September 2006.

A. Yes.

Q. According to your statement, then, the next thing that appears to have occurred - or maybe I should ask you. You refer at paragraph 26 of your statement to an interview that reverend Comben gave with a local newspaper, the Northern Star, on or about 26 September. But let me ask you this first: was there any contact between you and the diocese, or the diocesan solicitors, between 15 September and 26 September?

A. Not that I recall.

Q. Then it was brought to your attention that Reverend Comben had conducted an interview with the Northern Star with respect to the group claim; is that right?

A. That's correct.

Q. You have set out an annexure with no heading on it, but, in any event, it appears to set out the interview that was conducted?

A. Yes, that's correct.
Q. What were the concerns that were raised with you by the claimants about that particular interview?
A. That document actually wasn't prepared in that format by my firm. I believe that was a fax that may have come to us from Tommy Campion. I think he may have then received that, in turn, from the journalist at the Northern Star.

Q. You formed a view that that was an accurate account of the interview with the Northern Star; is that correct?
A. Yes, that's correct.

Q. Did you receive any information that may have led you to believe that it was not accurate?
A. Not at all.

Q. And you did subsequently have conversations with Peter Roland about that particular interview?
A. Correspondence, that's correct.

Q. So just returning to that issue, what were the main concerns of the claimants about that interview?
A. I wonder if you could refer me to the exhibit itself?

Q. Yes. Sorry, it's not on the screen. SJH-15.
A. Well, there were a number of concerns.

Q. Could we have the whole page, please, on the screen.
A. It certainly wasn't an appropriate vehicle to be discussing these matters. This wasn't to be a trial by media. It was very much a self-serving article that Reverend Comben was trying to put out there, and he was also, in my view, trying to rally the community behind himself as if he was some knight in shining armour. He'd said in the fifth paragraph towards the bottom:

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

They weren't. They were a very challenge to the Reverend Comben, not the community itself, in my view.

Q. So what did you do once you had received those representations from the claimants?
A. Yes, we then contacted Foott Law & Co. We put them on notice that if this article - if further steps were made by
the diocese to have that article published, then we'd be looking at injunctive relief, and we put them on notice that we'd take those proceedings straightaway.

Q. Is that in SJH-17, in your letter to Mr Roland?
A. Yes.

Q. I think you state there:

We are of the view this proposed step has been taken in complete and total bad faith on the part of your client ...

A. That's correct. There was nothing that would possibly serve the claim either from the - well, sorry, I'll start that again. There was nothing that would assist with the progress of these claims by this article. There was certainly a lot that would - there was a lot of damage that could potentially have been caused by this article to our clients, many of which, of course, experienced quite significant psychological and psychiatric disturbances, and this would only make matters a lot worse.

Q. As far as you were aware, a number of your claimants had actually already seen the interview or the terms of it, in any event?
A. That's my understanding, yes.

Q. Then what happened as a result of that threat to take injunctive relief?
A. We then received a reply, I believe, from Foott Law & Co on 26 September, whereby in paragraph 2 they stated:

Our client has instructed us that the material has been withdrawn at this time. Copies of your letter and this reply have been forwarded to "The Northern Star".

Q. Then you received a letter on 10 October 2006, you say in your statement at paragraph 30. This was a letter that was accompanied by a substantial document in reply; is that correct?
A. That's correct.

Q. That set out in some detail the diocese's position with respect to the question of liability; is that correct?
A. Sorry, is this exhibit SJH-19?

Q. Yes.

A. Yes, that's correct.

Q. So they had conducted a similar task, that is to say, they had gone through and had a look at historical records from the 20s and 30s, and so forth, to try to establish the history of the establishment of the North Coast Children's Home?

A. So they said, yes.

Q. You raise in your statement that paragraph (c) concerned you and that there was an indication that the matters set out there were discretionary. I wonder if you could explain that, please?

A. I'm sorry, is this this letter of 10 October?

Q. Correct.

A. Yes. Well, that was consistent with their general approach, which initially had said that they could only look at matters of a sexual nature, and this was really saying to us that the protocols that were established by the Anglican Church could just be rolled over, quite frankly; they were going to ignore them.

Q. So you had included in your letter of 15 September 2006 some detail about the application of the Professional Standards Ordinance 2004 as well as the protocol that accompanies that ordinance?

A. That's correct.

Q. This was an indication as to what the position of the church was with respect to the application of that ordinance and that protocol?

A. Yes, and it's a pretty disingenuous paragraph, actually.

Q. Why is that?

A. Well, the fact that we had some 42 claimants wouldn't have, itself, obviated the process, the protocol. There's no reason why each of those claimants couldn't have been taken individually through that process, if that protocol had been offered.

Q. Then you put a number of offers, as I understand it, to the Diocese of Grafton. At SJH-21, you have provided
a list of offers - that is, monetary offers - to settle the matter in eight bands, I think they were. Is that correct?
A. That's correct.

Q. The lowest band was at $40,000, and it ranged up to the highest band at $110,000.
A. That's correct.

Q. Then you annexed, I think, to that letter an assessment of where each of the claimants fell within those eight bands; is that correct?
A. That's correct. That assessment form was really - it's slightly out of context, in that we were looking at a number of ways in which we could try to do equity to each of the claims vis-a-vis the remainder, and so this is one of a number of documents, I think, that we looked at in individual cases to try to come up with some proposal that would sit well as between each claimant.

Q. What was the reaction from the diocese to that offer?
A. It was rejected.

Q. At paragraph 34 you then say that you and your clients:
... had agreed that seeking to engage the 2004 Protocol, including a relation to obtaining counselling, and actively seeking the intervention of the Professional Standards Director was unlikely to prove fruitful.

Was that simply arising from the 10 October letter, or were there other indications that the protocol had been abandoned or at least not followed?
A. We were uncertain whether or not it had been abandoned or just not followed, but, in any event, the result was the same: they were not going to proceed in accordance with a protocol.

Q. Then I think there was a further offer for six claimants on 13 November 2006, SJH-25. Was that simply picking up additional claimants that hadn't been included in the original list of bands?
A. Yes, that's correct.

Q. I see that you say that on 29 November you wrote to
Archbishop Phillip Aspinall, also the Primate of the Anglican Church of Australia. Can I ask you, first of all, why did you write to the primate at that stage of the negotiations?

A. I wasn't willing to accept the Grafton Diocese assumption that, effectively, that diocese should be ring-fenced so far as liability was concerned and so far as making any compensation was concerned. This is described as the one Anglican Church, and, as such, I felt that it was appropriate that I try to include Bishop Aspinall in that, as I did with the Sydney Diocese a little bit later on.

I should also mention that one of the other reasons for corresponding with Bishop Aspinall at that time is that I wasn't sure whether the Diocese of Grafton was acting in probably what I would describe as a bit of a rogue manner as opposed to other dioceses, so whether it was going off on an adventure of its own which was not consistent with what the bishopry would have approved of.

Q. When you say "an adventure of its own", and a departure - a departure from what?

A. Well, if it were the case that the diocese should have been pursuing the protocol and decided of its own volition that it wasn't, I wanted to be sure that that was something that was appropriate, so whether the diocese had a discretion to actually do that or whether it was mandated to actually proceed with the protocol. I wasn't convinced at that stage that the Reverend Comben was necessarily the right person to be making that call.

Q. I think in your letter to Dr Aspinall of 29 November you state that you were trying to informally and confidentially resolve the matters. Do you see that at the bottom of that first page?

A. Yes, that's correct.

Q. That was the case, and I think you've mentioned a couple of times already, and we've seen in the correspondence, that you were trying to obtain some sort of informal settlement conference or at least to be able to sit down with the solicitors on the other side and attempt to settle the matter; is that correct?

A. That's correct.

Q. By this time, 29 November, you had asked for
a settlement conference in your letter of 15 September. Had you received a response about whether such a meeting should take place or not?
A. I think the correspondence attests to the fact that we were still moving towards an eventual conference.

Q. When you say you were moving towards it, does that mean that the other side had agreed to such a conference taking place at that stage?
A. I'm trying to recall from the actual - without going to all the correspondence. I believe that's the case, yes.

Q. In your letter to Dr Aspinall, you quote from a number of documents, particularly definitions relating to "Church Authority", "Church Body", and so forth. I won't take you to them in any detail, but if I could just ask you, those were drawn, were they not, from the Professional Standards Ordinance?
A. I'm sorry, could you ask the question again?

Q. Yes, sorry. You'll see on page 641, towards the bottom there:

\begin{quote}
The Church defines "Church Authority" as the Bishop or a person or body having administrative authority ...\end{quote}

et cetera, et cetera. Do you see that?
A. Yes.

Q. Then over the page, there is a definition of "Church Body", and so forth. Were they taken from the Professional Standards Ordinance?
A. Yes, they were.

Q. What was the response from Dr Aspinall to this letter?
A. That, basically, he couldn't intervene; that this was a matter really for the Diocese of Grafton.

Q. Did you receive a specific response? I understand that you received a letter from Dr Aspinall dated 8 December 2006. Did he call you or did you have a telephone conversation with him --
A. I never spoke to him directly. I did speak to Rod McLary on several occasions.

Q. And who is he?
A. Rod McLary was the, or is the, professional standards officer for the Diocese of Brisbane.

Q. He was assisting Dr Aspinall, was he, in terms of handling matters such as this?
A. Yes, he was. In fact, it was during negotiations on another unrelated matter that I first canvassed the problems that I was having with the Diocese of Grafton with Mr McLary and either he suggested, or I suggested and he agreed, that I write to Dr Aspinall. I'd always found Mr McLary to be a man of integrity and honesty in my previous dealings with him, and I've got to say that I wasn't disappointed in him throughout any part of this process.

Q. So by the time we come to 8 December, you've received a letter from the archbishop, Dr Aspinall, which you've annexed to your statement at SJH-28.
A. Yes, that's correct.

Q. In it, he set out six principles which he said he has publicly espoused and continues to stand by.
A. Yes.

Q. Do you see those?
A. Yes.

Q. I just want to take you through those principles, and if we can cover the period both before and after this letter, so in other words from the start of the claim in January 2006 up until the settlement of the claim in March and April 2007.

the timely provision of counselling and pastoral support to the victims.

You gave some evidence yesterday about Mr Campion receiving counselling from the Diocese of Grafton. During that period that I've just referred you to, was counselling provided to the other claimants who were part of the group claim?
A. I think I indicated, or if I didn't I can clarify, I'm not sure whether that was actually the case. That information would be contained on their individual files and not on the master file, which I've reviewed. But I seem to recall that one or two were either receiving counselling that was facilitated through the auspices of
the diocese or at least being offered it.

Q. So do I take it from that that the vast majority were
not offered counselling?
A. That's my understanding - oh - yes, that's my
understanding.

Q. an offer of an opportunity to share their
experiences with the bishop or senior
clergy.

So up until December 2006, was any opportunity given for
your clients, the group claimants, to share their
experience with the bishop?
A. It was mentioned I think on a couple of occasions that
perhaps towards the end of this process that that would be
appropriate. It wouldn't have been appropriate, in my
view, during the course of the process itself.

Q. I'll ask you about that in due course. The next part:

an assurance that the victims will be
heard.

Is that part of, really, the second principle, that there
would be some sort of audience, if you like?
A. Yes.

Q. The next one:

an assurance that they [the claimants] have
recourse to legal advice and court
processes at any time, and that the Diocese
would do nothing to stand in their way.

Do you see that? Was that something that the Diocese of
Grafton had accepted and applied?
A. No, that's absolute nonsense.

Q. Why do you say that?
A. Because we were not able to seriously consider
proceeding with any court process because of the limitation
periods. If the diocese had agreed to waive limitation
periods, then we could have brought all these matters, we
could have chatted about the corporation's responsibility,
the bishop's responsibility and liabilities, and all these
matters could have been properly examined through the
correct evidential processes. So to suggest that an
assurance that we'd have recourse to court processes at any
time was just an absolute nonsense.

Q. The fifth dot point is about mediation and
reconciliation processes. We know from the evidence that
at least a settlement conference took place in December
2006?
A. Yes.

Q. Was there at any stage mediation offered by the
diocese?
A. The diocese came up with a proposal, which is in the
papers and I can't recall the precise date, where they
produced two hybrid proposals.

Q. I'll come to that in a moment.
A. Yes.

Q. But in terms of reconciliation, was there any form of
reconciliation process ever envisaged or referred to you by
the diocese?
A. No, no - well, because they'd closed down - they'd
closed down the opportunity of doing that because they said
that that wasn't appropriate for 41 claims where there were
significant legal or evidential issues that needed to be
discussed.

Q. If I could go, then, to SJH-31, which is a letter from
Mr Roland, the diocesan solicitor, to you of 14 December
2006.
A. Yes.

Q. In that letter, at the bottom of the first page, it
says:

    We are instructed to advise that the Church
    is prepared to apply the following
    principles in considering the claims
    brought on behalf of your clients ...

And then it sets out a number of principles. I see there
are five. Did you form an opinion about the association
between those five principles and the six principles that
Dr Aspinall had sent to you?
A. Well, they were very similar, save and except the
reference to legal processes.

Q. Which was absent or it had been amended?
A. It was absent in the letter of 14 December.

Q. In 2, it appears that two alternative courses of action are put as an offer being provided by the diocese to you and your clients?
A. Yes.

Q. They seem to be called (a) and (b) there. What did you understand the difference between the two offers to be?
A. Well, the first offer lacked any certainty or clarity, and I couldn't understand why they were coming up with something that we were discussing, anyway, save and except that under this scenario it would be what they have termed a "modest ex-gratia payment for the clients' inconvenience in those matters".

With regards to the second one, they had then proposed in (b)(a):

that the proposal will be administered by two facilitators (with counselling and legal qualifications respectively) and involve your client and a support person ...

And I think they also mentioned a little bit further on - sorry, if you can just bear with me, at (d):

that the facilitators may consider the prospects of the claim's success, the delay in making the claim ...

I took the view that particularly with regards to (d) what they were looking to do was get some statement from our client that may have caused some difficulties if we had to proceed with a secondary limitation application under section 31 of the 1974 Limitation Act, and that evidence, if we were to proceed with such an application, would have to be very carefully controlled and managed, and I felt that (d) was, potentially, their attempt at drawing our clients out to give them favourable commentary that would have caused difficulties if we did proceed then with an application to the court.
And in respect of (a), which is the administration by two facilitators, my concern there was that we could end up with a diocese proxy or we could end up with people who really did not have sufficient experience in either the very specific psychiatric treatment of long-term and historic abuse and also somebody who perhaps wasn't proficient in the machinations and the strictures involved with primary and secondary limitation periods, and as such that would introduce a very rogue element into the process.

Q. In other words, there was a degree to which option (b) involved your clients, or potentially involved your clients, in discussion of limitations issues and the merits of the claim, if you like?
A. That's correct.

Q. Both of those options included some form, or at least potentially included some form, of payment; is that correct? The last dot point at (a) and then (b)(e) both have payment.
A. Yes, that's correct.

Q. What did you understand by "modest ex-gratia payment for the clients' inconvenience in those matters"?
A. They had previously mooted the figure of $5,000 for a compensatory part of the claim. I wasn't even sure whether a modest ex gratia payment, linked as it was in that sentence to the clients' inconvenience in those matters, would have even extended to the $5,000.

Q. I see, if we go over the page, that both options require a deed of release to be entered into by your client; is that correct?
A. That's correct.

Q. So do I take it from that that counselling, for example, which is in option (a), was dependent upon your clients signing a deed of release?
A. Sorry, could you ask me that question again?

Q. Yes. You see counselling is included in option (a) on page 2?
A. Yes.

Q. And then on page 3, we have a statement that:

In the event that any of your clients are
prepared to accept either of the above
alternative proposals, such clients will
enter into a deed releasing all Church
persons ...

et cetera, et cetera. Do you see that?
A. Yes.

Q. So do I take it from that that counselling was
conditional upon your clients entering into a deed of
release, or at least to your understanding?
A. Yes, that's correct.

Q. A conference did go ahead; is that correct?
A. Yes.

Q. On 19 and 20 December?
A. Yes, that's correct.

Q. We have a number of accounts of that particular
settlement conference, but perhaps I should leave you to
describe it for the Royal Commission, and if paragraph 46
of your statement could be brought up.
A. I should perhaps just explain some of the general
background leading up to this. I had said to
Foott Law & Co that I was getting increasingly concerned at
the level of perceived decompensation that a number of our
clients were reporting either to myself directly or to the
assistant lawyers I had working on these claims.

We were anxious to try to get the church to this
conference to stop that happening. In particular, if
I recall, shortly before this conference I was on my way
home one evening in the car and I got a call on my mobile
phone from somebody who was in quite a distressed state, to
say the least. It transpired that they had contacted my
office and spoken to a junior receptionist who
inadvertently gave them my mobile number. Thankfully they
did that, though.

The person on the other end of the phone had told me
that they had covered themselves in petrol and were
standing in a hall with a lighter ready to set fire to
themselves. I pulled the car over and was then trying to
keep them talking on the mobile phone while also trying to
get some help on the landline. As that transpired, their
partner came in and I could here the furore in the
background and thankfully that attempted suicide was
stopped.

So we had a number of --

Q. Who was that person - was that one of your claimants?
A. Yes. I can't remember which one it actually was,
looking at the papers. Certainly that was the extreme of
what we were getting. But we were getting a number of
calls from people who were quite clearly on the edge of
self-harm. That was taking a great toll on - I'm not
particularly concerned about myself, but it was taking
a toll on the other lawyers who were working on these
claims. And what we'd done throughout this, by way of
general background, if you'll allow me - we'd set up
a process whereby we had counsellors come in to debrief the
group of lawyers and secretaries, of course, who were
working on these claims, and they could also take up
one-on-one counselling sessions.

We were often, when we were taking these instructions,
debriefing clients for the first time - this was the first
time for many of them that they had spoken about the abuse
openly. We were very concerned that if we were not careful
we would actually be decompensating some of those clients
ourselves by taking them to places that they really
shouldn't go. So the initial conversations were often
curtailed until we ascertained whether or not they had
taken advice from psychiatrists or psychologists, or
whether they had a support person.

So I think the background to all this is this wasn't
a, as you will imagine, straightforward group action claim.
There were all sorts of overlays that were taking place
throughout the carriage of the claims, and these were
getting progressively worse by the time we had the
conference with Mr Comben and Foott Law & Co.

You asked me about the conference itself. There's
a fairly lengthy attendance note which was prepared
contemporaneously by Greg Lauritsen-Damm who was one of my
lawyers who was in attendance in the room at the time.

We walked in to an office, a fairly large office. We
had a number of tables put together. 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 --

Q. All right. In terms of the negotiations that occurred over the days 19 and 20 December, did Mr Comben's behaviour change from that early episode you've just described?
A. No. Mr Comben's feet remained in a prostrate position throughout most of the conference.

When I opened and started to discuss some of the comments that he had made of late, he advised that if - I can't remember the exact wording, but that if we were going to start criticising him, then he would leave the conference there and then. Of course, he was the only representative that we had of the diocese at that stage, so I backtracked a little, against my better judgment, and said that we won't discuss Mr Comben during the rest of this conference.

Q. You had put to Mr Comben, hadn't you, the terms of the letter that he had sent to Tommy Campion in 2005 and the reference to the apology in that letter of harm having occurred in an Anglican place; is that correct?
A. That's correct.

Q. And what was his reaction to that when you put it to him?
A. He wasn't happy. He felt that we were overly personalising the matter with him, which we weren't. I think it was quite proper and appropriate that if he is referring to the children's home, as we knew, as an Anglican place, then it was only right to point that back to him, because, of course, if we did proceed with litigation, he would be one of our star witnesses, quite frankly.

