

EPISCOPAL STANDARDS BOARD OF THE ANGLICAN CHURCH OF AUSTRALIA

Matter: Episcopal Standards Commission referral concerning Roger Herft

Hearing Date: 21 September 2021

Decision Date: 8 December 2021

Tribunal Members: Mr Peter Dunning QC, Deputy President
The Rt Rev'd Dr Ian Coutts
The Rt Rev'd William Ray
Mrs Vivien Bleby
Ms Michelle England

Decision: The determination of the Board pursuant to s 49 of the
Episcopal Standards Canon 2017 is as follows:

- (a) pursuant to s 49(d) of the *2017 Canon*, the Board is satisfied that Bishop Roger Herft is unfit to remain in Holy Orders;
- (b) pursuant to s 49(m) of the *2017 Canon*, the Board determines that Bishop Roger Herft be deposed from the exercise of Holy Orders.

Parties: The Episcopal Standards Commission (Applicant)
Roger Herft (Respondent)

Representation: The Episcopal Standards Commission (Applicant)
represented by Carol Webster SC of Counsel instructed by
the Director of Episcopal Standards
Roger Herft (Respondent) not represented or attending

TABLE OF CONTENTS

	Paragraphs	Page Number
Part 1 – Introduction		
Referral from the Episcopal Standards Commission	1-5	1
The Board’s power to have regard to Royal Commission material and findings.....	6-7	2
Summary of the nature of the allegations: two categories of questions posed.....	8-14	2
Factual questions re respondent’s alleged actions / inactions as Bishop...	15-21	4
Evidence on which the ESC relies.....	22-28	6
Date of hearing, representation and appearances.....	29-38	7
Part 2 - Relevant Canonical provisions		
Constitution and appointment of the Board.....	39-45	9
Tribunals.....	46-47	10
Episcopal Standards Board.....	48-53	10
Adoption of relevant Canons by Diocese of Newcastle.....	54-55	12
Canonical basis for referral.....	56-61	12
Diocesan Professional Standards Ordinances.....	62-69	14
Nature of jurisdiction of the Board: present fitness not disciplinary.....	70	15
Unfitness and its consequences.....	71-91	16
Powers of ESB pursuant to s. 49.....	92-93	22
Procedural fairness.....	94-95	23

	Paragraphs	Page Number
Part 3 - Outline of allegations of which Mr Herft was said to be aware		
How the allegations were presented.....	96-98	23
Allegations in relation to Rushton.....	99	23
- <i>Pornography Incident in 1998 – Q 1 & 2</i>		24
- <i>Allegations of child sexual abuse, October 2002 – Q 3 & 4</i>		
- <i>Multiple allegations of child sexual abuse, made February 2003 – Q 5 & 6</i>		25
Allegations in relation to Parker.....	100	27
- <i>Sexual assault of two altar boys 1970 – 1975, made 17/5/96 – Q 7 & 8</i>		27
- <i>Sexual abuse of two boys, made on 12/1/99 – Q9 & 10</i>		29
Allegations re Yellow Envelopes System.....	101	30
<i>Oct 2001 – late 2004: 30 complaints in relation to sexual abuse received by CASM. Respondent informed of 24 child sexual abuse matters; police not notified of 17 matters & no disciplinary proceedings initiated – Q 11 & 12</i>		30
Allegations re Dean Graeme Lawrence.....	102	32
- <i>Allegations of sexual abuse of two boys, made in 1995 – Q 13 & 14</i>		32
- <i>Allegations of sexual abuse of young boys, made in 1996 – Q 15 & 16</i>		33
- <i>Allegation of child sexual abuse in Griffith, made in 1999 – Q 17 & 18</i>	103	33
Part 4 - Consideration		
Factual findings in relation to allegations.....	104-115	36
Disposition of the reference: relevant factors.....	116	37
<i>On a general note.....</i>	117-118	37
<i>On a specific note.....</i>	119-128	38
Determination as to specific questions posed: Q 1 – 18.....	129-130	39
Part 5 - Determination pursuant to s. 49 of the <i>Episcopal Standards Canon 2017</i>		
The Determination of the Board - 8 December 2021	131	40

	Page Number
ANNEXURE 1	
Report of the Episcopal Standards Commission to the Episcopal Standards Board Concerning the Right Reverend Roger Herft	
- <i>First Report – 18 March 2020</i>	41
- <i>Supplementary Report – 3 May 2021</i>	69
 ANNEXURE 2	
Episcopal Standards Commission Report	
Questions for determination and answers.....	88
 ANNEXURE 3	
Admissions by Bishop Herft to the Royal Commission into Institutional Responses to Child Sexual Abuse – Case Study 42	
- <i>Episcopal Standards Commission, First report Appendix 8</i>	96
- <i>Episcopal Standards Commission, Supplementary Report Appendix 13.</i>	100

ANGLICAN CHURCH OF AUSTRALIA
EPISCOPAL STANDARDS BOARD
DETERMINATION IN RELATION TO
EPISCOPAL STANDARDS COMMISSION'S
REFERRAL CONCERNING ROGER HERFT

PART 1 - Introduction

Referral from the Episcopal Standards Commission

1. The Episcopal Standards Board (**the Board**) received a reference from the Episcopal Standards Commission (**the ESC**) in the form of the ESC Report dated 8 March 2020 (**First ESC Report**). The First ESC Report followed an investigation undertaken by the ESC after referral from the Right Rev Dr Peter Stuart, Bishop of Newcastle, by letter dated 7 June 2018.¹
2. The referral from the Diocese of Newcastle to the ESC, and the ESC's subsequent investigation and reference to the Board, raised issues in relation to the conduct of the respondent Roger Herft, the former Bishop of Newcastle, while he was Bishop of the Diocese of Newcastle between 1993 and 2005. The respondent has asked the Board to use the title "Mr" rather than "Bishop", and accordingly he will be referred to in this determination either as the respondent or as Mr Herft. The materials referred to the Board arose from the public hearings in Case Study 42 of the Royal Commission into Institutional Responses to Child Sexual Abuse (**the Royal Commission**) and the Royal Commission's Report on Case Study No 42 of November 2017 (**the RC Report**).²
3. When it was originally published, the RC Report contained various redactions. On 20 October 2020, an unredacted version of the RC Report was released. The unredacted version was not available to the ESC in its investigation.

¹ Report Appendix 2, TB 48; and Appendix 3 TB 49-910. "TB" references in this Determination are to the ESC's hearing Tender Bundle.

² TB 51 ff.

4. On 4 May 2021, the Board received a further report from the ESC (**Supplementary ESC Report**). The Supplementary ESC Report concerned information that had become available when the unredacted version of the RC Report was released on 20 October 2020. That further information concerned the respondent's alleged failure between 1995 and 1999 to comply with the requirements of the legal and professional conduct framework which applied to the conduct of the then-Dean of the Diocese of Newcastle, Dean Graeme Lawrence.
5. Together, the First ESC Report and the Supplementary ESC Report are referred to in this Determination as "the Report". The Report, without its appendices, is Annexure 1 to this Determination.

The Board's power to have regard to Royal Commission material and findings

6. The Report, and to an extent, but not exclusively, this Determination, rely upon findings made by the Royal Commission in the RC Report. The Board is authorised to inform itself from the record of any court or tribunal and adopt any findings, and accept as its own, the record of a court or tribunal pursuant to s 29(5) of the *Episcopal Standards (Child Protection) Canon 2017* (**2017 Canon**).
7. As the Board noted at [49] in its preliminary Determination³, although in ordinary usage a Royal Commission may not fall within the terms "court or tribunal" (which are not defined in the *2017 Canon*), the Board "may inform itself on any matter in such manner as it thinks fit" under s 29(3). This permits the Board to inform itself from the Royal Commission material relied upon by the ESC in the Report. The reasons for this are set out more fully in the body of this Determination.

Summary of the nature of the allegations: two categories of questions posed

8. The questions posed for the determination of the Board, and the Board's answers, are set out as Annexure 2 to this Determination.

³ The preliminary Determination concerned the application of the open justice principle to the hearing.

9. The first category of questions for consideration is the 12 initial questions referred to the Board, set out at TB pages 22 to 27. Those questions relate to conduct of the respondent identified in Section 3 of the First ESC Report regarding:
 - (a) Father Rushton with respect to three periods: 1998, 2002, and 2003 – Section 3.2, Questions 1, 3 and 5⁴;
 - (b) Father Parker and allegations made by CKA and CKB and the reporting of child abuse to police, with particular reference to the allegations made by the complaints received from CKA in 1996 and then again in 1999 – Section 3.3, Questions 7 and 9⁵; and
 - (c) a number of reports of alleged child sexual abuse contained in the Yellow Envelope System – Section 3.4, Question 11.⁶
10. Each of the factual questions numbered 1, 3, 5, 7, 9 and 11 is paired with a question, if the Board answers the factual question affirmatively, asking whether the respondent failed to fulfil his obligations in relation to reporting child sexual abuse, under the legislative and procedural framework set out in Section 2 of the Report.⁷
11. The second category of questions for consideration is the six further questions referred to the Board in the Supplementary Report.⁸
12. Questions 13 to 18 relate to the conduct of the respondent in relation to Dean Lawrence identified at Section 3 of the Supplementary Report concerning three disclosures said to have been made to the respondent whilst he was Bishop of Newcastle:
 - (a) disclosure made by Mr Robert Wall in 1995 – Section 3.6.3⁹;
 - (b) disclosure made by Reverend Brian Kelly to Archbishop Harry Goodhew and by the Archbishop to the respondent in around 1996 – Section 3.6.4¹⁰; and
 - (c) disclosures made in 1999 by Bishop Brian Clark of the Diocese of Riverina –Section 3.6.5.¹¹

⁴ TB 12.

⁵ TB 15 ff.

⁶ TB 17 ff.

⁷ TB 5 ff.

⁸ Set out at TB 1798 – 1800.

⁹ TB 1790ff.

¹⁰ TB 1792 ff.

¹¹ TB1794 ff.

13. The ESC relied as well on the Royal Commission's finding that the allegations made against Dean Lawrence were treated differently to other matters the subject of the Yellow Envelopes.¹²
14. The respondent expressly accepted he was made aware on three separate occasions of allegations that Dean Lawrence had sexually abused children: Available Finding 43, which was accepted in the submissions for Mr Herft dated 10 February 2017 (**RH Submissions**) at paragraph 47.¹³

Factual questions re respondent's alleged actions / inactions as Bishop

15. The narrative description of the matters relied on in each part of Section 3 of the Report identifies the specific evidence from the RC Report on which the ESC relies.
16. The Royal Commission received submissions including, relevantly:
 - (a) Submissions of Counsel Assisting the Royal Commission, dated 22 December 2016 (**CA Submissions**)¹⁴; and
 - (b) RH Submissions.¹⁵
17. In Schedule 2 to its submissions, the ESC annotated Appendix 8 to the First ESC Report¹⁶, which identified particular admissions made by the respondent in the course of his evidence to the Royal Commission (annotated with TB references), and the relevant head of examinable conduct as defined in the *2017 Canon* referable to those admissions. The ESC also provided Appendix 13 to the Supplementary ESC Report¹⁷ which identified supplementary admissions by the respondent following the release of the unredacted version of the RC Report on 20 October 2020. The admissions of the respondent in the course of giving evidence to the Royal Commission are set out as Annexure 3 to this Determination.

¹² App 14 Finding No 21, TB 1810-1811 and section 3.6.6, TB 1796 ff.

¹³ TB 1651; unredacted Report at p 184, TB 1840; App 14 Finding No 18, TB 1810. The Board notes that it has considered the respondent's submissions to the Royal Commission in a redacted form only, due to non-publication orders made by the Royal Commission in relation to the redacted material.

¹⁴ SUBM.0042.002.0001; Item 4-4, TB 1356 – 1631.

¹⁵ SUBM.1042.018.0001_R; Item 4-5 TB 1632 – 1677.

¹⁶ TB 911-914. For ease of reference, errors in the numbering of the admissions identified in Appendix 8 have been maintained, such that numbers 8, 14 and 15 are not used, and the second number 12 appears as 12.1.

¹⁷ TB 1803 - 1809

18. In Schedule 3 to its submissions, the ESC annotated Appendix 9 to the First ESC Report¹⁸, which identified the questions, the relevant section of the First ESC Report and the findings relied upon as set out in Appendix 9. Appendix 9 included page references for the RC Report, supplemented by TB references and cross-referenced in respect of each finding to the relevant paragraph of the submissions of Counsel Assisting (including proposed available findings identified in the CA submissions) and to RH Submissions.
19. In Schedule 3, the ESC also drew attention to the matters upon which it relied from the RC Report. Notwithstanding the respondent's concern, expressed by letter dated 9 July 2020 that the ESC had failed to reference any of his responsive submissions to the Royal Commission¹⁹, the Board notes that in Schedule 3 the ESC included a summary of both:
- (a) the submissions made by Counsel Assisting; and
 - (b) RH Submissions, including:
 - i) the extent to which the respondent disagreed with the accuracy or fairness of a submission;
 - ii) the additional evidence or context that the respondent submitted the Royal Commission should take into account before reaching a conclusion about a fact or matter or a proposed finding;
 - iii) those findings proposed by Counsel Assisting that the respondent accepted; and
 - iv) those proposed findings with which the respondent disagreed or otherwise disputed and the reasons why.²⁰
20. The Board notes that only some of the matters on which the ESC relied in this reference were matters concerning which the respondent had contested findings proposed by Counsel Assisting the Royal Commission, as ultimately found by the Royal Commission.

¹⁸ TB 915-916.

¹⁹ TB 1760.

²⁰ See TB 1633.

21. Where there was such a dispute, and either Counsel Assisting the Royal Commission or the respondent in their submissions to the Royal Commission had identified particular documents as relevant, those documents were sought from the Diocese of Newcastle and provided to the ESC and ultimately to the Board.²¹ Schedule 3 to Counsel Assisting’s submissions specifically highlighted those documents, in relation to various proposed findings.

Evidence on which the ESC relies

22. The First ESC Report and the Supplementary ESC Report rely upon findings made by the Royal Commission in the RC Report and the unredacted Report.
23. The conduct the subject of the Supplementary ESC Report is of the same kind as that the subject of the First ESC Report: that is, further alleged failures of the respondent to act in response to allegations of child sexual abuse.
24. In the case of the Supplementary ESC report however, the alleged failure of the respondent concerned allegations made to him on three separate occasions over a number of years regarding the Dean of the Diocese. The respondent gave sworn evidence that he spoke to the Dean about the allegations made on each of the three occasions. His evidence was that he accepted the Dean’s denials.²²
25. The Chair of the Royal Commission put to the respondent “an allegation ... that one of the most senior priests in your Diocese has sexually abused at least one child. That is an extremely serious allegation”, “as serious as any allegation might be in relation to someone who was your responsibility, being in your Diocese” and the respondent agreed.²³
26. The ESC submits, and the Board agrees, that it is appropriate to endorse the Royal Commission’s finding²⁴ that the respondent mishandled the allegations of child sexual abuse made against two of the most senior and domineering priests in the Diocese – the Dean of the Cathedral, Mr Lawrence (the subject of the Supplementary Report), and the one-time Archdeacon of Maitland, Father Rushton (the subject of Questions 1, 3 and 5 in the First ESC Report).²⁵

²¹ Identified in Part 5 of the TB index.

²² See App 13 Admission 28, TB 1806, referring to the evidence at TB 711.20-711.32.

²³ App 13 Admission Nos 20 and 23, TB 1804 - 1805, referring to the evidence at TB 703.4 – 703.8 and TB 708.19-708.27)

²⁴ App 14 Finding No 24, TB 1811.

²⁵ Section 3.2, TB 12ff.

27. The Board had before it the relevant submissions that were made to and considered by the Royal Commission in Case Study 42 (although as indicated above the copy of the respondent's submissions provided to the Board was redacted, in keeping with Royal Commission non-publication orders).
28. The Submissions of Counsel Assisting the Royal Commission dated 22 December 2016 (**CA Submissions**)²⁶ and the Submissions of Mr Herft dated 10 February 2017 in their redacted form²⁷ were specifically annotated and cross referenced in Schedules 2 and 3 to the ESC's submissions to the Board, marking up Appendixes 8 and 9 to the First ESC Report.²⁸

Date of hearing, representation and appearances

29. The hearing of the ESC's referral concerning the respondent was conducted by the Board on 21 September 2021.
30. Ms Carol Webster SC appeared for the ESC. The respondent did not appear at the hearing, by Counsel or otherwise.
31. For the sake of completeness, the Board records the following communications from the respondent.
32. In correspondence to the ESC in the course of its investigation, the respondent referred to RH Submissions.²⁹ He stated in that letter:

The "facts" or submissions proposed by the ESC in its [draft statement of facts enclosed with the letter dated 22 July 2019] include very serious allegations that far exceed the findings of the Royal Commission.

