



Royal Commission into
Institutional Responses to
Child Sexual Abuse

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

STATE OF NEW SOUTH WALES
ROYALS COMMISSIONS ACT 1923

**PUBLIC INQUIRY INTO
THE RESPONSE OF THE DIOCESE OF GRAFTON OF THE ANGLICAN CHURCH TO CLAIMS OF
CHILD SEXUAL ABUSE AT THE NORTH COAST CHILDREN'S HOME**

OUTLINE OF SUBMISSIONS IN REPLY OF COUNSEL ASSISTING

1. On 23 December 2013, Counsel Assisting written submissions were served on all parties with leave to appear in the public inquiry into the response of the Diocese of Grafton of the Anglican Church to claims of child sexual abuse at the North Coast Children's Home. An errata correcting minor errors in Counsel Assisting's submissions was served on the parties on 14 January 2014.
2. Written submissions were received from those representing Archbishop Roger Herft, Archbishop Phillip Aspinall and General Secretary Martin Drevikovsky, Bishop Keith Slater, Archdeacon Greg Ezzy and the Anglican Diocese of Newcastle, and were served on the Royal Commission on 20, 21 and 22 January 2014. A short letter was received from Mr Phillip Gerber's solicitor.
3. The approach adopted to this outline of the reply is that the primary submissions of Counsel Assisting are relied upon unless expressly stated. Many of the submissions made concern matters of interpretation or nuance. In many cases those granted leave have made submissions to clarify particular terms or statements of fact. In many cases these are accepted and need not be traversed in reply submissions. These submissions will focus on substantive matters and proposed findings and recommendations.

4. References in square brackets are to the submissions of those granted leave to appear.

Submissions in Reply of Archbishop Roger Herft

5. **[1] the Reverend Allan Kitchingman conviction in 2002:** the suggested amendment to paragraph [314] may be accepted as a more detailed explanation of the available evidence save that the evidence revealed that it is likely that then Bishop Herft had spoken to Dean Lawrence on an earlier occasion because the Bishop was aware that Dean Lawrence had given character evidence at Kitchingman's sentencing hearing in June or July 2002.
6. **[2] asserted imputations against Archbishop Herft:** No imputations of a cover up or minimisation by then Bishop Herft are asserted in the submissions. There is no need for the clarifications sought.
7. **[3] Archbishop's statement of contrition:** the Archbishop's statement of contrition and remorse because of his acts of commission or omission should be noted and accepted.
8. **[4] suggested amendment to refute any imputation:** No assertion is made that then Bishop Herft covered up or minimised Rev Kitchingman's conduct. Further, the credibility and honesty of Archbishop Herft is not questioned in the submissions or available findings. It would not be appropriate to make such findings in the absence of similar findings for all other witnesses who apparently gave honest and credible evidence.
9. Accordingly, Archbishop Herft's proposed findings in paragraphs [4] (proposed available findings 43 and 43A) should not be made.

Submissions in Reply of the Anglican Diocese of Newcastle

10. The Diocese of Newcastle was notified that it could seek leave to appear at the public hearing. It did not seek leave to appear. The Royal Commission wrote to the Diocese to clarify certain matters and a short reply was received. The Diocese of Newcastle did not provide the Royal Commission with a statement other than through that provided by the Archbishop of Perth concerning events in 2002. Evidence was available from its professional standards director, Michael Elliott, who held that position with respect to both Grafton and Newcastle from 2009. As a number of findings concerned the Diocese of Newcastle, closing submissions were provided to the Diocese. A submission has been received from the Business Manager of the Diocese of Newcastle.