Q. So the negotiations continued for the two days, and at the end of those two days - I presume there was some toing
and froing with respect to the making of offers and counter-offers?
A. There was toing and froing. There was also a number of attempts, I felt, by the diocese at tilting at windmills to an extent as well. The diocese had advised that all these matters needed to go to the Bishop-in-Council, which would take several months to resolve, and again they were then building in a further period of time where these matters could be settled. But offers were made, although we didn't settle on that day.
Q. I think by the end of the second day, you had offered to settle the matter for $1.2 million for all 41 or 42 claimants; is that correct?
A. That's correct.
Q. And the diocese had come up from $5,000 a head to $750,000 to settle all of the claims; is that correct?
A. Yes. Whilst I've been in previous - over the past 25 years I've been in previous settlement negotiations with parties other than the churches. There's always an element of brokering and poker playing that goes on. For these particular claims, I felt that that would be an appropriate way to proceed forward, and Reverend Comben came back in the early part of those discussions --
Q. Sorry, was that inappropriate or an appropriate - I didn't quite hear?
A. Well, the poker playing is a given part of any settlement negotiations, effectively. When it comes to matters like this, I felt that that wasn't necessarily the appropriate way to proceed. But the Reverend Comben came back at one point and said, "Look, I've been back to" - I forget who he had called; I think it was Bishop Slater - "and the maximum we can go for each of these individuals is $10,000", and that if we were not going to settle, then, in Clint Eastwood style, he said, "Bring it on", which again I felt was inappropriate, but was consistent with the previous references to Tommy Campion as being a ringleader and other derogatory remarks that were made throughout the course of the process.
Q. What did he mean by "Bring it on", to your understanding?
A. Oh, again, his macho bravado was taking over and he was effectively telling us to bring these matters before the court, because he knew that we'd have significant
difficulties if they were not going to waive limitation periods to allow us to properly explore these matters and have some real transparency.

Q. During those negotiations, did you have any contact with Dr Aspinall or Mr McLary in Brisbane?
A. Yes, I spoke to Rod McLary by telephone, I think it was on the evening of the first day of the conference.

Q. Why did you do that?
A. Oh, because it wasn't going well and I also wanted to make sure that I was tying Bishop Aspinall into these matters again.

From one perspective, it was a political play, in large part - well, for one aspect, it was a political play on my part to make sure that if this wasn't settled, then we would be able to look at the wider arguments as to why the other diocese couldn't be involved in matters like this. And the second was to see whether or not he could bring any pressure to bear in trying to get these matters settled, because the approach, I felt, by Foott Law & Co and the approach I certainly felt by the Reverend Comben was that we had a pretty rogue, in my view, diocese here, and that if Bishop Aspinall had thought for one minute that these matters were going to be resolved and thought, well let's give it a day and see how it goes, he needed to be told that it was as I said it would be and that we were coming up with a very legalistic and obstructive approach by the diocese.

Q. Then after the conference, you received a letter dated 21 December from Foott Law & Co, from Peter Roland, setting out the terms of the bands and the offer at SJH-37, if that could be brought up on the screen, please.
A. Yes.

Q. I just want to ask you about that second paragraph. Mr Roland states:

We note that our client's offer of pastoral care and assistance package as set out in our letter of 15 December 2006 ... was rejected. We are instructed to advise on a "Without Prejudice" basis that such pastoral care and assistance package will remain open until 28th February 2007 unless
Was there some indication perhaps at the conference or afterwards that that was a viable route for your clients, that it was something to be explored, or how was it left?

A. I'd have to go back to the notes of the conference, but if it was mentioned, it was something that was a backburner approach, effectively, so if we couldn't settle in this regard, then there was some potential other avenue, which would have been the unacceptable proposal that was contained in the letter of 15 December.

Q. But in any event, you hadn't changed your mind, given the evidence that you have given earlier today about why you didn't like that second proposal, why you thought it was inappropriate?

A. No, and in fact I suppose having experienced those two days in Grafton, I think my attitude had probably cemented even further that that was not going to be something that I was going to be recommending to our clients.

Q. I understand then there were various additional steps taken to try to settle the matter, in the sense that there were counter-offers between the start of January 2007 through to March 2007; is that correct?

A. That's correct.

Q. Also at that stage, you involved Dr Aspinall, or you attempted to write to him to elicit his support; is that correct?

A. That's correct.

Q. What was the approach that he communicated to you, either through Mr McLary or himself?

A. It was the same as before, that really this was a matter for the Diocese of Grafton, and I believe Rod McLary had told me that the bishop had contacted - Bishop Aspinall had contacted, I think, the Reverend Comben and made certain suggestions, I believe. As to what that was, I really don't know.

Q. There was some discussion, was there not, about the Bishop-in-Council considering an offer that you had made of $950,000 to settle all of the claims?

A. Yes.
Q. What was the result from the Bishop-in-Council, of that proposal?
A. I remember at one stage that Foott Law & Co had come back to us to say that the Bishop-in-Council had said that all offers are now withdrawn and that if we are going to proceed by way of litigation, then effectively so be it. So quite arbitrarily they had pulled the rug from under this in the middle of the negotiations, only to recant I think 48 hours later, and re-offer the previous package - I'm sorry, the previous settlement offer.

Q. I'll just take you to that in a moment. SJH-46, if that could be brought up on the screen. If you could just read that to yourself, sir. Have you read that now?
A. I've read page 1. Do you want me to continue?

15 February 2007 letter?

Q. Yes, the one to Dr Aspinall.
A. I'm sorry, that was 47 I was looking at?

Q. Sorry if I said 47. SJH-46 was what I meant.
A. Yes.

Q. So there's a reference there to a statement from Mr McLary that he had spoken with the archbishop, Dr Aspinall:

... and his view is that the liability for payment is really with the legal entity which incurred the liability and I suppose that's the complicated way of saying that the responsibility is really with the Diocese of Grafton.

You thought that that was a legalistic response?
A. Yes.

Q. Why was that?
A. It was an interesting response, because to my mind, at least, I was seeing that as an example, I hope and I think, that the church knew that they were actually responsible for that home and what went on in that home. This was quickly retracted, I would say, a few days later, I think, by Mr McLary.

Q. Retracted in what sense?
A. I think there's a letter here which says that the words have been taken out of - I don't want to say taken out of context, but I think there is a letter in this bundle.

Q. I'll come to it later. In any event, was there any engagement with you from either the Diocese of Brisbane or from Dr Aspinall with respect to the acceptance of some sort of moral obligation for him, as primate, to assist?
A. No. I think there was probably a PR imperative, to be seen to provide some overture or some response to me. I don't think they could have ignored my correspondence, but certainly I wasn't picking up on any moral imperative to try and settle these matters appropriately. It may have been the case that Mr McLary, when he was speaking to the Reverend Comben, was expressing Dr Aspinall's wish to try to get these matters settled, but there was nothing that we were seeing that was suggesting that Dr Aspinall was recommending a settlement that would be in any way appropriate to the claims we were pursuing.

Q. As far as you understood it, he was effectively leaving the issue to the Diocese of Grafton?
A. Oh, he absolutely was.

Q. You mentioned a little while ago the withdrawal of an offer at one stage of the negotiations. I'll just ask you to have a look at SJH-54.
A. Yes.

Q. Just familiarise yourself with that letter.
A. Yes.

Q. So you'd made a further offer, I think, and that's referred to as the 22 February 2007 --
A. Yes.

Q. And then the response came that not only was that rejected but:

The Diocese withdraws all offers previously made by it save for the ... Pastoral Care and Assistance package set out in letter from Foott Law & Co dated 14 December...

it's now correctly stated?
A. They went a bit further than that. In paragraph 3
they also gave us an address for service of proceeding.

Q. So how did you react to that?
A. I'd probably say surprised, but the way that this
process had developed over the several months prior to
February, it fitted within a scheme of approach that we
were experiencing from the diocese. But to then come out
and withdraw all offers without any commentary as to why
the offers were being withdrawn or to reinstate a - or to
state, rather, an increased offer, was quite an affront,
and it was a fairly aggressive letter. I mean, it goes
straight into providing us with an address for service.

Q. As far as you understood it, that was the end of the
negotiations that had been ongoing for the last
three months?
A. Yes.

Q. In any event, a week or so later an offer had been
received from the diocese; is that correct?
A. Yes.

Q. How had that change in position happened or did it
just occur?
A. It just occurred.

Q. Suddenly it was back on, if you like, the settlement
negotiations?
A. Yes.

Q. I think there are then a number of pieces of
correspondence between you and Mr Roland which indicate
that you were attempting to increase the latest offer from
the diocese, which was about $800,000, and trying to
supplement that with, for example, coverage of the HIC
claims; is that correct?
A. That's correct.

Q. That is in terms that the claimants, if they were to
settle the matter, would have to repay Medicare for any of
those expenses?
A. Well, that was another difficulty. The abuses took
place many decades ago. There could be a number of reasons
as to why people are resorting to medical assistance, some
of which may be for physical conditions, but it could be
psychosomatic from the original abuse or some of the
psychological impairment that they may have been suffering
could have had nothing whatsoever to do with the abuse, and therefore it was quite difficult, I think, for HIC to make any decision as to what would or wouldn't be repayable. I don't remember seeing it in the papers that were in the master file when I've reviewed these recently, but I'm sure there was some correspondence and some discussions with HIC as to how we really sort out something that could be as messy and as convoluted as repayments.

Q. But, in any event, you were going to the diocese and saying, "Can you increase the offer to cover these out of pocket expenses"?
A. Yes, yes.

Q. And the same occurred with respect to legal costs?
A. Yes.

Q. And I think through Ms Johnston from Bravehearts, you also approached Dr Aspinall to see if some assistance could be provided there?
A. Yes, that's correct.

Q. On each of those occasions you were knocked back by the diocese, in the first part, and then by Dr Aspinall in the second?
A. That's correct.

Q. Eventually you settled with the diocese for $825,000?
A. That's correct.

Q. Out of that $825,000 had to come the legal costs?
A. That's correct.

Q. Which you had incurred, and any HIC payments that might be an obligation?
A. That's correct.

Q. For your clients?
A. That's correct. The cap on - there is a cap on legal costs which means that you cannot exceed 50 per cent of the clients' net damages, and at that stage we had gone way over the 50 per cent cap and so what we were also doing as a practice was writing down quite a lot of the costs that we had incurred to get us under that 50 per cent cap.

Q. Did you do a review after these matters had finished as to the costs to the firm of the litigation and whether
you had broken even or whether you had suffered a loss or whether you had made a profit?

A. Yes, we did. Our accounts department, God bless them, wanted to know why there had been such a write-off. I had made sure that my fellow partners knew all along what our costs were and how that was benchmarking against the 50 per cent rule. But we still - they still took the view that, look, we're not going to let this one drop, we're going to continue with it. So effectively - a solicitor pleading poverty, we were actually working on a lot of these matters then knowing that we were not going to recover those fees.

Q. As part of the settlement, then, I think we have on file a payment, at paragraph 80 of your statement, in the amount of $698,000. Obviously that's short of $825,000. What was the reason for that reduced amount?

A. That was to take into account three of the claimants who had decided not to accept the offer that was being made by the diocese.

Q. That was Mr Campion, Ms [CA] and a third person?

A. That's correct.

Q. And the third person eventually did agree?

A. Yes, I believe so. Can I just say on that, I perfectly well understood why [CA] and Tommy were not willing to accept the offers and that it was most appropriate for them that they, I felt, decided not to proceed to settlement. I'm just sorry it took another five years before the diocese decided that they would pay Mr Campion a paltry $5,000.

MR BECKETT: Your Honour, Mr Harrison inadvertently mentioned the name of [CA].

THE CHAIR: Does he have a list of the pseudonyms there?

MR BECKETT: Yes. They should be in front of him.

HIS HONOUR: You might just have another look at that. But I think we captured that, didn't we?

MR BECKETT: Yes.

THE WITNESS: My apologies.
THE CHAIR: That's all right.

MR BECKETT: Q. Once the amount had been settled, the $825,000, there was negotiation of some additional matters - namely, the prospect of an apology from the Diocese of Grafton and also deeds of release?

A. Yes.

Q. You wrote I think SJH-69.

A. Yes.

Q. If that entire page could come up, you wrote to Mr Roland on 15 May 2007 giving him a list of all of those people - that is to say, all of those claimants - that you represented who sought a written apology and we've redacted a number of those names, but please if you could assume that those nine names, and then if we go on to page 2, a total of 29 of the claimants sought a written apology?

A. Yes.

Q. Then there were some further members, you'll see at the bottom of the page there, who sought a personal apology from either the bishop or Reverend Comben?

A. Yes.

Q. There are three of those. And then there are a further ten people on the third page who did not require an apology.

A. That's correct.

Q. Do you see that?

A. Yes, I do.

Q. I wonder if tender bundle tab 81, so that's exhibit 3-2, could be brought up, page 2, which is 01802.1680. I wonder if you could read that document to yourself, please.

A. Yes.

Q. Was that a draft apology that was conveyed to you in about May or June 2007?

A. I believe so, yes.

Q. What happened with respect to that particular apology? Was it sent in that form to your clients or amended or what occurred?

A. I'm not sure whether it was amended. I'm trying to
think whether there's anything again in the bundle that
I've seen about that. That would have been dealt with on
the individual files, I would have thought.

Q. We haven't been able to locate in the diocesan records
any signed apologies from Bishop Slater to any of the
claimants. Do you recall whether you received or at least
saw some of those apologies?
A. I honestly - it's six years ago. I really can't
recall, but that information can be obtained from Nicol
Robinson Halletts, off the individual files. That might
shed some light on it.

Q. But you don't recall?
A. I don't recall.

Q. At paragraph 81 of your statement you refer to deeds
of release that were signed with respect to 38 claimants
and drafts were provided by Foott Law & Co, SJH-72, and
then there's a draft of one with respect to - at SJH-73, we
have a signed deed of release for [CM]?
A. Yes.

Q. I wonder if you could just go to that deed of release
and particularly the last page. You'll see there is an
item headed "Apology".
A. Yes.

Q. It says:

The Claimant acknowledges that they have
been offered an apology from the Anglican
Diocese of Grafton and other support
including counselling, pastoral care and
assistance, and that they have taken these
up to the extent that they wish.

Do you see that?
A. Yes.

Q. First of all, that was the apology in the draft form
that I took you to a moment ago; is that correct?
A. Yes, it would have been, yes.

Q. But this second element:

... other support including counselling,
pastoral care and assistance ...

What was the nature of that support that was offered to each of the claimants?
A. I should imagine that that was just in relation to - sorry, if the claimants had wanted to talk about some of these matters outside counselling, I would have thought that that would be included within that pastoral care and assistance. I didn't really see that as being a monetary component.

Q. Was that a reference perhaps to the second paragraph (b) of the offer that was communicated on 14 December 2006?
A. Yes.

Q. If I could just then finish with the two claimants that didn't accept the offer, no doubt they were bound, to some degree, by their fee agreements with your firm; is that correct?
A. That's correct.

Q. And what steps, if any, were taken with respect to the legal fees that they had incurred as a result of the group claim?
A. Well, I took that and made certain recommendations to the partnership. The partnership came back and said, "Look, the client agreement was quite clear. If we believe that these are reasonable settlements in all the circumstances", which in the context of this, they actually were, because we had no other recourse other than litigation, which would have put them all at risk in respect of strike-out applications, then this was the best we were going to get through the process with the diocese at that time. So I believe that our accounting procedures kicked in and requests were made for those two claimants to then meet the costs of the firm.

I'm not sure how that resolved, although I do believe that the fees were eventually written off after some payments were made. But again, unfortunately, I'm not sure how that evolved, because shortly after that time I had taken up a position with the University of Queensland as an adjunct.

Q. SJH-74. You were approached in 2008, so the following year, by some further people who said that they had...
suffered physical and psychological abuse at the North Coast Children's Home; is that correct?
A. Yes, that's correct.

Q. What occurred, what steps did you take with respect to those people?
A. We again entered into correspondence with Foott Law & Co to advise them that we had these claims and really to effectively start again, I suppose, by way of letter of action to Foott Law & Co, putting them on notice of the claims.

Q. Sorry, I missed that last bit?
A. We effectively sent a letter before action to Foott Law & Co putting them on notice of the potential claims.

Q. And we have a response here, SJH-75, from Mr Roland, dated 13 October 2008. He sets out some basic questions about the claim.
A. Well, again, I was a bit surprised to receive that correspondence, having just gone through almost two years or so with Foott Law & Co explaining what we alleged would be the duty of care and all the other issues. Nevertheless, it was I suppose a letter that he was at liberty to write.

Q. Sorry, that he was?
A. He was at liberty to write. It was as if we were starting with something that he knew nothing about previously.

Q. So you raised the issue as to whether those three new clients that you obtained instructions from could also be in receipt of a financial settlement in the same terms as those other group claimants you had just settled with?
A. Not necessarily in the same terms. It might have been that the diocese had seen the light and was willing to pay reasonable amounts to settle, but certainly that we would start a process off again with the diocese.

Q. In any event, you started negotiations with Mr Roland; is that correct?
A. Yes, that's correct.

Q. By 12 February 2009, SJH-81, he had expressed some opposition to the claims?
A. That's correct.

Q. He refers to a matter in the Court of Appeal called *Trustees of the Roman Catholic Church v Ellis*. Then in the next paragraph, paragraph 3 of that letter, he says:

The previous matters were, as you are aware, the subject of "ex gratia" settlements on a "Without Prejudice" and "Without admission of liability" basis. In agreeing to a range of negotiated settlements, our client had regard to both pastoral care and practical considerations. It was not our client's intention that such "ex gratia" settlements should be used as a basis for any future claims.

A. That's correct.

Q. So by February 2009, the position had been expressed to you that the diocese was not going to entertain any further similar financial settlements with respect to new claimants who were coming forward?

A. That's correct, and of course it was very difficult for - well, it's very difficult for any claimant who suffered that level of abuse to come forward. The psychiatric evidence is quite clear that it does take some time. My concern was that, notwithstanding that we had a group of claimants here in the 41 who had come forward, it may well have been the case, adopting that principle, that these three had suffered even more than perhaps you could say the 41 had. These had taken longer to come forward, and notwithstanding all of the publicity and activity around the original claims, they were only now stepping forward, so I was concerned particularly about the three, and others that would come forward.

Don't forget the evidence that we had was that abuse had taken place over a period of 48 years, and even on the evidence that we had received of 12 potential abusers, our view was throughout that this potentially was - this 41 was potentially just the tip of the iceberg in what may have come forward, and I think the diocese probably took that view as well.

So what they were doing was they were putting up the walls and saying, "Look, we've paid out, end of story."
Q. Had you indicated, during your representation of the group claimants, to them that the process, the settlement process, that you were engaged in was a once and for all settlement process?

A. No. It would be like approaching Suncorp with a settlement claim for 12 individuals involved in a motorway crash. Suncorp are not going to say, "Sorry, we've done 12 now. We're not going to do any more for the next four or five years until we've got some funding." That would have been quite surreal.

Q. Was there any indication from the diocese when you were representing the group claimants, so up until June 2007, that they were not willing to entertain any further claims after the settlement of the group claims?

A. Not that I recall, no.

Q. I wonder if this document could be brought up on the screen on ELMO. I have some copies for the Commissioners and once for the witness. Mr Harrison, we have been able to locate a letter from Mr Comben to Mr Roland dated 28 March 2007, so about the time that you'd agreed with the diocese on the $825,000.

A. Yes.

Q. Mr Comben, the then Reverend Comben, set out his matters, his instructions, I should say, to Mr Roland in that letter, referring to the $825,000 offer. At the bottom of the page, he says:

As we do not admit liability and part of what we believe to be a generous settlement offer is provided by the "saved" legal costs of litigation, it is our intention to treat this as a one-off ex gratia payment.

Do you see that?

A. Yes, I do.

Q. Then over the page, page 2, he indicates that:

... when any settlement with the great majority of the former residents is completed we will ask you to close your file and any further inquiries from the present group of former residents will only
be legally responded to if a Writ of
Summons is issued. Our instructions to
your firm will from the time of this
settlement be to ask that all inquiries be
passed to the Diocese and we will respond
pastorally, but not with further settlement
negotiations.

My question to you is: was the way in which Mr Roland
responded to the claims of [CE], [CF] and [CG], who you
were representing, in your mind in keeping with that
instruction of Mr Comben's?
A. Absolutely.

MR BECKETT: I tender that.

THE CHAIR: We'll make it exhibit 3-5.

EXHIBIT #3-5 LETTER FROM MR COMBEN TO MR ROLAND
DATED 28/03/2007

MR BECKETT: Those are the questions for this witness.

THE CHAIR: Yes, Ms Wass.