The same correspondence otherwise expressed an opinion that the respondent would not be provided with a procedurally fair or unbiased hearing once the matter was referred to the Board.

²⁶ Item 4-4, TB 1356-1631.

²⁷ Item 4-5, TB 1632-1677.

²⁸ See October Submissions of Ms Carol Webster SC, Counsel for the ESC, at [21] and [22] – [24].

²⁹ Respondent's letter dated 21 October 2019, para (d), part of Report App 12, TB 1011.

33. The respondent later drew attention to non-publication orders made by the Royal Commission, in response to a request for an unredacted copy of his submissions to the Royal Commission.³⁰
34. By letter dated 9 July 2020, the respondent informed the Secretary to the Board that he would not participate in the directions hearing of the Board to be held on 14 July 2020.³¹ The respondent expressed concern that the ESC had failed to reference any of his submissions to the Royal Commission and had reached conclusions in its report far exceeding and inconsistent with the findings of the Royal Commission, which he considered did not present a balanced view of the evidence and findings made. Furthermore, the respondent said that he apprehended that he would not receive an impartial and fair hearing from the Board.
35. The Secretary to the Board answered, in a letter to the respondent dated 10 August 2020³² noting that the Commission had unsuccessfully sought unredacted copies of submissions made to the Royal Commission.³³
36. Correspondence with the respondent during the ESC's investigation into the further information arising from the release of the Royal Commission's unredacted Report forms Appendix 20 to the Supplementary ESC Report.³⁴
37. Further correspondence with the respondent in relation to the Supplementary Report was included in Part 8 of the Tender Bundle. Part 8 and the Supplementary Tender Bundle Index were provided together with the submissions of Counsel Assisting.

³⁰ Respondent's letter dated 17 December 2019, TB 1014 – 1015, responding to a letter from the Commission dated 27 November 2019, TB 1012 – 1013).

³¹ TB 1760.

³² TB 1768.

³³ See TB 1762 – 1767.

³⁴ TB 1997 – 2015.

38. Similar sentiments were repeated in the respondent's correspondence with the ESC in the course of the further investigation: a letter dated 25 February 2021³⁵ in response to a letter from the ESC dated 6 January 2021 forwarding a draft statement of facts in relation to the further allegations the subject of the Supplementary ESC Report³⁶ and a further letter dated 16 March 2021 seeking to correct apparent misunderstandings in his letter of 25 February 2021.³⁷

PART 2 - Relevant Canonical provisions

Constitution and appointment of the Board

39. The Board was constituted by Peter Dunning QC, Bishop William Ray, Bishop Ian Coutts, Mrs Vivien Bleby and Ms Michelle England.
40. The Board conducted the reference under the *2017 Canon*, and was constituted and appointed in accordance with Part 6 of the *Episcopal Standards Canon 2007 (2007 Canon)*. This is the first referral under either Canon to be determined by the Board.
41. Both the consecration and the deposition of a bishop are matters of the utmost seriousness. The *Constitution of the Anglican Church of Australia (Constitution)* mandates that the National Church “preserve the three orders of bishops, priests and deacons in the sacred ministry” (s 3) and regulates “the Forms and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons”(s 4).
42. Section 4 of the *Constitution* provides that “this Church” “approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons and in the ...Thirty-nine Articles. However, s 4 also provides that this Church “has plenary authority” to order “rules of discipline”, provided that “all such statements, forms, rules or alterations or revision thereof are consistent with the Fundamental Declarations contained [in the Constitution] and are made as prescribed by this Constitution”.

³⁵ App 20.2 TB 2012- 2013.

³⁶ App 20.1, TB 1997-2000.

³⁷ App 20.3 TB 2014-2015.

43. The Fundamental Declarations include a declaration that:

This Church will ever obey the commands of Christ, teach his doctrine, administer His sacraments of Holy Baptism and Holy Communion, follow and uphold His discipline and preserve the three orders of bishops, priests and deacons in the sacred ministry.

44. Article XXVI of the Thirty-nine Articles states, in part:

Nevertheless, it appertaineth to the discipline of the Church, that inquiry be made of evil Ministers, and that they be accused by those that have knowledge of their offences; and finally being found guilty, by just judgement be deposed.

45. A bishop, once consecrated, remains a bishop even after retirement. Whilst the fact of retirement affects the jurisdiction of the Special Tribunal, it does not affect the jurisdiction of the Board under the *2017 Canon*.

Tribunals

46. Chapter IX of the *Constitution* provides for tribunals: a diocesan tribunal of each diocese, the Special Tribunal and the Appellate Tribunal. A provincial tribunal of any province is also contemplated.
47. The Special Tribunal has jurisdiction to hear and determine charges of breaches of faith, ritual, ceremonial or discipline and of such offences as may be specified by Canon, against any member of the House of Bishops and any bishop assistant to the Primate in his capacity as Primate: s 56(6) of the *Constitution*. A complaint may be made against a “Bishop” under s 17 of the *Special Tribunal Canon 2007*, defined in s 2 of the *Special Tribunal Canon 2007* as a bishop as referred to in s 56(6) of the *Constitution*. The respondent is no longer a Bishop as so defined: the Table annexed to the *Constitution* includes “a bishop” within the definition of “clergyman” when licensed by the bishop of the diocese.

Episcopal Standards Board

48. The Board is not mentioned in Chapter IX of the *Constitution*.
49. A “Bishop” is defined in s 2(1) of the *2017 Canon* as a bishop who is or was a member of the House of Bishops or an assistant to the Primate; separately (as is the case pursuant to s 2 of the *Special Tribunal Canon 2007*), “bishop: is defined to mean a person in bishop’s orders.

50. A valid reference under the *2017 Canon* must identify *examinable conduct* (as under a Diocesan Professional Standards Ordinance).³⁸ *Examinable conduct* is defined in s 2(1)(b) of the *2017 Canon*³⁹ in relation to a Bishop who was a member of the House of Bishops as:
- (a) any conduct or omission involving:
 - i) *child abuse* (as defined in the *National Register Canon 2007*)⁴⁰;
 - ii) conduct that impedes or undermines a professional standards process; or
 - iii) the failure without reasonable excuse to perform a function under a *professional standards process*⁴¹; and
 - iv) the failure without reasonable excuse to comply with laws of the Commonwealth, a State or Territory requiring the reporting of child abuse to the police or other authority;
 - (b) occurring while a member of the House of Bishops ... whether before or after the commencement of the canon; and
 - (c) the subject of *information* which, if established, might call into question the fitness of the Bishop to hold office, license or position of responsibility in the Church or to be or remain in Holy Orders, but excluding any breach of faith, ritual or ceremonial.
51. *Information* is defined as information of whatever nature and from whatever source relating to the alleged misconduct or omission of a Bishop wherever or whenever occurring.
52. The Board is satisfied that the questions referred fall within that definition.

³⁸ Cf the decision of the Appellate Tribunal in [Appeal of Keith Francis Slater](#) (19 January 2017) at [72].

³⁹ Set out at TB 19.

⁴⁰ SeeTB 19.

⁴¹ See the definition set out at TB 19.

53. *Child abuse* has the same meaning as in the *National Register Canon 2007*

Child abuse means:

(a) the following conduct in relation to a child:

- (i) bullying; or
- (ii) emotional abuse; or
- (iii) neglect; or
- (iv) physical abuse; or
- (v) sexual assault, sexual exploitation, sexual harassment or sexually inappropriate behaviour; or
- (vi) spiritual abuse; or
- (vii) grooming; or
- (viii) a child offence; or
- (ix) failure without reasonable excuse to report child abuse;

(b) the possession, production or distribution of child exploitation material;

Adoption of relevant Canons by Diocese of Newcastle

54. The *2007 Canon* and the *2017 Canon* are canons prescribed by the General Synod of the Anglican Church of Australia. Each of them applies to a diocese only in the event that the diocese adopts the Canon by ordinance of the synod of the diocese: s 69 of each of the *2007 Canon* and of the *2017 Canon*.
55. The Diocese of Newcastle has adopted the Canons, as recorded in the reference to the ESC.⁴² The respondent has not in any correspondence with the ESC or the Board contested that adoption.

Canonical basis for referral

56. It is noteworthy that the Board's determination on the questions referred is directed to a very different function than the scope and purpose of the Royal Commission hearings. However, the relevant factual inquiry in respect of the conduct of the respondent essentially coincide.

⁴² TB 48, Report Appendix 2, letter of 7 June 2018 from the Right Rev Dr Peter Stuart, Bishop of Newcastle.

57. The scope and purpose of the Royal Commission’s Case Study 42⁴³ was, relevantly, to inquire into:
1. The past and present systems, policies and practices in place within the Anglican Diocese of Newcastle for responding to instances and allegations of child sexual abuse.
 2. The experiences of survivors of child sexual abuse perpetrated by clergy and lay people involved in or associated with the Anglican Diocese of Newcastle.
 3. The response of the Anglican Diocese of Newcastle and associated institutions to allegations of child sexual abuse made against clergy and lay people associated with the Anglican Diocese of Newcastle, including Gregory Goyette, Andrew Duncan, Bruce Hoare, Graeme Sturt, Peter Rushton, Ian Barrack, James Michael Brown and another Anglican priest.
 4. The links between any institutional culture at St John’s College, Morpeth and the perpetration of child sexual abuse, including by any person listed in paragraph 3.
 5. Any related matters.
58. The conduct of the respondent was only one aspect of Case Study 42 and the RC Report.
59. By contrast, the purpose of the Board’s inquiry under the *2017 Canon* is into the respondent’s *present* fitness to hold office, noting that he remains in holy orders. The Board is not hearing any kind of disciplinary “charge”.
60. As discussed in the Appellate Tribunal decision in *Slater* in connection with diocesan Professional Standards Ordinances⁴⁴, professional standards questions are concerned with (the present) *fitness of clergy to hold office as such* rather than purely disciplinary matters which would be within the remit of the Special Tribunal, if the respondent was still a “Bishop” for the purposes of the *Special Tribunal Canon 2007*.
61. The ESC submitted, and the Board accepts, that a bishop in Holy Orders is held to a high standard of behaviour, consistent with the high expectations of the Church implicit in the consecration of bishops.

⁴³ <https://www.childabuseroyalcommission.gov.au/case-studies/case-study-42-anglican-diocese-newcastle>
 TB 61, noting redactions there appearing.

⁴⁴ See *Slater* at [5]-[6], noting that the ordinances had been recommended by resolution of the General Synod (Resolution 54/04).

Diocesan Professional Standards Ordinances

62. The Professional Standards Ordinances of various dioceses have been considered in the secular courts.
63. The Full Court of the Supreme Court of South Australia considered the Professional Standards Ordinance of the Diocese of The Murray in *Harrington v Coote*.⁴⁵ The Professional Standards Ordinance of the Diocese of Newcastle was considered in [*Sturt v the Right Rev Dr Brian Farran, Bishop of Newcastle*](#).⁴⁶ Challenges to the validity of each of those ordinances were rejected, as noted by the Appellate Tribunal at [8] of the decision in *Slater*.
64. It was recognised in *Harrington v Coote* that the subject matter of the inquiry authorised by the Professional Standards Ordinance was wide enough to include conduct which *might* have been the subject of a disciplinary charge against a priest brought in a diocesan tribunal as established under the *Constitution*. Nonetheless, in *Harrington v Coote* the Professional Standards Ordinance, *not* being concerned with the hearing of charges of offences or punishment, was held to be valid.
65. It may be noted that s 79(4) of the *Constitution* provides:

In this Constitution “discipline” means -

- (d) in Chapters II to VII and X to XII the obligation to adhere to, to observe and to carry out (as appropriate) -
 - (i) the faith, ritual and ceremonial of this Church; and
 - (ii) the other rules of this Church which impose on the members of the clergy obligations regarding the religious and moral life of this Church; and
- (e) in Chapter IX, as regards a person in Holy Orders licensed by the bishop of a diocese or resident in a diocese both -
 - (i) the obligations in the ordinal undertaken by that person; and
 - (ii) the ordinances in force in that diocese.

⁴⁵ (2013) 119 SASR 152; [2013] SASC FC 154

⁴⁶ [2012] NSWSC 400.

66. The obligation of the Professional Standards Board (and here, the obligation of the Board) is to consider present fitness to hold office having regard to all relevant facts and circumstances: see *Harrington v Coote* at [148] – [154] as cited in *Slater* at [12] – [14].
67. It may be noted that “disciplinary” proceedings in other contexts are seen as protective of the public, as well as of proper professional standards.
68. In *Slater*, the Appellate Tribunal noted at [14] the statements in *Harrington v Coote* as to the purpose of the Professional Standards Ordinance, being (per Kourakis CJ at [67], Peek J agreeing) to protect the standing of the church and welfare of parishioners by ensuring that all church workers are fit for the office they hold; and (per Gray J at [171]) processes “directed to ensuring pastoral protection for current and future members of the church from sexual harassment, exploitation, inappropriate gratification and related harms”.
69. The Appellate Tribunal further noted at [16] that in *Sturt*, Sackar J had rejected a submission that those parts of the Professional Standards Ordinance permitting the Professional Standards Committee to recommend various actions against a member of the clergy were inconsistent with the *Constitution* for seeking impermissibly to usurp the “disciplinary functions of the constitutionally recognised tribunals in Chapter IX of the Constitution”: see [166].

Nature of jurisdiction of the Board: present fitness not disciplinary

70. As identified in section 7 of the First ESC Report⁴⁷, if, after investigating the questions referred to it, the Board is satisfied of any of the matters in s 49(a) to (d) of the *2017 Canon*, namely that:
- (a) the bishop should be counselled;
 - (b) the bishop’s continuation in office should be subject to conditions or restrictions;
 - (c) the bishop is unfit, whether temporarily or permanently, to hold office; or
 - (d) the bishop is unfit to remain in Holy Orders;

⁴⁷ TB 27.

then the Board may determine accordingly and may give any of the directions or make any of the determinations stipulated in s 49(e) to (m), namely:

- (e) direct that the bishop be counselled;
- (f) direct that the bishop's holding of office shall be subject to such conditions or restrictions as the Board may specify;
- (g) direct that the bishop cease to carry out the duties and functions of his office from such time and for such period determined by the Board;
- (h) direct that the bishop resign from the office, within such time as is specified by the Board;
- (i) direct that the operation of a determination referred to in paragraphs (f) to (h) shall be suspended for such period and upon such conditions as the Board shall specify;
- (j) direct that the bishop relinquish Holy Orders within such time as is specified by the Board;
- (k) give such other direction as the Board sees fit;
- (l) determine that the Bishop be prohibited, either temporarily or permanently, from functioning as a bishop or as a bishop and priest; or
- (m) determine the Bishop be deposed from the exercise of Holy Orders.

Unfitness and its consequences

- 71. Counsel for the ESC referred the Board to numerous decisions of secular courts concerning the approach to determining fitness in the context of professional disciplinary matters. The argument was developed as follows.
- 72. Although the decision of the Appellate Tribunal in *Slater* made clear that the Board's determination concerns present fitness to hold office – not a matter of “discipline” such as would arise in a charge heard by the Special Tribunal – these decisions are nevertheless instructive.
- 73. The Board may be assisted by analogies drawn from the authorities concerning the discipline of lawyers and doctors. Those authorities discuss what amounts to “merely” unsatisfactory professional conduct, by way of contrast with “professional

misconduct”. For lawyers, both of these concepts are defined in the relevant statute, supplementing the common law definition of professional misconduct.⁴⁸

74. The quintessential test of what constitutes “professional misconduct” at common law, as regularly applied to lawyers, in fact related to a medical practitioner: *Allinson v General Council of Medical Education and Registration*.⁴⁹ In *New South Wales Bar Association v Cummins*⁵⁰ (**Cummins**) at [36]-[43], Spigelman CJ stated:

36 The origins of contemporary doctrine on these matters is to be found in the judgment of Lopes LJ in *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750 where his Lordship at 763 propounded what he described as a non-exhaustive definition of “infamous conduct in a professional respect” as follows:

“If it is shewn that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency,’ then it is open to the General Medical Council to say that he has been guilty of ‘infamous conduct in a professional respect’.”