11. **[3] – [6] disciplinary action against Reverend Campbell Brown:** The Diocese attempts to distance itself from the actions of its professional standards director by asserting that Mr Gerber did not pass on information about Reverend Brown to the Diocese. The factual assertion should be rejected. No evidence was provided to the Royal Commission by the Diocese of Newcastle and the issue was never put to Mr Gerber. Any omission by Mr Gerber as an officer of the Diocese of Newcastle should be taken as an act of the Diocese.
12. **[7], [12] – [16] Reverend Winston Morgan:** the available finding 49 concerning Rev Morgan should only relate to the Diocese of Grafton. Available finding 49 with respect to Rev Brown should, however, stand. The evidence established clearly that the professional standards director was informed of Rev Brown’s residence (and previous licences) within the Diocese in 2006 and did not commence disciplinary proceedings. In 2013 Rev Brown was referred to the police. It remains unclear whether separate disciplinary proceedings have been commenced.
13. Further, in relation to the Diocese’s qualification in paragraph [14.1], Counsel Assisting does not consider it is appropriate to distinguish between the contexts in which information comes to the attention of a professional standards director who performs that role for several dioceses. The applicable professional standards ordinances for the Dioceses of Newcastle, Sydney and Grafton all place obligations on its professional standards directors to refer information in their possession to their respective professional standards committees.
14. As such, the Diocese of Newcastle was notified of the allegations against Rev Brown when Mr Gerber was notified of the allegations. This was not on 21 November 2006, at the Grafton Professional Standards Committee meeting, but upon receipt of Tommy Campion’s letter to the Sydney and Grafton Dioceses dated 29 August 2005, which contained allegations against Rev Brown. This letter was responded to by Mr Gerber’s personal assistant at his direction on 8 December 2005.¹
15. **[17] – [23]: reluctance to commence disciplinary proceedings against clergy without a licence:** The Royal Commission was not provided with any statement concerning disciplinary processes in the Diocese of Newcastle other than those concerning Rev Kitchingman and Rev Brown. Further evidence – by assertion – is provided in paragraph [21] of the Diocese’s submissions. It has not been subject to analysis and there has been no opportunity to test it. Without necessarily accepting the submission by Newcastle but in order not to prolong the

¹ Exhibit 3-1, Annexure PG14 [STAT.0063.001.0109]

hearing it is preferable if Available Finding 50 is restricted to the Diocese of Grafton and does not refer to the Diocese of Newcastle.

16. **[24] – [27]: cumbersome legalistic and expensive process:** Available finding 51 concerns the effect of the disciplinary process on the decisions to commence disciplinary proceedings against Rev Brown and Rev Kitchingman. The process is characterised in Submissions as cumbersome, legalistic and expensive. It should be noted that the suggested finding states that nature of the disciplinary process ‘*contributed to*’ the reluctance and impliedly was not the only reason for the reluctance to proceed against those two clerics. The characterisation of the disciplinary process as ‘*cumbersome, legalistic and expensive*’ was one which Mr Gerber had adopted for the disciplinary process prior to the commencement of the professional standards ordinances which followed the model ordinance in about 2005 to 2006.² Archbishop Herft said that the process was ‘*rarely, if ever used*’ in 2002, when he was aware of Rev Kitchingman’s conviction.³ He was also unsure of the powers available to him.⁴ Mr Gerber said that the new procedures existed in parallel with the old tribunal processes.⁵
17. The Primate was asked about how he would characterise the *current* disciplinary process. Concerning the current system for deposing a cleric from Holy Orders, Dr Philip Aspinall described the current processes that are available through the professional standards boards and church tribunals as ‘*expensive*’, ‘*reasonably complex*’ and, impliedly, ‘*archaic*’.⁶
18. The deposing of Rev Kitchingman from Holy Orders, while an important step and one which should attract procedural fairness, should be reasonable and straightforward where there has been a criminal conviction for conduct which is a clear and sustainable basis for deposition. The Primate described a process which was complex, legalistic and involved representation on both sides by counsel. It is on that basis that the characterisation was made.
19. Available finding 51 should be made.
20. **[28] – [33] adoption of safe ministry policy:** The evidence before the Royal Commission suggests that there was no internally agreed approach on the management of persons of

² Exhibit 3-1, Statement of Gerber [22]

³ T2414-32-44

⁴ T2415.8-20

⁵ Exhibit 3-1, Statement of Gerber [23]

⁶Aspinall, T2452:13-41.

concern within the Diocese. Firstly, the oral testimony of Michael Elliott cited by the Diocese in support of this proposition (at paragraphs [30] and [31]) is qualified, as follows: *'We have safe ministry policies and Professional Standards Ordinances and the like, but as far as a document specifically relating to management of persons of concern, this is the first one that has been implemented'*.⁷