<EXAMINATION BY MS WASS:

MS WASS: Q. Mr Harrison, I appear on behalf of
Philip Gerber, who was the director in 2006 of the
professional standards committee, so I want to ask you just
a couple of questions about that.
A. Sorry, I didn't catch your name.

Q. My name is Wass.
A. Thank you.

Q. Might Mr Harrison be shown his evidence from yesterday
at page 1796.

THE CHAIR: Any particular part of the page?

MS WASS: Q. I'm sorry, if we could go over to the top
of page 1797. Do you recall you were asked some questions
yesterday about whether or not you were invited by the
Diocese of Grafton to place the applications in respect of
the claims before the professional standards director?
A. Yes.
Q. Did you know in October 2006 who that was?
A. I can't recall. I'm not sure.

Q. But you understood, did you, that there was such
a person acting in the position of professional standards
director at that time?
A. I was aware that all dioceses have those professional
standards directors, yes.

Q. And did you understand that there was operating in
November 2006 a professional standards committee in the
Diocese of Grafton?
A. Yes.

Q. Do I take it from your answers given yesterday that
you took the view that, for whatever reason, it wasn't
appropriate for those claims that you were handling to be
dealt with by the professional standards committee?
A. No, that's not correct.

Q. You said yesterday, did you not, that your previous
dealings with those sorts of protocols - and you were asked
a question about that in respect to a referral to the
professional standards director - can do more damage; do
you see that at line 29?
A. That's correct. That doesn't mean I wouldn't have
proceeded with them.

Q. You were aware that you had that option, were you not,
back in November 2006?
A. No, I was aware from the diocese, as I think is
confirmed in correspondence from Foott Law & Co, and in
attendance notes, that the protocol was only in place in
terms of sexual assault matters and that with there being
41 claims, that protocol was not appropriate for 41 claims
of evidential matters - sorry, of complex evidential and
litigous matters.

Q. Did you agree with that view?
A. Did I agree with what your client was telling me was
the case? I had no reason not to believe that that was the
case. In fact, I think, if we hadn't had the
misrepresentation, as Ms Hywood confirmed yesterday, that
in fact this diocese had adopted the Sydney protocols back
in 2005, we may have taken a different view.
Unfortunately, the diocese, your client, decided not to
tell us that information.

Q. When you refer to my client, do you mean the Diocese of Grafton?
A. The diocese. I'm sorry.

Q. I just want to get clear whether or not, and you don't need to go into the reasons for the moment, but did you take the view, for whatever reason, back in November 2006 that, firstly, as part of the protocol you were able to have the matter referred to the professional standards committee?
A. Not necessarily, no, that wasn't what the indication was - that's not what the indication was from Foott Law & Co.

Don't forget, any of these clients who had suffered sexual assault had also suffered from physical and psychiatric injury as well, and I think my evidence for yesterday did, in fact, say that - what situation would we have been in if we had proceeded with that protocol for the sexual element of the abuse but were then left high and dry in respect of any physical and psychological element of the abuse, because at that time Foott Law & Co were telling us that the Sydney diocese protocol was not accepted; it was a different protocol that would only refer to sexual assault. And also, don't forget, we were also told we would have to provide evidence of those sexual assaults, which after 30 or 40 years is quite difficult to do when those assaults have been undertaken one on one.

Q. Mr Harrison, I'm not interested in the reasons for the moment. Can I just direct you to the question, which is for whatever reason, did you take the view in November 2006 that the referral of these claims to the professional standards committee was something that you didn't want to do?
A. Not necessarily. I was keeping all options open at that stage.

Q. Did you make any decision to refer the matter to the professional standards committee?
A. We'd notified their representatives, Foott Law & Co, or at least we had requested them to advise us as to what protocols would be in place, and the response we got, as I've mentioned twice now to you, was that the Sydney protocol was not a protocol that was adopted at that time
by the diocese.

Q. Did you have a copy of the Grafton protocol?
A. I can't recall. If I had, it will be in the papers
that were secured by the Commission.

THE CHAIR: Ms Wass, I'm not sure where these questions go
in light of the extract from the letter that's in the
transcript to which you refer.

MS WASS: Your Honour, where they go - there's reference
in the evidence to this witness being aware of the contents
of the protocol.

THE CHAIR: Maybe. But the letter is clear, isn't it?

MS WASS: The letter directs itself, I think, to the
diocese position, as to whether or not they thought it was
appropriate to have it referred. I am directing the
questions to whether or not, in the interests of this
witness's clients, he also thought it was not appropriate
to have the matter referred.

THE CHAIR: That's why I query you, because there doesn't
seem much point in whatever view he had if the clear
indication from the solicitors is that the protocols were
not considered by the diocese to be relevant to this
process.

MS WASS: I'm simply exploring if, in any event, that
decision was made from the point of view from the
claimants.

THE CHAIR: Well, does it matter? The diocese position
was clear.

MS WASS: It may be a different thing if both parties
decide it's not appropriate to deal with it under the
protocol.

THE CHAIR: I don't know where you are going. The
protocol is a voluntary exercise. You can't enforce
legally a protocol. Where does the issue go?

MS WASS: I won't pursue it, then, if it is not of any
assistance. Thank you, I have no further questions.
THE CHAIR: Yes, Mr Griffin.

<EXAMINATION BY MR GRIFFIN:

MR GRIFFIN: Q. Mr Harrison, my name is Griffin. I appear for Archbishop Aspinall and for Mr McLary. Can I take you to SJH-28 of your statement, which is the letter from Archbishop Aspinall of 8 December 2006.

A. Yes.

Q. In particular can I ask you to read to yourself paragraph 3. Can you see in paragraph 3 that Archbishop Aspinall sets out what he says is his position as primate?

A. Yes.

Q. When you received that letter, did you accept that that was factually the position?

A. Sorry, are you asking me to know - are you asking me whether I knew what the bishop was thinking, whether he actually wanted to encourage the diocese to act in that way?

Q. No, what I'm asking you is in respect to paragraph 3, do you accept the proposition, as of 8 December 2006, that the primate had no authority to intervene in matters involving the Grafton Diocese?

A. No, I don't, because the evidence that was given by Ms Hywood yesterday, when she was talking about an Anglican-wide protocol, I believe she was asked whether or not the various dioceses had discretion, and I think she was effectively intimating that, no, they didn't. So I don't accept that the bishop couldn't have intervened, and I don't necessarily accept that the parameters that the diocese and the church have erected around different dioceses are necessarily ones that should be observed by the laity.

Q. You were aware, weren't you, that Archbishop Aspinall indicated that he could try to persuade those at Grafton to change the way they were doing things?

A. Yes.

Q. And to that extent would you accept that he could use any persuasive power he had or any moral authority he might bring to bear?

A. Sorry, can you repeat - did I accept?
Q. No, do you accept the proposition that Archbishop Aspinall was, in effect, saying that he could bring to bear any persuasive power he had or any moral authority to try to get Grafton to do things differently?
A. Well, Mr Griffin, how can I possibly tell?

Q. So your understanding at the time didn't extend to that?
A. I read the letter and the subsequent letter that the primate was suggesting that although he had no authority to intervene, that he would speak with the - or somebody would be caused - sorry, somebody would speak with the diocese and the Reverend Comben to see whether these matters could be moved on.

Q. Did you become aware that on 24 November 2006 Archbishop Aspinall had a telephone conversation with Bishop Slater in relation to these issues?
A. Is that referred to in any of the exhibits in my statement?

Q. It's referred to in AP-1 to Archbishop Aspinall's statement, that you don't have in front of you. But did you become aware that he had that telephone conversation on 24 November 2006?
A. I don't believe so. For all I know, it could have been a discussion about the weather. I mean, I wouldn't know.

Q. Do I take it from your answers earlier that you're critical of the conduct of Archbishop Aspinall when you tried to involve him in this process?
A. Well, at the moment I don't know what the archbishop actually did. I could be critical or I could be praiseworthy of the archbishop if I knew the nature of the conversations that he had with the Reverend Comben or with others, but unfortunately I'm not privy to those conversations, nor, quite rightly, were they relayed to me by Mr McLary.

Q. The situation is you don't know one way or the other whether or not you would have approved of what Archbishop Aspinall did at that time, simply because you had no detailed knowledge of it?
A. No, but I would have expected Archbishop Aspinall, if he was taking concrete steps that would have materially
affected the way these matters were being dealt with - that
we would have had some correspondence to say, "Look, I'm
stepping in. These matters are clearly not going the way
they should go. There have clearly been misrepresentations
to you about the 2005 protocol that was in place, and let's
see what we can do to put it right." I never received that
correspondence. All I did was receive correspondence such
as this, which says, "We're not going to stand in the way
of court processes at any time", that the diocese would do
nothing to stand in their way, yet that's exactly what they
did do.

MR GRIFFIN: Thank you, your Honour.

MR BECKETT: Nothing, your Honour.

THE CHAIR: Thank you for coming, sir. You are excused.
We will take the morning adjournment.

SHORT ADJOURNMENT

MR BECKETT: Your Honours and Commissioner, we will start
this part of the inquiry with the reading of the remaining
claimants' statements. We have four to read. Ms Cosenza
will read out the statements of the two female claimants
[CN] and [CM].

THE CHAIR: Just before you do that, are you proposing to
call Bishop Slater and the Reverend Comben?

MR BECKETT: Yes. I certainly am.

THE CHAIR: They are aware, are they, of what is likely to
happen in the course of their proceedings?

MR BECKETT: Yes. Your Honour, we wrote to --

THE CHAIR: As long as we understand that they are aware
of --

MR BECKETT: Yes, we wrote to them on 21 October advising
them that they were to be called as witnesses and that they
would have the opportunity to appear, that they could
instruct lawyers if they chose to do so, and that also they
could seek legal representation at the cost of the
Commonwealth Government, in keeping with the usual practices of the Royal Commission.

We have received an application for leave, which your Honour has granted, with respect to Bishop Slater. He is represented by a solicitor. But, as you can see, he hasn't been present in the public hearings to date.

THE CHAIR: Yes, very well. Thank you.

MR BECKETT: Thank you. Ms Cosenza will read out the statement of [CN] and then [CM].

MS COSENZA: This is the statement of [CN] of 4 November 2013.

I was born in 1951.

I have a sister, [CM], who is two and a half years younger than me. We lived with our parents until they divorced. After my parents' divorce, my sister and I were placed in the Church of England North Coast Children's Home, "the Home", on two separate occasions.

My mother placed us in the care of the Home on 22 February 1959. I was then seven and a half years old and my sister was nearly five years old.

I remember being driven to the Home. I recall the building. It was a big building. It smelt terrible, like faeces, and there was vomit on the ground. I could see about 20-odd children all dirty. It was horrific. I felt that I couldn't protect myself or my sister.

The first time in the Home I was physically, psychologically and sexually abused. It was horrific. I was raped three times by older boys who lived in the home. I was told and I heard other children being told by staff that we were dirty little heathens. I was told I was bad and horrible. I was made to feel
worthless by the people in the Home.

I saw children being beaten with fists. The staff that were there were so violent. To me, it appeared that they acted as though it was their entitlement to walk around and do whatever they liked. They were unbelievably cruel, and I witnessed them assault other children.

I remember one boy, four years old, being belted with a closed fist by a member of staff. She hit him and he went flying across the room. I screamed because I wasn't used to that sort of violence. I'd seen some violence but nothing like what was being done to this little boy. That little boy I believe was unconscious on the floor. When I screamed at what I saw she yelled at me, "You just get out of here", and I just ran.

Reverend Morgan was there at the time. He was attached to the home in that he gave services every afternoon in the Home's chapel and he lived on the grounds in the Church Home next to the Children's Home. I can't tell you how many times I saw Reverend Morgan flogging the children. I remember that he wore a black cassock with a thick black leather belt which had a big buckle on it. He used the belt to flog the boys. I saw Richard "Tommy" Campion and other boys being whipped terribly.

When my father found out that my sister and I had been placed in the home I believe it was around the middle of 1959. He applied to the courts to get us out, which he did later that year. I was in the Home for about eight months the first time.

My father worked weekdays and so he placed my sister and me with other families and paid them to care for us. One day he found me being belted and tied up to
a clothesline with the family I'd been put with. He was angry but he was unable to
care for us himself, so he took my sister
and me back to the Children's Home. That
was in or about early 1961. This was the
second period of time that I spent in the
Home and I was there for much longer, until
July 1969.

By the time I returned to the Home in 1961
Reverend Morgan had left. He was replaced
by Reverend Campbell Brown. Reverend Brown
was only there for a short period, from
memory, perhaps one or two years. He was
replaced by a Reverend Gommersol for
a while and then a new Reverend came along,
Reverend Allan Shepherd, and he was
a lovely man and was one of the only people
who showed the children any care. From
memory, after Reverend Shepherd left,
Reverend Allan Kitchingman came into the
Home. Jean O'Neill was there as Matron the
second time I went to the Home.

Although there had been some staff changes,
the Home was still a horrible place. I do
not recall being shown any kindness or
care.

I recall that many of the assaults of
children in that time happened in
Matron O'Neill's office. I didn't see
Matron O'Neill assaulting the children, but
I heard the children screaming through the
office door and seeing the bruises and
welts on them after they were beaten.

I left the Home when I was 18 years of age,
having been there for eight years. My
sister left in November 1969, when she was
about 15 years of age.

After I left the Home, I found life very
difficult. I had been in the Home for so
long that I had become institutionalised.
I was used to everything in my life being
ordered by time. It was all regimented and
on schedule.

As a result, when I left the Home I didn't have a routine. I didn't know how to react to people. I didn't know how people lived as families. So many things were confusing to me, because I couldn't comprehend what to do without any guidance or instruction. I found that extremely difficult.

I married soon after leaving the Home, probably within six months, and had a child. My husband was young and not pleasant. It was an emotionally abusive marriage and I didn't have any support. My husband made me feel completely worthless.

I thought about what was happening in my marriage and remembered all the rapes and abuse at the home and being told that I was a dirty little heathen and that I was filthy and that God didn't love me and it all came together and I just felt I was worthless. I felt, well, it must be true, I'm not meant to be living out here in society. And so I tried to kill myself. I actually died, but they brought me back in hospital. I am much stronger now than I was.

I became aware of a class action involving people who had been victims of abuse in the Home when my sister called me, telling me about an article in the newspaper. My sister and I never discussed what happened in the home. I found the paper and had a look at it. The report quoted Richard "Tommy" Campion and he was talking about all the things that happened to children in the Home.

When I saw the newspaper article, I just exploded. I went hysterical. I'd hidden the abuse for so many years and it just all came out. I'd cried for about two weeks. At one point I had to be sedated by my doctor because I had been so hysterical.
The legal process started in or around 2005.

When I joined the group of claimants, I had Simon Harrison of Nicol Robinson Halletts acting for me. Throughout the legal process, I had no direct dealings with the Church. About a month or so into the beginning of all this action, Mr Harrison just stopped talking to me. I understand from other claimants that they also didn't hear from him. I would call, but Mr Harrison wouldn't take my calls.

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 they were responsible at all. The Church said the Home was not a part of the Church.

My matter and those of the other claimants in the group did not ever get to court. There was no proper court case. We were made an offer by the Church to settle the matter. I recall that it was around $825,000, which was to be split between the 40-odd claimants. The Church still denied they owned or ran the Home. I just couldn't believe they were denying that they were liable and I felt like the amount we were offered was a pittance. I was advised by my solicitors that I could either take the offer or I could fight on. But if we fought on, it would be difficult. I didn't think my lawyer was strong enough. I felt like they didn't push issues and didn't fight hard enough for me and the other victims.

Mr Harrison advised me that Reverend Pat Comben, the Registrar of the Diocese of Grafton, who was involved in the claims process was very rude throughout the
negotiation. I understand at one point he had his feet up on a chair and was very blase, saying "bring it on". Hearing that Reverend Comben behaved like that really annoyed me because it is not right. It is 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.

I didn't see how we could win against the Church, and so I felt that it wasn't worth fighting on. The whole legal process was having a detrimental impact on me. I was mentally exhausted. It was putting a strain on my marriage. My husband found it difficult coming home from work and I'd be on the phone talking to someone about the case or dealing with legal papers. It was becoming too much.

I felt helpless. I thought "what can I do? I should just take the offer, push the whole thing aside and accept it and move on with my life." It was very hard.

I signed a deed of release settling for around $22,000. I ended up with about $11,000 after paying about the same amount to Simon Harrison's firm.

I asked for a written apology, which I never got. I wanted an apology from the church either from Pat Comben or from the Bishop of Grafton. I never had any direct contact from either of those men. I am still waiting for the apology.

Overall, I found that legal process very distressing. The whole thing was played out in the media as well, and there was so much pressure. I had people calling me and saying to me that I was lying. At the end of that 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.

I couldn't believe the Church treated me the way it did because I loved the Church, but it seemed to me that they were sending different messages to different people. By that, I mean that they were telling their congregation that they were doing everything they could to help the victims of the Home. In the media they had people discrediting our story and said that they did not own and run the Home. And to the lawyers, they were outright denying legal responsibility.

I will not walk into a Church again unless I have to because of both the abuse I suffered in the Home and because of the way they handled the court case.

This is the statement of [CM] of 1 November 2013:

I was first put into the Home around February 1959 by my mother. At that time I was five years of age. My older sister was placed in the Home with me at the same time.

I was physically, psychologically and sexually abused in the home. I also saw other children being abused in the Home.

I remember seeing Reverend Morgan beating children on my first day in the home. He would hit the children with a thick black leather belt that he wore around his robe. I also recall being beaten by Matron Jean O'Neill with a riding crop. It was a piece of steel covered in leather and she used to whip the back of my legs and back with it. It would leave red marks, bruises and cuts on me, which sometimes took two weeks to heal.

I would be whipped for the most trivial things, like not using my manners. I would have been around seven years of age when
she first whipped me with the riding crop.

I also saw Matron O'Neill hit children with the riding crop in common areas, and I heard her whipping children in her office with the crop and the children screaming. I remember hearing the "whoosh" of the riding crop every time matron hit the child. The "whoosh" noise filled me with intense fear.

I stayed at the Home until the end of grade 9, which was in December 1969. Matron O'Neill drove me to the airport but didn't tell me where we were going. I did not get a chance to say goodbye to my sister or friends in the home, which upset me. At the airport, Matron O'Neill told me I was going to my sister in Sydney. My sister in Sydney said I could continue my schooling to try for my school certificate or get a job. I was too scared to try for my school certificate, as I had no confidence in myself. Instead, I got a job in a chemist where they had lots of pretty things, such as make-up and perfume, which I had never been able to own at the Home.

My experience in the Home has affected my entire life. I cannot watch any type of violence on television. It takes me a long time to build up trust with people, and meeting people in a group is overwhelming for me. I do not cope with stress and I tend to shut myself down and withdraw.

Around 2005 I saw a newspaper article from Tommy Campion in regard to the North Coast Children's Home. As a result, I took part in a class action seeking compensation. I did not have any direct dealings with the church, as it was all done through my solicitors, Simon Harrison at Nicol Robinson Halletts. Eventually I was offered $7,000, which I accepted. I believed that this offer to me indicated that at last the Church recognised that
they had done the wrong thing by all the
children who had been at the home. I have
never received an apology or counselling
from the Church.

MR BECKETT: Thank you. I will read the statement of [CB]
of 4 November 2013. It is tab 15 in volume 6 of
exhibit 3-1.

I have a brother, who is 14 months older
than me, and two half-sisters. My parents
divorced when I was young. I cannot recall
much about my early life before being in
the Church of England North Coast
Children's Home in Lismore.

In the summer of 1976-77, my brother and
I were sent to live at the Home. My
understanding about how this happened is
that mum went around to collect us from
dad's one day and found a note on the door
saying "Sent the kids to Lismore". I was
approximately six years of age. I lived at
the Home until the end of 1980, when my
mother was in a financial position to get
my brother and me out of there.

I remember the day I arrived at the Home.
My brother and I sat on the patio and
bawled our eyes out. During the time that
I was there, I was physically,
psychologically and sexually abused.
I also saw other children in the Home be
abused.

I recall reporting the abuse to local
police in or around 1977. I ran away with
another boy from the Home and we went to
the police. My recollection is that the
police didn't do anything about what we'd
said. They just took us back to the Home.
I was severely beaten after that.