37 In *Allinson*, the Court of Appeal was exercising a statutory jurisdiction. The phrase “infamous conduct in a professional respect” was statutory, appearing in s29 of the Medical Act (21 and 22 Vict. c. 90) (U.K.).

38 This definition was applied to the case of the solicitor in the case of *In re A Solicitor. Ex parte The Law Society* [1912] 1 KB 302, where the issue was the definition of “professional misconduct” within the *Solicitors Act 1888* (U.K.).

39 In *Myers v Elman* [1940] AC 282 Viscount Maugham adopted this definition for purposes of the exercise of the inherent jurisdiction of the Courts when he said at 288-289:

“Apart from the statutory grounds, it is of course true that a solicitor may be struck off the rolls or suspended on the ground of professional misconduct, words which have been properly defined as conduct which would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute and competency: *In re a Solicitor; ex parte The Law Society*.”

⁴⁸ The relevant statute is now the *Legal Profession Uniform Law* (NSW) ss 296-298, and before 30 June 2015 was the *Legal Profession Act 2004* ss 469-498.

⁴⁹ [1894] 1 QB 750.

⁵⁰ [2001] NSWCA 284; (2001) 52 NSWLR 279.

- 40 Lord Atkin may have taken a different view in *Myers v Elman*, when he said at 303 that the words “professional misconduct” ... “only mean misconduct in the exercise of the profession”.
- 41 Viscount Maugham’s approach – which omits from the Allinson formulation, the introductory words “in the pursuit of his profession” – appears to have prevailed, at least in New South Wales (see *Re Hodgekiss* (1962) SR (NSW) 340 at 351; *Re Mayes and the Legal Practitioners Act* [1974] 1 NSWLR 19 at 24-25; *Prothonotary of the Supreme Court of New South Wales v Costello* [1984] 3 NSWLR 201 at 203D-E, 207B-C).
- 42 In *Marten v Royal College of Veterinary Surgeons’ Disciplinary Committee* [1966] 1 QB 1, Lord Parker CJ said at 9:
- “... Mr Crispin says that as a matter of law a professional man’s conduct cannot be said to be disgraceful to him in a professional respect unless it was done ‘in pursuit of his profession,’ and he would add that ‘in pursuit of his profession’ meant ‘in the course of the practice of the profession.’ For my part I see no valid ground for limiting the words in the manner suggested. If, of course, the conduct complained of is equally reprehensible in anyone, whether a professional man or not, as for example, conduct constituting some traffic offence, that conduct would not come within the expression. But if the conduct, though reprehensible in anyone is in the case of the professional man so much more reprehensible as to be defined as disgraceful, it may, depending on the circumstances, amount to conduct disgraceful of him in a professional respect in the sense that it tends to bring disgrace on the profession which he practises. It seems to me, although I do not put this forward in any sense as a definition, that the conception of conduct which is disgraceful to a man in his professional capacity is conduct disgraceful to him as reflecting on his profession, or, in the present case, conduct disgraceful to him as a practising veterinary surgeon.”

75. Disciplinary proceedings in other contexts are clearly seen as protective of the public, as well as of proper professional standards.⁵¹ The protective purpose of such proceedings is two-fold, to guard against further misconduct by the particular respondent and extending to protecting the public from similar defaults by other practitioners.⁵²

⁵¹ *Law Society of New South Wales v Walsh* [1997] NSWCA 185 per Beazley JA at 40; *New South Wales Bar Association v Hamman* [1999] NSWCA 404; 217 ALR 553 per Mason P at [77]-[79].

⁵² *Law Society of New South Wales v Walsh* [1997] NSWCA 185 per Beazley JA at 40; *NSW Bar Association v Meakes* [2006] NSWCA 340 at [114] per Basten JA; *New South Wales Bar Association v Hamman* [1999] NSWCA 404; 217 ALR 553 per Mason P at [99], referring to the judgment of Sheller JA (Gleeson CJ and Handley JA agreeing) in *Law Society of New South Wales v Bannister* (1993) 4 LPDR 24, at 27-28.

76. In *Law Society of New South Wales v Walsh*⁵³ (**Walsh**) at 40, Beazley JA, as her Honour then was, reasoned:

The court's duty to protect the public is not confined to the protection of the public against further misconduct by the particular practitioner who is the subject of the disciplinary proceedings. It extends to protecting the public from similar defaults by other practitioners. Thus, it is relevant to take into account the effect the order will have upon the understanding in the profession and amongst the public of the standard of behaviour required of solicitors.

77. What is required is an assessment of the seriousness of the conduct as found, taken with such mitigation as was advanced by the respondent. That consideration informs a determination as to the recommendation to be made.
78. Where an order for removal of a lawyer's name from the Roll is contemplated, the ultimate issue is whether the person is shown not to be a fit and proper person to be an officer of the Supreme Court upon whose roll the lawyer's name presently appears. That question must be determined at the time of the hearing.⁵⁴
79. A tribunal or court should not make an order for removal unless persuaded of the practitioner's "probable permanent unfitness" for practice; unless persuaded of that probability, the proper order to make would usually be one of suspension or fine instead of removal.⁵⁵
80. Recently, in *Council of the Law Society of New South Wales v Zhukovska*⁵⁶, the Court of Appeal considered a case where a disciplinary tribunal (there, the Occupational Division of the New South Wales Civil and Administrative Tribunal) was satisfied that a lawyer was not presently fit to practise, but also not satisfied that he or she was probably permanently or indefinitely unfit to practise. The Court held that in such circumstances, neither removal from the roll nor suspension for a specified period of time was appropriate in order to protect the public interest. Rather, the Court held, an order should be made for cancellation of the lawyer's practising certificate, coupled

⁵³ [1997] NSWCA 185.

⁵⁴ *A Solicitor v Council of the Law Society of New South Wales* [2004] HCA 1; (2004) 216 CLR 253 at [14]-[15], [21].

⁵⁵ *Cummins* at [26] per Spigelman CJ, adopting what was said in *Prothonotary of the Supreme Court of NSW v Ritchard* (NSWCA, Kirby P, Mahoney and McHugh JJA, 31 July 1987, unrep) per McHugh JA.

⁵⁶ [2020] NSWCA 163.

with an order preventing an application for a practising certificate for at least such time as the tribunal considered that the lawyer would not be fit to practise.⁵⁷

81. The question is one of present fitness: that is, whether the tribunal or court can be currently satisfied that the lawyer is a person who may properly be held out to the public as a fit and proper person to be entrusted with the duties and responsibilities of a lawyer.
82. The principles which would guide the tribunal or court in determining whether a lawyer's name should be removed from the Roll were summarised by Beazley JA in *Walsh* at 43, as follows:
 - (a) the power is discretionary;
 - (b) subject to considerations which would compel the tribunal or court to impose a lesser penalty, the protective nature of the jurisdiction calls for the removal of a practitioner's name from the roll when the practitioner has been found not to be of good fame and character;
 - (c) the subjective considerations which might compel a different course are ones which themselves are relevant to and enhance the essential nature of the jurisdiction, which is the protection of the public. An example is where the legal practitioner has reported the subject conduct to the Law Society or Bar Association. The relevance of mitigating conduct of that type is that it encourages practitioners guilty of misconduct to promptly report it; and
 - (d) in general, mitigating factors, such as evidence of a respected reputation, no previously found misconduct, or service to the profession "are of considerably less significance than in the criminal sentencing process".⁵⁸
83. The tribunal or court would also be entitled to take into account the persistence with which the conduct has been pursued and the degree of candour displayed by the practitioner in the course of the disciplinary hearing.⁵⁹

⁵⁷ Per Leeming JA (Macfarlan and McCallum JJA agreeing) at [111] – [115] and [130], distinguishing *Law Society of New South Wales v McNamara* (1980) 47 NSWLR 72.

⁵⁸ *Law Society of New South Wales v Bannister* (1993) 4 LPDR 24 at 13

⁵⁹ *Legal Services Commissioner v Baker* [2006] QCA 145 at [46].

84. However, it is also clear that removal of a practitioner’s name from the Roll need not be final: “an order removing the name of a solicitor from the roll ... is not, in the graphic language of James QC in *Jauncey v Law Society*⁶⁰ a sentence of “professional death”.⁶¹ That is because a lawyer whose name has been removed from the Roll may apply for re-admission.⁶² There is no analogous course following deposition from holy orders.
85. The Board has found these authorities concerning the question of unfitness in other callings useful. However, they are only useful by analogy and are to that extent necessarily limited in their present application.
86. Critically in the present case, the examinable conduct is not of personal misconduct – the respondent in no way personally participated in such behaviour – but rather the examinable conduct raises the extent to which the respondent discharged his responsibility as bishop to respond to allegations that such conduct had occurred.
87. Furthermore, the examinable conduct concerns someone who is no longer engaged in any professional capacity as a bishop. Consequently, on a practical level, many of the measures contemplated by s 49 of the 2017 Canon have no present application.
88. It is the Board’s view that, where allegations of this kind are made out in relation to someone in the respondent’s circumstances – which the reasons below record is the case here – the Board’s findings and disposition pursuant to s 49 of the 2017 Canon fall to be determined in the following way.
89. A broad philosophical, moral and practical assessment is called for which must necessarily synthesise:
- (a) the conduct;
 - (b) its gravity (including its consequences);
 - (c) its frequency;

⁶⁰ (NSWCA, 1 February, 1989, unrep).

⁶¹ *Dupal v Law Society of New South Wales* [1990] NSWCA 56 (26 April 1990 BC9002508) per Handley JA at 12.45-13.25, referring to *Ex parte Lenehan*.

⁶² The principles to be applied on such an application have been set out by the Court of Appeal seminally in *Kotowicz v The Law Society of New South Wales (No 2)* (NSWCA, Kirby, Samuels and Mahoney JJA, 7 August 1987); *In the matter of the application of Noel Norman Dennis to be restored to the Roll of Solicitors and in the matter of the Legal Practitioners Act; Motion for Readmission* (NSWCA, Samuels, Mahoney and Hope JJA, 23 December 1988) BC8801159; *Peter Cecil Harcourt Dawson v The Law Society of New South Wales* (NSWCA, Kirby, Mahoney and Meagher JJA, 21 December 1989) BC8901279; and *Johns v The Law Society of NSW* (NSWCA, Samuels AP, Mahoney and Clark JJA, 6 June 1991) BC 9101924.

- (d) the means available to the respondent to have prevented it or responded meaningfully to it;
 - (e) the extent to which the respondent did so;
 - (f) any explanation for why the respondent did not do so;
 - (g) whether it would be antithetical to the function, standards and beliefs of the Church, for a person who behaved in that way to continue to hold an office that can only be held with the authority of the Church; and
 - (h) the extent to which it would be unreasonable to expect other persons holding like office within the Church to have to count among their number a person who had engaged in such conduct.
90. This is obviously not an exhaustive list. The factors relevant to the Board's assessment are informed by the particular circumstances of the findings against the respondent, and necessarily involve value judgements.
91. In its consideration of the appropriate consequences flowing from its the findings against the respondent, the Board did not have evidence before it of mitigating factors. This was because the respondent refused to participate in the Board's processes. Despite the absence of evidence going to mitigation, the Board accepts that it is likely that during his time as clergy, the respondent made positive and valuable contributions to the life of the Church and to society generally. Nonetheless, there will be conduct that no amount of otherwise good conduct can mitigate. For the reasons that follow, the Board concludes that this is such a case.

Powers of ESB pursuant to s. 49

92. Provided that the Board is satisfied of any one of the matters in s 49(a) – (d) of the *2017 Canon*, then it is empowered to make a determination accordingly and to give any of the relevant directions or make any of the relevant determinations stipulated in s 49(e) – (m) of that Canon in its discretion.
93. For the reasons that follow, the Board is unanimously satisfied that on the facts as found the respondent is unfit to remain in Holy Orders: s 49(d). In the Board's view, it follows from such a conclusion, necessarily, that it is appropriate – indeed inevitable – that the respondent be deposed from the exercise of Holy Orders: s 49(m).

Procedural fairness

94. The Board, as it has earlier ruled⁶³ and as canvassed above, has an unfettered entitlement to make its determination in the manner that it considers fit, subject to the process being a fair one: *2017 Canon*, s 29(3).
95. For the reasons that follow, the Board has adopted a process that it considers to have been fair (after unsuccessfully inviting the respondent to participate, on numerous occasions). The Board also considers that it has made every reasonable allowance for the matters that the respondent might have, but did not avail himself of the opportunity to, put at the hearing of the reference.

PART 3 - Outline of allegations of which Mr Herft was said to be aware

How the allegations were presented

96. Counsel for the ESC presented the allegations on each of the questions for determination in tabular form, setting out the evidence identified in the First ESC Report, the Supplementary ESC Report, the finding in the RC Report relevant to that question, the CA Submissions relevant to that question and any RH Submissions made relevant to that question.
97. Given the central reliance by Counsel for the ESC before the Board on the findings of the Royal Commission, together with the underlying factual narrative in the RC Report and the fact that it was the basis of this reference, the Board considers that such a format was appropriate, fair and convenient. Consequently, the Board has reproduced those tables in this Determination below.
98. This is also a convenient course, given that the Board, for the reasons set out below, came to the same conclusions as the Royal Commission on these central matters.

Allegations in relation to Rushton

99. The several allegations regarding Rushton, and the several bases which were urged on the Board to find them proven, together with any response the respondent previously gave, are set out below.

⁶³ Decision on Preliminary Question at [9] and [48]-[49].
ESB Determination Herft 8 December 2021

Pornography incident in November 1998 – Q 1 & 2

SCHEDULE 3 – COMMISSION'S SUBMISSIONS – ANNOTATION OF ESC REPORT APPENDIX 9 (TB 915 – 916)

ROYAL COMMISSION FINDINGS RELIED ON – REPORT OF CASE STUDY 42

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	<p>Question 1 (TB 22) Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about 26 November 1998 that Father Peter Rushton was [or had been] in possession of a quantity of child pornography? ESC Report 3.2.3 (TB 13) Pornography incident in November 1998: 3.2.3.1 The evidence for this incident is set out in: (a) witness statement of Roger Adrian Herft dated 25 July 2016 at pages 41 – 43 and at [212] – [219] TB 508 – 509 (b) transcript of evidence pages C17272 – C17281 TB644 – 653, the pornography incident is covered at pages C17322 – C17334 TB 725 – 737 and (c) Royal Commission Report Pages 37 – 41 TB 90 – 94, including findings;</p>				
1	<p>[1998 period] We are satisfied that, in 1998, removalists located child pornography at Father Rushton's home.</p>	<p>Report p 40 TB 93 (summary) See also TB 246 where the conclusion is expressed, after reference had been made to the submissions for the respondent contesting the findings proposed</p>	<p>From [602] TB 1464 - p 109 (fnn 898 – 964) Conclusion at CA [640] TB 1470 p 115</p>	<p>AF 48 TB 1470 - p 115 Also see AF 49 - p 51 TB 1470 - p 115</p>	<p>RH [52] ff TB 1652 - p 20 – context, as to knowledge that Rushton was a child abuser, only known after his death. <u>Disputes or comments</u> CA [603], [632] and [640] – RH [53], CA [612] RH [54] CA [627] RH [55] CA [629] RH [56] – [58] CA [637] RH [59] CA [638] RH [60] RH [61] – [62] TB 1654 - p 22 AF 48 not open on the evidence RH [63] TB 1654 - p 22 AF 49 should not be made (fnn 86 – 91)</p>