21. Secondly, there are several examples in the evidence of divergent approaches to parish safety within the Diocese, including as between Mr Elliott and the Diocesan Council. For example, on 15 March 2012, Michael Elliott circulated to all clergy in the Diocese the parish safety guidelines produced in 2009 by the Anglican Church of Australia's Professional Standards Commission on managing persons of concern. In his covering letter, Mr Elliott described these as a *'clear set of guidelines'* with which *'all clergy should be familiar'*.⁸ Over a year later, Mr Elliott was advised by Bishop Peter Stuart that the Diocesan Council regarded the Professional Standards Commission's policy as *'too harsh'*, and that it required re-drafting.⁹ The resulting parish safety policy implemented in September 2013 and revised in November 2013 is objectively much shorter and less stringent than the guidelines produced by the Professional Standards Commission. The different views of the Professional Standards Director, and the sub-committee appointed to draft the parish safety policy, which did not consult Mr Elliott, suggests that there was in fact no uniform or existing policy in place for the management of persons of concern.
22. It is clear that the guidelines were informal and in a state of flux until adopted in 2013. Available finding 55 should be made.

Submissions in Reply of Archbishop Phillip Aspinall, Martin Drevikovskiy and Rodney McLary

23. **[11] National Register and [38] – [40] red flag system:** the evidence revealed that the National Register is in a state of flux. The General Secretary indicated that a new register was in the process of being established to replace the current register. The submissions reveal a draft amendment to the National Register Canon. As foreshadowed during the hearing the Royal Commission welcomes an ongoing dialogue with the General Synod of the Anglican Church of Australia about the National Register. Recommendation 5 proposes only that *consideration be given* to a red flag system given such a proposal has support from a number of professional

⁷Elliott, T2358:27-32.

⁸ Exhibit 3-1, Elliott [52] [STAT.0062.001.0015]; Exhibit 3-2, Tab 137A [ANG.0012.001.0146]

⁹ Exhibit 3-1, Elliott [69] [STAT.0062.001.0020]

standards directors. The term “red flag” is deliberately undefined so as not to impose a particular model on the General Synod.

24. **[41]: adoption of an audit process:** Section 15 of the National Register Canon concerns annual reporting and an audit of compliance with the Canon and protocols. Such a process is *ipso facto* constrained by its governing documents. An audit would, accordingly, not allow for a more widespread review of the National Register which identified structural impediments to its effective operation.
25. The evidence was clear that the current approach is cumbersome and in many cases unworkable. Many professional standards directors said as much. Paragraph **[57]** is a good example of the difficulties experienced with the National Register. As part of the establishment of the new system there is a clear need to adopt a process which is transparent, easy to use and effective. Exploration of a red flag system is one option that should be considered.
26. **[20]-[21] Responsibility for children at the North Coast Children’s Home:** the available finding is simply a statement of fact. The word “responsibility” should be given its ordinary English meaning and is not qualified by the adjective “legal”. In the evidence the Primate expressed his opinion that the Diocese of Grafton had a ‘*continuing pastoral obligation*’ to Mr Campion: see Counsel Assisting submissions [254]. The Royal Commission is not the forum for the determination of legal responsibility and, indeed, such an issue may, after *Ellis v Roman Catholic Church* [2007] NSWCA 117, need to be determined in the High Court. Most members of the public would readily accept that the Grafton Diocese of the Anglican Church had “responsibility” for the children in the home because of the presence of the Home on land owned by the Diocese of Grafton of the Anglican Church, and whose governing body was headed by the local Rector, whose majority of committee members were required to be from the Anglican Church, whose clerics ministered in the home and had free and unfettered access to the Home. Whether that responsibility was purely moral or something more need not be determined to make the finding.
27. The approach of the Primate on the issue of responsibility for children in the Home differs markedly from that of Archdeacon Ezzy who accepts responsibility: see below.
28. **[21]:** the reference to the ‘*Church*’ should be to the Diocese of Grafton.
29. **[26]:** the fourth sentence relates to the meeting Mr Campion had with Grant Blake SC.