While I was in the Home, I only saw my
mother three times. I remember getting
birthday and Christmas presents from her,
but they were always stolen from me.
Mum was able to get my brother and me out of the Home when I was about 10 years old. We went to live with her and her new partner, who was abusive to her and to me. She eventually left him, but I stayed, even though he was violent. He kicked me out when I was in year 12 and I ended up sleeping in a park.

The impact of the abuse on me in my teenage and early adult years was terrible. I had no confidence, no hope, no friends. I started to see a psychologist from about 1990. It was around 2005 that I started to acknowledge what had happened to me in the Home, and that was because I did a search on the internet about the Home after speaking with my brother and came across the name "Tommy Campion". He helped me to pursue my complaint against the Church.

On 5 March 2011 I wrote a letter to Bishop Slater, then Bishop of the Anglican Diocese of Grafton, detailing my experiences in the Home and the impact it has had on my life ever since.

I tried to contact the Bishop after writing the letter but was never able to speak to him. I was told by his office, "Oh, he's a busy person."

I received a response to my letter dated 4 April 2011 from Peter Roland of Foott Law & Co. The letter indicated that they were acting for the Diocese in responding to my matter and denied any liability on the part of the Diocese in refusing financial compensation. Instead, they offered me a "pastoral support package".

When the Church denied that they were responsible for the Home, I couldn't believe it. I thought "what a crock". 
I did not understand what was meant by a "pastoral support package". I responded to Mr Roland by email on 29 April 2011, indicating that I would be willing to accept a package but asked for more information about what it involved.

I received a letter from Foott Law & Co dated 5 May 2011, acknowledging my email and advising that they had referred my email to the Diocesan Registry for response.

I wanted the concerns I had raised in my original letter of 5 March 2011 resolved so that I could move on, and the ongoing delay was causing me grief. I wanted a response from the Diocese, not their lawyers. I emailed Bishop Slater on 24 May 2013, outlining these things.

Bishop Slater responded to me via email on 27 May 2013 explaining what the "pastoral support package" would involve. This was apparently a "pastoral carer" to "walk with me" and "be an impartial listening ear" to assist me to "move towards wholeness". I recall that Bishop Slater offered a layperson from the Church to provide the pastoral support, even after I explicitly said that I didn't want anyone associated with the Church.

I responded to Bishop Slater via email on 14 July 2013.

And I will just read from that, [CB]-5.

Dear Bishop Slater

I am appalled at your behaviour towards me concerning the abuse that 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" and that the diocese has also likewise supported various other victims who weren't involved initially.

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.

I would like to know your reasons for treating my case differently to that of other victims of the Home.

As it has been near five months since I first sent my letter of complaint I expect to hear from you as soon as possible.

The statement continues:

On 28 July 2011 I received an email from Bishop Slater confirming the information provided to me earlier through the Diocesan lawyers that "the support they were now offering was in the form of a pastoral support package". Bishop Slater also advised that, despite his best efforts, he had been unable to identify an appropriate support person for me through the Melbourne Diocese, where I lived at the time, and asking whether I would like him to continue this line of inquiry.

In around mid-2011, I can't recall exactly when, I decided to engage a lawyer to act for me.

It was a difficult time. I had become homeless and I ended up putting the fight with the Church on the backburner. When I contacted the firm again, I was told that Mr Nash had left and the firm would not deal with me. I believe they still "act" for me, but they don't ever update me on what is happening.
On 2 May 2013 I received an email from Michael Elliott, Director of Professional Standards for the Anglican Diocese of Newcastle and Grafton. He indicated that he had recently seen my file for the first time and wished to speak with me. I responded to Mr Elliott via email the same day.

I still have not received anything from the Diocese in terms of a financial settlement, and my claim remains unresolved.

The impact of the abuse on my life has been significant. I have been a heavy drinker throughout my adult life. I can't hold onto friends or sustain intimate relationships. I can't hold down a job, or even get a job, and I'm on a disability pension.

Although I am still down, I fight against it every day. I believe that I am much better now than I was - I was a complete wreck about ten years ago. I think I have been able to look at things in a different way, and I think my grandmother and Buddhism have helped me with that.

The final statement is the short statement of [CD]:

I was fostered out from a very young age to a family. I was in foster care for about four or five years. I ended up in the Church of England North Coast Children's Home because my foster parents were no longer able to look after me. I was about six years of age when I went into the Home, and I lived there until late 1983, when I was fostered out. I was about 12 or 13 when I left the Home.

During my time in the Home I was physically, emotionally and sexually abused.
When I arrived at the Home, aged six, I was probably one of the youngest children in there. I recall being beaten every day by staff and other residents at the Home. I remember Miss O'Neill, the matron, whipping me with a pony whip and a cane.

I also remember another staff member caning me in the Home. He also used to get me, and other children, out of bed at night when he was on duty in the dormitory. He would make us stand in the hallway, with a book in each hand and our arms out straight. If we dropped the book, we'd have to stand there longer and if we dropped it again we'd be caned across the legs. By the time I got to high school, where the cane was a punishment, it didn't matter because I'd been whipped so many times before that it was just normal for me.

I remember being taken away for a weekend by one of the staff members and that she sexually abused me during that time. I think I was about seven or eight years of age. I was also sexually abused by older boys who were also residing in the Home.

At the time I thought that the physical assaults - the "punishments" - were worse than the sexual abuse, but looking back now, when I think what was done to me sexually, that was worse than the punishment.

I also saw other children being sexually abused. I once saw a group of about five older boys pin down one of the young girls who lived in the Home and they all raped her. I was told by the boys not to say anything. They said words to the effect, "You open your mouth and we'll beat the crap out of you. We'll come in and get you one night out of your bed and just beat the living crap out of you. Shut the hell up, don't say anything. It's none of your
business. Go away." The girl was there, naked and crying, and I couldn't say or do anything.

When I left the Home in about 1983 my district officer at the time took me into the office and said to me that he wanted to show me something. He showed me a big bag, chockers full of letters and presents in a cupboard in the office. He told me that they were things - gifts and letters - that people had sent to me while I was in the Home. Miss O'Neill had kept them all locked away from me in the office. I was so angry.

I was fostered out after leaving the Home to a family. At first it was okay and I got on with the older son, but after a while he started causing trouble and blaming me for it. It got to the point where the parents packed up my bags and sent me back to Youth and Community Services, dropping me off on the doorstep. I was about 14 or 15 at the time.

After that I was placed in another abusive home in Boat Harbour. It was run by Youth and Community Services. I left there when I was about 19 years of age.

In the years after that, I went through job after job. I was living with my grandmother on the Gold Coast for a while, but after five years I moved out. I ran away, met a girl, had a son, and then I left her. I stayed up on the Gold Coast for about 15 years.

By 2007 I had heard about Richard "Tommy" Campion. He was also a former resident of the Home and was campaigning for victims. There had been a number of victims who had been involved in a group claim a couple of years earlier. Tommy had initially been a part of that group, but I was not part of that group claim.
I contacted Tommy in early 2007, and in July that year I wrote him a letter telling him about the abuse I'd suffered in the Home. I agreed that Tommy could let the Church know about what happened to me, which he did in 2007. I didn't hear anything from the Church and the matter just dragged on. It was months and months and I'd heard nothing.

In or around February 2008 I wrote several letters directly to Bishop Slater, the then Bishop of the Anglican Diocese of Grafton, telling him about the abuse I had suffered in the Home between 1978 and 1983, and also about the gang-rape of the young girl in the gymnasium. I said that I wanted to be compensated but that I did not want counselling at that time because I was getting support through my family.

Bishop Slater wrote back to me in the weeks after I wrote to him and told me that the Diocese would settle my claim and offered me $22,658. Bishop Slater's letter stated that this was the highest amount paid to victims who had been part of the group claim. I accepted the offer because I needed the money. I got legal advice on the deed from a lawyer in Brisbane.

I am not satisfied with the amount that I settled for. I am thinking about suing the Church again. I don't think that what I got was fair. I think it was a pittance. I have lived with the impact of the abuse for nearly 30 years of my life. I want someone to be held responsible for it, to be accountable. The $22,000 payout is ridiculous. I feel like the Church has given me the money and told me to shut up and go away, and it's not good enough.

I haven't been able to deal with the impact of the abuse properly and have never had counselling because the simple fact is
I can't afford it. Although the Church offered me counselling, I didn't accept it because at the time I just wanted my family around me. I was angry with the Church and didn't want to speak with someone associated with the Church. I can't deal with second-rate counselling. I need a professional.

I currently live in rental accommodation in Melbourne and I am reliant on a disability support pension. I have separated from my partner, the mother of my two other children, but we still live together because I don't want to leave the kids.

That is the end of that statement.

I call Mr Rodney McLary.

<RODNEY JAMES McLARY, sworn: [12.22pm]>

<EXAMINATION BY MR BECKETT:>

MR BECKETT: Q. Mr McLary, I wonder if you could state your full name and your occupation, please?
A. Rodney James McLary. I'm the director of professional standards for the Anglican Diocese of Brisbane.

Q. And you have provided your professional address to the Royal Commission; is that correct?
A. Yes, I have.

Q. Mr McLary, how long have you been the professional standards director at Brisbane, please?
A. I first became director in May 2004, continued until the end of June 2012, retired for a short period of time and came back in January 2013.

Q. We'll go to the detail in a moment, but from 2005 I understand Dr Phillip Aspinall, the Archbishop of Brisbane, became the Primate of the Anglican Church of Australia?
A. Yes, that's correct.

Q. You clearly worked with him in your capacity as professional standards director with respect to his duties
as archbishop?
A. Yes.

Q. Is there also a role for you with respect to his obligations as the Primate of the Anglican Church?
A. Yes, at his request, there may be issues that involve professional standards from other dioceses that come to his attention as primate, and at his request I may assist him in managing those situations.

Q. As you understand it, these hearings are particularly in relation to the group claim at the North Coast Children's Home in Grafton, or in the Diocese of Grafton. When did you first become aware of any claims, if you like, with respect to the North Coast Children's Home?
A. I think it was towards the end of 2006. I had previously had contact with Simon Harrison in relation to matters in the Diocese of Brisbane, so we had an effective working relationship, and I believe it came out of that that he made contact with me to briefly describe the situation in the Diocese of Grafton and to see what action, if any, could be taken from the Diocese of Brisbane to facilitate some successful outcome for those matters.

Q. I'll show you a document. If RM-1 could be put up on the screen, please? It's page 658.

MR BECKETT: Sorry, your Honours and Commissioner, there is a statement from Mr McLary, which I'll take him to in a moment. It is in exhibit 3-1, volume 4.

Q. Before I go to that annexure, I should probably have taken you to your statement. If the statement of Mr McLary of 23 October 2013 could be put on the screen. Mr McLary, you've provided a statement to the Royal Commission with respect to this matter, haven't you?
A. Yes, I have.

Q. And is that the document in front of you?
A. Yes, it is.

Q. Have you had a chance to review it recently?
A. Yes.

Q. Is it true and correct to the best of your knowledge?
A. Yes, it is.
Q. Thank you. Now if we could go to RM-1. Is this a memo you sent to the archbishop about that initial contact with Mr Harrison?

A. Yes, yes.

Q. Why did you determine that it needed to be brought to the archbishop's attention?

A. Mr Harrison had requested a meeting with the archbishop or the primate to discuss the matter, and it was my understanding that it was to be a kind of off-the-record discussion just to outline the concerns that he had with the matter, how the matter was being dealt with in the Diocese of Grafton, and to see what, if any, intervention the primate could take in relation to that matter.

Q. There's a note at the bottom of that page, which I presume is the primate's handwritten note to you?

A. Yes. Yes, it is.

Q. He's asking you to track down the press coverage. Then he says:

I don't deal with child abuse "off the record".

What's that a reference to?

A. I think it reflects the primate's concern that an off-the-record discussion could bring up allegations of child sexual abuse, which in all matters we refer those to the police in an appropriate way. I think the primate was just concerned that he may receive information that would require a reporting to the proper authorities.

Q. He suggested to you that you speak to Pat Comben and find out what's happening from his point of view?

A. Yes.

Q. Do I take it from that that the archbishop, Dr Aspinall, knew Pat Comben at that stage?

A. He certainly would have been aware of Pat Comben in his role as registrar of the Diocese of Grafton. There may have been some other connection between them about which I'm not aware.

Q. So if we go over to RM-2, you then contacted Reverend Comben; is that correct?

A. Yes. I telephoned Pat Comben and spoke with him at
some length about the matter, primarily to gather
information which I could then provide back to the
archbishop, the exact situation, the circumstances of the
matters before Grafton, where the sticking points were in
the process towards some resolution. So my purpose was
just simply to gather that information and report to the
primate.

Q. Did you form an opinion at this stage, on 21 and
22 November, about how long this particular set of claims
had been going on for?
A. No, not in any accuracy. I had assumed that there had
been some history, because it hadn't yet reached
a resolution, but I had no specific knowledge of the length
of time.

Q. By this stage in 2006, I presume Brisbane had adopted
its own Professional Standards Ordinance; is that correct?
A. Yes, we did so in June 2004 with the protocol.

Q. And those were based, in large part, upon the model
ordinance and protocol that had been adopted at General
Synod?
A. Yes, they were very similar to the model ordinance and
protocol.

Q. Are you aware of the Grafton similar instruments, the
ordinance and protocol there?
A. Yes, I am.

Q. And the degree to which those instruments are similar
or dissimilar?
A. I think in a general way, they're quite similar.
I couldn't identify the particular differences between the
Grafton documents and the model ordinances, but I know
there is a fairly high degree of similarity.

Q. In your position as professional standards director,
you understood that your work was governed by the Brisbane
ordinance and by the protocol?
A. Yes, absolutely.

Q. And that there is a very specific role for
a professional standards director; is that correct?
A. Yes. The protocol outlines the role of the director
in some detail. The framework for the role is also
contained within the ordinance and is very specific about
the roles and responsibilities of the director and others, but particularly the director.

Q. The initial role of a professional standards director includes dealing with issues such as reporting to the police, for example; is that correct?
A. It is correct, yes.

Q. Initial reception of the claim, if you like, and discussion of issues such as counselling and immediate needs of a person?
A. Yes, that's very much the responsibility of the director and it occurs very early in the first contact.

Q. The professional standards director is then involved in an assessment process of the claim and the making of recommendations to a professional standards committee; is that correct?
A. Yes. The assessment may vary from one situation to another, but there is a process of assessing the information and gathering any other relevant information, taking that to the professional standards committee, with some recommendations about the way forward from that point.

Q. As I understand it, you've only been professional standards director in Brisbane; is that correct?
A. Yes, that's correct.

Q. So in your experience as professional standards director there, what approach is, generally speaking, taken to the issue of establishing the factual basis for a claim?
A. In the Diocese of Brisbane we have a particular process, which relates to past residents of our two children's homes. We recognise that the paucity of information, the length of time which has elapsed, the likelihood that the perpetrators of the abuse have died or moved away or are untraceable in some way meant that it was very difficult to get any substantial information which would confirm the allegations of abuse, so we essentially start with the assumption that what the victim is telling us is correct and true.

Once we've established that the person was actually in the children's home, then we take the allegations as being correct and then look at an appropriate response. It's through that process that we then do those other responsibilities, such as a report to the police if that's
appropriate, engaging counselling, pastoral support for the person, and generally providing a fairly sensitive pastoral response to the person coming forward.

Q. You've probably heard some of the evidence today about the question of limitations. Is that something that arises for consideration by the professional standards director in dealing with a claim, particularly of some antiquity?
A. It's not a matter which is dealt with by the director. It does arise in some particular matters if a claim is made through the Queensland Personal Injuries Proceedings Act, but that process is managed separately in the diocese. For victims of abuse in children's homes and other settings where a civil claim has not been made, then the statute of limitations doesn't take effect.

Q. You mentioned two schools which I think appear to have generated a number of claims in the Diocese of Brisbane; is that right?
A. Yes, we have two.

Q. You now know the position taken by the Diocese of Grafton about the question of the association between the diocese and North Coast Children's Home. Was a similar approach adopted by the Diocese of Brisbane with respect to those two homes you've mentioned?
A. No. As far as I - no, there was never a question that the church did not have a responsibility for the children in those homes. They were classed as church homes. They were staffed, managed by church people. They were responsible to a church-based committee. Therefore, the question of whether they were actual legal entities of the church never arose.

Q. When you say a church committee, is that a parish committee or a diocesan committee?
A. A diocesan committee. I think it was called the "Social Welfare Committee" and it was headed at various times by senior clergy.

Q. And those two schools, were they incorporated entities or were they run by some form of committee, or was that the committee that you've just mentioned?
A. Yes, the committee that I just mentioned.

Q. They had the actual control of those two schools?
A. Two children's homes, yes.
Q. My apologies.
A. I think to the extent that they oversaw the general policy, the general directions, the management of the home. But the day-to-day operation would be the responsibility of the superintendents.

Q. You've given us some good indications of the way in which a professional standards director might approach his or her job. When you were asked by Dr Aspinall to follow up this particular issue, did you consider speaking with the professional standards director of the Diocese of Grafton?
A. I was aware there was normally a director for Grafton Diocese. My understanding through contact I've had with directors at other times - the directors meet on a regular basis and still continue to do so - was that it was a fairly - well, "informal" is probably overstating it a bit, but not necessarily a formal arrangement. It was more one at request to be involved in particular matters, but I hadn't considered speaking with the director about these sort of matters at this stage.

Q. And why was that?
A. I thought we were just simply gathering information for the benefit of the primate, that Simon Harrison had made that contact and raised some issues. I was then just seeking out Grafton's response to them, what the situation as they saw it was, and then providing that information back to the primate.

Q. Were you aware that Mr Philip Gerber, who was then located in the diocese of Sydney, was the professional standards director for Grafton?
A. Yes. I'd met Philip Gerber previously to that and I knew that his role extended to Grafton and some other dioceses as well.

Q. In any event, in November 2006, whether before writing this memo or not, you didn't contact him; is that correct?
A. No, I didn't.

Q. Did you mention Mr Gerber to Reverend Comben when you spoke with him on 21 or 22 November?
A. Not as far as I recall, no, I don't think I would have.
Q. Did he suggest to you that you should contact Mr Gerber?
A. No.

Q. Just returning, then, to RM-2, I think you indicated earlier that there was quite some detail provided by Reverend Comben to you about the state of the negotiations between the diocese and the claimants; is that correct?
A. It is correct.

Q. And you've set out a summary of that in your note?
A. Yes, I summarised in that memo of 22 November.

Q. You say here that he indicated that the diocese had declined responsibility and was relying on the statute of limitations, amongst other things.
A. Yes.

Q. You obviously had a firm idea, at least from the diocese's point of view, that there was no chance of legal success?
A. Yes, that was certainly what Pat Comben had said to me.

Q. And you indicated there that only eight related to sexual abuse; is that correct?
A. Yes.

Q. We have a table that Mr Comben provided where he sets out that there were 20 examples of sexual abuse that occurred at the home and that were part of the claim. Is it possible that you're mistaken about that number?
A. No, I would have taken great care to reflect accurately in the memo to the primate exactly what Pat Comben said to me in our telephone conversation.

Q. So he indicated, then, that some of the complaints were without real substance?
A. Yes.

Q. And that the approach of the claimants had been a legal approach, and which also involved the media. Did he indicate that the diocese was similarly represented by lawyers?
A. I can't recall exactly. I think he certainly referred to receiving legal advice from the lawyers, but I don't think he specifically said they were being represented by
Q. So you weren't aware of Peter Roland, at Foot & Co, representing the Diocese of Grafton at that stage?
A. Not at that stage, no.

Q. And the issue about the media - did he indicate to you that the Diocese of Grafton, or at least he, had approached the media at various stages?
A. No. No, he had not.

Q. You say in the second-last dot point:

... the lawyers have not provided any detail of the basis of the claim ... Do you see that?
A. Yes, I do.

Q. Did he tell you that the claimants' lawyers, particularly Simon Harrison, had provided approximately 450 pages worth of documentation to substantiate their claims?
A. No. No, he did not.