1

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	<p>Respondent's position: 1.1 The respondent's position in his submissions was in short that the evidence of Mr Askie is an insufficient basis to conclude that Fr Rushton possessed child pornography. 1.2 At RH [53] TB 1652 – p 20 the respondent drew attention to steps taken by the respondent: see RH [54] TB 1652-20, in direct response to CA [612] TB 1466 – p 111, with reference to the documents at fn RH 86 – 91. 1.3 The contest in respect of this aspect of the matter is best seen by reference to the text of these submissions, at RH [52] – [60] TB 1652 - p 20 – 1654 - p 22, and then specifically in response to AF 48 – 51, at RH [61] – [67] TB 1654 - p 22 – 1655-23, and then RH [69] – [74] TB 1655 - p 23 – 1656 - p 24 and then with respect to AF 52, at RH [75] TB 1656 - p 24.</p>				
	<p>Relevant documents:¹ Item 4-2 – Transcript 10 August 2016 Day C160 – Gary Askie C16885 – 16894 (TB 1039ff) Item 5-3 – Exhibit 42-0041, 'Statement of Jim Jackson', STAT.1077.001.0001 (TB 1735) – RC 950 Item 5-5 – Exhibit 42-0021, 'Statement of Colvin Ford', STAT.1096.001.0001 (Exhibit 21) (TB 1741) – RH 88 – RC 951 Item 4-1 – Transcript 4 August 2016 Day C156 (part) – Colvin Ford C16421 – 16439 (TB 1019) Item 5-4 – Exhibit 42-0022, 'Statement of John Farragher', STAT.1113.001.0001 (TB 1738) – RC 1002 Item 5-2 – Exhibit 42-0093, 'Yellow Envelope No. 20', ANG.0354.0020.0001_R (TB 1687) Item 5-11 – Exhibit 42-0001, Letter from Colvin Ford to Bishop Herft re Farragher Removals complaint – 27 November 1998, ANG.0050.001.1894_R (TB 1752) – RC 953 Item 5-10 – Exhibit 42-0001, Letter from Colvin Ford to Bishop Herft re further conversation with Jim Jackson – 29 November 1998, ANG.0050.001.1890_R (Tab 35) (TB 1750) – RH 86 – RC 966 Item 5-9 – Letter from Bishop Herft to Mr Rushton – 30 November 1998, ANG.0050.001.1876 (Tab 36) (TB 1749) – RH 87 Item 5-8 – Exhibit 42-0001, 'Letter from Colvin Ford to Bishop Herft re further conversation with Jim Jackson' – 2 December 1998, ANG.0050.001.1867_R (Tab 37) (TB 1748) – RC 971 Item 5-12 – Exhibit 42-0001, 'Notes of meeting between Bishop Roger Herft, Messrs Greg Hansen and Peter Mitchell' – 3 December 1998, ANG.0050.001.1866 (TB 1753) – RC 973 Item 5-6 – Letter from Mr Rushton to Bishop Herft – 6 December 1998 ANG.0050.003.5116 (Tab 36C) (TB 1746) – RH 89</p>				

¹ references to footnotes in the Submissions for Mr Herft 'RH__' and the Royal Commission Report 'RC__'

2

Allegations of child sexual abuse, made October 2002 – Q 3 & 4

Multiple allegations of child sexual abuse, made February 2003 – Q 5 & 6

	<p>Question 3 (TB 23) Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about October 2002 that Father Peter Rushton had sexually abused young boys? ESC report 3.2.4 (TB 14) Allegations of sexual abuse of young boys against Father Rushton made in October 2002: 3.2.4.1 The evidence for this incident is set out in: (a) Witness statement of Roger Adrian Herft dated 25 July 2016 at pages 41 – 43 at [221] – [225] TB 509; (b) transcript of evidence at pages C17340 – C17342 TB 743 – 745; and (c) Royal Commission Report page 42 TB 95 and findings.</p>				
2	<p>[2002 period] Bishop Herft conceded that he could have revoked Father Rushton's permission to officiate at will without requiring any diocesan tribunal procedure. We consider that Bishop Herft should have taken further action in relation to Father Rushton at the time.</p>	<p>Report p 42 TB 95 (summary) See also TB 250, TB 249 (RC fn 991)</p>	<p>[648] TB 1472 - p 117 [659] TB 1473 - p 118</p>	<p>See AF 57-58 TB 1475 - p 120</p>	<p><u>Disputes or comments</u> CA [647] RH [69] – [70], CA [648] RH [71] – [72] CA [650] RH [73] CA [651] – [652] RH [74] AH 52 RH [75] CA 578 – [658] RH [76] – [79] CA [660] RH [80] AF 53 accepted AF 54 disputed RH [82] RH [87] TB 1660 - p 28 AF 57-58 disputed</p>
	<p>Respondent's position: 2.1 The submission at RH [71] [TB] 1655 - p 23 is that CA [648] does not fairly reflect the evidence. That is with respect to the 1998 pornography incident and the evidence at T 171343:23. The submission is made that he was keen to revoke the licence but there was no child pornography found.</p>				

3

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	<p>2.2 The contest in respect of this matter is best seen by consideration of the text of the RH submissions, from RH [76] TB 1656 - p 24, in response to CA [657] – [658] TB 1473 - p 118, to RH [79] TB 1657 - p 25.</p> <p>2.2 In respect of AF 57 and 58, RH [87] – [88] TB 1660-28 disputes that his continued licensing of Mr Rushton in itself demonstrated poor judgment by him, although he accepted with the benefit of hindsight (T 17336:16-19; 17336:38 TB 739) that further steps should have been taken by him to investigate the complaints and minimise any ongoing risk to children within the diocese.</p>				
	<p>Relevant documents: Transcript of R Herft, Case Study 42, 12 August 2016, 17273:33-37 TB 645 RC 991 Item 5-15 – Letter from Reverend Jackson to Bishop Herft dated 11 December 2002 ANG.0050.4908 (TB 1757) – RH 97</p>				
	<p>Question 5 (TB 23) Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about February 2003 as to multiple allegations that Father Peter Rushton had sexually abused young boys? ESC report 3.2.5 (TB 14) Multiple allegations of sexual abuse of young boys made against Father Rushton February 2003. 3.2.5.1 The evidence for this incident is set out in: (a) witness statement of Roger Adrian Herft dated 25 July 2016 [205] – [225] TB 507 – 509; (b) transcript of evidence at pages C17334 – C17343 TB 737 – 746; and (c) Royal Commission report at pages 42 – 43 TB 95 – 96, including findings.</p>				
3	<p>[2003 period] We are satisfied this allegation was brought to Bishop Herft's attention. There is no evidence that Bishop Herft took any steps after being aware of this allegation even though it came on top of the child pornography allegations, the 2002 allegations and the other February 2003 allegations.</p>	<p>Report p 43 TB 96 (summary) See also TB 251</p>	<p>CA [661] ff TB 1474 – p 119</p>	<p>See / cf AF 53 (accepted) AF 54 TB 1474 - p 119 (no basis) RH [82] TB 1657 - p 25</p>	<p><u>Disputes or comments</u> CA [664] RH [83] TB 1658 – p 26, CA [670] RH [84] CA [671] RH [85] AF 55 and 56 – accepted AF 57 and 58 see RH [87] – [88] TB 1660 – p 28</p>

4

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	Respondent's position: 3.1 See RH [83] – [85] as to the limited disputes regarding the findings sought by CA, and [2.2] above as to the respondent's position regarding the taking action				
4	[Conclusions] We are satisfied that, by the end of February 2003, Bishop Herft could have been in no doubt that Father Rushton had a history of behaviour that required further investigation.	Report p 43 TB 96 (summary) See also TB 252	See [672] TB 1476 - p 121 (with reference to C17274, 17279, 17277, TB 646, 651, 649) [673] TB 1476 - p 121: Bishop Herft said that in 2003 there would have been 'not only alerts but alarm bells ringing' that Rushton should have been brought to the attention of the police and also taken before a disciplinary tribunal or had his permission to officiate removed. (C17343:9-19 TB 615) See also [676] TB 1476 - p 121	App 9 No 4 = AF 59 TB 1476 - p 121	<u>No disputes as to</u> CA [672] ff, the submissions responded to AF 59 – 62 <u>Disputes or comments</u> AF 59 not accepted RH [89] AF 60 – not accepted in full RH [90] – [91] AF 61 accepted with comments RH [92] AF 62 disputed RH [93]
5	Bishop Herft's inaction with respect to Father Rushton contributed to the Diocese's systematic failure to make	Report p 43 TB 96 (summary) See also TB 252	See [672]-[676] TB1476 - p 121	App 9 No 5 = AF 62 TB 1477 - p 122	As above, <u>no disputes as to</u> CA [672] ff, the submissions responded to AF 59 – 62

5

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	perpetrators accountable for their conduct. Bishop Herft showed no regard for risk management.				RH [93] TB 1661 - p 29 disputed AF 62 Bishop Herft's inaction contributed to the systematic failure of the Diocese to make perpetrators accountable for their conduct.
	Respondent's position: 5.1 In relation to AF 59, RH [89] TB 1660 - p 28 makes clear that the respondent does not accept the proposed finding; at the time he did not consider further investigation was required but now accepts that judgment was wrong. 5.2 At RH [90] TB 1661 - p 29 the respondent disputed AF 60 in part: he accepts with hindsight that the 2002 allegation and the 2003 allegation about the 1979 incident of abuse should have been reported to the police, but the diocesan approach at the time required the name of the complainant to make a complaint to NSW Police (T 17221:30-41; 17222:40-44 TB 593-594). 5.3 As to the 2003 allegation about the "group of boys", RH [91] TB 1661 - p 29 notes that it was unnecessary for the respondent to refer the matter to Police, as the complainant had done so. 5.4 In relation to AF 61, RH [92] TB 1661 - p 29 contends that the finding, which is accepted, should fairly reflect that his acceptance of his omissions was made with the benefit of hindsight. 5.5 The contest with respect to AF 62 RH [93] TB 1661 - p 29 depends upon the preceding material, the subject of - RH submissions [83] TB 1658 - p 26, responding to CA [664] TB 1474 - p 119; - RH [84] TB 1658 - p 26 responding to CA [670] TB 1475 - p 120 and - RH [85] TB 1660 - p 28 responding to CA [671] TB 1475 - p 120.				

6

Allegations in relation to Parker

100. The several allegations regarding Parker, and the several bases which were urged on the Board to find them proven, together with any response the respondent previously gave, are set out below.

Sexual assault of two altar boys 1970 – 1975, made 17/5/96 – Q 7 & 8

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	<p>Question 7 (TB 24)</p> <p>Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about 17 May 1996 that Father George Parker or an unidentified priest in the Diocese of Newcastle had sexually abused two boys?</p> <p>ESC report 3.3.3 (TB 16) CKA's report in 1996</p> <p>3.3.3.1 The evidence for this incident is set out in:</p> <p>(a) witness statement of Roger Adrian Herft dated 25 July 2016 at [152] – [169] TB 499 – 502;</p> <p>(b) transcript of evidence at page C17350 – C17361, C17393 – C17399 TB 753 – 764, 796 – 802; and</p> <p>(c) Royal Commission Report at page 44 TB 97, including findings.</p>				
6	<p>[Fr Parker [CKC]]</p> <p>We are satisfied that, following CKA's telephone call to Dean Lawrence in April 1996, Dean Lawrence was aware that it was alleged that Father Parker had sexually abused two boys in 1970</p>	<p>Report p 44 TB 97 (summary)</p> <p>See also TB 253</p> <p>(and TB 254: On 17 May 1996, Dean Lawrence sent Bishop Herft a letter in which he enclosed the file note of his conversation with CKA regarding his allegations of sexual abuse.</p> <p>Bishop Herft agreed that this letter made him aware of allegations of sexual abuse against one of his clergy, but he said he did not know who the allegations were against. The relevant parish was named, but Bishop Herft did not try to find out who the priest was.</p> <p>He gave evidence that, in hindsight, he ought to have done so.)</p>	<p>See [682] – [697]</p> <p>TB 1477 - p 122 to 1481 - p 126</p>	<p>App 9 No 6 =</p> <p>AF 64</p> <p>TB 1479 - p 124 (accepted)</p> <p>compare AF 65, 66</p>	<p>RH [98] TB 1662 - p 30 – AF 64 and 65 were accepted</p> <p>As to AF 66, see RH [99] (as in [6.1] below)</p>

7

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	Respondent's position: 6.1 In relation to AF 66, RH [99] TB 1662 - p 30 records the respondent's acceptance of the proposed finding, and his further contention that such a finding should also record his position at the time, that he needed to ascertain how CKA wished to proceed with the matter, and if CKA wished to report the matter to the Police, the Church had a responsibility to help him do that.				
7	Bishop Herft gave evidence that, as of 1993, there was a clear policy in the Diocese that matters of child abuse should be reported to the police. Despite agreeing that he received sufficient detail from CKA's initial complaint to report to the police, Bishop Herft told us that he neither contacted the police nor conducted any follow-up investigation. We are satisfied that in 1996 Bishop Herft took no further action.	Report p 44 TB 97 (summary) See also TB 255	[693] TB 1479 - p 124. Bishop Herft gave evidence that, as of 1993, there was a clear policy in the Diocese that matters of child abuse should be reported to the police. Despite agreeing that he received sufficient detail from CKA's initial complaint to report to the police, Bishop Herft told the Royal Commission that he neither contacted the police, nor did he conduct any follow-up investigation. Bishop Herft accepted that he did nothing.	See AF 68, 69 TB 1482 - p 127	AF 63 – accepted RH [94] TB 1661 - p 29 <u>Disputes or comments</u> CA [690] – RH [95] CA [693] - RH [97] TB 1662 - p 30 See RH [102], [104] TB 1662 - p 30, 1663 - p 31 re AF 68, 69
	Respondent's position: 7.1 In relation to AF 68, RH [102] – [103] TB 1662 – 1663 - pp 30-31 disputes the part of the finding, "or took any other steps in relation to the allegations", the contention is that CA [692] – [699] TB 1480 – 1481 - pp 125-26 set out what the respondent did or caused to be done. 7.2 RH [97] TB 1662-30, responding to CA [693] TB 1479 - p 124 submits that the last sentence of CA [693] does not fairly reflect the evidence at (T 17393-17394 TB 797 – 798), and refers to his evidence (T 17354-17355 TB 757): the respondent obtained advice from Mr Rosser QC about				

8

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	how to proceed, and as said in relation to AF 66, his position in light of that advice was that he needed to ascertain how CKA wished to proceed; he rejected the submission that he did nothing.				
8	Bishop Herft accepted that by 1999 he was aware of the legal obligation under section 316 [of the Crimes Act 1900 (NSW)]	Report p 25 TB 78 (summary) See TB 221 (and T 17221:22–28 TB 593)			
9	Bishop Herft gave evidence that from 1993 he understood 'that any matters of child abuse should be reported to the police'. However, he understood his obligation to report child sexual abuse allegations arose only when he had received a 'complaint of some substance'. He said that during his time as Bishop of Newcastle he did not consider he owed an obligation to report allegations of child sexual abuse to the police unless he knew the name of the complainant.	Report p 26 TB 77 (summary) See also TB 221	[472]-[473] TB 1442 - p 87 [474]-[476] TB 1442 - p 87 (see T 17221-2, 17252-3, 17255 TB 593-594, 624-625, 627)	See AF 36 37 TB 1442 - p 87 38 / 100 TB 1442 - p 87 / 1519 - p 164	Accepted with hindsight AF 100 (and AF 38) disputed (as below) RH [161] – [163] ff TB 1672 - p 40 to 1673 - p 41
	Respondent's position: 9.1 In relation to AF 100 / 38, RH [161] – [163] TB 1672 – 1673 - pp 40-41 disputes the proposed finding, on the basis that it was an overstatement to describe the policy as fettered in "many respects"; the proposed finding identified three matters affecting the decision to report to police. It was submitted as unfair to suggest that the respondent's approach was that he was only obliged to report matters to police when it was "necessary", his understanding that a complaint needed to be reduced to writing and the complainant's name known, were informed by his understanding of police requirements and consistent with the 1993 policy.				

