ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing
(Day 23)

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Wednesday, 27 November 2013 at 10.45am

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

Counsel Assisting: Ms Gail Furness SC
Mr Simeon Beckett
MR BECKETT: Q. Yesterday I was asking you some questions about the operation of the national register. I think perhaps the easiest place for us all to start is for you perhaps to explain briefly the process by which you would form an opinion that you needed to add something to the register and then what the process is that you go through to make an entry on that register?
A. Yes. If a matter fitted within the criteria of the national register canon, then the director would have that information and form the view that an entry needed to be made. Sometimes the difficulty with some of the historical files is that it's difficult to ascertain whether they do fit the criteria, and often those files - procedural fairness hasn't been afforded or the matters haven't been investigated properly or the file may be compromised or incomplete.

THE CHAIR: Do we have that canon?

MR BECKETT: Yes, we do, your Honours. It's in exhibit 3-3, the tender bundle of policies, procedures and canon law, at tab 5.

THE CHAIR: What is the relevant clause, do you know?

MR BECKETT: I have another copy, if that would assist.

THE CHAIR: I just wonder whether there is a statement of the criteria that is clear as to what should go on the register.

MR BECKETT: Perhaps I should ask Mr Elliott.

Q. When you referred to criteria for putting something on the register, were you referring to the first schedule to the canon?
A. I believe that's it, yes.

MR BECKETT: If that could be brought up. It's ANG.9310.01001.0592.

THE CHAIR: The first schedule is the information that is included, but I suspect that clause 5 is what I had in mind...
as being the criteria.

MR BECKETT: Q. Mr Elliott, perhaps we could trace it through. The national register, at clause 5, says that there shall be a register of all clergy against whom a notifiable complaint or a notifiable charge has been made.
A. Unless exhausted, yes. So when you go to look at the definition of a notifiable complaint --

Q. Yes, let's just do that. It is on page 16, or 0599. That's a "complaint in accordance with the relevant canon, ordinance, rule or protocol received by a Director of Professional Standards of sexual misconduct or child abuse by a member of the clergy".
A. That's correct.

Q. If we go to the previous page, there is a definition of something called a notifiable charge.
A. Yes.

Q. That means a charge of a person --

THE CHAIR: Just pause. Yes, keep going. I'm not sure how tight it all is, is my concern. And what's the "relevant canon, ordinance, rule or protocol received by a director of professional standards".

MR BECKETT: Q. Mr Elliott, what's your understanding of what the relevant canon, ordinance, rule or protocol is?
A. I can't see that on the screen, but I'm assuming we are referring to things like the Professional Standards Ordinance.

THE CHAIR: Q. It's referring to a "canon, ordinance, rule or protocol received by a director of professional standards". So it means a complaint, does it, received pursuant to that process?
A. Yes, that's my understanding.

Q. Is that what that's talking about?
A. Yes.

Q. So the person has been told of the complaint, then it goes on the register; is that the idea?
A. Well, one of the criteria is they need to be told about the complaint.
Q. But if it is a complaint and they are told, then it has to go on the register; is that the way it works?
A. Yes.

Q. Is that what happens in practice?
A. No.

Q. No?
A. No.

THE CHAIR: Back to you, Mr Beckett.

MR BECKETT: Q. Why is that? Why does that not occur in practice?
A. I think it comes back to some of the difficulties, the technical difficulties, with the system, and also the fact that in many cases, when it is either a current internal investigation or a police investigation, it may not be appropriate to notify the respondent.

Q. On the previous page, you will see at the top of the screen, there is something called a "notifiable charge"?
A. Yes.

Q. That includes a criminal charge, for example, laid by the police, I presume, that is communicated to a professional standards director; is that right?
A. Yes.

Q. Then I think at (b):

the engagement in professional misconduct;
... which a Director of Professional Standards certifies arises out of alleged sexual misconduct or child abuse by that person ...

Do you see that?
A. Yes.

Q. So it could also include allegations of sexual misconduct or child abuse; is that right?
A. Yes.

THE CHAIR: Q. I can't see a definition of "professional misconduct". How does that concept work?

.27/11/2013 (23) 2370 M I ELLIOTT (Mr Beckett)
A. That would be defined in the Professional Standards Ordinance or faithfulness in service; there would be definitions that apply to that. But, yes, perhaps they should be defined in this document also.

Q. Then, as I understand it, we go to the first schedule, and it is page 9, or Ringtail 592. The basic details are set out there at the first four paragraphs.
A. Yes.

Q. If we go down further, at 10, "date of a notifiable complaint" is included?
A. Yes.

Q. And "criminal history" is across the page at paragraph 19. I will come back to the process in a moment. If you are aware, for example, of a conviction, whether or not it was a criminal history report in the nature of that produced by the police, you would be able to enter that upon the register; is that correct?
A. Yes.

Q. On that first page, page 9, or Ringtail 592, you will see there is a reference there to "Date of reference of a notifiable complaint to a Determiner". Do you see that?
A. Sorry, which point?

Q. 13.
A. Yes.

Q. What's the role of a determiner?
A. I assume that that must be talking about when a complaint is referred to a professional standards board for determination. As I mentioned, in some of those historical matters, that has not occurred.

Q. Let me return, then, to the process in terms of the way in which it operates for you. You said there was some concern about logging matters on the national register where there was an ongoing police investigation.
A. Yes.

Q. Why were you concerned about those matters being put on the national register?
A. For two reasons: one, that as a matter of course, when a matter is entered on the register, a letter is sent out to the person whose information is being placed on the...
register, so it automatically notifies them of the complaint and the nature of it, which may compromise a police investigation. Secondly, the people who have access to the register nationally - and there are usually three people from each diocese - then have access to that information. So where police have requested that even the information saying that the matter is under current investigation be kept highly confidential, my view is that it's no longer kept highly confidential; there are a lot of people who have access to that information and it could potentially be passed back to the person who is under investigation.

THE CHAIR: Q. The register, as I understand it, operates so that the relevant people can access it themselves at any time?
A. They can't access information and browse information or look what's on there. All they can do is send off an inquiry of a name.

Q. Is the response framed as clear or adverse, or is more detail than that provided?
A. I believe it is clear or adverse. I'm not sure of the level of detail provided on an adverse return, because I haven't had one.

Q. One can contemplate, anyway, communications that might raise a red flag but do no more. The question is whether that would compromise or have the potential to compromise a police investigation?
A. Yes.

Q. Who are the people generally who would have the access - people like yourself?
A. Yes, it is all of the directors of professional standards nationally. Then it would usually be the bishop of each diocese and one other person, which would usually be the registrar or business manager.

Q. If it was confined just to directors of professional standards, would that --
A. I would be more comfortable with that.

Q. I won't ask you the rest of the questions, but there are obviously some issues around that.
A. Yes.
MR BECKETT: Q. There is some mention in Mr Drevikovsky's statements, which I understand you have had access to, about the use of a caution system.
A. Yes.

Q. I wonder if you could explain what that caution system is?
A. The caution system is an avenue where you can enter minimal details, so not all of the usual details that are required to make an entry are needed. It is name, date of birth and last known address, I believe. And an entry can be put on that is a flag, so that when someone does a check on that name, it simply notifies that there is a flag about that person entered by whoever entered it, and then you can make further inquiries with that person.

That system only lasts for 30 days. There are 30 days for you to enter further information about that. But, again, one of the problems with that is that a letter is sent out to the respondent notifying them that that entry has been made.

THE CHAIR: Q. Mr Elliott, if someone is contemplating engaging an ordained person from another diocese, is it usual for the prospective employer to make inquiry of the current diocese about the person?
A. Yes. What should happen, besides the legislative check, the Working With Children Check and police checks, the application is usually made, or the approach is usually made, directly to the bishop. The bishop should refer those names to their director of professional standards, who would then make a national register check as well as check with the other directors if there is any information of concern about that person. But at times, that system breaks down.

Q. I'm not quite sure I'm clear. If a bishop is contemplating taking someone from another diocese, does the bishop's professional standards director then make inquiry of the professional standards director of the other diocese about that person?
A. Yes, they do.

Q. So through that means, any knowledge that the director has would be communicated?
A. Yes, and often the bishops would communicate together as well.
Q. Is that a formalised process or is it ad hoc?
A. No, it's not formalised. Ad hoc.

Q. So it is just an expectation that may or may not be realised?
A. Yes.

Q. I assume that the expectation within the church is that any adverse knowledge that one diocese has will be communicated to the other?
A. Yes.

Q. Is that always achieved, do you think?
A. No. Sometimes that doesn't occur.

Q. Do you know why it doesn't occur?
A. For example, if an applicant came from the Diocese of Brisbane and applied for a position in the Diocese of Newcastle, if the bishop then asked me to make inquiries and I inquired with my counterpart in Brisbane, he may say to me, "Well, I have no information of concern about that person." But there may well be files held in any other diocese about that person. There is no central listing, outside of the national register, that a file may exist in any diocese on that person.

Q. You would be operating upon the assumption that the previous diocese, Brisbane in this case, made proper inquiry when they engaged that person?
A. Yes.

Q. That's the way, of course, that the commercial world works when they employ people?
A. Yes.

MR BECKETT: Q. In terms of your position as professional standards director for both Grafton and Newcastle, is there some form of internal register or system of file keeping that alerts you to current and historical matters that might be suitable for logging on to the register?
A. I'm not sure that I understand the question.

Q. Let me put it this way: we're talking about a national register where the indication, as I understand it, is that all matters of concern will be logged on to -
there will be entries made on to the national register on
a national basis. Is there an equivalent register of some
description in Newcastle, for example, which you could go
to and then ascertain with some degree of certainty that
these were the matters that needed to be then referred
either on to the national register or referred to
a professional standards director who was inquiring?
A. Yes. I have my own records management system that
would flag those things for me, and I believe the other
directors do as well. But, again, that's informal. Each
person has their own system that they utilise.

Q. There is not a standardised approach to the keeping of
diocesan registers?
A. No.

Q. You said that you have your own records. I think it
was at Newcastle. What about Grafton? Is there a register
of some description of persons of concern, if you like?
A. I have some of those records, but seeing as I only
received the five or so boxes of Grafton files from
Anne Hywood earlier this year, I still need to take the
time to go through those, compile those properly, make
assessments and enter them into my own database.

Q. In other words, you didn't receive, when you took over
the position in 2009, some readily accessible register or
index of those files and those people?
A. No, not for Grafton. No.

Q. But for Newcastle, you did?
A. No. I was given all of the files, but not an easily
recognisable summary.

Q. You have dealt with, over the time, a number of
professional standards directors, haven't you?
A. Yes.

Q. Is your experience with respect to an internal or
diocesan register replicated in other dioceses?
A. Yes.

Q. You talked about a process of natural justice,
I think, prior to putting an entry on to the register.
Could you please explain what that process is that you have
been going through before ascertaining whether it is
appropriate to register a particular name on the national
register?
A. Well, I'm still undertaking that process and I'm still
unclear on some aspects of it, but one of the things, when
I do do a review of a historical file, would be to look at
has the allegation been investigated properly, has it been
put to the respondent and is there an outcome and has
procedural fairness been afforded?

Q. So you are concerned about, effectively, the
preliminary processes before you get to the stage of
determining whether it is appropriate to enter somebody on
the register?
A. Yes.

Q. In the meantime, while you are going through that
process, has it been your practice to put a caution or some
sort of preliminary entry upon the register?
A. No, it hasn't, and the reason that I do that
preliminary work is because it may be the case that I need
to refer that matter to police or I may need to conduct my
own investigation, and at that point it may not be
appropriate for the respondent to be aware that that's
under way. For the same reason, I don't put the warning
on, because the letter will be sent out notifying them, and
it may not be appropriate; it may compromise that
investigation and that process.

Q. To your mind, is there an appropriate way, be it a red
flag system or some other process, by which you could make
some sort of entry on a national register? I'm not talking
about the current national register, but a way in which it
would achieve the aim of alerting other professional
standards directors, for example, to concerns about
a particular person but not provide notification to that
person so that they are alerted to an investigation?
A. Yes, I think that would be a commonsense approach, if
that could be integrated into the system. The difficulty
is that it would be outside the conditions in the canon, in
this instance. But that would be a more appropriate way
for that to be dealt with.

Q. Are you saying that the canon constrains you in the
sense that once you have put any entry on to the national
register, there is a requirement that the person who has
been registered be given notification of that?
A. That's correct.
Q. I wanted to ask you about some of the technical difficulties you have had with the national register. I understand that you have been given your own netbook, if you like, a laptop, I presume that is?
A. Yes, it is a small laptop.

Q. And the purpose of having that laptop is that you are able to access the national register; is that correct?
A. Yes. I think the purpose of it was that the software and a localised database version of the national register is installed on that computer. And then data from there is encrypted and sent to the central version of the register in Sydney.

Q. I understand you have had some difficulties, yourself, with utilising that particular process, using the netbook. What have been your problems with doing that?
A. I have had significant difficulties. Even simple aspects like utilising the mouse I find difficult with the system and have found it hard to use. It's not something that I was able to adjust to make it a bit easier to use. They are difficult to navigate. The start-up process and the passwords were difficult to get through. There was a number of passwords.

Q. Isn't that just simply a case of knowing what your passwords are and just entering it into the system to get it on?
A. No, some of them were computer generated initially so they were very long. They were things you couldn't remember. And it was difficult to even know at what point which password went in. You would enter three or four different ones trying to get through different parts of the system before it was activated.

Q. And then once you are on the system, did you have any difficulties with the functionality of the process of entering or perhaps just reading what was on the register?
A. Yes, significant difficulties. It just didn't seem to be a user-friendly system, and it was difficult to interpret what data was required and what boxes were required to be ticked. It was difficult to navigate.

In some instances, drop-down menus would change depending on what you selected, and certain combinations of those drop-down menus - even as recent as a few weeks ago I notified the national register officer that if you chose
a certain combination of drop-down menus, the system would freeze and wouldn't let you enter any more data and you had to shut the program down and restart.

Q. Those drop-down menus are trying to get you to allocate a particular registration of a person to particular categories such as sexual abuse or child sexual abuse or whatever it might be?
A. Yes, that's right. So as you selected one drop-down menu, it would provide a second one that would be dependent on what you chose in the first one. That could be for clarification. And then a third one came up, and in my case - and it happened twice - if I chose something from that third menu, the system seemed to freeze.

Q. Mr Elliott, how many years have you used that system for now?
A. I think it has been since 2009, since its inception. But because of those technical issues, I think a lot of the directors have avoided using it. It is very time consuming to try to work through those issues and it doesn't seem overly productive.

Q. Are you able to estimate how many additional files you need to review before you have completed your task with respect to Grafton, for example, of determining that you have completed all of the files for registration on the national register?
A. Yes, for Grafton, I think I would probably - I would have all of the North Coast Children's Home files to review and probably another ten to 15 on top of those. We are talking in the vicinity of 50 or more.

Q. What about for Newcastle?
A. I would have about 30 that I need to go through in detail to look at.

Q. Do you have any additional resources by which you can undertake that task or is it simply you have to absorb that into your duties as PSD?
A. I was provided some additional administrative support to review those files, which was helpful, but essentially, it is a task I think, from here, that only I can undertake, or a director can undertake to that degree, to make a proper assessment of those files.

MR BECKETT: Those are the questions for Mr Elliott.
THE CHAIR: Does anyone else have questions?

MR BRADY: No, your Honour.

THE CHAIR: No. Very well, thank you, Mr Elliott. You may step down. You are excused.

THE WITNESS: Thank you, your Honour.

THE CHAIR: I understand you have been asked to wait, though.

THE WITNESS: Okay.

THE CHAIR: Just so that we make sure that the Commissioners have the benefit of your knowledge if there should be a subsequent question arise as to the operation of the register. If you wouldn't mind waiting until that topic is exhausted, we would be grateful.