30. **[27]: the meeting between the Primate and Bishop Keith Slater to discuss Anne Hywood's report:** Notwithstanding the inability of the Primate to dismiss the Bishop and the precise language in which the Primate expressed himself, it is clear that the Primate was pressing for the Bishop's resignation.
31. **[29]-[33]: sufficiency of assets to settle the claims of child sexual abuse:** There is no doubt that many of the assets of the Diocese of Grafton were held in trust for the Diocese. However, the evidence established that the Diocese was able to liquidate a substantial number of assets in order to service the debt incurred from the Clarence Valley Anglican School. That evidence is referred to at [291] of submissions and the sales summarised at Ex 3-2 Tab 125E. The primary point is made at [291] to [298]: the Diocese made efforts to liquidate assets for the Clarence Valley Anglican School debt but did not do so for those claiming they had suffered from child sexual abuse. Indeed, as is set out at [298], the Diocese simply said there was no or insufficient funds for such claims.
32. **[35]-[37], and Part G: jurisdiction to commence disciplinary proceedings:** the Model Professional Standards Ordinance does not provide guidance on which diocese *must* take disciplinary action, where multiple dioceses *may* commence disciplinary action. The current Ordinance allows for resolution of a conflict between dioceses but does not impose an obligation upon a particular diocese to act. The result is that if neither diocese actively pursues a disciplinary matter then it is not patent which diocese may be held accountable. That is what occurred between the dioceses of Grafton and Newcastle with respect to Rev Kitchingman. A preferable model would be one which imposes an obligation on one diocese but provides a process for that responsibility to be shifted as appropriate.
33. **[43]: use of experienced mediators:** In his dealings with Mr Campion the Primate put forward the use of a professional mediator to assist in resolving the dispute between Mr Campion and the Diocese of Grafton. The comment made about the use of mediators concerns the pastoral care and assistance scheme and it is not intended to apply to the strictly disciplinary part of the process. The term "professional standards matters" is ambiguous but, unfortunately it is the term adopted by dioceses of the Anglican Church to describe both processes.
34. **[50]: escape from effective discipline through retirement or relinquishment of licence:** The conclusion was made in the context of the hearing and is based on the way in which the disciplining of Reverends Kitchingman, Morgan and Brown was handled. To a large extent that was due to action within the dioceses of Grafton and Newcastle. Nonetheless both were

operating under a model which has been adopted across the many dioceses of the Anglican Church. Whether that has or will occur in other dioceses is not something that this public hearing considered. The evidence revealed that it is the case as regards those three clerics that they were able to avoid a disciplinary process by retirement or relinquishment of licence until these public hearings.

35. In relation to Attachment 3, as summarised in paragraphs [57] to [59], Counsel Assisting notes that this material is new evidence to be tendered today.
36. **[57]: the propositions that relate to Michael Elliott:** These propositions should be rejected. Mr Elliott's initial difficulty in making a notification to the National Register in relation to Rev Kitchingman (due to, it is speculated, *'probably a deficiency in the information'* he provided), is not *'inconsistent with the tenor of [Michael Elliott's] evidence'* about technical problems with the National Register. Mr Elliott's evidence revealed numerous technical and policy reasons for why it is difficult to make a notification to the National Register, including system freezes¹⁰, complex layers of password requirements¹¹, and the automatic notification to alleged perpetrators of the register entry¹². Mr Elliott's concerns have also been voiced by other professional standards directors.¹³ Further, if the problem is the alleged (and unproven) *'lack of application and limited resources'* then that points to a further and ongoing systemic problem in need of remediation.
37. **[52]: cumbersome and legalistic nature of the disciplinary process:** the submissions above are repeated.