9

Sexual abuse of two boys, made on 12/1/99 – Q9 & 10

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	<p>Question 9 (TB 25)</p> <p>Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about 12 January 1999 that Father George Parker or an unidentified priest in the Diocese of Newcastle had sexually abused two boys?</p> <p>ESC report 3.3.4 (TB 16) CKA's report in 1999</p> <p>3.3.4.1 The evidence for this incident is set out in:</p> <p>(a) witness statement of Roger Adrian Herft dated 25 July 2016 at pages 34 – 36 at [157] – [169] TB 500 – 502;</p> <p>(b) transcript of evidence at pages C17355 – C17365, C17400 – C17414 TB 758 – 768, 803 – 817; and</p> <p>(c) Royal Commission Report at pages 45 – 46 TB 98 – 99, including findings.</p>				
10	A file note prepared by Bishop Herft on 12 January 1999 indicates that he spoke with Dean Lawrence about CKA's allegations [about Father Parker's sexual abuse of him in the 1970s].	Report p 45 TB 98 (summary) See also TB 256	[693] TB 1480-125 fn 1049		RH [97] TB 1662 - p 30
	<p>Respondent's position:</p> <p>10.1 In relation to CA [693] see [7.2] above re RH [97] TB 1662 – p 30</p>				
11	By not informing the police, Bishop Herft [redacted – <i>semble G Lawrence</i>] failed to act in accordance with the diocesan policy that allegations of child sexual abuse were to be reported to the police.	Report p 46 TB 99 (summary) TB 257	And see [702] – [703] TB 1482 - p 127	AF 69 TB 1482 - p 127	RH [104] TB 1663 - p 31 accepts AF 69 but RC Report should say why the respondent failed to act
12	Overall, Bishop Herft's response lacked any consideration for the protection of children (in respect of whom Father Parker may still have posed a risk) and demonstrated a	Report p 46 TB 99 (summary) See TB 258		See AF 93 / AF 94 TB 1511 - p 156	See RH [135] / [136] – [142] TB 1668 - p 36 to 1669 - p 37 – accepts failure with respect to pastoral responsibility but disputes no compassion, did

10

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	<i>lack of pastoral care and compassion for CKA.</i>				not understand Parker had not been acquitted
	<p>Relevant documents:</p> <p>Item 5-16 – Exhibit 42-0001 'File note of Bishop Herft' – 13 June 2003, IND.0486.001.0402_R (Tab 123) – RH 130 (and 133) (TB 1758)</p> <p>Item 5-17 – Exhibit 42-0001 'Letter from Bishop Herft to CKA dated 23 June 2004', PS.0532.001 .0031_R (Tab 134A) – RH 134 (TB 1759)</p>				
13	[trial where CKA complainant] It is inconceivable that Bishop Herft was not aware that Mr Rosser QC was acting for Father Parker ...	Report p 50 TB 103 (summary) See also TB 264 :Bishop Herft told us that he was not aware that Mr Allen was acting for Father Parker until Mr Allen wrote to Bishop Herft on 30 May 2001. Nothing turns on whether Bishop Herft learned this in May 2001 or after September 2000. Accordingly, we do not make a finding either way.	[744] TB 1489 - p 134. The Royal Commission should find that at all relevant times Bishop Herft was aware that Mr Allen and Mr Rosser QC were acting for CKC. [751] TB 1490-135 Bishop Herft told the Royal Commission that he does not recall Mr Rosser QC informing him that he was acting as CKC's defence counsel and believes he only became aware of this through the media. Bishop Herft maintained this position despite accepting that he was kept informed of CKA's matter by way of weekly meetings with Mr Mitchell and the public relations company that was engaged by the	AF 81 TB 1491 - p 136	Only issue raised is as <i>when</i> he knew RH [119] TB 1665 - p 33 disputed – only aware Apr / Sep 01 and see RH [120] TB 1666 - p 34

11

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
			Diocese to manage the information stream. Given Mr Allen's involvement in the Diocese and relationship with Bishop Herft, Mr Mitchell's knowledge that Mr Allen and Mr Rosser QC were acting and weekly meetings between Mr Mitchell and Bishop Herft about the CKC matter, it is inconceivable that Bishop Herft was not aware that Mr Allen and Mr Rosser QC were acting for CKC.		
14	We also consider that Bishop Herft failed to meet his pastoral responsibilities to these two complainants. [CKA and CKB]	Report p 58 TB 111 (summary) See TB 277: Bishop Herft acknowledged to us that the Diocese had 'failed miserably' in its response to CKA by not providing pastoral care and by allowing key persons in the Diocese to act on Father Parker's behalf. ¹³⁶⁵ He acknowledged that CKA's existing anguish would have been exacerbated by the fact that people with significant	See [856] ff TB 1511 - p 156	94	See RH [121] TB 1666 - p 34 re AF 83 See RH [128] TB 1667 - p 35 re AF 91 AF 94 disputed – see RH [136] – [139] TB 1668 - p 36 – it goes too far to say showed no compassion

12

Allegations re Yellow Envelopes System

101. The several allegations regarding the yellow envelopes system, and the several bases which were urged on the Board to find them proven, together with any response the respondent previously gave, are set out below.

Oct 2001 – late 2004: 30 complaints in relation to sexual abuse received by CASM.

Respondent informed of 24 child sexual abuse matters; police not notified of 17 matters & no disciplinary proceedings initiated – Q 11 & 12

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
		responsibility in the Diocese acted on Father Parker's behalf. We are satisfied that the anguish of CKA and CKB was compounded by the approach taken by the Diocese in Father Parker's criminal proceedings.			
	<p>Question 11 (TB 26) Did Bishop Herft, while he was a member of the House of Bishops, receive information, that persons identified in the Yellow Envelope System maintained in the registry of the Diocese of Newcastle, had engaged in sexual abuse of children?</p> <p>ESC report 3.4.2 (TB 17) Conduct of Bishop Herft relating to Information in the Yellow Envelopes System (see Section 2.7, (TB 8 ff) The evidence relating to this conduct is set out in:</p> <p>(a) witness statement of Roger Adrian Herft dated 12 August 2016 at pages 4-5 at [28] – [34] TB 469 – 470;</p> <p>(b) transcript of evidence pages C17372 – C17373, C17263 – C17266, C17269 – C17270, C17282 – C17283 TB 775 – 776, 635 – 638, 641 – 642, 654 – 655,</p> <p>(c) Royal Commission Report at pages 29 – 30 TB 82 – 83; and</p> <p>(d) Anglican Diocese of Newcastle Professional Standards Office "The Yellow Envelopes Report" dated 13 March 2015 [Appendix 11, TB 920 – 1006]]. (As produced by the Diocese to the Commission, the redactions made by the Royal Commission were supplemented by further redactions because it contained references to current professional standards investigations. A revised version with some of those further redactions reversed forms Item 5-2, TB 1687 – 1734)</p>				
15	[Yellow Envelopes] Correspondence and/or notations within the yellow envelopes themselves indicate that Bishop Herft was put on notice of at least 24 matters relating to alleged child sexual abuse.	Report p 29 TB 82 (summary) See also TB 228	[520] TB 1450 - p 95	No relevant AF – see CA Submissions	(Note redactions at [32] TB 1641 - p 9 responding to CA [520] TB 1450 - p 95) CA [517], [518] - RH [30] TB 1640 - p 8

13

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
16	The documents show that Bishop Herft caused the police to be notified in three of those cases.	Report p 30 TB 83 (summary) See TB 228: The documents suggest that Bishop Herft caused the police to be notified in three of those cases	[520 cont'd] TB 1450 - p 95		CA [520] RH [31] TB 1641 - p 9 RH [32] TB 1641 - p 9 – wholly redacted CA [521] - RH [33] TB 1645 - p 13 – additional conclusions accepted to be available [text redacted]
		However, included in the yellow envelopes compiled by Mr Elliott and produced as part of his Yellow Envelopes Report was a document containing an alphabetical list of names titled 'S11 – SEXUAL HARASSMENT – SENSITIVE INFORMATION'. A subheading under that title states: 'IN SMALL ENVELOPES IN FRONT OF THIS BLACK BOOK.' # This document appears to be an index of persons of concern.	See [532] TB 1452 - p 97- as appears in the Report (at left) to #, then continuing : While the provenance of this document is not known, this sub-heading suggests that the names listed beneath that sub-heading comprised the contents of a 'black book', insofar as it names individuals of concern		re CA [532] no comment was made
17	[Screening] It is likely that the list, or black book [recording names and used to screen potential clergy candidates] belonged to Bishop Herft specifically. We do not accept Bishop Herft's submission that there is no evidence to	Report p 177 TB 230 See also TB 84 (summary)	See [533] TB 1452 - p 97: Further, given that throughout ... [and continuing as in RC Report at p 177 TB 230]		RH [37] TB 1647 - p 15 – contests the proposed finding re Black Book

14

App 9 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC Report)	Proposed Available Finding (AF)	RH Submissions
	<p>Respondent's position:</p> <p>17.1 The other substantial contest with respect to the proposed findings and CA submissions was in relation to what was described in the Royal Commission Report as the Black Book.</p> <p>17.2 RH [37] TB 1647 – p 15, responding to CA [533] TB 1452 - p 97 contends that the submission is in the manner of speculation, and that "R/H drawer" of Brown Filing is more probably a reference to a "right-hand drawer" rather than a "Roger Herft drawer", referring to a brown filing cabinet, and noting Ms Sanders' evidence in her statement that records of complaints were stored in a filing cabinet in the office of the Diocesan Registrar (<i>RH fn 68</i>). In addition, it is submitted that there is no basis for the commission to find that the respondent's evidence at T 12231-2 is false.</p> <p>17.3 In relation to AF 41, RH [35] TB 1646 - p 14 accepted the proposed finding as to the fact and nature of the inadequacy of the record-keeping system, but submitted the proposed finding should, fairly, reflect that the assessment is made with the benefit of hindsight, and in the absence of evidence before the Commission about relative standards of record-keeping in other places at the time, and noting that when the respondent commenced as Bishop there were no processes in place to record such information.</p> <p>17.3 In relation to AF 42, RH [36] TB 1647 - p 15 accepted a proposed finding as to the consequences of the deficiencies in the record keeping system, but contended that the words "while not necessarily deliberate" were unsupported by the evidence. The RC Report omitted those words. The respondent contended that the words implied a possibility that the respondent may have deliberately kept inadequate records (the RC Report conveys no such implication).</p>				

16

Allegations re Dean Graeme Lawrence

102. The several allegations regarding Lawrence, and the several bases which were urged on the Board to find them proven, together with any response the respondent previously gave, are set out below.

Allegations of sexual abuse of two boys, made in 1995 – Q 13 & 14

SCHEDULE 6 – COMMISSION'S FURTHER SUBMISSIONS – ANNOTATION OF ESC SUPPLEMENTARY REPORT APP 14 (TB 1810 – 1811)

ROYAL COMMISSION FINDINGS RELIED ON – (UNREDACTED) REPORT OF CASE STUDY 42

App 14 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC (Unredacted) Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC (Unredacted) Report)	Proposed Available Finding (AF)	RH Submissions
	<p>Question 13 (TB 1798)</p> <p>Did Bishop Herft, while he was a member of the House of Bishops, receive information in about 1995 that two boys had separately approached and alleged that Mr Lawrence had sexually abused?</p> <p>ESC Supplem Report 3.6.3 (TB 1790) Disclosure of allegations against Dean Lawrence by Mr Robert Wall in 1995:</p> <p>3.6.3.1 The evidence for this incident is set out in:</p> <p>(a) Exhibit 42-75 Witness statement of Roger Adrian Herft dated 25 July 2016 (TB 467) at [170] – [185] pages 36 – 39 (TB 502-505);</p> <p>(b) Exhibit 42-76 Supplementary Witness Statement of Roger Adrian Herft dated 12 August 2016 (TB 517) at [28] – [34] pages 4- 5 (TB 520 – 521);</p> <p>(c) transcript of evidence pages C17287 – 17293 (TB 659 – 665); C17298 – 17302 (TB 701 – 705); C17320 – 17322 (TB 723 – 725); C17372 – 17373 (TB 775 – 776), the disclosures by Mr and Mrs Wall are covered at pages C17287 – 17290;</p> <p>(d) Exhibit 42-0030, 'Statement of Robert Wall', Case Study 42, STAT.1117.001.0001_R at [5], [7] (Item 7-1) (TB 1864);</p> <p>(e) Exhibit 42-0067, 'Letter from Bishop Herft to Mr and Mrs Wall' dated 13 July 1995, Case Study 42, ANG.0347.001.0001 (Item 7-2) (TB 1867);</p> <p>(f) Exhibit 42-0071, 'Supplementary Statement of Robert Wall', STAT.1124.001.0001_R (Item 7-3) (TB 1868 - 1869);</p> <p>(g) unredacted Report pages 32, 179-180 (TB 1820, 1835 - 1836) [cf TB 85, 232-233] including findings.</p>				

Allegations of sexual abuse of young boys, made in 1996 – Q 15 & 16

	<p>Question 15 (TB 1799)</p> <p>Did Bishop Herft, while he was a member of the House of Bishops, receive information in around 1996 from Archbishop Goodhew that there were allegations, disclosed by Reverend Kelly to Archbishop Goodhew, that Dean Lawrence had engaged in sexual activity with young boys?</p> <p>ESC Supplem Report 3.6.4 (TB 1792) Disclosure of allegations against Dean Lawrence by Reverend Kelly in around 1996:</p> <p>3.6.4.1 The evidence for this incident is set out in:</p> <p>(a) Exhibit 42-75 Witness statement of Roger Adrian Herft dated 25 July 2016 (TB 467) at [170] – [185] pages 36 – 39 (TB 502-505);</p> <p>(b) Exhibit 42-76 Supplementary Witness Statement of Roger Adrian Herft dated 12 August 2016 (TB 517) at [28] – [34] pages 4- 5 (TB 520 – 521);</p> <p>(c) Exhibit 42-0001, 'Letter from Reverend Brian Kelly to Archbishop Harry Goodhew dated 18 December 1996', STAT.0221.001.0031_R (Item 7-5) (TB 1875);</p> <p>(d) Exhibit 42-0001, 'Letter from Reverend Brian Kelly to Archbishop Harry Goodhew dated 18 February 1997', STAT.0221.001.0030_R (Item 7-6) (TB 1876);</p> <p>(e) Exhibit 42-0065, 'Statement of Richard Goodhew', Case Study 42, STAT.1053.001.0001 at [19], [27] (Item 7-7) (TB 1877 - 1884);</p>				
App 14 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC (Unredacted) Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC (Unredacted) Report)	Proposed Available Finding (AF)	RH Submissions
	<p>(f) transcript of evidence pages C17302 – 17305 (TB 705 – 709), C17321 – 17322 (TB 723 – 724), C17372 – 17373 (TB 775 – 776), the disclosures by Reverend Kelly are covered at page C17302;</p> <p>(g) unredacted Report pages 33, 181-182 (TB 1821, 1837 - 1838) [cf TB 86, 234-235] including findings.</p>				

Allegation of child sexual abuse in Griffith, made in 1999 – Q 17 & 18

103. The several allegations regarding allegation of child abuse in Griffith, and the several bases which were urged on the Board to find them proven, together with any response the respondent previously gave, are set out below.