<THE WITNESS WITHDREW

MR BECKETT: I wonder if I can tender a number of items before I call Mr Drevikovsky. First is a collection of documents that I will take Mr Drevikovsky to, produced on summons. I tender three copies of that.

THE CHAIR: Sorry, what are these documents?

MR BECKETT: They are a number of reports by the general secretary to the General Synod standing committee with respect to the operation of the register and also some associated protocols which amend the canon, or at least elucidate the operation of the canon.

THE CHAIR: All right. The documents produced by Mr Drevikovsky will be exhibit 3-21.

EXHIBIT #3-21 FOLDER OF DOCUMENTS PRODUCED BY
MR DREVIKOVSKY

MR BECKETT: I also tender copies of two letters. The first is a letter from Peter Caporaso, professional standards director in Adelaide, to Mr Drevikovsky of 9 May,
and then a letter from Mr Drevikovsky to Mr Caporaso of 31 May 2013.

THE CHAIR: Those two letters will be exhibit 3-22.

EXHIBIT #3-22 LETTER FROM MR CAPORASO TO MR DREVIKOVSKY DATED 9/5/2013, TOGETHER WITH LETTER FROM MR DREVIKOVSKY TO MR CAPORASO DATED 31/5/2013

MR BECKETT: I call Mr Drevikovsky.

<MARTIN JAN DREVIKOVSKY, sworn: [11.15am]

<EXAMINATION BY MR BECKETT:

MR BECKETT: Q. Mr Drevikovsky, you will see there is a folder in front of you, exhibit 3-21. I wonder if you could open that to tab 1 in the material there. You will see on page 2 of that document, at the top there --
A. I beg your pardon --

Q. This is the standing committee of General Synod, a report, not from yourself but from Paul Bennett, the GSO, national register projects manager; do you see that?
A. Yes.

Q. There is a reference on the second page there, in the top paragraph:

It was also agreed with the Directors of Professional Standards that they would write to the respondents to inform them that the historical matter was to be included in the National Register ...

It is the next part that I want to ask you about:

It is anticipated the bulk of the historical data will be in the National Register within the next month.

Do you see that?
A. Yes.

Q. Before I continue - I omitted all the formalities of process, Mr Drevikovsky. I apologise. Could you please state your full name for the Royal Commission?
A. Martin Jan Drevikovsky.

Q. What is your current position?
A. I am the general secretary of the General Synod of the Anglican Church of Australia.

Q. You have provided the Royal Commission with three statements; is that correct?
A. I have.

Q. Dated 11 November 2013?
A. Yes.

Q. Then 25 November 2013?
A. Yes.

Q. And then 26 November 2013?
A. Yes.


Q. Mr Drevikovsky, do you say that those three statements are true and correct to the best of your knowledge?
A. Yes.

THE CHAIR: We will add those to the bundle of statements that we each have.

MR BECKETT: Q. Mr Drevikovsky, one of the responsibilities you have as general secretary of the General Synod is overall responsibility for the national register; is that correct?
A. Yes.

Q. In undertaking those tasks, I understand you have a registry officer, is that correct, who assists you for the day-to-day running of that matter?
A. Yes.

Q. Is that a Ms Harvey?
A. Yes.

Q. As part of your duties, you report from time to time to the General Synod standing committee about the operation of the register?
A. Yes.

Q. You have undertaken that task for a number of years; is that correct?
A. Yes.

Q. Since what year?

Q. Returning to that document behind tab 2 - this appears to pre-date your involvement in any event - the sentence I wanted to take you to is:

> It is anticipated the bulk of the historical data will be in the National Register within the next month.

Do you see that?
A. Yes.

Q. From your memory, do you recall that the position in 2008 was that each of the professional standards directors would be, within the next month or so, up to date with entering all historical data on to the register?
A. Yes. That would have been my understanding.

Q. You indicate in the statements that you have provided to the Royal Commission that there is in fact a considerable backlog of reviewing such files and entering them into the register; is that correct?
A. Yes.

Q. Can you explain, perhaps, why there was an expectation back in 2008 that the process of entering all historical information would be done within such a short period of time?
A. This is a report of Mr Bennett, and he would have made that estimate on the basis of his discussions with directors.

Q. Can you assist me, then, as to why it appears to be the case that there was such an optimistic prediction, if you like, back in 2008, yet some five years later we seem to be in a position of the church going through and still ascertaining what historical material needs to be added on to the register?
A. One explanation would be that since the
Royal Commission was announced, the standing committee of
the General Synod established a Royal Commission working
group, which was established to help dioceses to respond to
the Royal Commission. That working group gave advice to
the dioceses and to church organisations to search for
files and to review them to ensure that all necessary steps
had been taken and, if not, to take remedial action.
I understand that a large number of files have come to
light as a result of those searches.

THE CHAIR: Q. Mr Drevikovsky, can you just give us some
idea of the context of this: how many names are presently
on the register?
A. About 129. I would have to check that. There is
a report to the standing committee in November of this
year, which contains a table. I have it with me. If you
pardon me a moment, I will try to find that.

MR BECKETT: Q. It is tab 4 of the volume in front of
you, I think, Mr Drevikovsky. Is that the document you are
referring to?
A. Yes, I think so. My memory is - yes, the total number
of persons verified is 129. It is on page 3, in table 3.2.

THE CHAIR: Q. Do we know how many files, collectively
around Australia, have yet to be reviewed to bring the
register to some state of reliability and completeness?
A. Yes, we do know that. It's a rough estimate. It's
annexed to the statement of 26 November. If I can find
that, I can direct you to it. It is annexure MJD-4. It is
estimated, by the inquiries that I had made of the
directors, that there could be somewhere between 145 and
about 210 files that still need to be reviewed.

Q. Of which the assumption I assume is a proportion will
end up on the register?
A. Yes, there is an estimate of the number that might
still be notified in the fourth column of that annexure.
It is estimated that it could be somewhere between about 41
and 46, and possibly more, persons still needing to be
entered on the register.

Q. And again so we have a context for this, what order of
inquiry is there each year about whether a person's name is
on the register when they are considering moving to
a different position in the church?
A. Does your Honour mean the number of inquiries made by
bishops to determine? Yes, there is something in the order of 2,500, say, this year. That's in the report. At page 4 of the report, under tab 4, table 3.6 shows that between 1 January this year and 16 October, there had been 2,644 requests.

Q. Do I assume that bishops and directors know that, in making that inquiry, they need to understand that the register is not yet a complete record?

A. Yes. When they get a report - there is a pro forma of the report at annexure 5 to my statement of the 26th - there is a warning there to the effect that they shouldn't just rely solely on the national register and they should make other inquiries.

MR BECKETT: Your Honour, I haven't received a copy of that fifth document.

THE CHAIR: MJD-5?

MR BECKETT: Yes.

THE CHAIR: I have it.

MR BECKETT: Yes. Thank you.

THE CHAIR: Q. So when do you expect that the register will be complete?

A. I don't have a specific date in mind. The national register - Mr Elliott said in his evidence the software is being rewritten. We expect that to be completed in February, and to the extent that difficulties that are experienced with the use of the current software are a contributing factor, we expect that the time frame would be reduced. But, as Mr Elliott said, it is a question of resources. Each diocese - they have to review their files; they have to load the information on. So we don't know how long they will take to do that.

THE CHAIR: Yes, very well.

MR BECKETT: Q. You heard what Mr Elliott said about problems with accessing the national register through the netbooks that were provided by yourself, I understand; is that correct?

A. Yes, they were provided by the General Synod office as a way of overcoming some technical difficulties that had
arisen with the original configuration of the national
register, and, yes, I have heard that there are - we did
supply those. I am sorry, I have forgotten the rest of
your question. I think it was in two parts.

Q. That's all right. I will ask another question. So
those netbooks were supplied at some stage - certainly
Mr Elliott seems to have had one by 2009?
A. The second half of 2009.

Q. It is correct to say that there have been a number of
complaints about the accessibility of that software and the
usability of the process through the netbooks communicated
to you from professional standards directors; that's
correct, isn't it?
A. Oh, yes, yes.

Q. You have responded by offering additional training and
the assistance of Ms Harvey to be provided to those people;
is that right?
A. Yes, and before Ms Harvey, her predecessor.

Q. In any event, you have determined, I think, certainly
by this year, to adopt an entirely new process; is that
right?
A. That was decided last year.

Q. The new process is to abandon the netbook idea and
just move to an entirely web-based system for the register;
is that right?
A. That's right, yes.

Q. You heard what Mr Elliott said, no doubt, about the
provision of natural justice once an entry is made on the
national register, didn't you?
A. Yes, yes.

Q. Irrespective of whether it is a brief entry or a more
lengthy entry setting out whatever information the director
wants to add in, the process required under the ordinance
is that the person named is given the opportunity of making
submissions or replying, at least, to the entry; is that
correct?
A. Yes.

Q. Clearly what is indicated on the national register is
passed through to the person who is the subject of the
entry; is that correct?
A. No, they have to apply for that. It is a multi-stage process.

Q. In any event, a flag is raised at the first point where they are told, as I understand it, that there is at least an entry with respect to them; is that correct?
A. Yes, yes.

Q. Then you say they apply. You said it was a multi-stage process. So if they want to gain information that has been put on to the register, what is that process?
A. Well, they then fill in a form, make the request and then the material is sent to them.

Q. Are they entitled to all of the information that is available on the register?
A. Yes.

Q. What is the situation where there is an ongoing police investigation with respect to that particular person?
A. Well, we in the General Synod office would not know that. That would be known solely to the director of professional standards.

Q. It appears to be the case, for example, that if a professional standards director was aware that a particular person was being investigated by the police, but also they had information in their possession which they were required under the canon to enter on to the national register, how should they resolve that conflict, if you like, between providing information to a person who was under investigation by the police and undertaking their obligations under the canon?
A. I don't think there is an easy resolution. There is no provision to resolve it under the canon. This is an issue that has only fairly recently become known to me, and so I haven't worked through how one might resolve it. But the way it is done in practice, I understand, is that the directors refrain from putting the material on to the national register, lest the police investigation is compromised.

Q. So what action can a professional standards director take to alert other dioceses to concerns about a particular person under investigation?
A. If there is a police investigation current, well, they
may - I think that is a difficult question to ask. I can't
really answer that, because they could, in theory, inform
other directors, but then they have to be confident that
that confidence will be kept, so that's really a matter for
their judgment.

Q. It is not a set process, in any event?
A. No, no.

THE CHAIR: Q. Can you help me with a related matter.
If someone is told that there is an allegation and it is
contemplated that their name will go on the register, and
they respond by saying that the allegation is not true, who
resolves whether or not it should go on the register?
A. They do not have the opportunity to intervene at that
point. They may object to the director, but the director
is obliged to put the information on to the national
register. Because the information is defined under the
canon, if they are licensed as clergy - and at least in the
case of clergy, I'm quite certain - they have, under the
consensual compact under which the church operates,
accepted the authority or the efficacy of the canon. They
can't object to that.

So it would go on to the national register. Then they
can go through a process. They would then be told that
information is on the national register. They would be
sent, by the national register officer, a letter. Then
they can apply to ask what information there is. That
would be sent to them. Then if they object to it, they can
object formally at that point.

Then the - I would need to check, but I think it is my
responsibility, as general secretary, to get in touch with
the director to determine the authenticity or the veracity
of the information. If I am satisfied that it is correct,
it stays there.

Q. When you say if you are "satisfied it is correct",
what do you mean?
A. Well, if the information - there would have to be some
compelling evidence to show that the information that is on
the national register is incorrect.

Q. So once it is there, the onus is upon someone to
persuade you that it shouldn't be there; correct?
A. Could I check the section?
Q. Yes, certainly.
A. I have been taken by surprise by the question, so
I will see what I can do. It is set out in - there is
a protocol. It is the last of the protocols that are
attached to the canon.

MR BECKETT: Q. Mr Drevikovsky, there are some protocols
in that folder in front of you, from tab 5 onwards.
I wonder if it is any of those ones?
A. Yes, I was looking in my own book. It is under tab 8,
The final document.

THE CHAIR: Q. Tab 8?
A. Yes. That sets out the procedures. So the person
makes an application on the basis that is set out in
clause 2. The general secretary then provides a copy of it
to the relevant director. Then there is a process for
resolving that.

MR BECKETT: Q. It appears to be left up to the
professional standards director to agree/disagree with
a proposed amendment; is that correct?
A. Yes, I think that's right.

Q. So it is not for you; it is in fact for the
professional standards director?
A. No, you're quite right. The information that is on
the register is quite objective, when you look at the
schedule. There is not subjective information, so it is
easier to check its accuracy.

Q. So you say that by being ordained, at least, leaving
aside lay people, the ordained person accepts that the
canon and the protocol that works with it will govern the
way in which the church records information about that
person?
A. I am not following that, your Honour, I'm sorry.

Q. Well, this is obviously a fairly serious matter for
someone whose reputation might be affected?
A. Yes, indeed.

Q. But is it the position that the church and those who
are ordained accept that their reputation can be affected
by the process provided by the canon and protocol and they
can't object to that process being applied to them?
A. I think that's a correct assessment. I wasn't in my role at the time when the current - the system as it now stands, the canon as it now stands, was introduced and negotiated, but I do know that what we now have is a very much reduced version of what was originally proposed. There was a lot of debate about questions of privacy and fairness when the 2007 canon was introduced in the 2007 synod.

Q. When you say "reduced", do you mean the information to go on to the register was to cover a wider set of allegations?
A. Yes, and to cover - yes, wider allegations. I think that probably explains it best, expresses it best.

Q. That was a matter of debate?
A. Yes, indeed.

Q. Is everyone happy with the current document?
A. I would think there are those who would still object, who would still have reservations about it.

Q. Being an objection because it is still too wide or it is too narrow?
A. Too wide or the existence of it at all.

Q. Is there a strong sense of that within the church?
A. No.

MR BECKETT: Q. Mr Drevikovsky, I will show you a letter, ME-19. It is a letter from the professional standards director, Bernard Hill, of the Diocese of Perth to you dated 19 July 2010.
A. Yes, I see that.

Q. Mr Hill, on behalf of the directors of professional standards, raises a number of serious concerns, doesn't he, with the process?
A. He raises some concerns, yes.

Q. On the second page, if we go down to the second-last paragraph, his concern is that:

... the Register may be given too much credence by those who may not understand the reality of its operational shortcomings.
He says:

This may in turn be creating a false and potentially dangerous sense of confidence in the decisions made using information on the Register...

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

Q. Do you consider that a fair criticism of the register, at least as it was in 2010?
A. No.

Q. Why not?
A. Because, as I pointed out, there is that warning on a report that is produced when somebody makes an inquiry of the national register, so it says, "Don't place all your reliance upon this - don't rely upon this exclusively." That's the first thing.

The second thing is that the national register was not designed to replace all the usual risk management processes that people undertake when they are engaging people for positions. So, for instance, things like police checks, Working With Children Checks, usual reference checks - all of those things continue and they are encouraged to continue.

There is also the recommendation that people undergo psychosexual examination before they take up roles where they are working with children. So the national register is only one tool in the process of engaging people and appointing them to positions in the church where they might be working with children.

THE CHAIR: Q. Mr Drevikovsky, when I asked you about the level of information or the completeness of the information in the register, you directed our attention to MJD-4.
A. Yes.

Q. I haven't mastered it, because I'm just looking at it now, but if we look at your statement of 25 November, paragraph 5, as I understand it, talks about October 2013, the relevant officer informed you that they had information
Q. Then in paragraph 12, you talk about Sydney Diocese estimating between 70 and 100 files to be reviewed, but they are part of a much larger review of about 600 files.
A. Yes.