Submissions in Reply of Bishop Keith Slater

38. **[11] and [12] Care and Assistance Package:** Pat Comben provided Mr Campion with a copy of the Sydney Care and Assistance Package in his letter of 2 October 2005¹⁴. The letter describes the package as *"available to victims of child abuse or sexual misconduct by a church worker"*.¹⁵ The letter suggests that all victims have access to the Package, and was not provided to Mr Campion in a way that suggested it was an exclusive offer. The Care and

¹⁰ Elliott T2377:36-47-T2378:1-14

¹¹ Elliott T2362:41-45

¹² Elliott T2360:36-T2361:7

¹³ Elliott T2361:9-47; Exhibit 3-1 ME19 [STAT.0062.001.0093], ME52 [STAT.0066.001.0001]; Exhibit 3-1 Drevikovskiy (25 November 2013) [16] [STAT.0076.002.0005]

¹⁴ Campion T1658:22-30; Exhibit 3-1, Annexure RC4 [STAT.0057.001.0042]

¹⁵ Exhibit 3-1, Annexure RC4 [STAT.0057.001.0042]

Assistance Package was considered twice by Bishop-in-Council and adopted on the second occasion in November 2005 as a policy of the Diocese of Grafton: see Counsel Assisting Submissions [101].

39. Further, the Package was later discussed at a meeting in July 2007 between Mr Campion, CA, Bishop Slater and Jenni Woodhouse.¹⁶ Upon Mr Campion's request, Ms Woodhouse subsequently provided Mr Campion with a further copy of the Care and Assistance Package.¹⁷ Bishop Slater also discussed the Care Package in letters of 14 August 2007 to both Mr Campion and CA. Further, Bishop Slater's file note dated 4 July 2007 entitled '*NCCH Thoughts*' refers to Mr Campion's discussions with other claimants who Mr Campion had reassured would '*receive a generous response from the church*'.¹⁸
40. Mr Campion and his sister, CA, were both 'claimants', and the process of negotiations between the Diocese and the claimants, which is set out in detail in Counsel Assisting's submissions, clearly show that the processes and settlement figures established under that package were not adhered to by the Diocese. Accordingly, there is evidence that a representation was made to 'claimants'.
41. **[13] – [18]: whether letter of 14 August 2007 sent with hostile intent:** The majority of Bishop Slater's submissions deal with the question of whether his letters to Mr Campion and CA of 14 August 2007¹⁹ were hostile. The context in which the letters were written is important in considering this issue. In particular, the letters were written by a Bishop to two victims of serious child sexual abuse. In the letter he told them that claiming financial assistance in accordance with the Care Package would be a '*betrayal*' and would '*actually impinge upon your integrity*'. By saying this to the two victims, Bishop Slater was perceived by Mr Campion and CA as accusing them of some of the very moral degeneracy that they had experienced in the North Coast Children's Home. Mr Campion described the letter as '*despicable*' and '*a shocking thing to say*'.²⁰ CA expressed a similar reaction.²¹ Objectively the letters were hostile, and that the hostility was in response to Mr Campion's claim for a financial payment in line with the Care and Assistance Package.

¹⁶ Exhibit 3-1, Woodhouse [46] [STAT.0067.001.0013]

¹⁷ Exhibit 3-1, Woodhouse [46] [STAT.0067.001.0013]

¹⁸ Exhibit 3-2, Tab 82 [ANG.9320.01103.0542_R]

¹⁹ Exhibit 3-1, Annexure RC46 [STAT.0057.001.0170]; Exhibit 3-1, Annexure CA12 [STAT.0059.001.0046]

²⁰ Exhibit 3-1 Campion [89]

²¹ Exhibit 3-1 CA, Annexure CA16 [STAT.0059.001.0052_R]; Exhibit 3-2, Tab 96 [ANG.9310.01001.0826_R]