Q. Do I take it, then, once he had run through all of those matters - perhaps you could summarise generally what you considered his attitude and the Diocese of Grafton's attitude was to the litigation?
A. I formed an impression that he saw it as quite a problematical issue; that he didn't see any real substance to the claims; there was still very much the question of the ownership of the home; therefore, there was no responsibility coming back to the diocese for what occurred in the home.

He gave me the impression, too, that it was a matter that was being dealt with by the Diocese of Grafton and although he was reasonably willing to provide me with some information, he saw no reason for anyone else to be involved in the matter; it was all under control, they were dealing with it, and whether or not that conformed with a proper approach taken by the church was not a matter for anyone else apart from the diocese.

Q. Did you form an opinion as to whether the diocese was favourable towards some form of conciliation or mediation
at that stage?
A. No, my impression was that they were taking a fairly hard approach to it. They saw the lawyer's approach as being very legalistic and they were responding in a like manner. There wasn't, to me, seeming to be any room for negotiation or conciliation.

Q. I think you pick up the issue of RM-2 in your statement at paragraph 11, if that could be brought up on the screen, please. On reflection, then, you raised some concerns in your statement about what you considered to be the position taken by the Diocese of Grafton; is that right?
A. Yes, it is.

Q. You were concerned about the statute of limitations issue?
A. Yes.

Q. You thought that a pastoral approach was more desirable?
A. Yes, absolutely.

Q. What do you mean by "a pastoral approach", if you could clarify that, please?
A. I think the pastoral approach starts from the position that victims of abuse take considerable courage and time to get to the point where they can share details of that abuse with another person. Because of that abuse, they're often very reluctant to approach the body in which the abuse occurred. They don't trust the church. They don't trust clergy because of the history of abuse.

So when they do get to a point to actually make contact, they need to be responded to sensitively, carefully and to be offered counselling, pastoral support, assistance, to help them deal with the very real feelings which have been woken up or brought to the surface because of the contact with the church.

I think to take an adversarial approach, to be challenging their story from the beginning, is a very threatening and traumatising process and certainly one in which Brisbane would not be involved in any way.

Q. And you formed an opinion that the Diocese of Grafton had taken that approach in that initial conversation with
Reverend Comben?
A. Yes. From our conversation, from the notes that I took and subsequently passed on to the archbishop, I could see that their approach was fairly antagonistic and a difficult one and certainly not responding pastorally to the people who had come forward.

Q. I wonder if you could then go to RM-3 and if that could be brought up on the screen, please. Do I take it from this that there was a further conversation with both Reverend Comben and Simon Harrison on or about 23 November 2006?
A. Yes, I had a number of contacts with Simon Harrison. Some of those just related to getting an update on where matters were - had I spoken to the primate, had I spoken to the Diocese of Grafton. But clearly in relation to this particular memo, I'd had a further conversation with Pat Comben coming out of further requests made by the primate.

Q. Just in terms of the attitudes of both, I think at the third-last paragraph you say:

The Registrar has again said that the Diocese is open to discussion with Mr Harrison but is wanting substantive argument why the Diocese is liable.

Do you see that?
A. Yes.

Q. Then in the next paragraph, you say that you had spoken further with Mr Harrison:

He states quite unequivocally that he has attempted to take a conciliatory approach with Grafton but has been unsuccessful.

Do you see that?
A. Yes, I do.

Q. So had you formed an opinion that both sides wanted to be conciliatory, or was it in fact the case that only Mr Harrison was seeking some form of conciliation?
A. My impression was that it was primarily Simon Harrison who was wanting to be conciliatory and to get to a point where he could resolve the matter for his victims, for the
claimants. I felt Pat Comben was reporting to me information which he would know I would be passing on to the primate, and therefore things were then couched in a particular way. It was difficult to establish exactly what the situation was, because both parties were telling me things that were slightly at odds with each other.

But my experience with Simon Harrison would suggest that he was generally wanting to reach a satisfactory outcome, and the impression I gained from speaking with Pat Comben was that they were opposing that.

Q. Reverend Comben had said to you that Mr Harrison had taken a bullying attitude towards the litigation. Is that right?
A. Yes. Yes, that's correct.

Q. Having spoken with Mr Harrison over those two or three days, did you form an opinion as to whether he was taking a bullying attitude either generally or towards you?
A. No. Look, I wouldn't have drawn that from my contact with Mr Harrison at all, that he was taking a bullying attitude, no.

Q. We have what appears to be a copy of a yellow stick-on note at the top right-hand part of RM-3. If that could perhaps be enlarged, and if I'm correct, it reads:

If Mr Harrison is being conciliatory and Grafton is being conciliatory why does Mr Harrison need to lay out matters before me?
P.

And "P", I presume is a reference either to the primate or to Phillip?
A. Phillip, yes.

Q. So at this stage had you formed an opinion that both sides were being conciliatory or was it in fact the case that Reverend Comben was taking an oppositionist stance to the litigation, or the claim, I should say?
A. I think it was difficult for me to establish a very clear view of exactly what was transpiring between the two parties, but I knew that Grafton was taking a fairly hard line in terms of issues about legal ownership and substantive grounds for the claims.
I had, as I said before, previous experience with Mr Harrison. I knew that he would generally be wanting to achieve a reasonable outcome, so I was more inclined to think that Grafton was being perhaps difficult in this process rather than Mr Harrison necessarily being so.

THE CHAIR: Q. Did you have any discussions with anyone at the Diocese of Grafton about their financial situation?
A. Not at that stage. I did subsequently speak with the registrar at the time, Mr Anthony Newby, and it was with relation to those three later claims where the diocese had declined to make any financial offer. I was told then that they were in very difficult financial circumstances.
I think he said words to the effect that Grafton had been mortgaged to the hilt to meet the payments in relation to this set of claims and there were simply no funds available for any further claims.

Q. So does that mean that it later became apparent to you that they had to borrow to meet this claim?
A. Yes, that was my impression at that later stage, yes.

Q. But you didn't know of that situation at the time?
A. No. I knew there was a reluctance on Grafton's part, but even that was a little bit later than this particular time, where they seemed to be very reluctant to encourage other victims to come forward. I had the impression then that it was a financial issue, but I had no understanding of the extent of that financial concern.

Q. Do you know whether, back in 2006, the archbishop knew of the financial situation of Grafton?
A. Not to my knowledge, but he wouldn't necessarily share that information with me in any way.

Q. Is there any process whereby the primate does know of the financial position of the dioceses throughout Australia?
A. I'm not aware. I think in terms of the responsibilities of the primate generally that he would expect to have a general overview of individual dioceses' situations, but whether there is an actual process to inform him of that I'm not aware.

MR BECKETT: Q. Mr McLary, we have evidence from Mr Newby that he commenced with the Diocese of Grafton in
September 2010, so is it reasonable to assume that the knowledge that you obtained about the financial difficulties in Grafton occurred after that period of time?
A. Yes, it would have definitely been after his appointment as registrar.

Q. As a result of this, are you aware that the archbishop spoke with Bishop Slater on 24 November 2006?
A. I'm not sure whether I was specifically aware of it at the time. I certainly knew at a later stage that there had been conversations, but I can't say that I knew at the time or around the time of this memo.

Q. Did you have any conversations with the primate during or after those memos of 21, 22 and 23 November concerning conversations with Bishop Slater or with Reverend Comben?
A. The primate's conversations?

Q. Yes, did you speak to the primate about communications - yes, the primate's conversations?
A. I would have spoken to the primate about the matter generally, but I can't recall whether we spoke about his conversations with the bishop or the registrar. I can't recall that.

Q. We have a note, AP-1, if that could be brought up. It's an annexure to the statement of the primate. You will see at about a third of the way through that entry, it says:

  Johnston, Harrison claimed Grafton not following policies of church.

Do you see that?
A. Yes, I do.

Q. I presume "Johnston" is a reference to Hetty Johnston from Bravehearts?
A. Hetty Johnston, yes.

Q. And "Harrison" is to Simon Harrison?
A. Simon Harrison.

Q. And is "the policies of the church" an indication of whether Grafton was following the ordinance and protocols that applied to professional standards, at least as far as you know?
A. Yes, certainly at least those two policies, but he may also be speaking more generally in terms of a pastoral approach, a more sensitive approach to victims coming forward.

Q. Did the primate express to you his concern that perhaps the Diocese of Grafton wasn't following the ordinance or the protocols with respect to these claims?
A. Yes, he did make some mention to me along those lines, yes.

Q. At that stage in November?
A. Yes, it would have been around that time.

Q. We have a document dated 8 December 2006. In fact, there are two letters which were sent - one to Bishop Slater and one to Simon Harrison - setting out six principles that the primate said that he applied in his role as the Archbishop of Brisbane, and presumably also as primate, in dealing with claims of child sexual abuse. You're aware of that letter?
A. Yes, I am.

Q. Were you involved in drafting that letter?
A. Yes, I think I would have been.

Q. I'll bring the letter up so that you have it in front of you and we don't conduct this as a memory test. If we could have SJH-28. This is obviously the letter to Mr Harrison. Have you seen that recently?
A. I saw it earlier today when it was shown on the screen.

Q. If I could also have AP-2 shown, a slightly longer letter, but this one sent to Bishop Slater. Are those the two letters you referred to a moment ago?
A. Yes.

Q. What was your involvement in the drafting of these two letters and the communications between the primate and the Diocese of Grafton on or about 8 December 2006?
A. The primate would have requested me to draft suitable letters to Bishop Slater and to Simon Harrison; he may have suggested a particular approach to be taken; and then I would draft the letters ready for his signature and, subject to any last-moment amendments, then process the letter for distribution.
Q. At this stage you weren't liaising with or speaking with Reverend Comben or with Bishop Slater; it was entirely handled by the primate with Bishop Slater?
A. Yes. At this stage I hadn't spoken to Bishop Slater at all, and I think my first contact with him was some time later.

Q. Did the primate indicate to you why he was sending this letter, particularly the one to Bishop Slater?
A. I think simply it would have been to encourage Bishop Slater to take an appropriate approach to these matters, that being adversarial and legalistic unnecessarily would not be helpful to the victims, that there were certain principles which need to be followed, and they've been espoused through the national church in a number of ways. So in a sense, the primate would be reminding Bishop Slater of a more suitable approach to take in this obviously quite difficult situation.

THE CHAIR: We might take the luncheon adjournment.

LUNCHEON ADJOURNMENT
UPON RESUMPTION:

THE CHAIR: Yes, Mr Beckett.

MR BECKETT: I call Anthony Newby, who will appear by audio-visual link.

<ANTHONY WILLIAM NEWBY, sworn: [2.05pm]

<EXAMINATION BY MR BECKETT:

MR BECKETT: Q. Mr Newby, are you able to hear me?
A. Yes, Mr Beckett.

Q. My name is Simeon Beckett and I'm counsel assisting the Royal Commission --

THE CHAIR: Just let me interrupt for a moment. Is it possible to have Mr Newby on the larger screen or not? We are confined to the one screen, are we? Okay. Yes.

MR BECKETT: Q. Mr Newby, you will have to forgive me. Unfortunately, you are around to my left, so I will have to twist around to try to see you.
A. That's quite okay.

Q. Mr Newby, I wonder if you could state your full name and occupation for the Royal Commission?
A. Yes. My name is Anthony William Newby, and I am currently the registrar/general manager of the Anglican Diocese of Grafton.

Q. Mr Newby, did you make a statement in this matter dated 23 October 2013?
A. Yes, I did.

Q. Have you had occasion to read that statement recently?
A. Yes, I have.

Q. Do you say it is true and correct to the best of your knowledge?
A. To the best of my knowledge, that is correct.

Q. I understand, Mr Newby, you have been on leave from the diocese since approximately December 2012; is that correct?
A. 16 November, that is correct.
Q. Mr Newby, I understand that you took on the role as registrar on 1 September 2010: is that correct?
A. It was actually the last day of August, but that's close enough.

Q. What was your experience coming into the position as registrar? What had you done in the years prior to that position?
A. I had spent most of my adult working life with a large multinational corporation in various capacities, from sales and marketing roles to general management roles, both in Australia and overseas.

Q. Do I take it from that that you had substantial experience in management of financial affairs of medium and large-size corporations?
A. Yes. Certainly I worked for a very large company and, within that, managed quite sizeable profit and loss responsibilities, large budgets and quite a large team of people - towards the end, anyway.

Q. As I understand it, one of your roles coming into the position of registrar at the Diocese of Grafton was to take over or at least manage the financial affairs of the diocese; is that correct?
A. One of my initial briefs, as coming through the interview process, was to resolve significant financial issues as a matter of priority.

Q. I think one of those that you refer to in your statement at paragraph 12 is the debt ascribed to the Clarence Valley Anglican School; is that correct?
A. That is correct.

Q. What is the nature of that debt? How had the debt arisen and what was its size when you took over?
A. The origins of the debt were quite simply that a school had been built, requiring a sizeable capital investment, on certain assumptions that a certain number of students would reside at that school. That was the business case proposed some years prior to my coming on board. Unfortunately, the debt was incurred, but the students did not materialise, so the school was unable to service its debt.

Q. I wonder if you could indicate when that debt was
incurred, at least approximately, in terms of the year?
A. I think it was in the early to mid-1990s.

Q. What had been done since the early to mid-1990s to service what I presume is a substantial loan for the capital improvement costs of the school?
A. Well, towards the early 2000s there was what was called rescue packages put together, which were financial packages that were raised by the diocese in order to provide some relief for the school through their debt with the Grafton diocesan investment fund. Those funds were raised through mortgaging certain assets and trying to provide some debt relief. It was also, I think, subsidised through some arrangements with aged care facilities, through some of their payments.

Q. I will take you through some documentation. Unfortunately, we haven't been able to get these documents to you in time for your evidence today, but I wonder if document 101A in the tender bundle - that is exhibit 3-2, volume 2 - could be put on the screen, please, and if we could go to page 633.

Mr Newby, unfortunately you don't have this document in front of you, but I will just refer you briefly to the relevant portions, which I will read out to you. We have minutes of the Bishop-in-Council meeting from 2007 at which Bishop Slater was presiding as the chair. One of the motions, the one at page 3633, is as follows. Motion 2:

That Bishop-in-Council:

Directs the Registrar to advise the Board of the Grafton Diocesan Investment Fund that Bishop-in-Council irrevocably guarantees the following security to GDIF to guarantee and secure the loans of Clarence Valley Anglican School...

And it sets out a number of values:

- The Managed Funds of GDIF $1.2m
- The GDIF/Diocesan capital $0.28m
- Bishopsholme and McWilliam Lodge $1m
- Gunundi $2m
- The Clarenza School land $4m
- The Bishopric Endowment Investments $3m
First of all, Mr Newby, were you aware of that motion that was carried at the 2007 Bishop-in-Council?
A. That was before my time. I was not aware of that.

Q. When you arrived in 2010, where you told of the nature of the security that had been provided with respect to the Clarence Valley school debt?
A. I did learn of the rescue packages and the assets that were provided as security for that amount, but those amounts sound slightly different to what was finally realised, I think.

Q. I see. I will take you to a further document. It is document 125D. Again, I apologise. If we could go through to page 362. Mr Newby, we also have Bishop-in-Council minutes of 18 May 2009, at which Bishop Slater, Archdeacon Ezzy, Reverend Comben and others were present. At page 362 we have a further resolution with respect to the Clarence Valley Anglican School. Again, I will just read it out to you and ask you about it:

The Registrar outlined the options on how to attempt to manage the huge debt that the Clarence Valley Anglican School has accumulated. He said that selling Diocesan assets may also have to be an option in the future. These being:-

- Gunundi
- Bishopsholme
- McWilliam Lodge

The School has a debt of $12m with the school buildings valued at $1m.
The Registrar had put together four (4) Options for discussion and Option 4 was deemed to be the most suitable.

Then it sets out a number of related motions, which allocate funds against that debt of $12.089 million. Were you aware of that particular resolution of Bishop-in-Council when you arrived in September?
A. No, I wasn't pointed specifically to that, but I was aware during my initial time at the diocese that the debt had been reduced down to - I think it was from over $12 million, close to $13 million, down to around just over
$10 million, between 10 and 10 and a half, depending on the interest rate. So those financial packages were put forward.

Q. Can I just clarify with you, $12 million is a very substantial debt indeed.
A. Exactly.

Q. Was that due solely to the capital works that had been incurred in the 1990s and the interest accruing on it?
A. Yes, it would have also included the purchase of the land, I believe, but, yes, significantly the building itself.

Q. So land was purchased and then a building erected on it --
A. That's right.

Q. -- for the school?
A. Prior to the erection of the high school, there was only a junior school in Grafton, and a separate site was sought for the building of a senior school, and that's the building, the school, we are talking about.

Q. When you took over as registrar in or about September of 2010, what was the state of the planning, if you like, with respect to dealing with a sizeable debt? Perhaps I should start with this: what was the size of the debt that you understood related to Clarence Valley Anglican School?
A. The number that we were working with was $10.3 million.

Q. Do I take it from that that it had been reduced by approximately $2 million over the period that I've just --
A. That's correct.

Q. What was the plan, if you like, to service that debt?
A. Well, currently the debt - when I came on board, the debt wasn't being serviced.

Q. One of your obligations as registrar became to try to set up a process for dealing with that debt; is that right?
A. That is correct.

Q. I think you say in your statement that you established something called an independent oversight committee; is
Q. Who comprised that independent oversight committee?
A. First of all, we went down to meet with the General Synod, head of General Synod, Mr Drevikovsky, and from that, we were able to secure the commitments from several dioceses to put forward nominations. We ended up with a nomination from Perth Diocese, two from Adelaide Diocese, two from Sydney Diocese, and Grafton Diocese as well, and the chair came from Adelaide. A couple of them were working for the Anglican community, and others were volunteering their time. They were associated with the church, but they volunteered their time. They were ex-corporate executives, and also we had a commercial lawyer, corporate lawyer.

Q. A former partner of a major commercial firm; is that correct?
A. Correct.

Q. I was just given a copy of a document at the start of the lunch break, so I apologise for not having it to give you now. It is entitled the "Oversight Arrangements Deed".
A. Correct.

Q. I haven't had a chance to look at it closely, but perhaps you could assist by describing what the document is? You clearly have some knowledge about it.
A. Yes. That was part of one of our strategies to provide certainty and surety around the investment funds that were held with the Grafton diocesan investment fund, which we referred to as the GDIF. Because of the unsecured loan out to the school, there was some concern about the solvency of the fund, so we had to shore up lines of credit.

There was already a line of credit in place with Westpac Bank, but we secured additional lines of credit through Adelaide Diocese and through Perth Diocese, just to give those depositors, who are really just parishioners - mothers, fathers and families - some security over their investments with the investment fund, so there was no sort of concern with regards to the security of their funds.

MR BECKETT: I will just stop you there. I wonder if I could tender a copy of the document I have just referred
to. I will hand up three copies for your Honours and the Commissioner. I will distribute some around the Bar table as well.

Q. Mr Newby, from that last piece of evidence, do I take it that the funding of the debt at Clarence Valley Anglican School was done by way of an unsecured loan from the investment fund to the school; is that correct?
A. That's my understanding, yes.

THE CHAIR: Q. Can I just understand, when was that fund initiated?
A. Your Honour, I'm not a hundred per cent sure of the start of the fund, but it has been in place for many years.

Q. Many years, is it? And it operates by inviting people to deposit moneys with it?
A. Yes, through the parishioners, through the churches, also through the giving, through bequests. There are a number of ways that people can put their money in the fund.

Q. With the expectation that they will get a return on that investment?
A. That is correct, and there is an interest rate applied, and they can buy various financial instruments to get that return.

MR BECKETT: Q. Mr Newby, does that also mean that the diocese itself has invested some of its funds in that investment fund?
A. That's correct.

Q. We have another document. This one was sent to you.

THE CHAIR: Do you want to tender the arrangements deed?

MR BECKETT: Yes, I tender that.

THE CHAIR: We should mark it as exhibit 3-6.

EXHIBIT #3-6 OVERSIGHT ARRANGEMENTS DEED

MR BECKETT: Q. Mr Newby, I understand Ms Viaggio sent you through a further document this morning by email for today's evidence. Did you receive that document?
A. If you are referring to the three-year synod plan,
I have received that.