Q. It gives me a confused picture, but it sounds to me like there might be hundreds of potential persons who need to be considered as to whether or not they should go on the register?
A. No, your Honour. What I was trying to convey in that is that, say, some of the dioceses, not just the Diocese of Sydney, have conducted these wider complete investigations. In the case of Sydney, it was 600. In the case of Melbourne, I know it was hundreds, but I don't know how many. What I asked them to do was to estimate how many of those files they estimated would need to be investigated to determine whether or not information had to be put on the register. They have done - I'm not sure whether I am explaining that very well, but they have made a preliminary cull.

Q. I'm sorry, can I stop you for a moment.
A. Yes, certainly.

Q. You are saying here that 600 files have been outsourced to a lawyer to have a look at.
A. Yes, I understood that.

Q. That rather suggests the potential in there, in those 600, for persons who should in fact end up on the register; is that right or not?
A. No, your Honour. They have done a preliminary cull, so the figures that appear in annexure MJD-4, in that table, are their current estimates of the files that they need to review to determine whether or not there is information to go on the register. The others have been rejected, as I understand it. They have concluded that they are not relevant.

Q. Forgive me for saying I don't presently understand you to be saying that about the 600, because they are out with a lawyer to be looked at?
A. They have had some preliminary - I understand they
have had some preliminary results.

Q. Again, I don't understand what you have said in your statement. Do you have it there?
A. Yes.

Q. You tell us that there are 600 that have been outsourced to an external person and that that review is to be completed in about two months.
A. Yes, your Honour.

Q. What is the relevance of that review to the task we are doing?
A. I beg your pardon, your Honour?
Q. What's the relevance of that review to the problems we are looking at, that is, the sexual abuse issue?
A. Well, the relevance of it is that they were - the review was to determine whether - I am assuming that they were - this was undertaken in response to the advice given by the Royal Commission working group that they review all past files to determine whether or not they had complied with whatever processes they should have complied with in dealing with those past cases.

So there is a pool of around 600. When I made inquiries, I was informed by the Sydney Diocese that they estimated that about up to 100 of those files would contain information that needed to go on a national register. Now, I didn't quiz them about that. I was simply trying to get the scale --

Q. So of the 600, they believe 100 may --
A. Yes.

Q. -- produce entries on the register; is that the way it works?
A. That's right. That's the way it works, yes, your Honour. I am sorry if I haven't explained that clearly before this.

Q. Right. Then going back to paragraph 5, the officer informed you that she had heard from four directors. They estimated between 110 and 180 new persons to be notified.
A. Yes, your Honour. That was my understanding at the time when I got that information, and it is really picked
up in the second statement, the statement of 26 November.

Q. What do you say there about that?
A. That when I realised - the numbers didn't gel, when
I considered it.

Q. That's plain, isn't it?
A. Yes. So I made some more phone calls over last
weekend and on Monday and ascertained that the numbers were
as are shown in the third and fourth columns of MJD-4,
which is attached to the 26 November statement.

MR BECKETT: That's the third statement.

THE CHAIR: Q. But they don't gel, though, do they,
because what you are telling us is that Sydney has 600, of
which they expect 100 may produce a positive result, as it
were?
A. Yes.

Q. Well, "Number of files to be reviewed" - the number
you have there doesn't come anywhere near 600?
A. No, your Honour - I am not sure how I can explain it.
They had the pool - they had a total number of 600 that
they had asked to be reviewed. On their preliminary
review, as I understand it, they estimated that somewhere
between 70 and 100 of those would yield information that
goes on the register. They have made a judgment that the
other 500 would not contain information relevant to the
register.

Q. Well, it may just be a question of the label you put
on something?
A. It may be.

Q. But it rather suggests that the 600 have to be
reviewed, with the expectation that 100 will produce the
positive?
A. That's not the way I put the question to them, but
that may be the way they have understood it.

MR BECKETT: Q. Mr Drevikovsky, I notice in the revised
MJD-4 annexed to your third statement, the one dated
26 November 2013, the number of files to be reviewed for
Grafton indicates 30 files to be reviewed. Do you see
that?
A. Yes.
Q. We received evidence a little while ago from Mr Elliott where he said that it was in excess of 50 files that had to be reviewed?
A. Yes.

Q. Would you agree that the appropriate number is in excess of 50 in that third column there?
A. I don't know that I can agree to that. The number 30 is what Mr Elliott told me as recently as yesterday. The evidence that you've got today is different. I can't explain the discrepancy. Mr Elliott would need to explain that.

Q. But this is your document, is it not?
A. That's right.

Q. Mr Drevikovsky, in the document that is in front of you, the letter from Mr Hill, in the third dot point you can see at the bottom of the page, he was asking, on behalf of the professional standards directors, whether a review of what is recorded on the register could be undertaken, and he says:

... whether a simple "red flag"/caveat style annotation that simply alerts the inquirer that a particular [director of professional standards] needs to be contacted, for case particulars - thus diminishing the sensitivity of the information and therefore the security required.

That red flag process - we had some evidence from you a little while ago about this particular thing - is that not a sensible suggestion?
A. It's a sensible suggestion. I'm not sure that it's workable.

Q. Why is that?
A. The difficulties that I see with it are that you would not necessarily have consistency of information, not necessarily have consistency of use of the system. There may be issues about unfairness, because somebody will simply be relying on what a director of professional standards tells them. There may be issues of unfairness for a candidate for a position. There may be questions
about the accuracy of the information that is imparted. So
unless there were some strict protocol for the way in which
this system were to be implemented, it seems to me that it
falls short of the kinds of safeguards about security and
consistency that you get from a system like the national
register.

Q. So your concerns are about security but also about
fairness; is that correct?
A. Yes, yes.

Q. And natural justice with respect to the person who has
had such a flag against their name?
A. Yes, yes.

Q. You heard some evidence today, and I think you
understand, that professional standards directors speak
from time to time about particular individuals?
A. Yes.

Q. And that it is not infrequent for one professional
standards director to indicate to another that there are
concerns about a particular person?
A. Yes.

Q. You also gave some evidence earlier on, I think, that
the bishops from time to time indicate to each other who
persons of concern might be?
A. Yes.

Q. The purpose for that is so that further inquiries can
be made of the person who is sent the email, if you like,
or communicated from one bishop to another?
A. Yes.

Q. None of that is governed by any particular protocol or
procedure, is it?
A. None that I'm aware of.

Q. So what is the problem with formalising that process
in the simple way of a red flag, in the way that is being
suggested by Mr Hill?
A. Well, I suppose it depends on the process - depends on
the detail, I suppose. It's something that could be looked
at, but I'm not sure that it --

Q. But it is no less fair than the informal system that
seems to operate amongst professional standards directors, and arguably amongst bishops as well, whereby they talk to each other about individuals of concern?

A. Yes, I think the --

Q. So is that, yes, you agree?

A. I beg your pardon?

Q. So is that, yes, you agree?

A. No, no, I - yes, I understand what you're saying, what I think you're getting at. I think the advantage of something like a system like the national register is that you have a central repository of minimum information which somebody ought to be interested in when they are considering appointing someone to a position. You have consistency and you have consistent access to it. Everyone who has a legitimate interest can inquire of it. A system that depends on people providing information that they may happen to think of in the course of a conversation can be risky.

Q. Shortly before the public hearing in this matter commenced, a summons was sent to the General Synod seeking a copy of any entry with respect to Reverend Kitchingman and Reverend Campbell Brown. You are aware of that summons, aren't you?

A. Yes, yes, I am.

Q. You replied to that summons, as I understand it, that there were no records or no entries on the register at that stage; is that correct?

A. That's right.

Q. You are also aware, are you not, that Bishop Stuart, the acting bishop at Newcastle, has indicated to the Royal Commission that an entry has been made, at least from their point of view, on the national register; you are aware of that?

A. I heard you mention it earlier today, but I'm not sure --

Q. I will show you the document.

A. I think I have seen something, but I don't know where I have seen it.

Q. I will show you the document. It is 161A, in exhibit 3-2, which is ANG.0019.001.0001_R. If we just
scroll down to about the middle of the first page, you will see the entry with respect to Reverend Kitchingman. Then, just above the name "Campbell Brown":

I advise that Mr Kitchingman's name has now been placed on the National Register.

Do you see that?
A. Yes.

Q. Do I take it that you are not aware of that entry on the register?
A. I am aware - I remember now seeing this, I think it was on the weekend. I was aware that - when I saw that, I asked the national register officer if she was aware of it. She said that something had come in from Newcastle but so far hasn't been able to - was not able to connect it.

Q. Is the process, Mr Drevikovsky, that once an entry is received, if you like, from a professional standards director, for example, it is compiled in some sense by the executive officer of the national register and then sent back to the professional standards director for verification; is that correct?
A. Yes.

Q. You are not sure, as I understand it, whether that second part of the process, the verification, has been requested?
A. Could I check some emails? Because this is a matter that has arisen at 9.30 this morning when I was here, I gave directions at my office to have a search made of the register to see if it - and I think I have had some responses to those emails.

Q. We may not need that directly, but just in terms of the process, I am correct in saying that's the process?
A. That's right. It is possible that --

Q. It goes back for verification?
A. It goes back for verification, yes.

Q. In your experience, that process of verification with professional standards directors sometimes can be quick and sometimes can take some weeks; is that correct?
A. Yes. Some things have been unverified for a long time - longer than weeks.
Q. I understand that you will provide any current
documentation in respect to that entry to the
Royal Commission?
A. Yes, certainly.

MR BECKETT: Those are my questions.

MR BRADY: Nothing, your Honour.

THE CHAIR: Mr Griffin?

MR GRIFFIN: Thank you.

<EXAMINATION BY MR GRIFFIN:

MR GRIFFIN: Q. Could I take the witness back to MJD-4.
Mr Drevikovsky, it appears from that table that there are
11 directors of professional standards Australia wide; is
that correct?
A. That's right.

Q. They have reported to you that five say they are up to
date at present in relation to entry on the national
register?
A. Yes.

Q. One says they are nearly up to date?
A. Actually, it looks like there are six that are up to
date - I am sorry, no, you are right.

Q. Then from Canberra Goulburn, you haven't been able to
obtain a response in the last couple of days because the
person is on leave?
A. That's right.

Q. Mr Elliott has given an explanation recently before
the Commission about the work he is doing with respect to
Grafton-Newcastle. Do you know whether Peter Caporaso or
Tracie Chambers-Clark, who have matters outstanding, are
experiencing any particular difficulties?
A. In relation to Mr Caporaso, no, I don't know that he
has any particular difficulties.

Q. He certainly hasn't raised anything with you in
respect to the outstanding matters?
A. No. What he has done is said that he has been
reluctant to engage in the process of entering material on to the national register because he has heard that others have had difficulty. We have offered him - there have been two occasions on which training has been offered to him to do that, and those offers haven't resulted in arrangements being made.

Q. Do you have any practice, in circumstances where a director is having difficulties, in trying to remedy those difficulties?
A. Oh, indeed. There's a number. For instance - let me see. Gippsland is an example, where last year they were having some difficulty performing operations on the national register. The national register officer engaged in a process with them, which involved, from memory, a number of email and telephone communications, and then the director and her assistant came to Sydney and they received some training and everything was resolved.

Q. What has been your experience in respect to the offer of training to other directors of professional standards?
A. The response is mixed when offers are made. We have also made offers to assist with loading information on to the national register by having the national register officer go to their office to help, and no diocese has accepted that offer.

Q. Have you taken any steps in relation to that sort of response?
A. The only steps are to - well, recently, I have written, at the request of the standing committee, to bishops and directors asking them to keep the national register up to date. Informally, whenever a national register officer goes to a meeting of the directors of professional standards, and when I've attended meetings of the directors of professional standards, we have mentioned that these offers are open, offers of assistance are open. That's not formal; that's as part of the meeting. But we don't always go to every meeting. We are not always invited.

Q. Mr Drevikovsky, were you involved in any detail in the creation of the national register and the particular model which was chosen?
A. No.

Q. Are you able to tell the Commission, should they wish
that information, as to who was primarily responsible for that work?
A. The professional standards commission had the carriage of it, and it's probably that the chairman was the primary draftsman of the 2007 canon.

Q. Do you recall who the chairman was undertaking that task?
A. Yes, that was Mr Garth Blake.

MR GRIFFIN: Your Honour, there is one other matter to raise while I am on my feet.

THE CHAIR: While you are on my feet, I need to put this to Mr Drevikovsky so that you can deal with it.

Q. The impression one gains from this discussion is that there is not a great deal of confidence about the reliability of the register; is that right?
A. Yes, that's what is said, but I think it needs a broader context to understand that.

Q. Yes, and the second limb of that is that it seems that what is being communicated to us and to you is a considerable degree of dissatisfaction, at least in some quarters, about the operation of the register as opposed to its reliability; is that right?
A. You mean the operability of the software?

Q. Its utility in terms of practical use by the directors around the country.
A. Well, yes, that's --

Q. You are giving us a sense that these people don't think very much of the way it works?
A. I think that's one way of describing it, but, once again, I think it needs to be seen in a broader context, which I'm happy to relate to you if --

Q. I understand that, and I will ask Mr Griffin to take that up. But if the answer to those two questions is yes, although you can provide us with some assistance, then if the people who are actually being asked to use it don't have confidence in it and don't see it as a practical vehicle, then there must be problems, must there not, because they are the people being required to use it?
A. Yes, and it's conceded that they say they have
problems. That's not denied. But we have taken measures - we are replacing the current system with a new one. We are planning to have that finished by February.

THE CHAIR: Mr Griffin, over to you if you want to deal with those matters.

MR GRIFFIN: Q. What particular issues does the new system propose to address?
A. Oh, a range of them. Perhaps the best thing is to refer to the ones that were mentioned by Mr Elliott, that I had hoped we would discuss in the meeting that was called for this morning, but they weren't raised then until the very end. There are three. If you pardon me a moment, I will find my note.

One had to do with - Mr Elliott said that there was a difficulty about matching names. I think he gave evidence to the effect that somebody who searches the register needs to have a precise - has to have the name precisely the same as it is on the register. That is not entirely accurate. If they have the surname correct, you will get what is called a partial match. They will be told initially that there is no match, but then the national register officer will contact the person who is making the inquiry and tell them that there are similar names on the system and give them options. So there is a partial matching system.

Now, that is being dealt with in the new system to automate that, so that you don't have to have - it doesn't have to be done by the national register officer, and there will be a process by which they will get a choice of similar names. That's the first thing.

The other thing he mentioned was the passwords. Now, the passwords, as Mr Elliott said, are currently - were computer generated, and that was necessary because of the kind of security software that was being used. Different security software will be used, and the password issue will be addressed in the course of that.

The third thing that I recall him mentioning was the netbooks. By way of explanation, the netbooks were issued to enable the directors to enter information on to the national register. That was their sole purpose. So you can't print from them. They are very limited in the range
of functions that they can perform, and that's for security reasons.

They have had difficulty with those, and they don't like the fact that they need to use two computers - one to load information on and one to make inquiries. That's going to be eliminated. They will be able to do it from their own desktop via the internet.

So they are the three things that he mentioned. Those things are being addressed. I don't know what other concerns others may have. But we went through a process with the directors when preparing the functional requirements specification for the new system. We circulated that to all the directors and got their comments. Not all directors responded. I think there was further discussion of that functional requirements specification at a meeting that I attended in November 2012, and from that point on, it was finalised and we then proceeded with the development of the new system.

We have also addressed some of the look and feel issues that they have by demonstrating prototypes on two occasions, two meetings with the directors, in November 2012 and I think in February of this year. Subsequently, because it is difficult to meet them all together, we have had sessions with the director from Sydney on, I think, two occasions where the software developer and the national register officer have worked through issues with him.

Q. If one assumes from Mr McLary's evidence, for example, that at least he has managed to operate the system effectively and says he is up to date, why is it that some of the other directors appear not to be in that category?
A. I don't know. You would need to ask each of them individually. It is really speculation on my part as to why the others - those who are not up to date can't be. But I think that letter of Mr Hill's points to the lack of resources. And the evidence of Mr Elliott this morning was to the effect that he has five boxes of documents to look through from Grafton. Well, that, I understand, is just an enormous task, and I think he is working on his own. I don't know how much help he has. So lack of resources is an issue.