42. Counsel Assisting notes that the conclusion that Bishop Slater was *'negligent, inappropriate and careless'*, as suggested in his submission at paragraph [18], is also a conclusion that would be open to the Royal Commission. It is not asserted that Bishop Slater was deliberately hostile to Mr Campion although objectively there was hostility.
43. Available finding 23 refers to the letter as having the date 14 August 2008. It should read 14 August 2007.
44. **[19] – [20] conflict of interest:** Bishop Slater submits that there was not sufficient evidence before the Royal Commission for Available Finding 23 to be made. Bishop Slater agreed that his letters of 14 August 2007 confused the interests of the complainants, the Bishop, the financial interests of the Diocese and the interests of other members of the group claim.²² Whether he was consciously aware of the conflicts at the time is a moot point. Objectively the conflicts existed and the Bishop should have recognised them.
45. **[22]: conditions and restrictions on meeting with Grant Blake SC:** Bishop Slater seeks to clarify that he was acting under advice when he negotiated the *'conditions'* and *'restrictions'* around his 14 August 2012 meeting with Mr Campion and Garth Blake SC. Mr Blake SC was instructed by the Diocese of Grafton. Whether or not he imposed the conditions and restrictions the point is that they were imposed, unfairly, on Mr Campion who was not legally represented and did not understand significant parts of what he was told.
46. The further admissions of remorse and contrition in Bishop Slater's submissions should be accepted: see [9] to [11], and [27].

Submissions in Reply of Archdeacon Greg Ezzy

47. **Factual matters:** the clarifications in paragraphs [2], [3], [9], [15] and [16] of Archdeacon Ezzy's submissions should be accepted save for the spelling of Anne Hywood's name.
48. **[4]: access of clergy to the Home:** the evidence was not that clergy accessed the home *'in respect of their pastoral ministry'*. The evidence is that clergy had access for different reasons, some to do with ministry but also for other reasons.

²² Slater T2289:23-40

49. Counsel Assisting rejects the proposed amendments in paragraphs [4] and [8], and accepts the proposed amendments in paragraphs [6] and [7].
50. **[5]: access of clergy after 1985:** Archdeacon Ezzy's submissions suggest that there should be a statement after paragraph [65] of Counsel Assisting's written submissions clarifying that from 1985 onwards, clergy had no involvement in the operations of the NCCH. The basis for this is asserted as being the experience of Archdeacon Ezzy. While not a contentious proposition, there is no evidence before the Commission to support this clarification.
51. **[6]: characterization of control of the Home:** the suggested amendment, while not opposed, does not specifically mention the Anglican Church or its predecessor, the Church of England.
52. **[7]: responsibility for the Home:** Archdeacon Ezzy's proposed finding 2A is also not opposed. The approach adopted differs with that of the Primate who is apparently wary of the Diocese accepting responsibility for children who were resident at the Home.
53. **[8] and [9]:** not opposed.
54. **[10]: Rev Morgan:** the Royal Commission successfully served Rev Morgan with documents prior to the commencement of the public hearing.
55. **[12]:** evidence was provided by Mr Newby to that effect.
56. **[14]:** evidence was provided by Mr Newby to that effect. He stated that he established the Independent Oversight Committee. According to Mr Newby the Committee produced a draft financial strategy which was put to Synod in October 2010.²³
57. **[17]: adoption by the Diocese of a detailed care and assistance package:** the evidence available is that a summary document setting out the care and assistance package was adopted in October 2013. It is not a detailed document. The recommendation is intended to encourage the development of a detailed care and assistance package with the same level of detail as the Sydney Care and Assistance package. Archdeacon Ezzy's evidence before the Commission was that the Diocese was '*revising the original [2005 Sydney care and assistance package]*'²⁴ and that he '*thought*' it was passed at Bishop-in-Council in October 2013.²⁵

²³ Exhibit 3-1, Newby[14] [STAT.0058.001.0004_R]

²⁴ Exhibit 3-1, Ezzy T2341: 1-12

²⁵ Exhibit 3-1, Ezzy T2341: 1-12

58. **Further suggested findings:** the issues raised about *'independent and experienced lawyers'* are noted but the issue was not extensively canvassed in the public hearing. The issue concerns the quality of legal advice but also whether that advice should be adopted where there are stronger indication of moral responsibility. The comments should be noted.

Submissions in Reply of Philip Gerber

59. Counsel Assisting accepts the proposed amendment in paragraph [2] of Philip Gerber's submissions. At the hearing, evidence was provided to the Royal Commission that Philip Gerber ceased providing professional standards director duties for Newcastle and Grafton towards the end of 2007.²⁶

Simeon Beckett

Counsel Assisting the Royal Commission

24 January 2014

²⁶ Gerber T1947:46-T1948:3