App 14 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC (Unredacted) Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC (Unredacted) Report)	Proposed Available Finding (AF)	RH Submissions
	<p>(f) transcript of evidence pages C17302 – 17305 (TB 705 – 709), C17321 – 17322 (TB 723 – 724), C17372 – 17373 (TB 775 – 776), the disclosures by Reverend Kelly are covered at page C17302;</p> <p>(g) unredacted Report pages 33, 181-182 (TB 1821, 1837 - 1838) [cf TB 86, 234-235] including findings.</p>				
	<p>Question 17 (TB 1800)</p> <p>Did Bishop Herft, while he was a member of the House of Bishops, receive information in 1999 from Bishop Clark that there was an allegation that, while Dean Lawrence was in Griffith, he had been a perpetrator of child sexual abuse?</p> <p>ESC Supplem Report 3.6.5 (TB 1794) Allegations against Dean Lawrence disclosed in 1999.</p> <p>3.6.5.1 The evidence for this incident is set out in:</p> <p>(a) Exhibit 42-75 Witness statement of Roger Adrian Herft dated 25 July 2016 (TB 467) at [170] – [185] pages 36 – 39 (TB 502-505);</p> <p>(b) Exhibit 42-76 Supplementary Witness Statement of Roger Adrian Herft dated 12 August 2016 (TB 517) at [28] – [34] pages 4- 5 (TB 520 – 521);</p> <p>(c) Exhibit 42-0001, Filenote of Archbishop Goodhew dated 20 July 1999, Case Study 42, STAT.0221.001.0022 (Item 7-8) (TB 1885);</p> <p>(d) Statement of Bishop Harry Goodhew, STAT.1053.001.0001_R at [33] (Item 7-7) (TB 1877 - 1884);</p> <p>(e) Statement of Bishop Bruce Clark, STAT.1055.001.0001_R at [4], [6], [7] (Item 7-10) (TB 1886 - 1887);</p> <p>(f) transcript of evidence pages C17306 – 17308 (TB 709 – 711), C17308 – 17309 (TB 711 – 712), C17320 – 17322 (TB 723 – 725), C17372 – 17373 (TB 775 – 776); the disclosure by Bishop Clark is covered at pages C17306 – 17307;</p> <p>(g) unredacted Report pages 34, 182-183 (TB 1822, 1838 - 1839) [cf TB 87, 235-236] including findings.</p>				
	<p>Relevant to all Questions (13, 15 and 17)</p> <p>ESC Supplem Report 3.6.6 (TB 1796) Failure to take appropriate action regarding allegations of child sexual abuse made against the Dean of the Cathedral.</p> <p>3.6.6.1 In addition to the matters set out in 3.6.3, 3.6.4 and 3.6.5, relevant evidence is set out in:</p> <p>(a) transcript of evidence pages C17443 (TB 1236); C17452 (TB 1245); C17459 - 17460 (TB 1252 – 1253);</p> <p>(b) unredacted Report pages 35 – 36, 184 – 186 (TB 1823 - 1824, 1840 - 1842) [cf TB 88-89, 237-239] including findings.</p>				
18	Bishop Herft was made aware on three separate occasions of allegations that Dean Lawrence had sexually abused children. First, he was told by the Walls in 1995 that two boys had separately	Page 184 of Unredacted Report TB 1840	Discussion commenced [545] TB 1454 - p 99 (fn 809 – 853) Conclusions from CA [578] TB 1460 p 105	AF 43 TB 1461 - p 106	RH [47] TB 1651 - p 19 – AF 43 accepted

App 14 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC (Unredacted) Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC (Unredacted) Report)	Proposed Available Finding (AF)	RH Submissions
	approached him and alleged that Mr Lawrence had sexually abused them. Second, he was told by then Archbishop Goodhew in around 1996 that there were allegations that Dean Lawrence had engaged in sexual activity with young boys. Third, he was told by Bishop Clark in 1999 that there was an allegation that, while Dean Lawrence was in Griffith, he had been a perpetrator of child sexual abuse.				
19	Bishop Herft agreed that he should have made file notes of all the conversations ... He denied the proposition that the file notes of these conversations did not exist. However, no file notes of any such conversations have been produced to the Royal Commission.	Page 185 of Unredacted Report TB 1841	CA [579] TB 1460 - p 105 See AF 45 TB 1462 - p 107 Bishop Herft made no record of the disclosures he received in relation to Mr Lawrence.		No specific response to CA [579] RH [49] TB 1651 p 19 - AF 45 disputed, as explained (see below re RH [39]-[41]), the evidence does not support this. The more probable inference on the evidence is that both file notes and a Yellow Envelope were created but no longer exist.
20	We do not accept Bishop Herft's submission that the weight of evidence is that he did make file notes of his conversations with Dean Lawrence at the time. It has been suggested that his file notes may have later been removed or destroyed. While this theory is	Page 35 and page 185 of Unredacted Report TB 1823; 1841	See CA [578] – [582] TB 1460 – p 105 (with reference to C17305 - TB 708, C17306 - TB 709, C17309 - TB 712, C17373 – TB 776 (see	Also see AF 45 as above	RH [39]-[41] re CA [553], [579]-[581] TB 1647 - p 15 See below

3

App 14 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC (Unredacted) Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC (Unredacted) Report)	Proposed Available Finding (AF)	RH Submissions
	conceivable, there is no evidence in support of it. Just as there are no file notes of conversations with Dean Lawrence, there are also no file notes regarding Bishop Herft's conversations with the various people who disclosed allegations to him and his conversations with Archbishop Goodhew or Bishop Clark. In addition ... he made no entry in his personal diary notes about the matter.		also C17443 – TB 1236)		
21	Bishop Herft treated the allegations against Dean Lawrence in a way that was different from the way he treated other matters the subject of the yellow envelopes: • Bishop Herft agreed that the allegations against the dean were never made known to CASM and were never provided to Mrs Sanders when she created a new recordkeeping system. • There was no yellow envelope for Dean Lawrence. We do not accept Bishop Herft's submission that an envelope may have been created but later destroyed. From the yellow envelopes in evidence, it is clear that Bishop Herft reviewed their contents periodically.	Page 36 and page 185 of Unredacted Report TB 1824; 1841	See CA [578] – [582] TB 1460 - p 105 as above		RH [39]-[41] re CA [553], [579]-[581] TB 1647 - p 15 See below

4

App 14 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC (Unredacted) Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC (Unredacted) Report)	Proposed Available Finding (AF)	RH Submissions
22	Bishop Herft agreed in evidence that he had failed 'at levels of recording, administration and dealing with the problem' in relation to Dean Lawrence. This is undoubtedly correct.	Pages 36 and 186 of Unredacted Report TB 1824; 1841	See [588] TB 1476 - p 121 referring to C17306 TB 709 (<i>fn</i> 877)		No comment made
23	We are satisfied that Bishop Herft's response to the disclosures was unsatisfactory. <i>While he spoke with Dean Lawrence</i> , he did not take any further action in relation to the allegations even though they were made on multiple occasions by different people. He did not report them to the police. He did not <i>cause any kind of investigation to be conducted</i> . He did not implement any kind of risk management strategy with respect to Dean Lawrence.	Pages 36 and 186 of Unredacted Report TB 1824; 1841		AF 46 TB 1462 p 106 "... was unsatisfactory by any standard. <i>Even if he did speak with Mr Lawrence about the allegations of sexual abuse</i> , he did not take any further action in relation to the allegations. He did not report them to the police. He <i>did not conduct any kind of investigation</i> . Nor did he implement"	RH [50]-[51] TB 1651 – p 19. Disputed in part: 'There is no evidentiary basis to qualify the proposed finding with a presumption that he did not speak to Mr Lawrence. Consistently with his practice at the time, Bishop Herft did not report the allegations to the police because the complainant was not known.' Bishop Herft would accept a modified finding "Bishop Herft's response to the disclosures was unsatisfactory, even by the standards of the day. He did not take any further action in relation to the allegations. He did not conduct any kind of investigation, nor did he implement any kind of risk management strategy with respect to Mr Lawrence."

5

App 14 No	Finding relied on (highlighting addition in RC Report of CA Submissions)	RC (Unredacted) Report Reference (Summary and Part 4 detail)	CA Submissions (highlighting change in RC (Unredacted) Report)	Proposed Available Finding (AF)	RH Submissions
24	Bishop Herft mishandled the allegations of child sexual abuse made against two of the most senior and domineering priests in the Diocese – the dean of the Cathedral, Mr Lawrence, and the one-time Archdeacon of Maitland, Father Rushton.	Page 233 of Unredacted Report TB 1859	See TB 1462 re AF 46	See AF 46 (as above)	
	<p>Respondent's position in relation to paragraphs [553], [579], [580] and [581] – set out in RH [39] – [41] TB 1647-1649 pp15-17</p> <p>In substance, RH [39] contests the description of the respondent's evidence in CA[580] citing C17373 – the submission is his evidence was to the effect that no Yellow Envelope presently existed but (he accepted) there should have been one, with reference to the evidence at C17372.41; 17373.1 (TB 775-776) <i>fn</i> 71.</p> <p>At RH [40] it is submitted that the Royal Commission being unable to locate any file notes is insufficient to establish that none were created, noting that the Yellow Envelopes had been reconstructed and were incomplete. Attention was drawn to the respondent's evidence that file notes should exist: C17320.1 (TB 723) <i>fn</i> 72.</p> <p>It was contended that the weight of the evidence supports the conclusion that he made file notes about his conversations with Lawrence relying on:</p> <ul style="list-style-type: none"> his evidence that he often made file notes of his dealings with people about child sexual abuse matters, referring to the Yellow Envelopes and CA[553] (TB 1455-1456) <i>fn</i> 73; his denial that file notes of the conversations did not exist: C17306.2 (TB 709) <i>fn</i> 74; the respondent having voluntarily disclosed his diary record of the scheduled meeting with the Walls on 10 July 1995 before his 13 July 1995 letter to the Walls was tendered (in his supplementary witness statement, Exhibit 47-76 at [52] (TB 523) <i>fn</i> 75); Mr Wall's reference to the Bishop having taken notes during their meeting (Exhibit 42-030, at [7] (TB 1865) <i>fn</i> 76), together with the fact of his letter to the Walls having been produced from Diocesan Records: Exhibit 42-067 (TB 1867), and his evidence in his supplementary witness statement, that he would have made a file note (Exhibit 42-76 at [52] (TB 523) <i>fn</i> 78). <p>At RH [41] it was submitted, in response to CA[581] TB 1460 that a Yellow Envelope was created as other inferences are available on the evidence (that the file notes and Yellow Envelope had been lost, taken or destroyed by another), and the inference for which Counsel Assisting contended was not more probable [note: this submission was rejected by the Royal Commission: see Finding 20 above].</p> <p>More generally, the respondent resisted findings that he had given false evidence to the Commission: see RH[45] TB 1650, responding to CA[582] TB 1460, contending rather for a finding according with his consistent evidence that he had no independent recollection of having put allegations of child abuse to Mr Lawrence: see also RH [46] TB 1651 responding to CA[585] TB 1461.</p>				

6

PART 4: Consideration

Factual findings in relation to allegations

104. The Board is satisfied that the factual findings for which the ESC contends are made out and finds accordingly. The reasons for coming to that conclusion are as follows.
105. *First*, in the opinion of the Board, reliance on both the evidence from and the findings of the Royal Commission is reasonable and appropriate. It is a means of proof that sits comfortably within the Board's power in relation to factual findings.
106. *Second*, the evidence from and findings of the Royal Commission are a reliable source of information. It is clear from the scope and purpose of the Royal Commission in Case Study 42, as set out above, that the Royal Commission's inquiry in that case study was very relevant to the Board's current reference.
107. *Third*, the Royal Commission was assisted by the resources of the State, the co-operation of the Anglican Church Australia-wide, skilled legal representation (including for investigation and for leading and testing evidence) and extensive powers of compulsion in relation to gathering documentary evidence and compelling oral evidence.
108. *Finally*, the respondent himself participated in that process and made submissions in addition to the evidence that he gave on oath.
109. In these circumstances, the Board respectfully considers the findings of the Royal Commission to be an obvious source of reliable information. That notwithstanding, the Board has critically considered the evidence before the Royal Commission, and the submissions that were relevant to the present enquiry. In particular, the Board has carefully considered the submissions made by the respondent to the Royal Commission, given his non-appearance at this inquiry, in order to satisfy itself that the findings of the Royal Commission were appropriate.
110. Following that consideration, the Board has satisfied itself as to the appropriateness of those findings.
111. Related to that point, having examined the available source documents (including as identified in the allegations above), the Board has formed the firm view that those source documents are consistent with findings of the kind made at the Royal Commission and supplemented by the submissions of Senior Counsel for the ESC.

112. The Board also notes that the respondent made a series of admissions ⁶⁴when he gave evidence at the Royal Commission. The respondent was legally represented at the time. The admissions, which must be seen as voluntary, were in relatively unqualified terms and in material respects were an acknowledgment of certain of the complaints.
113. Additionally, the respondent's own submissions to the Royal Commission might fairly be considered to have presented the best arguments available to him. They have been carefully considered by the Board. Indeed, the Board's conclusion does not in effect require any wholesale rejection of the submissions made by the respondent, because in certain material respects they did not in terms refute the matters the subject of the present complaint.
114. For the avoidance of doubt (as may be clear from what has been set out above), whilst the Board would have been at liberty to have acted on the basis that the evidence adduced by the ESC and the submissions made on its behalf by Senior Counsel for the ESC stood unchallenged, that is not the approach the Board has taken. The Board has weighed that evidence and those submissions against those things that the respondent has previously said in his own defence. The Board has also carefully considered whether there might have been reasonable explanations, had the respondent participated in the Board's consideration of this reference.
115. Even making that allowance, the Board considers that its factual findings would have been unchanged.

Disposition of the reference: relevant factors

116. The matters of principle that particularly exercised the Board's considerations in terms of the ultimate disposition of the reference are as follows.

On a general note

117. The respondent's non-appearance, whilst not relied on by the Board in making any factual finding against him, was a significant matter in determining the appropriate consequences that follow from those factual findings. The complaints against the respondent were of the utmost seriousness. They necessarily required that he avail himself of the opportunity, repeatedly offered, to respond. His refusal to engage with

⁶⁴ Annexure 3: Admissions by Bishop Herft
ESB Determination Herft 8 December 2021

proceedings such as this was relevant to weighing any factors that could be said to be in his favour.

118. That said, on the strength of the factual findings that were on the evidence inevitable, the respondent's non-appearance could not have altered the Board's ultimate decision as to the appropriate determination under s 49 of the 2017 Canon on such facts as found.

On a specific note

119. The specific factors that influenced the Board's consideration in this case were as follows.
120. First, the respondent's failure to follow then-existing diocesan protocols in relation to the reporting of child sexual abuse is very serious. Whatever improvements may have been made over time to those protocols, from their inception they have always been on a topic of the utmost seriousness and importance. They called for adherence, and consistent adherence. Plainly that did not occur here. That is a very serious matter.
121. Second, a number of the complaints related to matters that, as the allegation was relayed to the respondent, related to serious criminal conduct. The failure to report to police on multiple occasions complaints entrusted to somebody in a position of authority in relation to conduct of that kind, is again something of the utmost seriousness. It needs no specific legal provision to warrant the conclusion that a person in authority who was possessed of information of that kind in that capacity was bound to act on it. The repeated, inexplicable and largely unexplained or inadequately explained failure to do so requires the conclusion the Board has reached here.
122. In this regard, the Board notes that to the extent the Board had the benefit of the respondent's responses to these allegations through his participation in the Royal Commission, those responses were, with great respect, in material respects unsatisfactory. RH Submissions were demonstrated to be incorrect on a number of occasions.
123. The Board has carefully considered the transcript of the respondent's evidence before the Royal Commission. The Board considers his recall of events to be unsatisfactory, for a person who had held a senior, responsible position in the Church over a long period of time. Even making all due allowances for the trying nature of giving evidence, quite simply when the occasion arose for the respondent to explain why

events had transpired the way they did, he was not able to offer anything approaching a satisfactory explanation. Indeed, at times the respondent's evidence before the Royal Commission seems to have been unresponsive or evasive.

124. Third, as outlined above, a bishop in Holy Orders is held – and must be held – to a high standard of behaviour, consistent with the expectations of the Church implicit in a bishop's consecration. This is a relevant factor in the disposition of the reference, given the factual findings of the Board.
125. In summary, returning to the broad philosophical, moral and practical assessment identified in paragraph 88 above, the conduct the Board has found; true of omission rather than commission; was all too frequent and undoubtedly grave. The consequences of the allegations going unchecked over a period of years can be assumed to be profound on those who were abused.
126. There were relevant protocols to guide, indeed impel, the respondent to act in material respects, and additionally he had the capacity to call on the organs of the Church for resources, advice and support. Moreover, there was always the straightforward medium of reporting allegations of serious criminal conduct to the police.
127. The respondent did not do so when the position of authority he held demanded that of him. We have looked for any acceptable explanation for why he did not do so and have not found any.
128. In those circumstances it would be antithetical to the functions, standards and beliefs of the Church, and unreasonable to other clergy, especially bishops, for the respondent to remain in holy orders.

Determination as to specific questions posed: Q 1 – 18

129. Accordingly, the Board's determination of Questions 1-18 posed by the ESC is in identical terms to the findings made by the Royal Commission, as supplemented by the submissions of Senior Counsel for the ESC.
130. Those findings are as set out in Annexure 2.

PART 5: Determination pursuant to s. 49 of the *Episcopal Standards Canon 2017*

131. The determination of the Board pursuant to s 49 of the Episcopal Standards Canon 2017 is as follows:

- “(a) pursuant to s 49(d) of the *2017 Canon*, the Board is satisfied that Bishop Roger Herft is unfit to remain in Holy Orders;
- (b) pursuant to s 49(m) of the *2017 Canon*, the Board determines that Bishop Roger Herft be deposed from the exercise of Holy Orders.”