Another thing, I think, is that they don't have a steady flow of information coming in. It comes in in
fits and starts, and so it puts pressure on them at particular times.

Q. If one assumes that the accuracy and integrity of any register depends on each and every director being up to date, how do you propose to deal with circumstances where one or more directors, for whatever reason, are not up to date?

A. Following the current practice of offering them assistance and probably writing to them and their bishops from time to time to remind them that they need to keep up to date, and repeating the offers, but we don't have any power to compel compliance.

MR GRIFFIN: They are the questions I have for Mr Drevikovsky.

I just have one issue I want to raise, if I could. Mr Drevikovsky is also the author of a document in volume 2, tab 152B, which is a lengthy document entitled "Outline of the Structure of the Anglican Church of Australia."

I anticipate that learned senior counsel will take Archbishop Aspinall to those issues, but if that is not to be the case, I thought I should tell the Commission that if they wish to ask any questions of Mr Drevikovsky on that subject, he is in fact the author of that document.

THE CHAIR: Thank you.

I think, Ms Furness, you are going to take that matter up with the archbishop; is that right?

MS FURNESS: Yes, your Honour.

THE CHAIR: Very well. No-one else wants to ask any questions?

MS WASS: No.

<EXAMINATION BY MR BECKETT:

MR BECKETT: Q. Mr Drevikovsky, you were asked just a moment ago by Mr Griffin about what assistance you could provide to those professional standards directors who had been unable to complete logging of matters on to the
register?
A. Yes.

Q. There was an issue raised by Mr Elliott that, before
he got to that stage, he needed to go through the task of
reviewing a number of historical matters at both Grafton
and Newcastle. You heard that evidence, didn't you?
A. Yes.

Q. Clearly there is a considerable amount of work that is
to take place prior to attempting to put on the register
any entry with respect to those people?
A. Yes.

Q. What assistance can you provide to those professional
standards directors who are going through that process?
A. At the moment - before I answer that, could I make the
point I was going to make? I should say that Mr Elliott
gave evidence that he believes he is the only person who
can do it. But assuming one can get beyond that barrier,
there would be some possibility of the national register
officer giving assistance, but we have a limited budget and
I would have to go to my standing committee and ask for
more funds.

Q. But your national register officer is essentially
engaged in the task of how one goes about putting things on
to the register, isn't she?
A. Yes.

Q. So the assistance that she would be giving would be
about how to manipulate data with the netbooks that you
have supplied to professional standards directors; that's
correct, isn't it?
A. Yes, but she has some familiarity with the sorts of
things that go on to the national register. She could be
used in some fashion to give some sort of clerical help to
do that. She works part time and I could expand her hours.

Q. Sir, I think it is perhaps a little wider than that,
in the sense that Mr Elliott indicated that the process
that needs to be undertaken includes writing back to
alleged perpetrators, for example, and providing them with
natural justice and engaging in the professional standards
process under the relevant Professional Standards
Ordinance. Did you understand that?
A. Yes, yes.
Q. What assistance could Ms Harvey provide in that process?
A. Well, whatever assistance Mr Elliott would seek from her. I don't understand - I am sorry, I don't understand the question.

Q. Clearly that is an extensive task that would no doubt take a number of weeks of toing-and-froing, to provide natural justice, not with respect to the register, but with respect to those professional standards matters. Is there not a need for additional resources for those professional standards directors so that they can undertake that task and, once they have done that, be able to put things on to the register?
A. Well, certainly. That's a matter for each diocese to assess what their need is and to meet that need.

Q. And it is a matter for those dioceses to determine?
A. Yes, indeed. Indeed.

Q. Just a couple of short matters. You mentioned I think in one of your answers to Mr Griffin's questions that Mr Caporaso had not expressed concerns to you about operation of the national register; do you recall saying that?
A. No, I think what Mr - the question that I understood was whether Mr Caporaso had raised any particular concerns about the national register, and I said that he hadn't - so far as I'm aware, he hasn't raised any particular issues about that.

Q. Just so I'm correct in my understanding of your evidence, if you would go to your statement of 25 November 2013, paragraph 16.
A. Yes.

Q. You will see there is an indication there of information provided by Mr Caporaso to you about between 20 and 50 files in Adelaide that he had not yet finally processed?
A. Yes.

Q. Then if we go down further:

He said he has not yet finished that processing because he had a bad experience
with the National Register when he first
commenced to notify Information in about
October 2008 and has heard from other
Directors of Professional Standards that
they have had difficulties ...

Do you see that?
A. Yes.

Q. You accept, don't you, that he had indicated to you
that he had had specific problems, in particular, a bad
experience with the operation of the national register?
A. Yes, but he didn't tell me what those bad experiences
were, no detail. And he has twice been offered training
and hasn't taken it up.

Q. Ms Cosenza has just received an email from your office
annexing, in relation to the national register, what
appears to be a national register report. I will just hand
up three copies for the Bench and one for Mr Drevikovsky.
The email we have received is from Ms Mary Phipps-Ellis.
Is that your executive assistant?
A. Yes, it is.

Q. You will see that this is a national register report
with respect to Reverend Kitchingman?
A. Yes.

Q. There is a note at the bottom there that says:

There is currently no information on the
National Register for a person with the
name ...

Do you see that?
A. Yes.

Q. The information we had from Bishop Stuart was dated
14 November.
A. That's right.

Q. So do I take it that it is correct to say that
notwithstanding that communication from Bishop Stuart,
there does not appear to be an entry in the register for
Allan Kitchingman?
A. That is technically a correct conclusion, but I don't
know that it addresses the substance of what Bishop Stuart
Q. What do you mean by "addresses the substance"?
A. Well, it is quite possible that the relevant person in
the Diocese of Newcastle has entered information - sorry,
has notified information to the register, but it is
possible that they haven't verified it. And if it hasn't
been verified, then you won't get a report saying that
there is information there; you will get "There is no
report", because it hasn't been verified by the director.
So I don't know whether the director has done that.
I don't know what has happened. We would need to
investigate that.

MR BECKETT: I tender that document.

THE CHAIR: We will make that exhibit 3-23.

EXHIBIT #3-23 NATIONAL REGISTER REPORT

MR BECKETT: Thank you. Those are the questions.

THE CHAIR: Thank you. You may step down. You are
excused.

THE WITNESS WITHDREW

MR BECKETT: There are just two more housekeeping matters.
If I could tender the extract of draft minutes from the
Diocese of Grafton Bishop-in-Council of 14 November 2013
adopting the pastoral care and assistance package.

THE CHAIR: Very well. The extract from the minute of the
Bishop-in-Council meeting of 14 November 2013 will be
exhibit 3-24.

EXHIBIT #3-24 EXTRACT FROM MINUTE OF BISHOP-IN-COUNCIL
MEETING OF 14/11/2013

MR BECKETT: I also tender a letter from Maddocks Lawyers
on behalf of the State of New South Wales to Ms Cosenza of
19 November 2013.

THE CHAIR: What is this about?

MR BECKETT: This is a letter with respect to
investigations undertaken by the State of New South Wales
to determine whether there were any licensing records for the North Coast Children's Home for the period that we were requesting.

THE CHAIR: What's the answer?

MR BECKETT: The answer is that they think they have been destroyed. The penultimate paragraph says:

Consistent with historical records management practices from time to time, Community Services' predecessors routinely destroyed records.

THE CHAIR: Very well, that letter will be exhibit 3-25.

EXHIBIT #3-25 LETTER FROM MADDOCKS SOLICITORS TO THE ROYAL COMMISSION DATED 19/11/2013

MR BECKETT: Mr Elliott, I understand, is still here. Is he also excused, your Honour?

THE CHAIR: Yes.

I should say this, though: the Commissioners will need to discuss between ourselves the position in relation to this register and its operation. Mr Griffin, it won't have escaped you that the evidence we now have leaves everyone with considerable difficulty in relation to both the reliability and the practicality of that current operation of the register. You understand that?

MR GRIFFIN: I accept that proposition.

THE CHAIR: We will look for your help in submission, I think, to make sure that we can, by what we do and say, do what we can to contribute to future confidence in the register.

MR GRIFFIN: Your Honour, two things we were proposing to do in submission were to deal in more detail with the proposals of the new register, which is to come into force we hope early in the new year, but also to go back historically and find out why this particular model was chosen, because it may be important to know what other models were considered so the Commission isn't placed in a situation of reinventing the wheel.
Ultimately, it will be our submission that any recommendations the Commission makes will have to have a characteristic of practicality and utility, to avoid the problems of the past.

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

MR GRIFFIN: We accept that proposition.

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

Mr Griffin, we will leave that in your hands.

MR GRIFFIN: Thank you, your Honour.

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

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

<ROGER ADRIAN HERFT, sworn: [12.30pm]>

<EXAMINATION BY MS FURNESS:

MS FURNESS: Q. Would you tell the Royal Commission your fill name and occupation?
A. Roger Adrian Herft, Archbishop of Perth.

Q. You have provided a statement dated 8 November 2013, archbishop?
A. Yes, that's right.

Q. That statement has been tendered as exhibit 3-1 and can be found in volume 6, tab 17. Do you have a copy of that statement with you?
A. I do.
Q. Are the contents of that statement true and correct?
A. Yes.

Q. You were the Bishop of Newcastle between 1993 and April 2005?
A. That is correct.

Q. And you went from that position to your current position?
A. That is correct.

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

Q. The context of you having learnt about him at that time was that he was worshipping at a church within the Newcastle Diocese?
A. Yes, that's correct.

Q. Did you know anything else about him at that time other than that he was a worshipper?
A. No.

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

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

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

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

Q. In paragraph 6 you say that, to the best of your knowledge, he wasn't licensed and didn't perform formal functions; do you see that?
A. Yes.
Q. So there is no question that he was not licensed, if you were the only person with the power to licence him; is that right?
A. Yes.

Q. In terms of not performing any formal functions, do you say that is only to the best of your knowledge, or do you say that he did not perform those functions?
A. To the best of my knowledge, he did not perform any sacramental or other functions.

Q. Could he have performed them and you not know about them within your diocese?
A. That is possible.

Q. Not likely, however?
A. Not likely.

Q. You say in paragraph 8 that you received a facsimile concerning a telephone call from Bishop Freier. Do you see that? Who at that stage was Bishop Freier?
A. Bishop Freier was the Bishop of the Northern Territory.

Q. In August 2002 you had drawn to your attention a newspaper article?
A. Yes.

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

Q. Would you tell the Royal Commission who Dean Lawrence was at that time?
A. Dean Lawrence was the dean of Christ Church Cathedral in Newcastle.

Q. So he was someone who was within your diocese?
A. Yes.

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

Q. Had you heard, before that, that he had been charged?
A. No, I had not.
Q. Had you heard, before that, of any conduct unbecoming by Kitchingman?
A. No.

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

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

Q. What was the protocol or practice in place in 2002 when it came to your attention, as a bishop, that a person who was resident in your diocese had been convicted of offences in relation to children in the care of the church?
A. What I did at that stage was to inform the Bishop of Grafton, because no other bishop or professional standards person or anyone had informed me about any prior case concerning Allan Kitchingman. This was the first time that I received that particular detail, and so I contacted the Bishop of Grafton, thinking that he didn't know about this, either.

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

Q. Was there any discussion with the Bishop of Grafton as to what should be done, given that this man was ordained as a priest?
A. Given that it had reached the stage of compensation, I believed that the matter had been completed as far as attentiveness to those who had suffered abuse, at least at that level, but also that if there was any action to be taken further, the Bishop of Grafton would in fact take that action.

Q. Did you discuss that with the Bishop of Grafton?
A. No, I did not.

Q. Did you discuss disciplining Kitchingman in any way at
all with the Bishop of Grafton?

A. No, I did not.

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

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

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

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

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

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

A. At the time I asked the diocesan legal personnel as to what my obligations were, firstly, in terms of the court case that had just been completed and the anonymous letter that I had received. He told me that he would attend to
that in terms of bringing it to the attention of the public prosecutor, which he did. Then he said to me, I think in some correspondence, that that was as far as I needed to go in that matter.

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

Q. You have given an answer to my question in respect to the former. Can I ask you in respect to the latter, that is, did you seek advice from any person in respect to your obligations or powers, given that Allan Kitchingman was still ordained in holy orders and resident in your diocese?
A. No, I did not.

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

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

Q. What information have you acquired to come to the view you now hold?
A. In 2002 the deposing of a person from holy orders was the highest level to which you could go to remove what we would call the indelibility of holy orders from an individual. As I understood, it was very rarely, if ever, used, and I could not do it on my own. It would have to go through due process. In our case, in the Diocese of Newcastle at the time, it would have to go through the disciplinary tribunals, and then, as a consequence of their determination, I would then receive a request from them, or a recommendation from them, to depose the person from holy orders. It wasn't an action that I could take on my own.

Q. But it was an action that you, and you alone, could initiate, wasn't it?
A. I could have initiated it, or other persons within the diocese could have.

Q. It required the action of the bishop, did it not, to begin the process you have described?
A. I'm not altogether sure about that.

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

Q. Is the reason that you didn't do it because you lacked the knowledge as to the powers that were available to you then?
A. I think that is one answer to the question. The other is that I was under the impression that Grafton had gone further down the track on this matter than I was even aware of, and I again thought that the matter would be completed by the Diocese of Grafton.

Q. But you didn't confirm that impression --
A. No, I did not.

Q. -- in a discussion with the Bishop of Grafton as to disciplinary action, did you?
A. No, I did not.

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

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

Q. If we could continue over the page and if I could ask you to keep reading to yourself. We can continue to scroll
up so that the first line is at the top of the screen. If we then scroll down to the last three-line paragraph and stop there. Thank you. Have you read that?
A. Yes, I have.

Q. Is this the first time this part of the transcript has been brought to your attention, archbishop?
A. I read it when Mr Gerber made his submissions.

Q. Were any of the matters that Mr Gerber refers to in those paragraphs I have referred you to within your knowledge at the time that you were the Bishop of Newcastle?
A. When I became Bishop of Newcastle in 1993, through to 2005, no-one ever raised with me either directly or indirectly any matter that would have brought concern to me regarding the behaviour or otherwise of the Dean of Newcastle.

Q. What system did you have in place in that period between 1993 and 2005 for such matters to come to your attention?
A. We had a committee called the committee for sexual allegations and misconduct, which came under a particular set of protocols. We had the disciplinary tribunal that people could invoke if there were issues or concerns raised. As far as I was aware, there was no concern ever brought to my knowledge concerning the matters that Mr Gerber has referred to in his evidence.

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

Q. Would you have expected concerns of the nature he gave evidence of to have been brought to your attention?
A. I would have.

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

MS Furness: Thank you. I have nothing further.

THE CHAIR: Does anyone else have any questions?
MR GRIFFIN: No, thank you.

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

THE CHAIR: You have leave to appear.

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

<EXAMINATION BY MR ROSS-ADJIE:

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

Q. RH-16. It is up on the screen.
A. Yes.

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

A charge of an offence other than breach of faith ritual or ceremonial may be made by:
(a) the Bishop of his own mere motion or
(b) a person appointed by the Bishop or
(c) any other adult member of the church resident within the diocese.

Q. Is it safe, then, to assume from that section that a charge against Reverend Kitchingman could have been made not just by yourself but by persons appointed by you or any other adult member of the church resident within the diocese; in other words, a charge did not have to just be made by yourself?
A. That is true. That is correct.

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

THE CHAIR: Thank you.

MS FURNESS: Nothing, your Honour.
THE CHAIR: Thank you, archbishop.

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

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

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

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

<THE WITNESS WITHDREW

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

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

LUNCHEON ADJOURNMENT
UPON RESUMPTION

MS FURNESS: Your Honour, I call Archbishop Aspinall.