Q. Do you have a copy in front of you?
A. I do, I have it right here.

Q. Unfortunately, we don't have the part of the document that this came from. It appears to be Bishop-in-Council minutes, with a motion at the end with respect to the Clarence Valley Anglican School. Is this a document that you had seen before today?
A. Yes, it is. I helped put it together, and one of the - it was just on a submission form, so this really is the text that was just on the form.

Q. Just going back to the start of that, then, if GE-18 could be brought up on the screen as well, please. Unfortunately, we don't have a date on this document, but it appears to be about July 2011. Does that sound correct to you?
A. That sounds correct. That's right.

Q. Was the three-year synod plan a plan that you put to the bishop or the Bishop-in-Council?
A. This was actually presented to synod just after I arrived in 2010. It was October 2010.

Q. Did you have much involvement in its presentation, or was it something that had been given to you to then present to synod?
A. No, I was heavily involved in its preparation.

Q. Just looking at that first dot point there on the page, you are saying that during 2011 significant progress was made against the plan. It refers to a line of credit with Westpac Bank being increased to $2.6 million and additional lines of credit totalling $5.5 million being negotiated and put in place with both Adelaide and Perth Dioceses, and so forth; do you see that?
A. Correct. Yes, that's correct.

Q. I wonder if you could tell the Royal Commission perhaps about the way in which other dioceses were able to assist the Diocese of Grafton to deal with what is a very substantial debt indeed?
A. Well, it was not easy. We met with, as I say, a group of registrars and investment managers in Sydney that came from various Anglican dioceses. In the end, we were only
able to secure support through Adelaide and Perth. We did originally seek support from other dioceses, but these were the only two dioceses that were able to come forward with any offer.

Q. Were the offers that you are referring to from those two dioceses on a commercial basis or was there some --
A. Yes, yes, they were on a commercial basis, so we had to provide security for these lines of credit, and a formal arrangement was entered into with a term and conditions. There were also fees associated with the lines of credit, so there were line fees. So it was a fully commercial arrangement.

Q. Then you say, I think, at the end of the next dot point, that the liquidity of the fund has improved significantly as a result; is that right?
A. That's correct.

Q. Then, going over the page, there is more detail about that. At the second-last dot point on that page, there is renegotiation of further substantial loans with St Columba Anglican School and Emmanuel Anglican College. So the situation was improved, at least?
A. That was just to more formally put those loans - they were existing loans, just put under more commercial terms and conditions.

Q. Then at the bottom of that dot point, the last one on that page, it says:

... it was agreed that CVAS [the school] could only support a sustainable debt ceiling of $3 million. This would require GDIF to retire $7.3 million of the CVAS debt.

Do you see that?
A. Yes, I do.

Q. When you say that CVAS could only support a sustainable debt of that amount, I presume you meant that that means that that specific entity itself was only able to sustain that amount of debt?
A. That is correct.

Q. The source of that ability to pay off the debt, if you
like, was through school fees, was it?
A. That is correct.

Q. Going over the page, there is a mention there, too, of the bishop's appeal:

... in order to raise the requisite $7.3 million.

Do you see that?
A. Yes, I do.

Q. What was the proposal there? What was the bishop's appeal?
A. The bishop's appeal was already in place when I came on board. All we did was retool the appeal. Now that we had a go-forward plan to address the debt, we needed to have the diocese commit to a broader bishop's appeal, where not only were we looking for gifts from individual parishioners and groups of parishioners, but we were now also looking at the sale of assets on a larger scale, because we were now sure, as sure as we could be, of the numbers that were needed to be raised.

Q. So as at 2011, the GDIF, can I say, is attempting to cover a $7.3 million debt; is that correct?
A. That's correct.

Q. Was the GDIF able to service the interest payments and other obligations it had to its investors during that time?
A. Yes, it was.

Q. Then you say that approximately $2 million would be recouped from the bishop's appeal if at all possible. Is that through asset sales?
A. Yes. That's correct.

Q. As at this particular time, what was the proposal to deal with the additional $5.3 million worth of debt?
A. We had a list of proposed assets that were being worked through in conjunction with Archdeacon Ezzy and the parishes concerned, and we were also working with the corporate trustees and property board as a team to see if we could realise the sale of certain assets that had been identified.

Q. Was that in addition to the $2 million in asset sales?
that you just mentioned?
A. It's all part of the same total. We were going to
accomplish two things by the sale of assets: one was to
address the debt issue of Clarence Valley Anglican School,
CVAS, and also try to pay the diocese back for the rescue
packages that had already been put forward.

Q. The term "bishop's appeal" - do I take it from that
that one of the matters that had to be overcome was that to
sell a particular asset, you essentially needed the support
of the local parish council if you were to sell that asset
and realise its value; is that correct?
A. That is correct. Not just the parish council but also
the community.

Q. The appeal was from the bishop to realise those assets
so that this substantial debt could be serviced or at least
retired?
A. The original bishop's appeal was just for donations
and now it was broadened to include the sale of assets,
that is correct.

Q. Has there ever been a valuation of the assets of the
Diocese of Grafton that you are aware of?
A. That is something that was talked about a lot.
I believe to this day it is still currently valued for
insurance purposes - that is the current valuation - and
the Valuer-General valuations are used.

Q. What's that amount, approximately?
A. I think it is $100 million, I think, if you include
all the cathedrals and everything.

Q. Mr Newby, I now want to go to your involvement with
professional standards matters. You indicate in your
statement that you received only a bare handover from
Reverend Comben; is that correct?
A. No, I did not receive any handover from
Reverend Comben. He had already left.

Q. Thank you. That's my mistake. You say:

It was suggested when I commenced as
Registrar by the senior leadership of the
Diocese team and the Bishop not to have any
contact with Reverend Comben. ... [he] had
not left the Diocese on good terms.
I wonder if you can assist with what that is a reference to?
A. That's just what I was told. I don't know the details to it.

Q. If we go to paragraph 17 of your statement, there is a reference to claims for compensation by three people, who the Royal Commission has ordered be referred to by pseudonyms, particularly [CE], [CF] and [CG]. Do you have that now?
A. Yes, I am just looking at the redacted copy, thank you.

Q. You had a conversation - paragraph 18 of your statement - with both Mr Roland, the diocesan solicitor, and Bishop Slater about the approach to these claims; is that correct?
A. That's correct.

Q. These were the claims that had come to the diocese from Herbert Geer, particularly from Simon Harrison, who had managed the group claims in 2006 and 2007; is that correct?
A. I believe so.

Q. What was the approach that was taken by Mr Roland and Bishop Slater with respect to these new claims?
A. The bishop was very keen on a pastoral approach to the new claims.

Q. What did you understand that to mean?
A. He explained it to me because obviously these terms were new to me, but he explained it as providing somebody to walk with that person who had been injured towards healing.

Q. Were you aware at that time that the group claims from the North Coast Children's Home which had been settled in 2007 involved a financial payment to those claimants?
A. Yes, I had been told that, yes.

Q. What of a similar payment for these new claimants that had come forward? In fact, they had come forward in 2010, I think.
A. Yes, my understanding was, from discussions, that the original claim was settled and these new claims were to be
treated in a more pastoral approach.

Q. And that did not include a financial settlement; is that correct?
A. We didn't specifically discuss a financial settlement; I cannot recall that. We certainly focused a lot on a pastoral approach.

Q. If you could please have a look at AN-3, it is a letter of 13 October 2010 to Herbert Geer from Peter Roland.
A. Yes, I have it here.

Q. Was that a letter that you saw at about that point in time, that is, in October 2010?
A. Yes, I believe I was given a copy of this, yes.

Q. You can see that there is a reference in the third paragraph to:

... the matters previously settled on an ex gratia basis were not intended to be used as a basis for any future claims.

Do you see that?
A. Oh, yes, my apologies, yes, I do see that.

Q. Then in the next paragraph, it says:

We are accordingly instructed to advise that our client is not prepared to offer financial settlements of the abovementioned claims.

Do you see that?
A. Yes, I do.

Q. Do I take it that by October 2010, you were aware of the fact that these new claimants from the North Coast Children's Home were not to be offered a financial settlement?
A. My understanding was that the diocese was taking on a pastoral approach to these new claims.

Q. You said earlier on that you weren't quite sure as to what the pastoral approach might include in its entirety.
A. No, I was not.
Q. You weren't aware of what it contained?
A. No, I didn't quite - as I was so new to the diocese and never worked in this type of organisation before, I really wasn't sure what a pastoral approach really meant.

Q. So was Mr Roland looking to you for instructions about how to deal with these matters, or was there some other process for providing Mr Roland with instructions as to how to run these claims?
A. I certainly participated in the discussions, mostly as a spectator, because I was so new to the organisation. Of course, anything that was determined either with bishop or with Mr Roland, then I would follow up with a letter or an instruction. That was how the process worked.

Q. I think you say here that you trusted those two, Mr Roland and Bishop Slater, to make decisions concerning responses to the claims; that's your evidence, isn't it?
A. That is my evidence. With regards to the North Coast Children's Home, that is correct.

Q. Going over the page to page 7 of your statement, you refer to a matter that arose. You call it the "Wauchope matter".
A. Excuse me, which paragraph?
A. Would you like me to elaborate on that?
Q. I will ask you a question about that now. The Wauchope matter - I wonder if you could describe very briefly what that matter was?
A. I just referred to it as that so as just to keep the confidentiality of the case. It was a case that came through bishop to me, that was a new matter, and that went through professional standards. Apart from what had already taken place with North Coast Children's Home, that was the first matter that I had dealt with that was, unfortunately and sadly, a new matter.

Q. Just taking what you have written here, the first time you heard of the Wauchope matter was when it had been referred by the bishop to you; is that the process that was adopted?
A. Yes, that's correct. There was a letter that came in.
Q. Then you took the step, I think you say, of referring the matter to the director of professional standards, Mr Elliott; is that right?
A. Yes, that was the standard procedure, correct.

Q. When you say "the standard procedure", how had you gained knowledge of what the standard procedure was?
A. Well, we had an ordinance and I had spoken to Mr Elliott to say I had received a letter. Between that documentation and the process that was already agreed with the committee that was put in place - we had a professional standards committee - and Mr Elliott's guidance, we proceeded to process that letter through the appropriate channel.

Q. So by this stage, you had been there - in early 2011 you say you had been there perhaps two or three months?
A. Correct.

Q. Do I take it that you had read the Professional Standards Ordinance of 2004 by then?
A. To be perfectly honest, I hadn't read every word of every ordinance. I did refer to it in order to process this and spoke to Michael, and he was a great help.

Q. What about the professional standards protocol - had you read that as well, or was it a similar approach - you relied on Mr Elliott?
A. A similar approach. I sought the relevant pages and made sure that I spoke to the appropriate people who had the experience, and we went from there.

Q. At paragraph 25 you refer to further claims from people who had been resident at the North Coast Children's Home. We are referring to those two witnesses as [CB] and [CC]. Do you see that?
A. Yes, I do.

Q. How did that correspondence first come to you?
A. It may have come through a meeting with bishop and Mr Roland, once again, and a discussion. I can't recall necessarily all of these discussions with as much clarity as I can other matters, because of just the sheer magnitude of work that was on my plate.

Q. Do I take it from your statement that the matters of [CB] and [CC] were being dealt with at the same time as the
Wauchope matters; is that right?
A. That's correct.

Q. Would you please look at AN-8. Do you see that is a letter of 24 March 2011 to Mr Roland from you concerning [CB] and [CC], and you clearly had a conversation with the bishop and Mr Roland concerning financial compensation with respect to North Coast Children's Home matters; is that correct?
A. That was my understanding from those discussions, yes.

THE CHAIR: Q. Mr Newby, did you understand that the decision not to provide financial compensation was motivated by the financial circumstances of the diocese?
A. I was certainly aware of the financial dilemma that the diocese was in, your Honour. I understood that the claims that had already been processed prior to my arrival - rightly or wrongly, I believed that this is how we were dealing with those claims, separately to how we were dealing with new claims. I don't know why I thought that. In hindsight, it probably was maybe not quite the right assumption. However, that was my understanding at the time.

Q. The compensation being no longer available, which you express in this letter - what did you understand to be the motivation for that?
A. That the original group claim was settled, and I can't recall exactly who said the words, but my understanding was that it was a one-time deal.

MR BECKETT: Q. Mr Newby, when you say "one-time deal", does that mean that people who came along after the group claim had been settled would not be able to obtain the same settlement that the group claimants had obtained?
A. My understanding was, from discussions, that a pastoral approach was preferred.

Q. At least by this stage in 2011, judging from your letter of 24 March, that did not include a financial compensation element; is that correct?
A. That's correct.

Q. Did it strike you as odd that there appeared to be two different streams or two different ways in which these claims could be dealt with - first of all, the Wauchope matter and then, secondly, the North Coast Children's Home...
Q. Did you raise that with anybody?
A. Yes, I did.

Q. Who did you raise it with?
A. When these discussions were taking place, particularly later as I got more involved in the Wauchope matter, I could clearly start to differentiate in my own experience what my definition of pastoral support was and I started to formulate in my mind the difference between what I thought was an effective process that seemed to be more in line with what the ordinance was proposing to do.

Q. Was that a reference to the Wauchope matter?
A. That's correct.

Q. You received a letter dated 25 March 2011. It is AN-9. It is from Mr Roland.
A. I have that.

Q. In that letter, Mr Roland sets out some of the history of the North Coast Children's Home group claims, does he not?
A. That's correct.

Q. What was the purpose of this letter, as far as you were aware?
A. The purpose around this time, in my mind - and it was referred to in the last letter referred to - was that I believed we needed to come up with a standard approach that clearly outlined what the approach was going to be with these claims, because I still was uncertain as to what was meant by "pastoral care".

Q. He indicated to you not only the history of the North Coast Children's Home matters but also the way in which apparently a position had been adopted by the diocese - and I am referring to page 2 - and that the monetary settlements be paid to those 40-odd residents.

In negotiating these settlements regard was taken of pastoral care considerations as well as practical matters including the likelihood of negative publicity and the considerable litigation costs likely to be
incurred. It was not intended that these
settlements should create a precedent for
future claims.

Do you see that?
A. Yes, I do.

Q. That was the nature of the explanation provided to you
by both Peter Roland and also Bishop Slater; is that
correct?
A. That's correct.

Q. At paragraph 33 of your statement you say that you
could not recall there being any discussion about referring
the [CB] and [CC] matters to the director of professional
standards. Do you see that? Do you have that there?
A. Yes, I do.

Q. You say:

... I recall that Bishop Slater and
Mr Roland said to me that the victims of
the NCCH had been finalised, and that the
Diocese had no money to meet additional
ex gratia payments.

You were clearly aware of the financial position of the
Diocese of Grafton. Was it a correct statement of fact to
say that there was no money to meet additional ex gratia
payments?
A. There certainly was - it would have created
significant financial hardship for the diocese, yes.

Q. "Additional ex gratia payments" - what did you have in
mind in terms of the value of those ex gratia payments?
A. Well, I know when we were dealing with the Wauchope
matter, and we were dealing with a second diocese on that
matter as well, we were both struggling to meet the
pastoral care support that was being provided, and they
were only small amounts.

Q. Do I take it from that that there was no provision in
the budget of the diocese, if you like, for the meeting of
similar claims of child or other sexual abuse made against
the diocese?
A. No, there was not. There was not.
Q. Did you put in place some form of provision for such future claims?
A. That was certainly in our plans to do so, and we were strongly recommended to do so.

Q. Did you put one in place in the two years or so before you went on leave?
A. We were unable to put that in place, no.

Q. Why was that?
A. Because of the financial strain that already existed on the diocese, we had no additional funding for any additional provisioning.

Q. Do I take it from that that precedence was given to the servicing of the Clarence Valley Anglican School debt over any provisioning for future claims from the North Coast Children's Home or other sexual abuse claims?
A. That was certainly the priority that I was given, yes.

Q. Who gave you that priority?
A. It wasn't explicitly said that way, that you just did, but the resolution of the Clarence Valley debt issue was clearly the number one priority given to me.

Q. Going on to paragraph 38 of your statement, you refer to and make some comments about the pastoral approach that Bishop Slater had adopted. You raised some questions about that. Rather than me read it out, I wonder if you could assist the Royal Commission by stating what your concerns were with the pastoral support approach that Bishop Slater was advocating?
A. In my work experience, whether you call it pastoral support or whether you call it supporting someone who may be injured at work or requiring - a customer or anybody that requires support from your organisation, it's normally clearly outlined exactly how that support is meant to be given, such as, in these cases, I clearly saw it as someone would require psychological support, counselling, help with prescriptions, all manner of things that would help them get better and heal. Albeit that goodness knows what they have suffered and how difficult it might be, there was certainly, I saw, quite a logical approach to it, to give them the support they needed. So that was my definition of pastoral support.

I never quite understood what it meant to have someone
just walk with you to healing or wholeness. I couldn't quite see how that sort of materialised in practical terms.

Q. Mr Newby, irrespective of the issue about financial compensation, those other elements that you have talked about - counselling, support, procedural matters, and so forth - wasn't it sensible really to just have the professional standards director take over carriage of that particular aspect, the pastoral support that you're referring to?
A. For the Wauchope matter, that's exactly what we did. But there was also specialist care required, and they obviously came at a cost, but they were necessary for the support that the person needed.

Q. I was referring, in fact, to [CB] and [CC] and the reference to using a pastoral support person to assist those people. Was it not simply a sensible approach to give it to the professional standards director, who was aware of those matters and could take appropriate steps to deal with somebody from the pastoral approach that seemed to be advocated?
A. In hindsight, yes. At the time, bishop was assuming that responsibility.

Q. Did you form an opinion as to whether that was an effective way in which to deal with these claims, particularly the ones for [CB] and [CC]?
A. At times it was a little confusing, because even when we went through professional standards, accessing appropriate resources wasn't easy, either. So it might sound theoretically like a smoother process, but neither process seemed to me to be all that smooth. However, you are correct, I was having, I think, a better understanding going through the professional standards approach than I was trying to understand the other approach.

Q. I think there was a difficulty with the implementation of support persons, particularly with respect to Mr [CB], simply because Bishop Slater had been unable to find a support person for him in Melbourne; is that correct?
A. That's my understanding as well, yes.

Q. Just briefly, I think Mr Campion's matter also came to your attention as well; is that correct?
A. When you say "Mr Campion's matter", there was --
Q. If you go to paragraph 45 of your statement.
A. Oh, yes. Yes, that is correct.

Q. Were you able to speak to somebody at the diocese about Mr Campion and his involvement in the group claims and subsequent to the group claims?
A. Are you referring to the Grafton Diocese when you say "speak to the diocese"?

Q. Yes.
A. I had not met Mr Campion, had not spoken to Mr Campion, but he was well known to the diocese.

Q. You say in paragraph 45 that Mr Campion was still complaining after receiving a lump sum payout in relation to his claims of abuse at the North Coast Children's Home:

It seemed to me that the financial compensation didn't seem to have been effective. It seemed clear to me that Mr Campion still needed support and that the package offered to him wasn't satisfactory.

What did you do, if anything, with respect to Mr Campion and that particular issue?
A. At that point, Mr Campion's matter was referred through the primate directly to the bishop. I was excluded from that process entirely.

Q. Did you refer Mr Campion to the professional standards director at that stage?
A. No, I did not.

Q. Was there any particular reason for that?
A. No. Once again, he had been a regular corresponder with the diocese and his situation was being handled by the bishop.

Q. Could I take you to AN-16, which is annexure 16 to your statement. I wonder if we could go to that?
A. Yes, I have that here.

Q. This was a letter written to [CA] by Mr Roland with respect to a response to Ms [CA]'s claim, and Mr Roland was replying directly to her. Do you see that?
A. Yes, I do.
Q. In this particular letter, it sets out that the diocese was "prepared to offer a pastoral support package" to her, which includes the appointment of a support person to meet with her. Do you see that?
A. Yes, I do.

Q. I think you had some input into the letter in the sense that you assisted in hoping to insert the words:

... and with the intention of recognising a concern for how you may be cared for ...

Those are your words, are they not?
A. Yes, they are.

Q. Mr Roland adopted those and included that in the letter?
A. That's correct.

Q. Do I take it that you were concerned that the letter was, I think your words were, a little harsh; is that correct?
A. That's correct.