Determination date: 8 December 2021

Episcopal Standards Board of the Anglican Church of Australia

Deputy President Mr Peter Dunning QC

Members: The Right Reverend Dr Ian Coutts
The Right Reverend William Ray
Mrs Vivien Bleby
Ms Michelle England

ANNEXURE 1

REPORT

of

THE EPISCOPAL STANDARDS COMMISSION

to

THE EPISCOPAL STANDARDS BOARD

concerning

THE RIGHT REVEREND ROGER ADRIAN HERFT

18 March 2020

TABLE OF CONTENTS

1.	INTRODUCTION	3
2.	LEGISLATIVE AND PROCEDURAL FRAMEWORK FOR RESPONDING TO CHILD SEXUAL ABUSE WHICH OPERATED WITHIN THE DIOCESE OF NEWCASTLE BETWEEN 1996 AND 2003	5
2.1	Clergy Discipline Ordinance 1966	5
2.2	1993 Sexual Harassment Policy	5
2.3	Diocesan Monitoring Committee to Consider Issues of Sexual Harassment.....	6
2.4	1995 Principles and Procedures.....	6
2.5	Committee to Monitor Allegations of Sexual Misconduct	7
2.6	2002 Principles and Procedures for dealing with Allegations of Sexual Misconduct	8
2.7	Yellow Envelopes System.....	8
2.8	Section 316 of the Crimes Act 1900 (NSW)	9
3.	CONDUCT OF BISHOP HERFT	11
3.1	Introduction	11
3.2	Allegations against Father Peter Rushton.....	12
3.3	Allegations Against Father George Parker	15
3.4	Conduct of Bishop Herft relating to Information in the Yellow Envelopes System.....	17
3.5	General Admission	18
4.	APPLICATON OF THE CANON TO BISHOP HERFT’S CONDUCT	19
5.	REPORT REQUIRED UNDER s12(1) OF THE CANON NOT PROVIDED	21
6.	QUESTIONS FOR DETERMINATION	22
7.	DETERMINATION OF THE BOARD	27
8.	LIST OF APPENDICES REFERRED TO IN THIS REPORT	28

1. INTRODUCTION

- 1.1 The Episcopal Standards Commission (**the ESC**) makes this report under sections 16 and 34 of the Episcopal Standards (Child Protection) Canon 2017 (**the Canon**) [**Appendix 1**]
- 1.2 By letter dated 7 June 2018, Bishop Peter Stuart, the current Bishop of Newcastle, provided to the Director of the ESC information regarding Bishop Roger Adrian Herft, who was the Bishop of Newcastle between 6 May 1993 and 26 February 2005 (**Information**) [**Appendix 2**]. The Information concerns the conduct of Bishop Herft in response to allegations of sexual abuse of minors which were reported to him between 17 May 1996 and 25 February 2003.
- 1.3 The Information comprises:
 - 1.3.1 the report of the Royal Commission into Institutional Responses to Child Sexual Abuse (**the Royal Commission**) in Case Study 42 (the **Royal Commission Report**),
 - 1.3.2 transcripts of evidence given before the Royal Commission and
 - 1.3.3 statements of witnesses to the Royal Commission [collectively **Appendix 3**].
- 1.4 After resigning as the Bishop of Newcastle, Bishop Herft became the Archbishop of Perth on 11 June 2005 until his retirement on 7 July 2017. Not having become the Bishop of any other Diocese, Bishop Herft became a former member of the House of Bishops. By virtue of paragraph (b) of the definition of examinable conduct in s2(1) of the Canon, the Canon therefore applies to Bishop Herft. As far as the ESC has been able to determine, Bishop Herft does not hold a licence or any active office in any Diocese.
- 1.5 The ESC has determined that the information discloses examinable conduct as defined in the Canon namely:
 - 1.5.1 Child abuse, by reason of failing to disclose a criminal offence against a child to the police;
 - 1.5.2 Child abuse, by reason of failing without reasonable excuse to report child abuse;
 - 1.5.3 Failure without reasonable excuse to perform a function under a professional standards process; and
 - 1.5.4 Failure without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority.

- 1.6 The ESC's determination is based on admissions of facts by Bishop Herft and findings of the Royal Commission contained in the Information.
- 1.7 This report:
- 1.7.1 outlines relevant elements of the legislative and procedural framework for responding to child sexual abuse which operated within the Diocese of Newcastle during the relevant period (Section 2);
 - 1.7.2 identifies material in the information which provides evidence of Bishop Herft's failure between 1996 and 2003 to comply with the requirements of the legal and procedural framework which applied to the conduct of Father Peter Rushton, Father George Parker and to persons identified in what is called the "the Yellow Envelopes System (Section 3);
 - 1.7.3 sets out provisions of the Canon which apply to Bishop Herft's conduct (Section 4);
 - 1.7.4 records that Bishop Herft declined to provide a report which the ESC required under s12(1) of the Canon (Section 5);
 - 1.7.5 sets out questions concerning Bishop Herft's conduct for determination by the Board (Section 6);
 - 1.7.6 makes brief reference to the legislation which empowers the Board to determine this matter (Section 7); and
 - 1.7.7 lists the documents referred to in this report as appendices (Section 8).

2. LEGISLATIVE AND PROCEDURAL FRAMEWORK FOR RESPONDING TO CHILD SEXUAL ABUSE WHICH OPERATED WITHIN THE DIOCESE OF NEWCASTLE BETWEEN 1996 AND 2003

2.1 Clergy Discipline Ordinance 1966

2.1.1 The Clergy Discipline Ordinance 1966 of the Diocese of Newcastle (the Clergy Discipline Ordinance) provided the mechanism to institute disciplinary processes against clergy for offences [Appendix 4]

2.1.2 Section 3 of the Clergy Discipline Ordinance specifies relevant offences:

....

(b) *unchastity*

....

(g) *conduct disgraceful in a member of the clergy and productive or likely to be productive of scandal or evil report,*

(h) *any offence punishable by law being a malum in se.*¹

2.1.3 Section 6(2)(a) of the Clergy Discipline Ordinance provides that the Bishop of his own mere motion may make a charge of an offence other than breach of faith, ritual or ceremonial.

2.2 1993 Sexual Harassment Policy

2.2.1 At page 23, the Royal Commission Report states:

Introduction of Sexual Harassment Policy in 1993

In October 1993, the Diocese published a policy called “Principles and Procedures for dealing with Sexual Harassment by Ministers in the Diocese of Newcastle” (1993 Sexual Harassment Policy). The definition of “sexual harassment” was wide enough to include child sexual abuse.

The process under the policy was that, first, an attempt would be made to conciliate a complaint. If the complaint could not be conciliated, it was to be referred to the bishop. If the bishop could not resolve the complaint, it was

¹ Crimes harming another person

open to refer the complaint to the board of inquiry, which might refer the matter to the disciplinary tribunal.

The 1993 Sexual Harassment Policy provided that no complaint would be proceeded with unless the complainant was prepared to have his or her name and details of the complaint referred to the respondent. The policy made no reference to any reporting requirements or guidelines as to when or how such incidents should be reported to the police or the Department of Community Services (DOCS).

2.3 Diocesan Monitoring Committee to Consider Issues of Sexual Harassment

- 2.3.1 In 1994 the Diocese established the Diocesan Monitoring Committee to Consider Issues of Sexual Harassment which received and managed complaints of conduct of a sexual nature (harassment or abuse) by clergy or other parish officials.

2.4 1995 Principles and Procedures

- 2.4.1 In March 1995 the Diocese amended and re-issued the 1993 Sexual Harassment Policy (1995 Principles and Procedures) **[Appendix 5]**. In the 1995 Principles and Procedures, the term sexual harassment is defined as:

“The important features of sexual harassment generally are:

- 1. It is of a VERBAL or PHYSICAL (including visual) nature.*
- 2. It is of a SEXUAL nature.*
- 3. It is UNWELCOME.*
- 4. It is OFFENSIVE and might reasonably be considered so.*
- 5. It is SERIOUS or PERISTENT.*

Sexual harassment can take various forms extending from unwelcome actions such as gestures, display of offensive pictures, comments of a sexual nature, inappropriate questions and comments about one’s private life, implicit or explicit demands or suggestions for sexual activity through to physical contact such as patting or pinching and even to rape.

Harassment may be perpetrated by an individual towards a person of the same or different sex or by an adult towards a child or group”.

- 2.4.2 The 1995 Principles and Procedures imposed the following duties on the Bishop in clause 9:

“9. Under the Clergy Discipline Ordinance 1966 [in particular under definitions in Section 3(1) a-h] or by the withdrawal of licence for lay ministers, the Bishop will deal appropriately with any person who i) has sexually harassed another person or ii) threatens or carries out any act or recrimination or retribution against a complainant.”

- 2.4.3 Accordingly, when the Bishop received information concerning alleged child sexual abuse during the period from 1995 to 2001, he :

2.4.3.1 had power to make a charge under the Clergy Discipline Ordinance 1996;

2.4.3.2 was under a duty to deal appropriately with any person who had sexually harassed another person.

2.5 Committee to Monitor Allegations of Sexual Misconduct

- 2.5.1 In October of 2001, Mrs Jean Sanders was invited by Bishop Herft to chair the Diocesan Monitoring Committee to Consider Issues of Sexual Harassment. In December of 2001 the Committee became known as the Diocesan Committee to Monitor Allegations of Sexual Misconduct (CASM).

- 2.5.2 The evidence of Mrs Sanders shows that the functions of CASM were as follows:

2.5.2.1 A complainant would meet with an appropriate contact person to be offered time to be heard, to be given the necessary support and advice in order to attempt to resolve an issue raised.

2.5.2.2 The initial contact person would notify the Chair of CASM (e.g. Mrs Jean Sanders).

2.5.2.3 A complaint in writing was required from the complainant before it was referred to the Bishop.

2.5.2.4 The Chair of CASM would report the incident to the Bishop. Mrs Sanders says she reported all incidents to Bishop Herft.

2.5.2.5 The Bishop or an authorised representative had the duty to report the matter to Police or other appropriate authority.

2.5.3 Accordingly, from 2001 at the latest, in addition to the power and duty set out in paragraph 2.4.3, diocesan policy imposed on Bishop Herft, a duty to report allegations of child abuse to the Police.

2.6 2002 Principles and Procedures for dealing with Allegations of Sexual Misconduct

2.6.1 In September 2002, the Diocese of Newcastle revised the 1995 Principles and Procedures. [The 2002 revision is **Appendix 6**]

2.6.2 Procedure number 2 provided:

When the complaint concerns an allegation of child abuse this matter must be referred immediately to the Diocesan Reporting Authority who will implement action according to Diocesan Policy for Child Protection.

2.6.3 Procedure number 19 provided:

The Bishop shall deal with the formal complaint in the manner the Bishop feels is appropriate.

2.6.4 Accordingly, from September 2002, diocesan policy allowed Bishop Herft a discretion in dealing with formal complaints of child abuse.

2.7 Yellow Envelopes System

2.7.1 The Yellow Envelopes System was used by the Diocese of Newcastle to store and manage records of complaints of sexual misconduct made against clergy and relevant church workers primarily between June 2002 and 19 January 2009 (although some complaints originated prior to 2002). The system, formally called a Protocol for Storage of Records of Issues Managed by CASM, was originated and established as a Diocesan procedure through Mrs Jean Sanders, the Chair of CASM² on 4 June 2002³. [**Appendix 7**]. It became known as the Yellow Envelopes System

² Mrs Sanders was the chair of CASM between October 2001 and late 2004.

³ Report page 173.

- 2.7.2 Under the Yellow Envelopes System, records of complaints to CASM were placed into separate yellow envelopes which were sealed. The envelopes were stored in a locked cabinet in the diocesan offices. File and documentary integrity were not strictly enforced as material accompanying files and documents may not have been kept together.
- 2.7.3 Mrs Sanders held a key to the cabinet and the Bishop's secretary also held a key on behalf of the Bishop. Access to the sealed envelopes was recorded on the envelopes. Mrs Sanders monitored the access to the envelopes and marked them accordingly. The Bishop's Commissary Father Graeme Lawrence was also authorised to have access to the yellow envelopes.
- 2.7.4 The Chair of CASM reported the incidents recorded in the Yellow Envelopes System to the Bishop for action and direction once the matters progressed beyond the preliminary stages.
- 2.7.5 In 2005 the Professional Standards Committee was established, and its procedures subsumed the Yellow Envelopes System.

2.8 Section 316 of the Crimes Act 1900 (NSW)

- 2.8.1 Section 316 of the Crimes Act 1900 (NSW), which came into force in 1990 and remained in force at all material times, provided:

316 Concealing serious indictable offence

- (1) If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.*

- 2.8.2 The word "indictable" was inserted between the words "serious" and "offence" in 1999. A 'serious indictable offence' means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more. This is contained in section 4 "Definitions" of the Crimes Act 1900.

2.8.3 Serious indictable offences which are relevant include:

2.8.3.1 Section 578B Crimes Act 1900 “Possession of child pornography” as it was known at the relevant time (See below concerning Father Rushton at Section 3.2); and

2.8.3.2 Section 66C (amongst others) Child Sexual Abuse and the other similar provisions at the relevant time (See below concerning Father Parker at Section 3.3).

2.9 **Summary**

2.9.1 Throughout the period from diocesan policy between 1993 and 2005, Bishop Herft had a power to institute disciplinary proceedings under the Clergy Discipline Ordinance against persons who committed an offence.

2.9.2 During the period from 1995 to 2001, under diocesan policy, Bishop Herft:

2.9.2.1 had power to make a charge under the Clergy Discipline Ordinance 1996;

2.9.2.2 was under a duty to deal appropriately with any person who had sexually harassed another person.

2.9.3 From 2001 at the latest, in addition to the power and duty set out in paragraph 2.9.2, diocesan policy imposed on Bishop Herft a duty to report allegations of child abuse to the Police.

2.9.4 From September 2002, diocesan policy allowed Bishop Herft a discretion in dealing with formal complaints of child abuse.

2.9.5 Throughout the period from 1993 to 2005, section 316 of the Crimes Act 1900 (NSW) imposed on Bishop Herft a duty to report all allegations of child sexual abuse of which he became aware to a member of the Police Force or other appropriate authority.

3. CONDUCT OF BISHOP HERFT

3.1 Introduction

- 3.1.1 As early as 1993 Bishop Herft was aware of his statutory obligation to report all incidents of child sexual abuse in accordance with his duty under section 316 of the Crimes Act 1900 (NSW). As Diocesan Bishop, Bishop Herft must be taken to have been aware at all material times of his power to institute disciplinary proceedings under the Clergy Discipline Ordinance.
- 3.1.2 The evidence shows that Bishop Herft did not report certain allegations of child sexual abuse to relevant authorities, nor did he exercise powers to institute disciplinary proceedings against the perpetrators under the Clergy Discipline Ordinance.
- 3.1.3 The evidence of the relevant conduct of Bishop Herft identified for purposes of this report comprises:
- (a) Admissions by Bishop Herft in evidence before the Royal Commission listed in **Appendix 8**; and
 - (b) Findings of the Royal Commission listed in **Appendix 9**.
- 3.1.4 Under section 29(5) of the Canon, the Board may inform itself from the record of any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal.
- 3.1.5 In reaching findings, the Royal Commission applied the civil standard of proof which requires its 'reasonable satisfaction' as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

[...] it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal but reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question

whether the issue has been proved to the reasonable satisfaction of the tribunal ... the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.

- 3.1.6 Accordingly, the more serious the allegation, the higher was the degree of probability that was required before the Royal Commission could reasonably be satisfied as to its truth.
- 3.1.7 The evidence discloses three strands of incidents relating to, first, Father Peter Rushton (Section 3.2), second, Father George Parker (Section 3.3) and, third, a number of reports of alleged child sexual abuse contained in the Yellow Envelope System (Section 3.4) In relation to each strand of incidents, Bishop Herft failed to fulfill his obligations under the legislative and procedural framework described in Section 2 of this report.
- 3.1.8 The facts relating to each of the three strands of incidents are outlined in Sections 3.2 to 3.4 below.
- 3.1.9 A chronology is Appendix 10 to this Report.