<PHILLIP JOHN ASPINALL, sworn: [2pm]

<EXAMINATION BY MS FURNESS:

MS FURNESS:  Q. Would you tell the Royal Commission your full name and occupation?
A. Yes. My name is Phillip John Aspinall. I am the Archbishop of Brisbane and the Primate of the Anglican Church of Australia.

Q. You have provided a statement, archbishop, dated 13 November 2013?
A. Yes.

Q. Do you have a copy of that with you?
A. Yes, I do.

Q. Are the contents of that statement true and correct?
A. Yes, they are.

Q. The statement may be found in exhibit 3-1, volume 6, tab 19. Archbishop, you were appointed the Archbishop of the Anglican Diocese of Brisbane in 2002?
A. Yes.

Q. What position did you hold prior to that?
A. Prior to that I was the assistant bishop in the Diocese of Adelaide.

Q. And prior to that?
A. Prior to that I was the director of Anglicare in Tasmania.

Q. You have said that you are the Primate of the Anglican Church of Australia and you refer also in your statement to the number of dioceses of the Anglican Church in Australia.
A. Yes.

Q. Would you tell the Royal Commission the difference between the Anglican Church of Australia and there being dioceses of the Anglican Church in Australia?
A. I'll attempt to do that. You might need a constitutional lawyer to do it properly. The Anglican
Church of Australia is made up of the 23 dioceses. The constitution says that the diocese is the basic unit of organisation in this church. That's a very important matter, because when it comes to making church law, any law that the General Synod might make at the national level, if it affects the order and good government of the church in a diocese, only takes effect in that diocese if the law is adopted by the diocese. So that severely constrains the General Synod from making decisions and, in particular, laws which are binding on a diocese without the assent of each individual diocese.

Q. When you say "severely constrains", is it the case that they cannot do so or that they can under limited circumstances?
A. They can - the General Synod can under limited circumstances, but that circumstance is that the law does not affect the order and good government of the church in that diocese. Now, that's a technical legal phrase, which you would need a lawyer to explain, but virtually everything does affect the order and good government of a church in a diocese. So basically it means that any law passed by the General Synod has to be adopted in each diocese for it to come into effect.

Q. And it is the discretion of each diocese as to whether to adopt it and, if so, with what amendments?
A. That's not quite right, because once a law or a canon is passed by the General Synod, then a diocese cannot amend it. A diocese can only adopt it or not adopt it, in which case it either comes into effect or doesn't come into effect in a diocese. But it is only the General Synod that can amend a General Synod canon.

Q. If a diocese chose to adopt a set of principles or procedures for itself that was based on and taken from but didn't completely follow something the synod had determined, could it do that?
A. The General Synod?

Q. Yes.
A. Yes, it could. A diocese could pass its own law, its own ordinance, its own canon, and it could base such a law on something the General Synod had done and could include divergences from what the General Synod had passed.

THE CHAIR: Q. Could a diocese pass a law, using that
general expression, which was in conflict with what the
General Synod had done?
A. That's an interesting question, your Honour. I'm not
entirely sure. It cannot, as I understand it, pass a law
which is in conflict with the national constitution.
I think a diocese would be free to pass a law which did
diverge from and was in conflict with a General Synod
canon, as long as the General Synod canon was not in force
in the diocese at the same time. So, yes, a diocese could
put in its own arrangements contrary to what the General
Synod has legislated for.

Q. Ms Furness, I think, is going to expose a little bit
more of the structure of the church, but do you understand
that for an outsider the concept of the Anglican Church of
Australia carries with it a unified assumption?
A. I do, your Honour, and it's very important, I think,
for the Commission especially, and the general public more
broadly, to understand that that is really not the case.
If people have in mind a corporate structure,
a corporation, a company, when they're thinking of the
Anglican Church of Australia, nothing could be further from
the truth.

There is no board, there's nothing like a company
board, for the Anglican Church of Australia which can make
decisions about restructuring the church and implement
them.

Q. This will no doubt be explored by Ms Furness, but you,
I suspect, know that this discussion is leading to whether
or not there should be a national response to the problems
which the Commission is looking at.
A. Yes, yes.

Q. Which, of course, could be achieved by federal
legislation, but that's a different issue, or a bigger
issue.
A. Yes.

Q. I'll leave it to Ms Furness to explore it, but that's
where the discussion goes.
A. Thank you.

MS FURNESS: Q. Now, archbishop, there are 23 dioceses
of the Anglican Church in Australia. They are not part of
the Anglican Church of Australia?
A. I'm not sure, Ms Furness, what the answer to your question is. I think - and I don't have a copy of the national constitution in front of me, but I think the Anglican Church of Australia consists of the dioceses. We'd have to check the constitutional definition, and I'm afraid I don't have that top of mind.

Q. As primate, what powers do you have in respect of individual dioceses?
A. The powers of the primate are very, very limited. Again, if I might use a commercial analogy, if people think that the Primate of the Anglican Church of Australia is the CEO of Australia's Anglicans, then nothing could be further from the truth.

The primate has very, very limited powers. The primate is responsible to chair the General Synod, to chair the standing committee of the General Synod and its executive. The primate has powers to appoint people to certain national commissions on the advice of the standing committee. The primate has power to pronounce a sentence on a bishop subject to a determination by the special tribunal. The primate has power to implement a recommendation made by the episcopal standards board. And there might be one or two other things that the primate can do, but that's it.

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

Mostly, Anglican bishops are too polite and courteous to do that directly, but they certainly do it by not responding to requests made by the primate. It has been my experience that correspondence is just not answered, if the bishop doesn't want to take up the suggestion that I've made, and in other ways, proposals, suggestions, advice is simply ignored.

Q. Just turning to the General Synod, you've given evidence as to what it can do in terms of passing canons or laws and how that then might have force in a diocese after the diocese has taken some action. What other role does the General Synod have other than that?
A. The General Synod can make statements on behalf of the church.

Q. And this is the Church of Australia?
A. Yes, the Anglican Church of Australia. But as soon as the General Synod does make a statement, it would be possible for a diocese to issue a dissenting statement or for an individual bishop to issue a dissenting statement. The General Synod can pass resolutions, but again those resolutions are not binding on a diocese or a bishop.

Q. What's the purpose of the General Synod? I say that with the greatest respect, archbishop.
A. No, I understand the questions, and I think for those of us who have grown up in the church and just know it and are very accustomed to its limitations and the way it works, I do understand how strange it seems to people looking in from outside, and it makes it very difficult to achieve some of the things that some of us would want to achieve.

But I think you need to understand that there's a very strong debate that goes on in the life of the church about what the church is and what it should be. There are some people who take the view that there is very little role for the national church, that it's merely an administrative convenience. It might be a helpful way to purchase insurance and run a long service leave fund, and that's about it.

Other people take the view, no, the church at the national level ought to be a coherent body that is able to take action, that assists the dioceses to be healthy and strong and to engage with the Australian community in constructive ways.

That debate between those two views in the church surfaces constantly, and it goes back to the 19th century. It took more than 60 years for the constitution of the Australian church to be agreed to. Negotiations started around the time of federation, 1901, and the constitution was not agreed until 1962, and --

THE CHAIR: Q. That's longer than it took the Australian Constitution to be developed.
A. Indeed, your Honour. It has been said that a General Synod of the Anglican Church of Australia makes federal
parliament look like kindergarten. The politics are very
difficult and it's very difficult to get any kind of
uniform approach to any matter through the General Synod,
and so you have big differences between dioceses. You have
some dioceses where women can be priests and bishops and
other dioceses where they can't be. You have some dioceses
where a prayer book is licensed for use and other dioceses
where it's not.

MS FURNESS: Q. So is it the case, then, archbishop,
that if it was considered desirable to have a national
consistent approach to an issue in this respect, the
response to child sexual abuse by those within the church,
that could not be secured under the current structure?
A. I think, on that issue, it came to the 2004 General
Synod, a raft of proposals, and I think such was the
resolve of the church and the level of a common mind that
emerged, I can't recall any other issue where there has
been a greater level of agreement and commitment.

Q. Are you able to say that in each of the 23 dioceses
there is on paper precisely the same principles and
protocols for dealing with child sexual abuse within the
church?
A. No, I'm not. In fact, I believe there are
differences. The model ordinance was recommended by the
2004 General Synod, so that was not the General Synod
passing a law. That was the General Synod passing
a resolution to recommend this form of law to the dioceses.

Now, dioceses were then free to amend that, to accept
it or to reject it. I think I'm right in saying that
virtually every diocese adopted some form of that, but
there are variations, and in fact there have been
variations in my own Diocese of Brisbane about the
definition of "abuse", for example. It was very broad at
one stage and later became narrowed.

I think in some dioceses there is a complaints-based
system rather than an information-based system, so that's
another variation.

Q. Is it the case that notwithstanding the content of the
principles and protocols in place, were the diocese not to
follow their own protocols or principles, there is nothing
that could be done at a national level to enforce the
performance of their own protocols or principles?
A. No, that's not the case. There are sanctions. Once
a diocese has adopted its own law, its own canon or
ordinance, then I think it's the case everywhere that the
bishop is bound to uphold that canon, that law, and to
abide by it, as are the clergy.

I think when bishops take office, I think it's the
case everywhere that they make a solemn undertaking to do
that, as do clergy, and there is an offences canon in the
church and I think I'm right in saying that one of the
offences is wilful neglect of the canons of the church. So
there would be sanctions. A person could be charged with
that offence and, if found guilty, there are sanctions.

Q. The ordinance to which you referred that the General
Synod recommended in 2004, whatever form it was adopted by
a diocese, it became a canon or a law, did it?
A. It would be, yes. Once a diocese puts it through its
own synod, through its law-making processes, then it would
become a law, a canon or ordinance in that diocese.

Q. And in the event that the bishop did not follow the
diocese's own policies and protocols, a person could take
action against the bishop for breach of the canon under the
heading of general wilful neglect; is that right?
A. A person - a charge could be laid against the bishop,
which would be heard by the special tribunal.

Q. Who can lay such a charge?
A. My statement addresses that question somewhere.
Another bishop can lay a charge, another diocesan bishop.
I'm just trying to turn up where that is.

Q. There is reference in paragraphs 12 and 13 to the
Professional Standards Ordinance?
A. My memory is - and this detail might not be correct,
Ms Furness. My memory is that a charge can be laid against
a diocesan bishop before the special tribunal by another
diocesan bishop, by the episcopal standards commission, and
I think there's also provision for five persons resident in
a diocese to lay such a charge as well.

THE CHAIR: Q. Archbishop, you say that the 2004
recommendation was not adopted uniformly.
A. I believe that to be the case, yes.

Q. Are the differences a matter of significant debate
between the dioceses?
A. There are debates on some matters of policy, your Honour - for example, in relation to mandatory reporting. In Brisbane, for example - and that's in the protocol, I think, rather than the canon - we have taken the view that we report every allegation of child sexual abuse, whether it's historical or current. We report that matter to the police, whether or not the complainant or the victim or the informant desires that.

Other people have taken the view that that has the potential to retraumatise victims, and so if it's a matter of historical abuse and the victim is now an adult, the church will only report it with that person's agreement and permission. So that is a policy area where there is serious debate, and that debate exists internationally about what best practice is.

It's certainly my hope that the Commission will examine some of those areas where there is debate, to see if it can come to a mind about what would be best practice.

Q. That's what lay behind my question. How do you think we should best come to terms with the debates that are within the Anglican Church? Are they captured in any document?
A. They're probably not captured all in one place, your Honour, but I think the different views could be harvested and presented to the Commission, if the issues were identified. I think some of them have been flagged to the Commission in - I know Brisbane did in its submission in relation to the terms of reference for the Commission.

Q. I think what we might have to do is find a way to identify all of the differences and then we may have to arrange for some discussion, which would be public, which involves the Commissioners, so that we can understand the different perspectives on those particular issues.
A. Yes.

THE CHAIR: But that's for another day, perhaps.

MS FURNESS: Q. Just returning to the issue of reporting to the police for the moment, you say that without the victim's consent where that person is now an adult, you do not report to the police.
A. No, I'm saying in Brisbane we do report every
allegation of child sexual abuse to the police, with or
without the victim's consent.

Q. But part of the debate you referred to is that some
don't report in those circumstances where the adult victim
does not consent; is that right?
A. Yes, that's correct.

Q. Is there also a variation within Australia that you're
aware of, where there is a reporting of the name of the
alleged accused without the identifying details of the
victim?
A. Yes, I am aware of that. In fact, I think that might
actually be the recommendation of our own professional
standards commission at the national level. And Brisbane
has taken a different view.

Q. Are there other dioceses that you're aware of that
take the same view as Brisbane?
A. I couldn't name any at this stage, but I would be
surprised if there weren't. But I can't name any, I'm
sorry.

Q. As primate, is that sort of information something that
you would expect to know?
A. No. I think I could find out if I had reason to and
wanted to. The General Synod office keeps a register of
which canons - which General Synod canons are in force in
which dioceses, so a simple phone call, or it might even be
on the web - I'm not sure - you can check which dioceses
have adopted which canons.

But if I wanted to know what the situation was in
a particular diocese, I would ask my professional standards
director to contact his counterpart in that diocese and
find out for me.

Q. And you would do that as primate, but you would use
the director of professional standards for the Brisbane
office, would you?
A. Well, I - yes, I would. I have nobody else, and again
that's a reflection of the national church. You know,
there is no professional standards staff person at the
national level who can do that. So, yes, Brisbane Diocese
kindly allows the primate to access its professional
standards director.
Q. Can I turn your attention to paragraph 46 of your statement and if that can be on the screen. This is in relation to money, archbishop.

A. Yes.

Q. You've given evidence as to the extent to which the General Synod has power to do various things. There is also, of course, the question of funding and funds available to dioceses.

A. Yes.

Q. You say in paragraph 46 that:

It is a common misconception that there is some sort of overarching fund that the broader Anglican Church possesses ...

A. Yes.

Q. By "the broader Anglican Church", do you mean the Anglican Church of Australia?

A. Yes.

Q. Is there any money available to that entity?

A. It might be helpful to the Commission, Ms Furness, if I just give a thumbnail sketch about what the church looks like at the national level.

Q. Thank you.

A. The General Synod is a body of about 250 people that meets every three or four years. It has a standing committee of about 35 people that meets twice each year and an executive of seven or eight that meets once in between standing committee meetings.

The staff of the General Synod are about six people. There's a general secretary, Mr Drevikovsky, who has given evidence. He has a personal assistant. There is a business manager, who has an accountant who assists him. There is a person who runs the long service leave fund. There's a receptionist and a two-days-a-week archivist.

Now, that is the complete infrastructure of the Anglican Church of Australia. There are then six or seven commissions of eight or nine people each, all of whom are volunteers, and commissions have budgets generally which allow them to meet for two days once per year. It really
Q. And who funds it?
A. In terms of funds, there are four funds that operate. The first is called the statutory fund. It levies dioceses on the basis of the number of representatives they have in the General Synod. Dioceses are required - they have no choice; they must pay that statutory assessment, and that can only be used for running the machinery of the General Synod itself, for no other purpose.

Q. How is that amount determined?
A. The budget for the statutory purposes is calculated each year, and then that's divided up among the dioceses on the basis of how many representatives they have in the General Synod. The number of representatives in the General Synod is calculated according to a formula, basically, of how many full-time clergy there are serving in the diocese.

Q. So there's no, if I can put it crudely, means test that those dioceses with more money contribute more and those with less, less?
A. Usually the larger dioceses have more full-time clergy, so that's the driver of the calculation, as it were.

Q. It's not related to the assets held by any diocese?
A. No, it's not. So that's the first fund, the statutory fund.

The second fund is the special fund, and that is a voluntary fund - it's called an assessment, but it's voluntary - and at the moment two dioceses are not paying their special fund assessment. All that does is pay the Anglican Church of Australia's membership fees for a number of ecumenical organisations to which we belong and to the bodies of the Anglican Communion, the international Anglican Communion.