Q. Is that an appropriate characterisation?
A. That is correct.

Q. Again, with respect to [CA], is it the case that the diocese was just applying the same approach to [CA] as they had to [CB] and [CC]?
A. That is correct.

Q. You make some concluding remarks at paragraph 55 of your statement about the issue of pastoral care.
A. That's correct.

Q. You say:

... the Diocese should have ensured that pastoral support packages were victim-focussed.

Is that a reference to the approach taken to [CA], [CB] and [CC]?
A. That is correct.
Q. What do you mean by "victim-focussed"? What was the problem with the pastoral support packages?
A. By this point, I had seen the effectiveness of the other matter that had gone through professional standards, what I refer to as the Wauchope matter, and we had regular committee discussions with regards that matter, and although still a very difficult matter for the person involved, it was providing what seemed to me to be a good support approach. So I now started to see what might be offered as quite a tangible support, a practical support package, and that's what I'm referring to.

My only other experience with the lump sum was the fact that one of the claimants, who I'm pretty sure - I don't know whether they accepted a lump sum or not, but the lump sum offered did not seem to satisfy their desire for support. So I've made the conclusion that I would rather see a tangible focus put on the victim as to what they might need to recover from the situation and seek the appropriate support, because I don't know whether we have as much control over a lump sum and what they might use that money for.

However, with the Wauchope matter, we saw exactly where the money was going and it seemed to me, based on all the professionals who were involved in that case, that the money was going to the appropriate places for the appropriate support.

Q. We had some evidence earlier today from Mr McLary that you would not have heard, that he recounts a conversation he had with you concerning the financial ability of the Diocese of Grafton to meet these claims. Do you recall a conversation along those lines?
A. He is from Newcastle?

Q. No, Rodney McLary is the professional standards director at Brisbane, at the Diocese of Brisbane.
A. Oh, Brisbane. I think he may have called me when the primate and him and the bishop were dealing with a certain matter, yes. I don't recall the conversation per se, but I have spoken to him, yes.

MR BECKETT: Yes. Nothing further.

THE CHAIR: Yes, Mr Wass?
MS WASS: Nothing, thank you.

MR GRIFFIN: No, thank you.

THE CHAIR: No questions from anyone else.

Q. Thank you, Mr Newby. Thank you for coming forward and talking to us. I gather you are not in the most pleasant of surroundings up there; is that right?
A. Yes, your Honour. I'm not well at all.

Q. I think they made the facility available for you in the Grafton Correctional Centre; is that right?
A. That's correct, and I want to thank you, your Honour, for making that available to me today.

THE CHAIR: Well, thank you for being prepared to go there. Thank you very much. You are now excused.

<THE WITNESS WITHDREW>

MR BECKETT: Perhaps Mr McLary could return to the stand and we can continue with his evidence.

<Rodney James McLary, on former oath: [3.07 pm]>

<Examination by Mr Beckett continuing:

MR BECKETT: Q. Mr McLary, just before lunch I was asking you some questions about the period of late November, leading up to December. Were you aware that on 14 December the Diocese of Grafton had written to Simon Harrison proposing the structure of the settlement for the upcoming settlement negotiations which were to take place?
A. No, I wasn't aware of that, no.

Q. On 8 December the primate sent two letters - one to Simon Harrison and also one to Bishop Slater. We were discussing those before lunch?
A. Yes.

Q. Do you understand what happened, what the response was from both of those parties to that particular letter?
A. No, not specifically. I think the letters were to make a point to each of the two parties, but I'm not aware of the particular responses.
Q. The evidence that we have is that there was a letter of 14 December that was sent from Mr Roland at Foott Law & Co to Mr Harrison, which adopts some but not all of the principles that are set out in the archbishop's letter. Were you aware of that?
A. No, no, I was not.

Q. Did you become aware on 19 or 20 December that the parties were sitting down to have settlement negotiations?
A. Not that I can recall. My role in the matter was fairly limited, and while there were obviously clearly other exchanges of correspondence between some of the parties, I wasn't necessarily made aware of them. I had a particular role to find out certain information and advise the primate but wasn't made aware of the step-by-step process that was being undertaken.

Q. Were you in the hearing room earlier today when Mr Harrison gave his evidence?
A. Yes, I was.

Q. Did you hear Mr Harrison say that he recalls calling you, I think it was, with respect to the settlement negotiations I think on 19 December 2006? Do you recall that evidence?
A. Yes, I do, yes.

Q. Do you recall that conversation, him ringing you or you ringing him?
A. No, look, I can't recall the conversation. That's not to say that it didn't occur. But I can't recall it.

Q. Can you assist us at all as to why Mr Harrison was calling you, or vice versa?
A. He was probably just wanting me to be kept up to date with the process of the matter. He had, as we know, made that initial contact with me to facilitate a more reasonable response, so I think it was probably just keeping me informed of how it progressed.

Q. Wasn't one of the purposes of keeping you informed presumably in the hope that the primate might be able to assist with some form of intervention or pressure, at least, upon Grafton to settle the matter?
A. Yes, it may well have been the intention, but I think the primate and I had both been fairly clear to Mr Harrison
that the primate was not able to intervene in the matters
of another diocese. He could certainly encourage, persuade
in relation to a more reasonable approach, but was
certainly not able to intervene.

Q. Is it right to say that essentially throughout the
period of these matters - so starting at the end of 2006
but going all the way through to 2012 - the position
adopted by the primate was that the settling of these
claims was a matter for the Diocese of Grafton?
A. Yes, that's correct.

Q. Let me take it one step at a time. As primate, he
also has a separate hat, if you like? That's probably the
wrong word, I know. He is the Metropolitan and the
Archbishop of Brisbane?
A. Yes.

Q. So he performs, effectively, the same role as the
bishop of Grafton, but he is the archbishop of Brisbane?
A. Yes.

Q. Clearly, that is a different diocese, and as
I understand the way in which the Anglican Church conceives
of itself, if one diocese is responsible for the particular
claims - such as these claims - then essentially the other
dioeceses don't regard it as a matter that they would,
generally speaking, assist with; is that correct?
A. Yes, that would be correct.

Q. Obviously, the archbishop also is Primate of the
Anglican Church. What, to your understanding, is his
obligation or his ability to influence, intervene or direct
a particular bishop, such as Bishop Slater, with respect to
a claim?

THE CHAIR: Q. I think correctly he is the Primate of
the Anglican Church of Australia, isn't he?
A. Yes, he is. That is correct, your Honour.

Q. The issue is what does "of Australia" mean in that
context?
A. It does include the 23 dioceses of Australia, the
entire Anglican Church within Australia. I am not an
expert in these particular matters, but my understanding is
that the primate is an elected position, and there are
certain responsibilities and authority attached to it, but
it's more in a general sense rather than the power or 
authority to intervene into individual dioceses and how 
they might conduct themselves.

So it is perhaps a role of shaping, persuading, 
providing some sort of moral influence on how particular 
matters may be dealt with, but there is no power or 
authority to directly intervene to direct any particular 
diocese or bishop to take a certain action.

Q. Do you understand why an outsider to the church might 
see that as inconsistent with the representation made that 
he's the Primate of the Anglican Church of Australia?
A. Yes, I do. It is an issue which comes up from time to 
time, certainly in this case, but in other matters I have 
dealt with, where people have contacted the primate's 
office to resolve a particular matter in another diocese 
and do struggle to understand that the primate's role in 
dealing with those other diocesan matters is a very limited 
one.

MR BECKETT: Q. Mr McLary, I wonder if I could take you 
to RM-4, an annexure to your statement. It will come up on 
the screen in a moment. It appears that Mr Harrison wrote 
to the primate on 15 February 2007 but concerning 
a statement that you had provided to him, and the statement 
is set out there?
A. Yes.

Q. Am I right in saying that that was a statement that 
you had said to Mr Harrison concerning the North Coast 
Children's Home?
A. It was a message left on his voice mail. I'm not sure 
that it's entirely correct. I don't believe I would have 
started a message with the word "Look", but essentially the 
intent of the message is correct, that it was identifying 
again the limited responsibility or limited authority the 
primate had to deal with this matter in another diocese.

Q. Mr Harrison was obviously disappointed with that 
particular statement, and he has written back to the 
primate saying that effectively he - that is, the primate - 
and "the church has relied in the past on hiding behind 
legal technicalities", including this as being one of them?
A. Yes.

Q. Is that a reasonable observation, do you think, made
by Mr Harrison with respect to the position taken by the
primate?
A. I think probably so, given the voice message itself,
because the message was intended to obviously leave a very
brief message summing up the situation, so it perhaps was
a bit more legalistic in tone than a conversation with
Mr Harrison would have been, but I can certainly understand
that he drew that conclusion, that we were trying to be
legalistic and avoiding assisting Grafton to resolve the
matter.

Q. Did you or the primate take steps to respond to this
letter?
A. Yes, there were follow-up correspondence in relation
to that. There was, I think, a withdrawal or
a qualification of the message, that it wasn't intended to
be as legalistic as it sounded, but again reiterating that
there were limits to the primate's authority in these sorts
of matters.

Q. Could you look at RM-7, please. That is a letter you
wrote to Mr Harrison. You are representing on behalf of
the archbishop that:

The Archbishop regrets that you have
understood that the message that I left was
a legalistic response. That is not his
wish and he is committed to the pastoral
principles which he has enunciated on
a number of occasions.

Does that include the six principles that the primate had
indicated to Mr Harrison and to Bishop Slater on 8 December
2006?
A. Yes, it would include those principles.

Q. Effectively, you were reiterating for him those
principles?
A. Yes.

Q. Just to go back, I skipped over an annexure. Look at
RM-5. That is an email to the archbishop from you
following an approach by Mr Harrison where Mr Harrison has
said, "There is an offer of $950,000 on the table from the
claimants", but he is seeking a contribution from Brisbane
to increase the offer by $50,000 or to offset the legal
fees incurred by the victims. So in the scheme of things,
that would make it an approximately $1 million settlement.
He was asking for a contribution of $50,000 from Brisbane.
Why was it the case that the Diocese of Brisbane, and
particularly the primate, knocked back that contribution of
$50,000?
A. I think essentially because of the same reason as
before, that it was really a matter for Grafton, that it
would set an unreasonable precedent for one diocese to
provide funds to another diocese in relation to any of its
legal liability, and I think essentially just drawing that
line between the responsibility of Grafton and the
responsibility of the primate in his diocese.

THE CHAIR: Q. Did you appreciate at the time that the
consequence of that approach would be that people who might
have suffered in different dioceses would be differently
treated by the Anglican Church?
A. Yes, there was a general awareness of that. It was
certainly a concern that sometimes these settlements were
dependent on the financial situation of a particular
diocese and therefore some people could be disadvantaged,
depending on the diocese in which they lived. But I think
it was moving into uncharted territory, in a sense, to
contribute funds from one diocese to another to --

Q. I understand that. Did you discuss that issue of
fairness or perception of fairness with the primate?
A. Not that I can recall. I think I just simply
discussed the suggestion from Mr Harrison. I'm sure,
though, in the primate's consideration of how he would
respond, he would have considered issues of fairness and
equity as well.

Q. You accept, do you, that this is a fundamental issue
of fairness?
A. Yes. It's a matter that directors of professional
standards have talked about at various meetings,
particularly in the light of some of the smaller, less
financially sound dioceses, that people are disadvantaged
if they come forward there as opposed to a larger diocese,
but I think the solution to it has not yet been canvassed
properly, fully.

MR BECKETT: Q. Mr McLary, I wonder if you could go to
RM-14. I will come to the earlier annexures in a moment.
You will see at RM-14 that Mr Harrison won't let the legal
argument issue go, and he writes further to you on 13 March
2007. You will see at the bottom of that page, he invites the primate to comment on the above observations that he makes there about the impact upon his clients and then specifically to confirm the following. He says:

Does he believe that the offers put forward by the Diocese of Grafton are fair and reasonable?

Do you see that?
A. Yes, I do.

Q. Then over the page, he asks:

Is the Primate advising that he cannot exercise his discretion in assisting the Diocese of Grafton in settling these claims?

That is correct to the degree that, as you say, he could counsel, he could advise, he could assert moral authority, but he could not direct?
A. Yes, I think it is a qualified acceptance of that, because it does refer to a discretion, which I don't believe the primate has, in terms of intervening in another diocese. But certainly the legal situation had been spelled out to Mr Harrison a number of times prior to this.

Q. Just going on to item 3, he asks:

Is the Primate of the view that the "structure" he refers to is one that if rigidly observed by the Primate, can give rise to inequities.

That's a reference, is it not, to inequities between dioceses?
A. Between dioceses, yes, I believe it is.

Q. Effectively, item 4 follows on from item 3:

Is the Primate of the view that if one individual has suffered injury as a result of alleged abuse to the same extent as another individual in a separate diocese, that the recompense offered to each should be determined by the level of resources
available in the particular diocese?

Is that correct?
A. Yes, yes, it is.

Q. Did you raise this letter with the primate?
A. Yes, I would have. Even though it was addressed to me, it certainly touched on issues which are more the issues for the primate rather than the director of professional standards. But as far as I can recall, and I don’t think there is anything in the files that we actually responded to that letter, in the sense of replying to Mr Harrison.

Q. As director of professional standards, you mentioned a moment ago that from time to time the professional standards directors of the various dioceses of the Anglican Church of Australia come together to discuss matters such as this?
A. Yes, we do.

Q. What is the current thinking, if you like, with respect to how to deal with this potential inequity between dioceses?
A. We have certainly discussed it as an issue. We have not been able to consider the best way that it can be dealt with, and really the responsibility of dealing with it would be beyond the role of the directors of professional standards. It would be really a matter for the individual dioceses and the national church, I believe, and I'm not aware that it has been discussed at that level. I'm just simply not aware whether it has or it has not been.

Q. Has there been any discussion about the pooling of money, if you like, to allow those less-resourced dioceses to tap into it, if they like, on a claims-based occasion?
A. I think the discussions of the directors have really been in the sense of kind of spontaneous thoughts rather than looking at necessarily the implications of any of those thoughts if they were put into practice. So we may have canvassed particular ways of doing it but without any real conclusion or resolution coming out of it; it has just been, I guess, more a reflection of the concern of the directors and --

Q. There is a body known as the professional standards commission, which advises the General Synod from time to
time on professional standards matters, isn't there?
A. Yes, there is.

Q. Is that based with the primate in Brisbane or is it somewhere else in the country?
A. It is based essentially from the General Synod office here in Sydney.

Q. Do you know if any work has been done at the professional standards commission level with respect to this issue of addressing inequity between different dioceses?
A. I'm not aware of any work, and as far as I know, there is no indication that anything has been shared with the directors, at least, in relation to that matter.

Q. I don't need to take you back to it, but I think there was an approach by Mr Harrison not only with respect to $50,000 but also with respect to the primate or the Diocese of Brisbane covering some of the legal costs of the North Coast Children's Home matter?
A. Yes, I can recall that being raised, and I think the response was a similar one, that that's not a cost for the Diocese of Brisbane.

Q. Were you, or as far as you know the primate, aware of an offer, if you like, being made by the Diocese of Grafton which effectively meant that all settlement offers were off the table at the end of February 2007?
A. Yes. I recall a letter from Mr Harrison to me, which said essentially that, that the offer has been taken off the table. It was, from memory, a very brief letter, direct to the point, just saying that the offers had been taken off the table.

Q. What, if anything, did you do to respond to that letter?
A. I don't recall responding to it at all.

Q. Why was that?
A. I think again because it essentially was a Grafton matter, not a Brisbane matter, and Mr Harrison was simply applying perhaps a little more pressure on the Diocese of Brisbane to intervene because the offers had been taken off the table. But our position would continue to have been that it is properly a matter for the Diocese of Grafton to deal with.
Q. Did you come to an understanding that the Diocese of Grafton had taken such a step in the negotiations and did you form an opinion as to whether that was an appropriate way to be dealing with claims of child sexual abuse?
A. I don't believe I had a conversation with Pat Comben about the offer being taken off the table. I think, though, that there was a general concern that the approach being taken from Grafton was not the best approach to take, and with the number of victims of abuse.

Q. I see at RM-13 to your statement that you provided Mr Harrison with effectively a three-point position about the way in which different dioceses work?
A. Yes. I think that essentially was for him to pass on the information to the clients themselves, so they had a better understanding of why the primate was not able to intervene in a matter which properly belonged to another diocese. Hence the description of the limits in very plain language.

Q. It is not entirely apt, is it, to describe each diocese as equivalent to a state government in the sense that obviously the state governments all look to the federal government in terms of GST revenue or consolidated revenue to provide them with funding, whereas the Anglican Church does not seem to have a similar funding arrangement for individual dioceses?
A. That's correct.

Q. I think you had some further involvement with this matter in terms of counselling. There was an issue that arose about the payment of counselling for Mr Campion, at paragraph 32 of your statement.
A. Yes. That issue was raised with me, that the counselling originally provided to Mr Campion by the diocese had been ceased. It was never really clear why it had been stopped, but it certainly concerned Mr Campion a great deal. It was quite distressing to him because he was in the process of counselling and that was very beneficial to him, and to have it suddenly ceased, apparently without explanation, was quite harmful to him.

Q. Your approach and the primate's approach to that issue was to encourage the Diocese of Grafton to continue counselling for Mr Campion?
A. Yes, that's correct.
Q. At paragraph 33, you say that you had referred information that you had received from Mr Campion about allegations of child sexual abuse to police on 31 May 2007 by letter to something called Taskforce Argos, which was a task force of the Queensland Police Service. Do you see that?
A. Yes, I do.

Q. Why had that particular matter been referred to the Queensland police?
A. It was raised in a letter to the primate. Therefore, the knowledge of the allegations of abuse was within our office. Therefore, there was an obligation, consistent with our policy that all allegations of child sexual abuse which come to our attention are referred to the police.

Q. Let's just stick with that letter for the moment. Did you make any inquiries of the Diocese of Grafton as to whether they had referred the matter to the NSW Police?
A. No, my understanding from the letter was that this was the first time the matters had been disclosed, and I think even if Grafton had referred it to the police, we would have done so as well, simply because we had the information before us and it was consistent with our policy to report immediately.

Q. If RM-18 could be brought up, please. You will see that is the letter to Taskforce Argos?
A. Yes.

Q. This is the letter that you sent to Taskforce Argos that you just referred to a moment ago?
A. Yes, it is.

Q. You will see in the second paragraph there, there is a reference to:

... forty-one persons made various complaints against the staff of the Home who were there between 1978 and 1983. The complaints alleged sexual, physical and emotional abuse perpetrated on these persons by the staff - some of whom are still alive.

Do you see that?
A. Yes, I do.

Q. Had you taken any steps to refer any of those
41 matters to the police prior to May 2007?
A. No, not specifically, only in the general sense of
that paragraph in that letter.

Q. Why was that the case? You clearly knew that there
were allegations of that sort of abuse, including sexual
abuse. Why had that not been referred to the police prior
to May?
A. The earlier allegations were not specific in relation
to either the victim or the perpetrator, or the alleged
perpetrator. I had that information about the claims just
simply in a general way, that the claims did include
allegations of those types, but no specific linking between
a particular allegation and a person or an alleged
perpetrator.

Q. I will just show you a document. It is tab 39 of
exhibit 3-2. If the first page could come up, it is
01802.0602, if we could have that on one page. Mr McLary,
I want you to assume that this is a document that was
created in September 2006 in the Diocese of Grafton by
Reverend Comben, summarising the claims of sexual, physical
and psychological abuse that had been received from
Simon Harrison?
A. Yes.

Q. Is this a document you have seen before?
A. The first time I saw it was just, I think, either this
morning or yesterday when it was shown on the screens.
I had not seen it prior to that.

Q. Had you ever received any detail of the sexual abuse
particularly with respect to the 41 claimants prior to May
2007?
A. No.

Q. You said you knew that the complaints included matters
of sexual abuse. Did you ever speak with Reverend Comben
or anybody else at the diocese, for that matter, about the
reporting of those matters to the police?
A. No, I didn't.

Q. Were you not concerned about whether that issue had
taken place?
A. The information first came to me from Pat Comben when I spoke with him, gathering that information about the whole matter. At that stage, I was simply gathering information. It is reasonable now, I think, to have asked a question about whether the appropriate reports had been made, but I didn't at the time.