The third fund is called the indigenous ministry endowment fund. It's an endowment fund that has been built up to the level of I think $300,000 or $400,000 over the years, and income from that fund has been used to offset the costs of the Aboriginal bishop who serves Australia, and that amounts to about $30,000 or $35,000 per year only.
The fourth fund is a reserve fund, and that's a fund over which the standing committee and the General Synod do have some discretion about its use. It's a fund of about $2 million, and six, seven, eight hundred thousand dollars of that are the proceeds from the sale of a former house that was owned to house the general secretary, and that amount sits there in case the next general secretary needs a house provided for him to live in. The rest, $1.2 million, really reflects royalties on prayer book sales from previous years. The income from that fund is used to fund special one-off projects.

So, for example, some years ago when we needed to invest money in developing our professional standards regime, it was from that fund that the resources came to do that work.

Clearly, a fund of that level, $1.2 million of discretionary funds, is not sufficient to address a major financial crisis in a school somewhere in the country, and nor is it sufficient to address significant sexual abuse claims.

The resources of the Anglican Church are really in the dioceses. That's where the property assets and other assets are vested.

Q. Does the Anglican Church of Australia hold any insurance which would cover any activities in the dioceses? A. Again, I'm probably not the best person to ask, but, as I understand it, based in Melbourne there is what's called the Anglican or Australian Anglican National Insurance Program. Now, that is led by people in Melbourne, and that's an arrangement by which they broker insurance cover with various insurance companies for various purposes. It's a bulk-buying scheme, effectively. Each diocese can opt in to that scheme or not, as it chooses.

I suppose the General Synod does carry some insurances itself for various purposes, and I suppose it is a participant in that scheme, but I'm not sure of the details of that.

THE CHAIR: Q. Archbishop, I assume from your answer that there is no obligation for any diocese to be insured...
if it chooses not to be?
A. I believe that's correct, your Honour, and that's an
outworking of the principle of the diocese being the basic
unit and it makes decisions about its own governance.

Q. You understand that many professional bodies who
advise or deal with people now are required by law to hold
insurance?
A. Yes.

Q. In relation to their activities?
A. Yes.

Q. Is there room for that principle in the church?
A. I think there is. It may well be easier for such
a requirement to be imposed on the church externally than
for the church to put in place a binding requirement itself
of that nature, because of the issues in the governance of
the church that I've described.

MS FURNESS: Q. Archbishop, can I now turn to Grafton
and your involvement with the events in relation to the
claims made arising from the North Coast Children's Home.
Your statement first begins at paragraph 22 in relation to
your involvement. Do you have that?
A. Yes.

Q. From your statement, you say that you were first aware
of concerns about claims in November 2006 when a lawyer
representing former residents contacted you?
A. Yes, I believe that's correct.

Q. And following on from that contact, you had
a discussion with Bishop Slater?
A. Yes.

Q. If I can ask you to turn to AP-1 to your statement,
which is your handwritten note of your telephone discussion
with Bishop Slater on 24 November?
A. Yes.

Q. Do you have that?
A. Yes, I do.

Q. If you go down half a dozen or so lines, there is
reference to:
Johnston, Harrison claimed Grafton not following policies of Church.

Do you see that?
A. Yes.

Q. What's that a reference to?
A. Mr Harrison had several conversations with Rod McLary, and I think he later wrote to me setting out some material which was drawn from a statement made by the General Synod standing committee in 2002. He also made reference to various public statements that I had made about my convictions about the way these matters should be dealt with, and I think he took the statement made by the standing committee and various public statements I had made of which he was aware and referred to those as policies of the church.

He was explaining - I think he was concerned that Grafton was not acting in a way that was consistent with the views that I had expressed.

Q. That is not a reference to the law or ordinance that the Grafton Diocese adopted in respect of dealing with child sexual abuse claims?
A. I don't believe so, no.

Q. You then wrote to Bishop Slater, and that's at AP-2.
A. Yes.

Q. If that can be brought up on the screen. That was your first correspondence with Bishop Slater in relation to these matters?
A. I believe so, yes.

Q. You set out the various principles which you thought he should apply in managing those claims?
A. Yes, this - these are principles that I was convinced about. When you say "in managing the claims", there has been an issue, I think, running right through this public hearing, I think, Ms Furness, about the use of the word "claim".

The model Professional Standards Ordinance talks about information, and my understanding of the role of a professional standards director and a professional standards committee is basically to investigate and
prosecute allegations, complaints, of sexual abuse.

Once a proper body has made a finding that abuse occurred, then certain other actions follow. Apologies can be given, meetings with church officials, the face-to-face apologies, and so on, and discussions about financial compensation and settlements. Now, I think there has been a confusion in the public hearing about investigating and prosecuting allegations, complaints, and so on, and the settling of financial claims.

I think it's important to keep those two things a bit distinct. In fact, I've found value in separating the roles of the people who deal with those matters.

If I might venture an observation, I think one of the key issues in Grafton has been that they concentrated almost entirely on trying to settle the financial claims and not deal with the allegations, complaints, and so on, through the apparatus that existed to do that.

Q. When you record your discussion with Bishop Slater, you refer to Harrison wanting to talk about settlement of - you have a money sign in respect of it?
A. Yes, yes.

Q. So you understood that his approach to you was in relation to settling claims?
A. Yes, yes.

Q. And then, following that, you wrote to Bishop Slater?
A. Yes.

Q. And, in doing so, you sought to put it on a different plane in respect of a pastoral approach, if I can use that language?
A. Yes, I set out the principles that I think we had learnt to be valuable in Brisbane and more broadly across the church about the best way to go about settling financial claims, yes.

Q. In writing this letter, would you describe your role as primate in attempting to influence his conduct along the lines that you set out in your letter because you were the primate and, as such, had some moral authority or influence?
A. I was certainly attempting to influence the bishop.
I was certainly trying to encourage him to adopt those principles and act in this way because I believed that was in the best interests of the victims and of the church.

Q. Was that something that you had done previously with any other diocese?
A. I think I probably had. I'm not sure I wrote to any other bishops, but certainly there were discussions. Between 2002 to 2004 when all the work was going on to develop model ordinances, and so on, the bishops were constantly talking with each other. Whenever we gathered, we talked about the best way to handle these things. There were often reflections about how to approach it, and so on, so I would have espoused these principles and spoken about my own convictions on all those occasions.

Q. Had you been in a position where lawyers for claimants had especially sought your intervention in the way that the lawyers did in this case, on this occasion?
A. No, I don't think so. I think this was the first time that had happened.

Q. Coming back to your statement at paragraph 31, you say - and this is about a third of the way down - that you didn't raise with Bishop Slater any issues of compliance regarding the relevant ordinances or protocols in place because you believed they would be in place and that the bishop would be following them, as he was required to do. Do you see that?
A. Yes, yes.

Q. The basis of that requirement is as you've set out before - that had Grafton adopted an ordinance, which it did, then it was required to follow it?
A. Yes.

Q. And you didn't take Mr Harrison's approach to you about policies as a red flag for you that perhaps he wasn't following those policies?
A. No, I didn't. On the contrary, when Mr Harrison wrote to me in his first letter, he quoted a number of definitions, I think, from either the canon or the protocol, and that I took as an indicator that the protocol and the canon were very much in view in Grafton. So I assumed they would be being followed.

Q. You continued in the first six months of 2007 to have
communication with Bishop Slater about these matters, either prompted by somebody else or because of a letter you received?
A. Yes.

Q. From those communications until about August 2007, so this is from November 2006 when it began to August 2007, did you sense any change in Bishop Slater's position in response to your intervention?
A. No, I didn't really. I can't recall Bishop Slater responding to any of my correspondence formally. When I spoke with him personally, he was often very reticent about offering any view. He listened politely to what I had to say but didn't say much in response himself.

Rightly or wrongly, I had feeling that he was getting advice elsewhere that was in conflict with the advice I was giving him.

Q. Where was that elsewhere?
A. Well, I imagine the people who were around him in Grafton and others from whom he sought his advice.

THE CHAIR: Q. In your discussions with him, was the question of the financial circumstances of the diocese raised?
A. Not directly and explicitly in relation to this matter, your Honour. I was aware of financial constraints impinging on Grafton, and it's a difficult matter for any diocese to find the funds to settle large claims, so, you know, I was aware of that generally.

I would have been aware of financial difficulties in Grafton at the time the IOC was appointed, and I can't remember when that was. Certainly I was made aware at the 2010 General Synod, because Bishop Slater came to me during that synod and asked me if I would call the archbishops of the church together during a break in the General Synod so that he could put before them the financial circumstances of Grafton and seek their assistance, which I did.

Q. Did it occur to you that, rightly or wrongly, one of the factors that might be influencing the way in which the diocese was responding to Mr Harrison was money?
A. I think it is always a factor, your Honour, when dioceses are trying to settle sexual abuse claims, but my experience in relation to - at the General Synod was that
when Bishop Slater wanted advice and assistance, he had no trouble asking for it. So I expect if he wanted advice and assistance about the financial dimension of this problem, he would have asked for it.

Q. You no doubt are aware of the evidence that has been given to the Commission.
A. Yes.

Q. It would seem, rightly or wrongly, that a concern about the money caused people to react in particular ways.
A. Yes.

Q. And that concern seems to be based in inadequate cash reserves, but, as we know, significant capital?
A. Yes.

Q. Now, I assume that's not an unusual position for a diocese, particularly a country diocese, to be in; would that be right?
A. I think facing claims of this magnitude, your Honour, that's correct, yes.

Q. And there would be many country dioceses where the cashflow would be disproportionately low as against the capital assets which the diocese holds?
A. Yes.

Q. Have there been any discussions in the church - I'm using that expression broadly, but not in a structured way - about how it's necessary, when claims do come forward, for the individual diocese to address them with the recognition that capital may have to be realised in order to respond appropriately?
A. I'm not sure that there have been discussions focused on that particular issue in any significant way,
your Honour. I think, generally speaking, dioceses - virtually every diocese, I think, finds it very, very difficult to adjust assets for cash in that kind of way, because the assets that dioceses hold mostly are church buildings or church halls or houses in which clergy live, and were a diocese to propose that a particular house in a particular parish be sold in order to settle abuse claims, generally speaking the people of that local community, which generally have raised the funds to build that house or build that church or purchase that property, would take a very grim view of such a proposition and not
see it as their sole responsibility to be doing that.

So those kinds of negotiations are actually very difficult and it's not simply a matter of some central body saying, "Sell that asset" in order to do what's required.

Q. I'm sure you understand that, to the outsiders again, that presents a picture which many would find difficult to accept?
A. Yes.

Q. A rich body, in terms of assets, who has difficulty meeting its obligations in cash?
A. Yes.

Q. Have you thought about a solution?
A. I have. I think - I think it may well be helpful if this Royal Commission were able to achieve a uniform mandatory compensation scheme, which would ensure parity not just between Anglican dioceses but across government organisations and all community organisations so that we don't have different classes of victims.

I think in terms of the Anglican Church, it would be much quicker and simpler for us if that were imposed on us from outside, and then dioceses wouldn't fall into the trap that Grafton did in terms of focusing on financial matters to the detriment of victims. They would simply be given a determination by a statutory body and required to find the money, and then they could focus on the financial aspects and be forced to deal with it.

I think it would be very, very difficult, if not impossible, for the church to implement that kind of system itself, because it would require every diocese to agree to it.

Q. I understand. Thank you for that. You understand, again, as I've said earlier today, that's an issue that we will have to visit in a significant way further in the course of our work.
A. Yes. Your Honour, it seems to me there are two possibilities, and I haven't done a lot of work on this and clearly we might need to have more conversation with the Commission about it, but it seems to me two ways forward would be a mandatory compensation scheme, which is somehow run, like an insurance fund, to which all bodies have to
contribute.

A second possibility would be a body with statutory authority that makes determinations and then directs organisations to meet those obligations.

Q. Yes, and there are hybrids and one can think of various statutory schemes, particularly those that deal with workers compensation.
A. Yes.

Q. But it's far too early for us to have any mature thoughts about those matters. Thank you for the response.
A. Yes.

MS FURNESS: Q. Just turning to paragraph 48 of your statement, which deals with this issue of the finances of Grafton and responses to it, archbishop, you say there that you were aware at the time that negotiations were taking place that and Grafton was concerned. Then in the last sentence, you say, to your mind:

... whatever the financial pressures ... ways must be found to respond properly and fairly ...

A. Yes.

Q. You have indicated thoughts as to work that this Royal Commission might do towards thinking of recommendations. In the shorter term, have you thought further about the ways that you refer to there which could be found, short of a national scheme, to respond properly and fairly to victims, as you set out in paragraph 48?
A. I think the use of experienced, independent, professional mediators in these settlements. I think if Mr Harrison and Grafton Diocese had together come to an agreement about engaging an independent mediator, then that would have assisted this process in Grafton enormously.

My understanding is that in mediation negotiations, in settlement negotiations with such a mediator, the mediator can meet with the parties separately, and it would have been possible for a mediator to say to Grafton, "Look, you're being unrealistic here. These are the kinds of settlements that have been reached in other places. This really is your obligation. We're not going to reach
agreement here unless you change your view."

That was one of the reasons - fairness and justice for
the victims, as well as for the church - that I encouraged
both Mr Harrison and Grafton to engage such a person, but
it seems to no avail.

Q. You made a number of suggestions throughout your
correspondence with Bishop Slater and others --
A. Yes.

Q. -- towards that end, including providing possible
names.
A. Yes.

Q. As primate, was there anything further you could have
done in respect of promoting and, indeed, resourcing
a mediator?
A. I don't believe so. If Grafton had come back and
said, "Look, we really would like to use such a person, but
we can't afford the few thousand dollars to engage them",
then I think that would have been found, but --

Q. Found by the Church of Australia or the Diocese of
Brisbane?
A. I don't know. I think it would have been found.

Q. And it didn't get to that stage?
A. No, it didn't. I saw no indication from either party
that they saw the value of that and were committed to
taking up that suggestion.

Q. Did you make an express offer of contributing
resources to the settlement of the claims that were then on
foot?
A. No, I didn't. Mr Harrison approached me about that,
and I address that somewhere in my statement.

Q. Yes, that's paragraph 45.
A. And I give the reasons there where I thought - why
I thought it was inappropriate. The analogy I use there is
that that would be like asking Brisbane City Council to
meet the financial obligations of Grafton City Council.
Now, that's not making any judgment about the merit of the
claims, but --

Q. But, with respect, archbishop, that would be an
analogy that might have some force were you being approached as the Bishop or Archbishop of Brisbane as opposed to the Primate of the Church of Australia. The analogy is not as good in that respect, is it?

A. Well, with respect, Ms Furness, I believe Mr Harrison asked me as Archbishop of Brisbane. He was inviting me, at least on one occasion, for Brisbane to contribute to the settlement of the claims, and that's the basis of the analogy I made in the statement.

I've already explained the financial circumstances of the national church, and I don't believe that the standing committee of the General Synod could responsibly have considered the request that Mr Harrison was making.

Q. The request Mr Harrison was making, as representative of the victims making a claim, is different from an approach you may have made to the Bishop of Grafton offering resources in whatever form you thought appropriate; that's right, isn't it? They're different concepts?

A. Well, I certainly did offer resources and support and advice and encouragement to the Bishop of Grafton on numerous occasions, but contributing to financial settlements was not part of that offer.

Q. So when you used the word "resources", which you did, as you have said, to Bishop Slater, what were you thinking of?

A. On a number of occasions - for example, I tried to encourage Bishop Slater to seek out further victims. Where people had come forward, as they had, in numbers from the North Coast Children's Home, it's likely that there are further victims out there who need assistance. And in Brisbane when we discovered abuse had occurred in certain places - in schools, for example - we took steps to see if there were further victims who needed to come forward and be heard and cared for and assisted.