Q. Was it something that you thought you perhaps should raise with the professional standards director at Grafton, who had obligations to report such matters to police?
A. No, I hadn't done that. I saw my role just simply to gather information at that point. There was an assumption that the matter was being managed by Grafton Diocese. At that stage, we had no - or I had no general awareness that it wasn't being managed in an appropriate way.

Q. The evidence we have is that that table particularly sets out 20 claimants who say they were sexually abused and presumably a larger number of acts than 20. The evidence we have at least so far is that three people were referred to the police. Were you aware of that before May 2007?
A. No, I think it was some time after that that I became aware that there were other people referred to the police. I think in my documents, there's a fax from a police officer in New South Wales. I believe that was the first time that those names had been raised with me.

Q. Was that in 2013 or so?
A. No, I think it is more recent than that. Sorry, I mean earlier than that, not more recent.

Q. I think a number of those annexures won't appear in the redacted version of your statement, but thank you. An issue arose, as I understand it, with respect to a claimant by the name of [CD], who Mr Campion had written to the Diocese of Grafton about, and Mr Campion was concerned that [CD]'s claim was not being handled appropriately by the Diocese of Grafton. Do you remember that?
A. I do.

Q. If you would, could you remind me when you first became aware of [CD]'s claim?
A. I think it was in early 2008 that Mr Campion wrote, referring to [CD] in relation to his claim, and I wrote back to Mr Campion in February 2008.

Q. The evidence seems to indicate that the May 2007
letter, the one you referred to Taskforce Argos - we know from Mr Campion now that that related to [CD], but obviously the letter doesn't indicate the name of the person who has come forward to him.

A. No, no, it didn't.

Q. There was a letter in August 2007 to the Bishop of Grafton from Mr Campion on behalf of [CD]. Were you aware of that letter, August 2007?

A. I think I became aware of it in February 2008, when Mr Campion wrote to me, but I wasn't aware of the previous correspondence, I don't think.

Q. What steps did you take when you received Mr Campion's letter of 1 February?

A. I did make some inquiries to establish exactly the situation and how it was being dealt with. I did have some concerns about the fact that the Bishop of Grafton seemed to require a letter directly from [CD] rather than one provided by Mr Campion, which was an unusual approach, but it did seem to be the way they expected it to happen, so I think I just reflected that to Mr Campion in my response.

Q. Do I take it from that that Reverend Comben or somebody at least at the Diocese of Grafton had indicated that because the complaint had come through Mr Campion, it was not to be accepted until the claimant himself had come forward to make a complaint to --

A. Yes, that was my understanding, that Grafton Diocese did seem to require a letter directly from the complainant rather than through a third party, which, as I said, did strike me as an unusual requirement and probably an unreasonable requirement to make of a victim, but if they had a process which did require it, then perhaps there was an obligation for that to occur.

Q. What was the approach at the time in the Diocese of Brisbane, whether that is still in place now?

A. It is still in place. We would accept information from any party. Victims are not always able to make the initial contact themselves and will call on a support person, a relative, lawyer, et cetera, a victim's advocacy group, to make the approach for them, and that is accepted and we respond accordingly from that point. It is certainly advantageous to be able to speak directly to the victim at some point, but that is gauged by the capacity of the victim to have that meeting and be able to talk about
his or her matter, and it varies from one matter to another.

Q. Turning towards the end of your statement, paragraph 50, if we can go forward to May 2012 - sorry, I will ask you about February 2012 first. Mr Campion, you may have heard, said that he conducted a protest, if you like, outside the cathedral in Brisbane in February 2012. Were you aware of that?
A. Yes, I am.

Q. Perhaps you can describe what happened. Obviously Mr Campion was outside the cathedral. Did you approach him? Did he approach you?
A. Not on the first day. I was certainly aware that he was there, and someone from the diocese did speak with him, but I don't think that meeting was particularly effective. That evening, the primate, myself and a number of other people met to discuss the best way forward, and the outcome was that when Mr Campion returned the following day, I would approach him and ask if I could spend some time with him and talk to him about the issues.

Q. And did you?
A. Well, as it turned out, he actually came in to the reception area that following morning, and I went out and introduced myself, asked if he would come in to my office. He agreed, and we then spoke for about an hour and a half about his issues and what he was looking for and just canvassed the whole situation.

Q. What approach did you take to that particular meeting and what was the conclusion?
A. His primary request was to have a meeting with the primate. He had, of course, been flagging that for some period of time. The main intent of the picketing was to bring about that meeting. I undertook to Mr Campion that I would approach the primate and ask him about a meeting. Mr Campion said that he felt obliged to continue to protest until a decision had been made about the meeting, and he went outside to do that.

I spoke with the primate, and the primate agreed to a meeting, and I went out and then informed Mr Campion and we set up a date and time and so on. I think Mr Campion then stopped protesting, and after he and I had a bit of a casual conversation, he returned home.
Q. Mr McLary, do I take it from that that Mr Campion had been asking you for a number of years for a meeting with the primate?
A. Yes, he had - well, not only asking me directly, but in his letters to the primate, asking for meetings.

The intent, I believe, the consistent intent - some of the matters changed over time, but the consistent requests were to have a meeting to resolve the issue of the legal ownership of the home and, flowing from that, who would actually accept responsibility for the abuse perpetrated on the children in the home.

Q. You say you organised a meeting. Did you attend the meeting with the primate in I think late February 2012?
A. Yes, I think it was 22 February. Yes, I did attend, and Mr Campion had a support person with him as well.

Q. Again, presumably he stated his issues to the primate and his concerns about the acknowledgment of the duty of care by the Diocese of Grafton?
A. Yes. The purpose of the meeting was really to allow Tommy to spell out to the primate in a face-to-face meeting exactly what his concerns were, not to necessarily achieve any resolution or decision at that meeting, but have the opportunity to talk it all through and then get an interim response from the primate in terms of what may be able to be done.

Q. Was the interim response a further meeting on 9 May, or was there some intervening act?
A. We didn't actually set the next meeting, but the undertaking the primate gave was that he would come down to try to get to the bottom of the matter. Tommy had provided quite a deal of information, so the primate undertook to try to get to the bottom of the matter. When that occurred, at a point where the primate would have information, we would then set up a second meeting, again with Tommy and his support person, and go through the outcome.

Q. A further meeting was set up, wasn't it?
A. Yes. We subsequently had a meeting on 9 May 2012.

Q. I think you have set out in a letter at RM-37 to Bishop Slater the outcome of that particular meeting?
A. Yes. Yes, that's the letter I wrote shortly after we held the second meeting.

Q. You set out there, it sounds like as a result of the 9 May meeting, that the way forward was to line up a meeting whereby somebody senior, such as Mr Blake SC, representing presumably the Diocese of Grafton, would be able to explain to Mr Campion the basis for the legal approach that had been taken to the group claims from North Coast Children's Home?
A. Yes. There were quite a lot of actions taken by the primate and myself between the two meetings. But in relation to the issue of duty of care, the essential outcome was that as it was a Grafton matter and Grafton Diocese had the benefit of a legal opinion from Mr Garth Blake, the best way of delivering that explanation to Mr Campion was by Grafton itself, and this letter canvasses some of the arrangements around that meeting and how it could be conducted and how it would be best serving answering the questions that Mr Campion had raised.

Q. One of the central propositions to assist Mr Campion with that meeting was the provision of a lawyer to help him, no doubt with understanding what was to be told to him by Mr Blake and other lawyers who were there?
A. Yes. Mr Campion expressed to me that he felt uncomfortable in meeting with lawyers by himself; they tended to confuse him, and he needed the security, I think, and the reassurance of his own lawyer there, who could help him understand, if necessary, what was being said to him and also to be able to ask legal questions about whatever was being provided to Mr Campion.

Q. Did you consider that to be a reasonable request?
A. Yes, we - when I say "we", I say the primate and myself - did consider that Tommy's requests about the meeting and how it should be set up were perfectly reasonable.

Q. Were you aware that the primate had spoken to the Chancellor of Grafton, Mr Tom Blackburn SC, about having a senior member of the legal fraternity come and assist with such a meeting or with mediation generally?
A. Yes, I was aware of that.

Q. What was the nature of that proposal?
A. I understand the primate had in mind Tony Fitzgerald,
who obviously has a very high reputation and would be seen to be a very skilled legal person, a very strong independent mediator, and would be able to mediate in a very effective way to resolve that matter.

Q. Had he proposed that to somebody at the Diocese of Grafton?
A. I think it was proposed to them. I think there was a reluctance to accept that as a way forward. I'm not clear on the reasons why that reluctance existed, but it seemed, certainly from our point of view, an extremely good suggestion but wasn't taken up.

Q. You weren't privy to those discussions between the primate and somebody from the Diocese of Grafton?
A. No. The primate and I were in discussion quite frequently about this matter because it had a certain urgency about it. I'm certainly aware that he had discussions with various people, and while I may have got the general outcome, not always or not necessarily the detail of those conversations.

Q. You then, it appears, wrote to the Bishop of Grafton on or about 16 May 2012, because we have the reply at RM-38 from Bishop Slater. Do you have that in front of you?
A. Yes, I have that.

Q. Does this follow the meeting or was this before the meeting?
A. No, it follows the meeting Tommy Campion had with the primate and myself.

Q. But is it before the meeting with Mr Blake? I have just lost my chronology. I'm told that the meeting with Mr Blake was in December 2012. But in any event, there appear to be discussions between you and the Bishop of Grafton with respect to a meeting with Mr Blake; is that correct?
A. I don't believe there were any discussions. There was my letter of 14 May, in which I outlined what was being offered or suggested, and the bishop's response of 16 May. I don't know that I had any further correspondence or discussion with him.

I actually finished in the position shortly after the date of that letter, 19 June, so there was no further
opportunity for the bishop or me to exchange correspondence, and as far as I can recall, I didn't speak with him about this matter.

Q. Can I just pick up some issues that are raised in that letter from the bishop, if I could. On the first page you will see there is:

These requirements --

that is the requirements that Mr Campion sought around the meeting with Mr Blake --

indicate that Mr Campion is almost certainly contemplating further legal action.

Do you see that?
A. Yes, I do.

Q. You had met with Mr Campion and the primate on 22 February and also on 9 May 2012. Did you form an opinion as to whether Mr Campion was contemplating further legal action against the Diocese of Grafton?
A. Yes, I did form an opinion, and my opinion was that there was nothing said to me or implied to me that led me to believe that Mr Campion was considering any other further legal action. His concern just simply was to get clear, direct answers to those two questions.

Q. Bishop Slater also indicates in that letter, on the second page - if we could go over the page - in the paragraph in the middle of the page beginning "Rather" he said:

... I do not consider it appropriate to put at risk any persons who may have had a duty of care, and not actually involved in any abuse. Such persons may be elderly, frail or otherwise unable to cope with litigation, particularly if, as seems inevitable, there is no insurer involved. It would in my opinion be quite wrong to proceed in that manner.

Was that something that had been put to you by Bishop Slater prior to this particular letter?
A. I was aware - and I'm not sure now whether it came from Bishop Slater directly, but I was aware that there was someone, a member of the management committee was quite elderly and still alive, and there was a concern that further legal action or some litigation through the courts about the North Coast Children's Home may involve that particular person, and the bishop was very mindful of needing to protect that person from any further litigation. I was very doubtful, myself, as to whether there would have ever been further litigation.

Q. Can I just ask you about that. Without naming the person, did he provide you with a name of the person who is described as an elderly former member of the home's staff?
A. Not that I can recall. It was a female rather than a male, but I have no recollection of knowing the person's name.

Q. At paragraph 52 of your statement you say that Bishop Slater wished to shield a now elderly former member of the management committee. So we are referring to the same thing, are we not?
A. Yes, we are.

Q. You say:

I was concerned that this appeared to take priority for the Bishop over and above Mr Campion's needs. I considered there would be great benefit to the meeting between Bishop Slater and Mr Campion going ahead ... et cetera, et cetera. You are an experienced professional standards director. In those sorts of circumstances, where there are interests of the claimant and also interests of the alleged perpetrator, how is that dealt with? What is the appropriate way in which to approach that?
A. The general approach taken in Brisbane would be - we would not want to do or be seen to be doing anything which would affect somebody's legal rights in any situation. We certainly wouldn't want to be seen to be preventing or making it difficult for somebody to take legal action if he or she wished to.

Having said that, though, I had no sense at all from Tommy Campion that he had that taking some sort of legal
Q. I want you to focus in on a slightly different issue, that is to say the conflict, if you like, between the interests of the claimant and the interests of the perpetrator. Bishop Slater appears to be saying that he wants to come down and shield - the word that you used - the alleged perpetrator, or at least somebody who might be liable for conduct at the home, to the exclusion of the needs of the claimant, namely, Mr Campion. Is that the appropriate approach to take, in your view?
A. No, definitely not.

Q. Why not?
A. I think the interests of the claimant or the victim have to take priority. That is the person who has come forward with certain allegations, certain history of abuse, whatever, and that is the priority. If there are consequences which flow from that towards somebody in a position of authority, whether it's on a management committee, staff member or whomever, then that will just take its course in time. The essential focus at the beginning has to be the victim, the claimant, and to respond to his or her needs as a priority.

MR BECKETT: Your Honour, I notice the time. I have one small matter. Mr McLary, I understand, has come down from Brisbane to be here today. If I could have five minutes --

THE CHAIR: Do either of you have questions to ask?

MR GRIFFIN: I only have one matter of correction in the statement, which I have raised with counsel assisting.

MS WASS: I have no further questions.

THE CHAIR: All right. We will sit on.

MR BECKETT: Thank you, your Honour.

Q. I will just show the witness a document. It is the Professional Standards Canon for the Diocese of Brisbane. I have three copies for your Honours and Commissioner Fitzgerald, and if a copy could be shown to the witness, thank you. This is the Professional Standards Canon that has applied in Brisbane since 2009; is that correct?
A. Yes, it is correct.
Q. I presume there was an earlier but similar canon based on the 2004 ordinance?
A. Yes, there is a number, actually. There is 2004 and then an amendment was made in 2006, again in 2007 and the most recent one in 2009. So this was the current version.

Q. I wonder if you could go to clause 20(2), it is on page 001.0031 on Ringtail. That clause, clause 20, sets out at subclause (2) that the power and duty of the PSC to exercise its functions under this Canon arises in respect to a number of matters that are set out there. Do you see that?
A. Yes, I do.

Q. It gives an obligation or a duty on the PSC with respect to conduct which is alleged to have been "engaged in by a church worker, resident or licensed in the diocese" - so that is the primary occasion where jurisdiction, if you like, is drawn from in terms of a committee?
A. That's correct, yes.

Q. Going down to (c):

Conduct which is alleged to have occurred within the diocese wherever the Church worker involved in the alleged conduct may reside.

So that's with respect to the act: If there is an act of examinable conduct that occurs within the diocese, but the person is elsewhere - that is, the member of clergy is elsewhere - then the diocese, for example, of Brisbane, would have jurisdiction over that issue?
A. Yes. It is canvassed, I think, in the widest possible way to ensure that there is no way that an alleged perpetrator can escape being dealt with under the Professional Standards Canon, if there is a requirement that he or she do so.

Q. Going to (d), then, there seems to be a further proposition, that is:

Conduct, wherever it is alleged to have been engaged in ... by a Church worker, wherever the Church worker may reside -
(i) in respect of or affecting a person resident in the diocese ...

Do you see that?
A. Yes, I do.

Q. In other words, the victim, if I can use that term generically, could reside within the diocese and the professional standards committee could exercise jurisdiction over a complaint even though the church worker and the act were external to the Diocese of Brisbane; is that correct?
A. It is possible. There is a clause elsewhere in the canon which allows for those kind of cross-jurisdictional issues and sets out a brief process, I think, of resolving them.

On an informal level, the directors have spoken between ourselves about how to deal with matters where the alleged perpetrator is in one diocese and the victim is in another, and we have an informal protocol in which we can manage those without necessarily alienating a particular diocese.

THE CHAIR: Q. Mr Newby, I assume it hasn't escaped your attention, but the structure of this document provides for the church to be the Anglican Church of Australia?
A. Yes.

Q. It then speaks to the constituent bodies of the church being authorities or bodies and workers, do you see that?
A. Yes.

Q. The structure of this contemplates the united Australian church, which has different components?
A. Yes, that is correct, your Honour.

Q. That hadn't escaped you, I assume?
A. No.

MR BECKETT: Q. Was there a particular reference within the canon - and it may have eluded me; certainly I haven't absorbed every provision there - are you able to locate quickly the provision that governs those cross-jurisdictional issues?
A. No, unfortunately I would need to read it through to identify the particular section.
Q. All right. I think the way in which to deal with that is perhaps we can ask you to take that on notice and provide us with a short letter, perhaps, setting out that particular provision?
A. Yes, certainly.

THE CHAIR: Q. Just let us know by telephone will do, as long as you can make contact and tell us.
A. Yes, certainly.

MR BECKETT: Q. Do I take it that at no point did the Diocese of Brisbane consider taking on Mr Campion's matter, for example, exercising that power under clause 20(2)(d)?
A. No, it had not ever been considered.

Q. Even though you knew, did you not, that he was resident within the Diocese of Brisbane?
A. Yes, I did know that. I knew he resided within the boundaries of the diocese. But we hadn't - "we" meaning the committee or myself - considered the matter being dealt with within our diocese.

Q. And why was that?
A. I think because the matter was clearly in the hands of Grafton; the process had been commenced. It may have been, in some respects, unsatisfactory and not necessarily in alignment with how we would have dealt with it in Brisbane, but certainly the process was well and truly in place, and the Diocese of Grafton was responding in its particular way, even if it was different from how we would have responded.

Q. My last question is, if the Diocese of Brisbane had wanted to take on the matter, then am I correct in saying that this particular provision of the Professional Standards Canon provided an ability for the Diocese of Brisbane to take it on as a matter to be processed?
A. Yes, subject to the other clause, which I haven't been able to identify, and some negotiation or at least discussion with the relevant committee and director in Grafton, and at that time, that would have been - well, certainly the director would have been the director in Sydney, and he and I would have had to talk it through and look at a way of managing it. But it certainly could be done, and in other situations, it has been done between dioceses.
MR BECKETT: Thank you. Those are my questions,
thank you.

THE CHAIR: I think we should mark the canon, should we,
exhibit 3-7.

EXHIBIT #3-7 PROFESSIONAL STANDARDS CANON FOR THE DIOCESE
OF BRISBANE

<EXAMINATION BY MR GRIFFIN:

MR GRIFFIN: Q. Can I take you to paragraph 25 of your
statement. Is it correct, Mr McLary, that in the second
line, when you refer to "Bishop John Shearman", you had
intended "Bishop Donald Shearman"?
A. Yes, it is an error. It should be "Bishop Donald
Shearman". That was my mistake, and I hadn't picked it up
in checking the statement.

MR GRIFFIN: Thank you, your Honour.

THE CHAIR: Thank you. And thank you, Mr McLary, you are
excused.

THE WITNESS: Thank you.

<THE WITNESS WITHDREW

THE CHAIR: 10 o'clock tomorrow. We will adjourn.

AT 4.13PM THE COMMISSION WAS ADJOURNED TO THURSDAY,
21 NOVEMBER 2013 AT 10AM
background [e] - 1827:25, 1828:1, 1828:15, 1828:32
backtracked [i] - 1829:25
bad [p] - 3, 17:11, 1851:47
bag [n] - 1865:8
bags [i] - 1865:22
band [p] - 1819:5, 1819:6
bands [h] - 1819:2, 1819:11, 1819:44, 1831:34
Bar [p] - 1889:2
bare [n] - 1893:36
basic [p] - 1841:19
bawled [i] - 1859:30
bear [e] - 1825:30, 1831:21, 1848:46, 1849:4
beat [p] - 1864:43, 1864:45
beating [i] - 1857:33
Beckett [s] - 1814:39, 1815:1, 1883:3, 1883:13, 1883:15
become [h] - 1849:17, 1849:25, 1853:45,


claimed [1] - 1880:31


claims-based [1] - 1913:36
- 1831:47, 1831:24, 1831:47, 1831:24, weekdays


W