So I was encouraging Bishop Slater to do that, and I provided him - or Rod McLary did on my behalf - with some of the notices, some of the things that had been put in school newsletters, and so on. So we provided him with templates that he might consider using in Grafton. That's one example of a resource which was offered to him.

Q. Are there any other examples of resources which were
offered to him that you can now recall?
A. None that spring immediately to mind. I mean, there
were people we could have made available to him to speak
with him about experiences with processes. A number of
people were suggested to him as mediators that he might
consider using.

My staff, Mr McLary, assisted Grafton on several
occasions, including to locate information. Rod McLary
travelled to Grafton on one occasion to search through
Grafton's files to provide information to the NSW Police,
who had launched an investigation.

They're the things that spring immediately to mind.

Q. Thank you. The events that we have been discussing
primarily took place in the first half or so of 2007.
A. Yes.

Q. Then there was a period of some time which elapsed
before you then became involved with the matters involving
Grafton Diocese. That's your recollection?
A. Yes, from time to time Mr Campion made contact with
Grafton Diocese - with either Mr McLary or myself and we
attempted to respond to him as helpfully as we could on
each occasion. Sometimes there were gaps between his
contact. Other times there was lots of contact in a short
period. So it was really trying to assist and to gain
assistance for Mr Campion that dictated our involvement.

Q. So in the years following 2006 and 2007 when you were
first involved, your then involvement was to respond to
correspondence or other communications primarily from
Mr Campion and pass them on to Bishop Slater, again seeking
to influence his action by reminding him of the principles,
the use of mediators and the resources to which you've
referred?
A. Yes, and making suggestions about how we might
proceed, yes.

Q. In 2012 it seems that you became, again, more
involved?
A. Yes.

Q. That's your recollection?
A. Yes, it is.
Q. If I can ask you to have a look at AP-20 to your statement, this is a letter that you wrote to Bishop Slater on 7 March 2012?
A. Yes.

Q. Was it the case that at the time that you wrote this letter it was clear to you that the events of six years ago had not been resolved?
A. Yes, it was. Well, in a particular respect, I think, and that was Mr Campion continued to be distressed, and the particular concern Mr Campion had was that he was convinced that Grafton had the duty of care for the children who were in the North Coast Children's Home, but Grafton would not acknowledge that. Mr Campion spoke repeatedly and passionately about that being a cover-up, that Grafton was covering up its duty of care, and he wanted that addressed.

Q. And what did you do to help Mr Campion get that addressed by Bishop Slater?
A. Well, I believed - notwithstanding I was aware of Grafton's assertion, conveyed in media reports, that it had attempted to give such an explanation to Mr Campion, I was aware of that, but clearly he was still troubled by this and I believed another attempt should be made to give him what he was requesting. I thought he deserved an explanation about Grafton's position on duty of care. I believed he should have been given copies of constitutions of the home.

Mr Campion was trying to make sense of what had happened to him over 14 years of his life as a child. He was trying to come to terms with that. He wanted to know how the home was managed, who ran it, who was involved, and so on, and I thought they were entirely reasonable questions and that he should be given such an explanation - copies of the constitutions and an explanation of the thinking that led Grafton to the position it had taken.

Q. And you were seeking to influence Bishop Slater again in your role as primate?
A. Yes.

Q. With what success?
A. With no success, I don't believe. Well, initially no success. I mean, in that letter I asked the bishop if he would provide me with copies of the constitutions of the home and with Grafton's legal advice and legal thinking.
He refused to do that, he declined to do that. To this
day, I have not been given copies of the constitutions of
the home or Grafton's legal advice.

Q. In the structure of the church that you have
described, there was nothing more you could have done to
acquire that material from the diocese or through the
bishop?
A. I don't believe so, no.

Q. Is that the way it should have been?
A. Well, it depends who you ask, Ms Furness.

Q. I'm asking you, archbishop.
A. I take a view that we should have effective national
instrumentalities in the church that can work effectively.
Not everyone shares that view.

Q. How would your view be put into effect, leaving aside
the dissidents for the moment?
A. Well, it's very hard to imagine. For all practical
purposes I don't think it can be put into effect, because
of these differences of view. It would require giving the
primate or some central body some power to require bishops
to act in certain ways, and certainly for the foreseeable
future I cannot see that happening. We just would not get
agreement about that in the national church to the level
necessary to implement it.

Q. And it couldn't be done without agreement? There is
no structure that could impose it upon you?
A. No, because it would affect the order and good
government of a church in a diocese, and the diocese would
have to agree to do it.

Q. Is there any process of cultural change that you think
could be considered to move the church towards that
national consistent approach you've referred to?
A. As you might imagine, I've been thinking hard as these
proceedings have unfolded, and I think one step that may be
achievable and might help prevent another Grafton-like
situation emerging would be to implement a kind of auditing
scheme on dioceses. So we could set up a professional
standards auditing group, which every two or three years
might visit a diocese and look not only at what policies
and canons and procedures they have in place but look to
gather evidence that they are being effectively
implemented. That group might then provide a report back to the diocese identifying areas for improvement or action steps that it suggests should be taken.

As long as that was an advisory group to the diocese and the decisions about those matters were still left with the diocese, I think that might be acceptable to a large number of dioceses. I think there might be a few dioceses who would still resist even that. But a kind of auditing procedure like that, I think, would be much more acceptable and achievable than trying to impose something which was coercive.

Q. Would you envisage with that auditing process that the report would be made available to others than just the diocese?
A. Well, I think that would be a good thing to do and would add leverage to it. I think making public those reports would apply significant pressure to dioceses to take the steps.

Q. Could that be done within the current structure, that is, it be made public rather than kept private to the diocese?
A. It could be done.

Q. Only with the agreement of the diocese?
A. Yes, I think so, yes. Yes, and in fact such an auditing group would really need the invitation of a diocese to come in and do it, but the General Synod standing committee could make public the fact that a diocese declined to issue such an invitation, I suppose, which would be a partial step in the right direction.

Q. Am I right in understanding, archbishop, that when the Royal Commission was initially announced in November of last year, what happened was something similar to what you've described, certainly in some areas, that there was an audit undertaken?
A. I think what happened was that the standing committee of the General Synod established a working group to assist dioceses prepare for the Royal Commission. That working group asked dioceses to review files they held on child sexual abuse matters and to check to make sure that all appropriate steps had been taken in relation to those matters.
Part of it was to locate files, so that if the Royal Commission asked for them, they would be there, ready to be produced. The second part was to do a self-check to make sure that all appropriate steps had been taken.

Ms Anne Hywood was in place as the acting registrar in Grafton at the time. She commenced those checks and was horrified at what she found, at such gross non-compliance in Grafton with Grafton's own canons and protocol. Ms Hywood, I think, with great courage and with great integrity, spoke first with the leaders in Grafton about that and told them she was horrified at what she'd found, and then she asked to meet with me because she thought the matters were very serious and that I should know about them.

The context in which that happened was heightened because the Daily Telegraph was about to run stories, both by Mr Campion and by myself, and I think the particular thing that prompted Ms Hywood to come to me was that she didn't want me interacting with the Daily Telegraph and not knowing about the situation in Grafton. So she came to me and we spoke - we met in Sydney, actually. I was here for a meeting and Anne was as well.

I regarded what she told me as so serious that I asked her to put it in writing to me, so that I could follow it through, and she subsequently did that.

Q. When that audit was undertaken by the working group, were there any dioceses who refused to participate?
A. It's still in progress, actually, and is not yet complete. There are difficulties in bringing it to completion, not least of which is the volume of work involved. I know in Brisbane, for example - a lot of this work has fallen on to the desks of professional standards directors, who are already very busy people. In Brisbane, we are trying to review just under 300 files. It requires people to read those files with care, and that is actually very traumatising for the people doing that work, in the same way I think as the Royal Commissioners themselves --

Q. We're very well aware of that, archbishop.
A. Yes.

THE CHAIR: Q. I was going to ask you - I understand the complexity of the task, but do you have any knowledge of
results so far? We know about Grafton, but do you know of any other dioceses where the audit has revealed problems?
A. Not of any great significance or extent, your Honour. I think any review of that nature is likely to pick up hiccups here and there, steps that have been missed, and so on, but I'm not aware of any gross failings such as those highlighted in Grafton anywhere else.

Q. As you appreciate, I know one of the significant issues in Grafton is the failure to follow its own adopted protocol.
A. Yes.

Q. And I assume that is being checked around Australia in these audits, is it, whether others have adopted and then not followed their protocols?
A. I believe what the national working group invited people to do was to do that in each diocese - to check to see if they had done the right thing in managing these claims. So, yes, that involves checking the actions that have been taken against the actions that were required to be taken.

Q. Does the process result in a written document, a report, as it were?
A. The working group has not yet decided what it will do with those results if and when it gets them, your Honour. I think it's actually a very complex task because it involves not only dioceses but schools, some of which are independently incorporated, et cetera, et cetera.

Q. I understand.
A. So it's not clear to me whether the working group will be successful in harvesting all that documentation. It's likely to be incomplete, I think, when it comes, and the extent of that incompleteness I think can't yet be determined.

Q. The working group is a group of people based where?
A. It's a group of half a dozen volunteers, your Honour, from around the country.

Q. And who are they reporting to?
A. The standing committee of the General Synod.

Q. That will be in a written document?
A. The group has not yet seen any information so I think...
is unable to decide in what form it will report, your Honour. The intention is to gather what information the group can and then to get some advice about that information, I think. I mean, the intention is to try to be as useful to the Royal Commission as we can be, but just exactly what use we can be is not clear yet.

Q. Well, you understand we will need to have further discussions about that, too?
A. Yes, yes.

MS FURNESS: Q. Do you know what period of time the working group asked those conducting the audits to consider?
A. Oh, look, it was quite ambitious at the outset with its time frames. I think it allowed six months or so for that material to come in --

Q. No, I'm sorry, I asked that question poorly. The period of time that the audit should cover.
A. Oh, it was unlimited, my understanding is. I stand to be corrected on that, but I think there were no time limits in relation to abuse allegations, as to when the events allegedly occurred or as to when reports were made. I think it was completely open ended.

MS FURNESS: We might correspond with the primate's office in future in relation to that.

THE CHAIR: Yes.

MS FURNESS: Q. As you've indicated, archbishop, you provided to the Royal Commission, as did Ms Hywood, the written report that she had provided to you. Other than through the process of this audit, are there any other matters that have come to your attention as primate which fall within this Royal Commission's terms of reference about which we have not already been provided with information from you?
A. I don't believe so. I understand that the major reports that have been undertaken from inquiries, Anglican Church inquiries, around the country have been provided to you. You've sought those and been given those.

Q. Perhaps we might just list those, primate?
A. I'm aware of a pastoral inquiry that took place in Tasmania in about 1997. There was the Brisbane one that
I was involved in myself that reported in 2003.

Q. Was that in relation to Toowoomba?
A. No, it was much broader than that. It involved, I think from memory, about 15 matters where it was alleged those matters had not been handled properly, that they were mishandled by the church.

Q. Within the archdiocese of Brisbane?
A. Yes, within Brisbane Diocese. That report was publicly tabled in the Queensland parliament in 2003 and is publicly available and I believe has been provided to the Commission.

I'm aware that the Anglican Church in Adelaide conducted an inquiry, the Olsson/Chung inquiry. I believe that report might also have been tabled in the parliament of South Australia, and I believe that has been provided to you.

The General Synod standing committee, through our professional standards commission, commissioned a report into reported sexual abuse in the Anglican Church of Australia, and that was undertaken by Professors Parkinson and Oates from Sydney University.

Q. A research-type project?
A. Yes, it was. I do have a copy of it and I believe that has been provided to you.

Q. Yes, we do have a copy of that, thank you.
A. Yes, it was a Study of Reported Child Sexual Abuse in the Anglican Church, and it covered reports, I think from memory, that were made between 1990 and 2008 and considered 191 reports of child abuse.

Q. That report relied upon the willingness of the dioceses to come forward with the information, didn't it?
A. I believe so, yes. I understand 17 of the 23 dioceses participated in that research.

Q. Are there any other matters that you now recall?
A. I don't believe so, no.

Q. In your role as primate and having regard to the General Synod, is there a process by which a certain type or level of complaint comes to the attention of the General
Synod? I understand the process with the professional standards, and I'm not referring to what happens with professional standards. But how do matters come to your attention as primate?

A. There is no requirement for any body to report to me about matters that are occurring in dioceses. There is a provision in the episcopal standards canon which requires the episcopal standards commission to report to me on any reasonable basis that I might require.

Q. Require in advance, as it were?
A. Yes, so I can negotiate with the episcopal standards director to report to me in a way which satisfies me. But I have no control over the episcopal standards commission. It does its work, but it is required to keep me informed about what it's doing.

I must say, that whole episcopal standards area is another area where we struggle, because I think I'm right in saying that only 11 out of the 23 dioceses adopted the episcopal standards canon. There is dissatisfaction with it, and for the third General Synod in a row next July we will have another go at putting in place an episcopal standards regime that will be acceptable, but I think next time it's proposed to do it on the same basis as we did with the professional standards regime and it will be on the basis of a model ordinance which dioceses are then invited to adopt.

The issue is resistance to the idea that there should be a national body which can compel a bishop or a diocese in certain ways.

Q. In your role as Archbishop of Brisbane, what process do you have in place with your director of professional standards as to what and when complaint information of the type that falls within this Royal Commission's terms of reference comes to your attention?
A. I have a reporting system with my director. He reports to me each month when there are active matters. The report is in three parts. The first part, he reports on matters that are before the professional standards committee, and each matter has - it's in a table form and each of the significant steps in relation to each matter are identified, so the date a complaint is made, the date an investigator was appointed, the date the investigator's report was received, the date the professional standards

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committee dealt with the report, and so on.

I think preparing the report keeps the director on his toes, and if there are any significant delays, it enables me to ask why there was a delay. The first section of the report deals with professional standards committee matters.

The second section of the report deals in the same way with matters that are before the professional standards board.

The third section of the report deals with matters that are with the police. Again, if there are any delays evident, I am able to ask the director to follow things up or to check what's happening.

Q. Do you know whether any other archbishop has in place any scheme or any scheme similar to yours?
A. No, I don't.

Q. It's not something that's discussed?
A. No, it's not. It could be. I presume the other archbishops have put things in place that satisfy them.

One of the tensions in this, of course, is that the functioning of directors of professional standards and professional standards committees are meant to be at arm's length from the bishops, to stop interference by the bishops. I do sometimes find myself - I've taken the view that I want to know what's happening. If I'm going to be the person overall responsible for ensuring that this works, I need to know what's happening.

I think perhaps some other professional standards directors in other parts of the country would object to their bishop taking such an active role, as it were. From time to time I do find myself saying to my director of professional standards, "Please tell me if I'm overstepping the mark here. You need to make this decision in your own professional judgment, but it seems to me that this is a concern. Would you please take that back to the professional standards committee and discuss it with them."

To date, he has not told me that he thinks I have overstepped the mark or infringed his professional judgment, but there does need to be, I think, a mutual trust and a frankness between a bishop and his director of
professional standards.

Q. The director reports to the committee, effectively; is that right?
A. Yes.

Q. So any oversight necessary should be carried out in that structure?
A. Yes.

Q. Has that worked that way?
A. Yes, although sometimes I do find myself asking questions of the committee and of the director, and of course it's usually not the committee or the director that are held accountable in the public arena. It's the bishop. So I certainly want to stand behind my director and the committee, but I need to be confident that the right thing is happening in order to do that.

Q. In the structure, is there any formal relationship between you and the committee?
A. There is a provision in our canon, I think, and I think in the model canon where either the director or the committee is required to report to the bishop, I think, on any reasonable basis as the bishop may require. I can't recall if it's the director or the committee.

Q. When you say a "canon", that's a canon that has been adopted or passed in your diocese?
A. Yes, yes.

Q. Whether or not other dioceses have them is a matter for them?
A. Well, I think it's a provision in the model ordinance, I think I'm right in saying, so it's likely to be in place in many of the dioceses, I would think.

Q. Unless they've varied it so as to change that?
A. Yes.

Q. So you will have heard evidence this morning in relation to Allan Kitchingman.
A. Yes.

Q. And that, in particular, in 2002 it became known that he had been convicted of charges of indecent assault in respect to one boy, and there were a number of ordinances
or canons or laws or rules that would have enabled a bishop
at the time to have taken action in respect of him, as he
was then resident in Newcastle.
A. Yes.

Q. Are you aware of that evidence?
A. Yes.

Q. And no action was taken, the archbishop gave evidence
to that effect. Is it the case that the complexity of
church laws in respect of deposing a person from holy
orders is such that it's rarely undertaken?
A. It's true that it's rarely undertaken, I think that is
true. Whether that's because of the complexity of the
church laws or not I'm not sure. It is true that laying
a charge before a church tribunal is a process akin to
a court case. You know, there needs to be a barrister
briefed to prosecute the charge, as it were. It needs to
be formulated in a formal way. Evidence needs to be
gathered. Usually there would be a defence lawyer. So it
is an arduous process. Legally trained people I think find
their way through it without any difficulty, but it's also
a very expensive process. It is seldom used, I think that
is true.

The kind of arcane nature of church tribunals stems
from ancient times in England, or at least medieval times
in England, where secular courts and church courts were
separate, so there's some kind of hangover there. But it
was the kind of archaic nature of that system that led to
the development of the new professional standards regime,
I think, 10 or 12 years ago, which is meant to be something
much more akin to the kinds of models that work in other
professional fields - medicine, law, and so on.

When it comes to it, though, in practice it seems to
me that a professional standards board hearing is not too
dissimilar from an old tribunal. You've still got a person
against whom allegations are made. You've still got
lawyers on both sides arguing the cases. It's still
expensive and it's still reasonably complex.

Q. In the case of Mr Kitchingman, he was convicted.
A. Yes, yes.

Q. So, yes, there was a charge against him, but
nevertheless the subject matter had been proved.
A. That's correct.

Q. Beyond reasonable doubt.
A. Sorry, I think I'm right in saying - certainly under
the new professional standards regime and I think I'm right
in saying the same is similar with the old tribunal system,
the finding of a court can be taken as fact by a tribunal.
So that certainly simplifies the matter.

Q. Can you help us understand why nothing was done in
respect of Mr Kitchingman still being ordained in holy
orders after his conviction in 2002?
A. I would only be speculating, and that's --

Q. I'm inviting you to do that, archbishop.
A. -- really a question you need to ask Archbishop Herft
and the other bishops involved. I think it probably just
didn't occur to the bishops to take disciplinary action.
I certainly can understand how a new bishop coming into
a diocese and inheriting someone, as it were, who had been
convicted and gaol prior to the bishop's time might not
discover that for some period.

But I think if I were the bishop of a diocese in which
someone was sent to gaol while I was the bishop of the
diocese, it would occur to me to ask what further action
I need to take in relation to him.

Q. In this case, of course, he was a retired clergy.
A. Yes.

Q. And was there as a parishioner rather than officiating
in any manner. Would that affect your view if it happened
in your diocese?
A. No, think if a retired priest in my diocese was
convicted of a child sex offence and went to gaol, I would
take action.

Q. And that action would be now under the professional
standards scheme?
A. Yes, it would go to the professional standards board,
yes.

Q. There is just one other matter I want to ask you
about, if I could. You referred in your statement to
research. Paragraph 15. It's in the context of the
national professional standards commission.
A. Yes.

Q. You note that it is essentially a policy development committee and it researches and recommends good practice. Then you refer in subparagraph (b) beneath it to also developing frameworks and models. Can you tell the Royal Commission, archbishop, what research has been undertaken or commissioned in the context of establishing or, from time to time, reviewing the professional standards scheme in the Anglican Church?

A. Yes. I think when an issue arises which the professional standards commission believes the church should be given advice or direction about, it does investigate what is being done in other places, other parts of the world, other churches, other organisations. It consults professionals in the field. It would consult victims and victims' advocates groups and so on to try to inform itself about the issues around any particular area.

Then it would formulate a view and recommend that to the standing committee. So that has been done, I think, in relation to safe ministry checks, and all the tools that have been developed I think are on our website. It has been done, I think, in relation to psychosexual assessments that should be done before people are engaged or appointed to work in situations that involve children. It was done in relation to what the church should do to supervise known offenders or persons of concern when they attend worship in a church.

I think it has been done in relation to mandatory reporting. I think it has been done in relation to safe ministry training. There's a whole suite of issues which the professional standards commission continues to work its way through, and it acts in that kind of consulting way to research good practice and then advise the church.

Q. Is it part of the work of the commission to have evaluated independently from the commission and the church the work that it does in this area?

A. I'm not aware that it has done that, but I have no doubt that it would be open to it. The standing committee and the professional standards commission are very committed to getting this right, and if that would provide any improvements or certainty that we're on the right track, I think they would welcome that.
Q. In the researches that the commission and others in the church have done, have there been discussions with the Catholic Church and how they deal with there issue?
A. I'm sure there would have been, yes. One of the things I note in my statement is that our people have participated in a number of conferences, ecumenically, over the last decade or so, and I'm sure Catholic professional standards officers have been involved in those discussions, and I'm sure that when our model ordinances were developed, it was a few years after Towards Healing, and so on, and I'm sure our people would have looked at what was provided for in Towards Healing and other Catholic responses.

Q. You haven't participated in any discussion that has looked at and compared the processes you have in place with Towards Healing or the Melbourne Response?
A. Not for quite some time, Ms Furness. I think there were various protocols and procedures in place in Brisbane in the early days. I was there before the model Professional Standards Ordinance was produced, and as we were developing those we too looked around at what was happening, so I'm pretty sure that would have happened then, too.

MS FURNESS: Thank you, your Honour. I have nothing further for the archbishop.

THE CHAIR: Ms Wass, any questions?

MS WASS: No.

THE CHAIR: Anyone else before Mr Griffin?

MR TAYLOR: I would like to ask some brief questions, your Honour, if I may, in two areas.

<EXAMINATION BY MR TAYLOR:

MR TAYLOR: Q. I appear for Bishop Slater in the proceedings. My name is Taylor, archbishop. You were asked some questions about discerning any change in Bishop Slater's position from, say, August 2007 onwards, and I think your answer was to the effect of - I'm just paraphrasing - "No, I didn't really. He didn't formally respond to correspondence." Isn't it the situation that you exchanged emails with him?
A. Yes, certainly.
Q. Is that not a formal response?
A. No. I stand - he did not email me in response to every letter I wrote to him. In fact, there were numbers of letters I believe there was no response to at all.

Q. Did he not speak to you on a regular basis?
A. Not on a regular basis, no, and it was usually me initiating contact, not Bishop Slater.

Q. Well, whoever initiated it, you did speak on quite a number of occasions?
A. On a number of occasions, yes.

Q. And you exchanged quite a number of emails?
A. At certain points there were email exchanges, yes.

Q. And you met face to face on a number of occasions?
A. Yes.

Q. So although he may not have formally responded to your concerns, he did respond in some way, did he not?
A. He did not respond to many of my contacts at all.

Q. Did he respond in any way?
A. There were some interactions between me and Bishop Slater over those years, yes.

Q. But you're not able to quantify those?
A. I could, if you wished me to. I could. I certainly have a full chronology of all my contacts with Bishop Slater and all occasions on which he responded, and I think that would bear out what I'm saying.

Q. And that's email correspondence, telephone conversations, face to face?
A. Every contact, yes.

Q. When I say can you quantify it, I'm not suggesting that he responded to each and every piece of correspondence you sent him, but what I am suggesting to you is that he didn't totally ignore you, refuse to communicate with you on a full-time basis?
A. No, it's not the case that he refused to communicate with me, that's correct, and he did not fail to respond on every occasion. But on many occasions I received no response.
Q. It is the circumstance that when he did respond and you did speak and communicate with him, he advised you that he had obtained, or the diocese had obtained, legal advice in relation to the claims being made by Mr Harrison's clients?
A. Yes, he did.

Q. You were fully aware of that?
A. Yes.

Q. And --
A. Well, I was fully aware of the fact that he said he had obtained legal advice. I was not aware of the content of that advice in any detail.

Q. Sorry, another clumsy question. I wasn't suggesting that he made you aware of the specifics of the advice. But he made you aware, did he not, of the general terms of the advice?
A. He made me aware of the position that Grafton had taken on the basis of advice he said they had received, yes.

Q. Were you aware who provided that legal advice?
A. I believe so. I can't remember at what stage I became aware of that, but I believe it was Mr Garth Blake.

Q. That is the senior counsel that you were recommending should speak with Mr Tommy Campion?
A. That's correct, yes.

Q. So you knew that before you made that approach to Bishop Slater?
A. Yes, there were two reasons I suggested that Mr Blake might do that. First, because he has been at the forefront of developing the church's responses to sexual abuse. I know Mr Blake personally and I know that he is sensitive to the needs of victims, and I believed he would offer an explanation in an understanding way with respect and which would accord dignity to Mr Campion.

He was also the right person to do it, I think, because he had advised Grafton and they had come to their conclusions on the basis of his advice.

Q. Can I correctly assume from what you have just said in
that answer that you respected Mr Blake's professional opinion?
A. Yes - well, yes, I do. I believe he's a person of substance and that he would have had reasons which, in his view, were valid for advising the diocese in that way.

Q. You also respected Mr Blake's professional manner in which he could communicate, you anticipated, with Mr Campion?
A. Yes, yes. I wouldn't have recommended that Mr Campion meet with anyone whom I thought would offend him or not accord him dignity or not be sensitive to his needs.

Q. You made that recommendation knowing that he was in fact the counsel providing advice to Grafton?
A. Yes, I did, yes.

Q. Might the witness be shown AP-20, please, your Honour. This is a letter to Bishop Slater of 7 March 2012. Could we just have the first page down the bottom, please. Could you just read that last paragraph, archbishop?
A. Yes.

Q. This is a letter in March 2012.
A. Yes.

Q. Would you agree with me that prior to this date, you had been made aware that Grafton Diocese had obtained advice from Mr Blake SC?
A. I believe that's the case, yes.

Q. And you were aware of the general nature of that advice?
A. Yes.

Q. Why did you express yourself by saying that you "may have sought legal advice"?
A. Well, there was one issue, and I was taking care, I think, because an issue arose at some stage in all of this as to whether Mr Blake had actually advised the Diocese of Grafton or whether his advice was to the incorporated association that at that time ran the home, CASPA. I remember becoming aware of that distinction at some stage, so I think I expressed myself in that way to allow for the possibility that the advice had been given to CASPA and not to the Diocese of Grafton.
I recall at some stage a question about whether Grafton itself had received advice - that is, the Diocese of Grafton had received advice - or whether it was CASPA that had received advice and whether Grafton was simply relying on the advice that had been given to CASPA. So that's why I expressed myself in that way.

Q. Does that indicate that you had some specific knowledge of the advice, then?
A. No, it doesn't.

Q. In the discussions that you had with Bishop Slater, be it face to face, email or on the telephone, did you have discussions about Bishop Slater's concerns relating to the financial health of the diocese?
A. I don't recall ever discussing that with Bishop Slater in any direct way.

Q. How did you become aware of the concerns that Grafton had about its finances at the time negotiations were taking place between Mr Harrison, on behalf of his client, and the diocese?
A. I think a fair bit of the context for all of this was relayed to me by Mr McLary pursuant to his conversations with Mr Comben.

Q. Would you agree with the proposition that from time to time Bishop Slater did express to you - perhaps not in specific terms but certainly in general terms - that he had concerns about the financial status of the diocese?
A. I think it is fair to say that. I was aware that money was a question for Grafton in dealing with these claims.

Q. Would you agree with the proposition that you were aware of that concern fairly early on in the piece after Mr Harrison's approach?
A. Yes, I think that was very evident from the toing and froing that was going on between Mr Harrison and Mr Comben.

Q. Would you agree that Bishop Slater indicated to you that that concern that he had in relation to the financial health, for want of a better term, of the diocese was information he was receiving from Mr Comben?
A. Well, again, I'm not sure that Bishop Slater ever addressed concerns about finance to me directly. But, yes, I understand that there were discussions going on in
Grafton. I'm sure that Mr Comben and the bishop were involved and they were concerned about money, yes.

Q. Did Mr McLary at any stage tell you that he had spoken to Bishop Slater and that Bishop Slater had expressed concerns about the financial health of the diocese?
A. He may well have, but I don't recall that.

MR TAYLOR: Nothing further, thank you, your Honour.

THE CHAIR: Mr Griffin.

MR GRIFFIN: I only have one matter, your Honour.

<EXAMINATION BY MR GRIFFIN:

MR GRIFFIN: Q. Archbishop, you were asked some questions about the funds available to the national office. Did you have in mind section 32(1) of the constitution of the Anglican Church of Australia, which provides that the synod shall not make any canon or rule imposing any financial liability on any diocese except in accordance with that section?
A. I don't have the constitution in front of me, but I think that does govern the statutory fund, and it says that the synod cannot levy the dioceses for anything other than the machinery of the General Synod.

MR GRIFFIN: Thank you, your Honour.

THE CHAIR: Yes, Ms Furness?

MS FURNESS: Nothing further, your Honour.

THE CHAIR: Thank you, archbishop. You may step down. You are excused, but you appreciate, I am sure, that we will be talking to you again. Thank you.

<THE WITNESS WITHDRAW

MS FURNESS: Your Honour, that is the final witness in the third case study.

I have a draft order, if I could hand it up, in respect of the next stage, which is submissions. I understand that all of my friends have seen and concur with the matters contained in it.
It is submitting that an order be made that those assisting the Royal Commission provide written submissions to each person with leave and any unrepresented witness by 20 December; submissions in reply by 20 January; with oral submissions, if necessary, to be heard on 24 January at 10am.

THE CHAIR: Nearly everyone is happy with that?

MR GRIFFIN: Your Honour, I wouldn't describe our response as happy. I assumed that there were imperatives with the Commission in terms of that timetable, but obviously that time of the year does prevent difficulties not only in terms of our availability but also if we need to speak to other people and obtain other material.

THE CHAIR: We appreciate the time of year, but, yes, there are real pressures, as you can imagine, on the Commission to do its work.

MR GRIFFIN: I appreciate that, your Honour. Could I raise the possibility that even before 20 December, if counsel assisting has particular matters that they know that they will want us to address, if we could be given a heads-up, we could do some preliminary work before we receive their submissions?

THE CHAIR: That's a very sensible idea, and I'm sure that, to the extent that counsel can cooperate, they will.

MR GRIFFIN: Thank you, your Honour.

THE CHAIR: That applies to everyone involved. I understand the effort that people are required to make, but I would be grateful if it can be made, so that we can move ahead. You appreciate that there is another case study before the end of the year and there is a whole agenda for next year.

MR GRIFFIN: Yes, junior counsel assisting pointed that out to me.

THE CHAIR: Yes. Thank you.

Very well, we will adjourn. The next case study takes place when, Ms Furness?
MS FURNESS: On 9 December, your Honour, in relation to Towards Healing.

THE CHAIR: 9 December, Towards Healing, which is the Catholic response.

MS FURNESS: The Catholic response, sitting for two weeks, your Honour.

THE CHAIR: Two weeks, yes. Very well, we will adjourn until then.

AT 3.55PM THE COMMISSION WAS ADJOURNED ACCORDINGLY
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dissimilar [1] - 2452:38
distinct [1] - 2433:13
distinction [1] - 2458:43
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divergences [1] - 2420:45
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Discipline [1] - 2417:18
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Merrill

two
[27]

[3]
twice

trying

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twice

truth

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trust

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