3.2 Allegations against Father Peter Rushton

- 3.2.1 Father Peter Rushton was the priest in the parish of St Luke's, Wallsend from 1973 to 1983 and then he was the Archdeacon of Maitland from 1983 until 1998. He was then appointed Rector of Hamilton. Due to ill health, Father Rushton resigned from the Parish of Hamilton in August 2001. Father Rushton died in 2007.
- 3.2.2 The evidence discloses three incidents involving Father Rushton that came to the knowledge of Bishop Herft:
 - (a) Pornography incident in November 1998;
 - (b) Allegations of sexual abuse of young boys (minors) made against Father Rushton in October 2002; and
 - (c) Multiple allegations of sexual abuse of young boys (minors) made against Father Rushton in February 2003.

3.2.3 Pornography incident in November 1998:

3.2.3.1 The evidence for this incident is set out in:

- (a) witness statement of Roger Adrian Herft dated 25 July 2016 at pages 41 – 43 and at [212] – [219];
- (b) transcript of evidence pages C17272 - C17281, the pornography incident is covered at pages C17322 - C17334 and
- (c) Royal Commission Report Pages 37 - 41, including findings.

3.2.3.2 A summary of the facts follows:

- (a) A Farragher Removals representative, Mr Jim Jackson, reported the matter to Archdeacon Ford by telephone on 25 November after the firm had been retained to move Father Rushton's belongings. On 26 November 1998, Archdeacon Ford informed Bishop Herft that the removalists had discovered pornography amongst Father Rushton's belongings in his bedroom. Archdeacon Ford indicated to Bishop Herft that he understood that possession of child pornography was a criminal offence.
- (b) Mr Jackson reported that whilst packing Father Rushton's bedroom, Mr Gary Askie, one of the removalists, had found videos that depicted males having sex with each other on the covers and one that showed pictures of a naked young boy. Mr Askie said that the estimated age of the young boy was 12 years. Mr Askie said he was certain the images were not of an adult and that he was "shocked and horrified" and offended when he saw it.⁴
- (c) Bishop Herft did not inform the Police Force or other appropriate authority of the incident, thereby infringing section 316 of the Crimes Act. Bishop Herft did not take steps to commence internal disciplinary proceedings against Father Rushton under the Clergy Discipline Ordinance.

⁴ Transcript of evidence page C16887

3.2.4 Allegations of sexual abuse of young boys against Father Rushton made in October 2002

3.2.4.1 The evidence for this incident is set out in:

- (a) Witness statement of Roger Adrian Herft dated 25 July 2016 at pages 41 - 43 at [221] – [225];
- (b) transcript of evidence at pages C17340 – C17342; and
- (c) Royal Commission Report page 42 and findings.

3.2.4.2 A summary of the facts follows:

- (a) Bishop Herft was made aware of this incident on 15 October 2002.
- (b) At a meeting with Bishop Herft, the Reverend Graham Jackson informed him of an incident in which an acquaintance's son had been sexually assaulted by Father Peter Rushton and that the acquaintance's son was considering making a formal written complaint.
- (c) Bishop Herft did not inform the Police Force or other appropriate authority of the incident, thereby infringing section 316 Crimes Act. Bishop Herft did not take steps to commence internal disciplinary proceedings against Father Rushton under the Clergy Discipline Ordinance.

3.2.5 Multiple allegations of sexual abuse of young boys made against Father Rushton February 2003.

3.2.5.1 The evidence for this incident is set out in:

- (a) witness statement of Roger Adrian Herft dated 25 July 2016 [205] – [225];
- (b) transcript of evidence at pages C17334 - C17343; and
- (c) Royal Commission report at pages 42 - 43, including findings.

3.2.5.2 A summary of the facts follows:

- (a) In February 2003, Mrs Sanders who was the chair of CASM reported to Bishop Herft that CASM had received an allegation that Father Rushton had abused the son of a priest and another boy in about 1979.
- (b) Also in February 2003, Mrs Sanders was made aware of another allegation against Father Rushton. The allegation was forwarded by the Diocese of Sydney. The complaint concerned behaviour and conduct of 4 clergymen in the Diocese of Newcastle in about 1976. One clergyman was identified as "Father Peter Rushkin" (sic) of Wallsend. Father Rushton was the priest at Wallsend in Newcastle in 1976. The complaint was made by an altar boy who served in about 1976 in the Newcastle Diocese. The complainant alleged that Father Peter Rushkin (sic) had his own group of boys. Bishop Herft was made aware of this allegation in February 2003.
- (c) Bishop Herft did not report the incidents to the Police Force or other appropriate authority, thereby infringing section 316 of the Crimes Act. Bishop Herft did not take steps to commence internal disciplinary proceedings against Father Rushton under the Clergy Discipline Ordinance.

3.3 Allegations Against Father George Parker

- 3.3.1 Father George Parker was an Anglican priest in the Diocese of Newcastle where he is alleged to have sexually assaulted two minors who served as altar boys in the period from 1970 to 1975. Father Parker was charged with sexual abuse offences under the criminal law on 18 August 2000. That case was no-billed.
- 3.3.2 Father Parker was given the anonymizing initials CKC for identification by the Royal Commission. Father Parker moved to the Diocese of Ballarat in 1996 to be a hospital chaplain. He retired from office in 2004, but he was active in that diocese until 2013. The no-billed charges were revived, multiple other criminal charges were added, and he was charged on 23 December 2016. Father Parker died on 11 January 2017 in Ballarat without going to trial.

3.3.3 CKA's report in 1996

3.3.3.1 The evidence for this incident is set out in:

- (a) witness statement of Roger Adrian Herft dated 25 July 2016 at [152] – [169];
- (b) transcript of evidence at page C17350 – C17361, C17393 - C17399; and
- (c) Royal Commission Report at page 44, including findings.

3.3.3.2 A summary of the facts follows:

- (a) The incident came to the knowledge of Dean Graeme Lawrence, on 24 April 1996, when CKA, the alleged victim, made a telephone call to Dean Lawrence. The Dean was Bishop Herft's Commissary whilst the Bishop was absent from the Diocese. CKA disclosed his identity and said he was sexually abused by an Anglican priest in a named parish in the 1970s. Dean Lawrence made a file note of the conversation.
- (b) Dean Lawrence informed Bishop Herft of the incident by letter on 17 May 1996 enclosing the file note of his conversation with CKA in relation to his allegations of sexual abuse.
- (c) Section 316 of the Crimes Act does not require that the Bishop must know the identity of the perpetrator for the duty to report to the Police Force or other appropriate authority to be enlivened.
- (d) Bishop Herft did not report the incident to the Police Force or other appropriate authority.

3.3.4 CKA's report in 1999

3.3.4.1 The evidence for this incident is set out in:

- (a) witness statement of Roger Adrian Herft dated 25 July 2016 at pages 34 - 36 at [157] – [169];

- (b) transcript of evidence at pages C17355 – C17365, C17400 – C17414; and
- (c) Royal Commission Report at pages 45 - 46, including findings.

3.3.4.2 A summary of the facts follows:

- (a) In 8 January 1999, CKA spoke to Dean Lawrence by telephone and again alleged that he had been sexually assaulted by Father Parker in the 1970s as a 14-year-old boy.
- (b) Dean Lawrence took a file note of the conversation with CKA and this was given to Bishop Herft on 12 January 1999.
- (c) Bishop Herft did not report the incident to the Police Force or other appropriate authority.

3.4 Conduct of Bishop Herft relating to Information in the Yellow Envelopes System

3.4.1 The operation of the Yellow Envelopes System is set out in Section 2.7 above. The evidence shows that Bishop Herft was aware of a number of allegations of child sexual abuse contained in the Yellow Envelopes System but failed to fulfill his obligations under the legislative and procedural framework in force at the time, described in Section 2 of this report.

3.4.2 The evidence relating to this conduct is set out in:

- (a) witness statement of Roger Adrian Herft dated 12 August 2016 at pages 4-5 at [28] – [34];
- (b) transcript of evidence pages C17372 – C17373, C17263 – C17266, C17269 – C17270, C17282 – C17283,
- (c) Royal Commission Report at pages 29 – 30; and
- (d) Anglican Diocese of Newcastle Professional Standards Office “**The Yellow Envelopes Report**” dated 13 March 2015⁵ [Appendix 11].

⁵ This document was produced by the Anglican Diocese of Newcastle to the Royal Commission. The Royal Commission redacted the report for its purposes. The Diocese of Newcastle further redacted the report before

3.4.3 A summary of the facts follows:

- (a) Between October 2001 and late 2004, 30 complaints involving sexual abuse were received by the Chair of CASM. In that time, CASM received only one complaint of harassment.⁶
- (b) The Yellow Envelopes Report refers to 30 yellow envelope files produced to the Royal Commission containing allegations of child sexual abuse. There were 36 yellow envelopes in total. Six envelopes were not produced to the Royal Commission because the subject matter of those envelopes did not relate to allegations of child sexual abuse.
- (c) Bishop Herft was informed of 24 matters relating to child sexual abuse by Mrs Sanders, the Chair of CASM.
- (d) Bishop Herft caused the Police to be notified in 3 of the 24 matters about which he was informed. Of the remaining 21 envelopes, in the case of 4 envelopes, the Police had already been notified by the time Bishop Herft was informed. Police were not notified of the incidents in the remaining 17 envelopes. The identities of those parties are not ascertainable from the redacted form of the Yellow Envelopes Report.
- (e) Bishop Herft did not report the incidents in the remaining 17 envelopes to the Police Forec or another appropriate authority nor did he institute proceedings under the Clergy Discipline Ordinance against the known perpetrators.

3.5 General Admission

At the conclusion of his evidence at the Royal Commission, Bishop Herft made a general statement to the effect that he admitted all of his failings and omissions during his tenure as Bishop and that he was grateful to the Royal Commission for identifying them.⁷

providing it to the Episcopal Standards Commission because it contained references to current professional standards investigations.

⁶Report page 28. Transcript of evidence C 17278 - C17279.

⁷ Transcript of evidence C17460 – C17461.

4. APPLICATION OF THE CANON TO BISHOP HERFT'S CONDUCT

- 4.1 Under s16(b) of the Canon, the ESC "may refer to the Board the fitness of the Bishop, whether temporarily or permanently, to hold office or to remain in Holy Orders".
- 4.2 The scope of the conduct into which the Board may inquire is defined in paragraph (b) of the definition of "examinable conduct" in s2 (1) of the Canon:

"(b) in relation to a Bishop who was a member of the House of Bishops or an assistant to the Primate, any conduct or omission involving:

- (i) child abuse; or*
- (ii) conduct that impedes or undermines a professional standards process; or*
- (iii) the failure without reasonable excuse to perform a function under a professional standards process; or*
- (iv) the failure without reasonable excuse to comply with the laws of the Commonwealth, a State or Territory requiring the reporting of child abuse to the police or other authority;*

occurring while a member of the House of Bishops or assistant to the Primate whether before or after the commencement of this canon, and the subject of information which, if established, might call into question the fitness of the Bishop to hold office or to remain in Holy Orders, but excludes any breach of faith, ritual or ceremonial;"

- 4.3 Each of the following expressions in the definition of examinable conduct is itself a defined term:

child has the same meaning as in the National Register Canon 2007 (National Register Canon);

child abuse has the same meaning as in the National Register Canon; and

professional standards process means a process for determining the fitness for office of clergy or lay persons under any canon of the General Synod or diocesan ordinance or a process under Chapter IX of the Constitution, where the conduct that is the subject of the process relates to child abuse.

- 4.4 The Dictionary in the Third Schedule of the National Register Canon defines child, child abuse and the related expression child offence as follows:

child means anyone under the age of 18;

child abuse means:

(a) the following conduct in relation to a child:

.....

(viii) a child offence; or

(ix) failure without reasonable excuse to report child abuse;

.....

child offence means conduct that amounts to a criminal offence against the laws of the Commonwealth a State or Territory ... involving the failure to disclose a criminal offence committed against a child to the police.

5. REPORT REQUIRED UNDER s12(1) OF THE CANON NOT PROVIDED

5.1 By letter dated 22 July 2019 the ESC required Bishop Herft under s12(1) of the Canon to provide a detailed report. Bishop Herft expressed some objections which led to further correspondence in which the ESC provided information addressing his concerns and sought further information. Bishop Herft maintained his position. The outcome was that Bishop Herft did not provide a report.

5.2 The correspondence with Bishop Herft is **Appendix 12**.

6. QUESTIONS FOR DETERMINATION

The ESC refers to the Board for determination firstly, the facts and matters of Bishop Herft's alleged conduct during the time he was Bishop of Newcastle; and secondly, in light of those facts as found by the Board, whether Bishop Herft is fit to hold office or to remain in Holy Orders.

Question 1

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about 26 November 1998 that Father Peter Rushton was [or had been] in possession of a quantity of child pornography?

Question 2

If the answer to question 1 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of "child abuse" and the definition of "child offence" in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of "child abuse" in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon?

Question 3

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about October 2002 that Father Peter Rushton had sexually abused young boys?

Question 4

If the answer to question 3 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon?

Question 5

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about February 2003 as to multiple allegations that Father Peter Rushton had sexually abused young boys?

Question 6

If the answer to question 5 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon?

Question 7

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about 17 May 1996 that Father George Parker or an unidentified priest in the Diocese of Newcastle had sexually abused two boys?

Question 8

If the answer to question 7 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1)

of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;

- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon?

Question 9

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about 12 January 1999 that Father George Parker or an unidentified priest in the Diocese of Newcastle had sexually abused two boys?

Question 10

If the answer to question 9 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) failed without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW),

within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon?

Question 11

Did Bishop Herft, while he was a member of the House of Bishops, receive information, that persons identified in the Yellow Envelope System maintained in the registry of the Diocese of Newcastle, had engaged in sexual abuse of children?

Question 12

If the answer to question 11 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon?


7. DETERMINATION OF THE BOARD

If, after investigating the questions referred to it, the Board is satisfied of any of the matters in s49(a) to (d) of the Canon, the Board may determine accordingly and may give any of the directions or make any of the determinations stipulated in s49(e) to (m).

8. LIST OF APPENDICES REFERRED TO IN THIS REPORT

- Appendix 1** Episcopal Standards (Child Protection) Canon 2017
- Appendix 2** Letter from the Diocese of Newcastle dated 7 June 2018
- Appendix 3** Information received from the Diocese of Newcastle
- Appendix 4** Clergy Discipline Ordinance 1966
- Appendix 5** Principles and Procedures for Dealing with Accusations of Sexual Harassment by Ministers in the Diocese of Newcastle March 1995
- Appendix 6** Principles and Procedures for Dealing with Accusations of Sexual Harassment by Ministers in the Diocese of Newcastle March 2002
- Appendix 7** Protocol for Storage of Records of Issues Managed by the Diocesan Committee to Monitor Allegations of Sexual Misconduct
- Appendix 8** Admissions by Bishop Herft
- Appendix 9** Findings of the Royal Commission
- Appendix 10** Chronology
- Appendix 11** Anglican Diocese of Newcastle Professional Standards Office "The Yellow Envelopes Report" dated 13 March 2015
- Appendix 12** Correspondence between ESC and Bishop Herft:
- 12.1** Letter from the ESC to Bishop Herft dated 22 July 2019
 - 12.2** Letter from Bishop Herft to the ESC dated 21 October 2019
 - 12.3** Letter from the ESC to Bishop Herft dated 27 November 2019
 - 12.4** Letter from Bishop Herft to the ESC dated 17 December 2019
 - 12.5** Letter from the ESC to Bishop Herft dated 24 December 2019
 - 12.6** Letter from Bishop Herft to the ESC dated 7 January 2020

Dated: 18 March 2020



.....

Martin Drevikovsky
 Convenor of the Episcopal Standards Commission

SUPPLEMENTARY REPORT

of

THE EPISCOPAL STANDARDS COMMISSION

to

THE EPISCOPAL STANDARDS BOARD

concerning

THE RIGHT REVEREND ROGER ADRIAN HERFT

3 May 2021

TABLE OF CONTENTS

1s.	INTRODUCTION.....	3
2s.	LEGISLATIVE AND PROCEDURAL FRAMEWORK FOR RESPONDING TO CHILD SEXUAL ABUSE WHICH OPERATED WITHIN THE DIOCESE OF NEWCASTLE BETWEEN 1996 AND 2003	5
3s.	CONDUCT OF BISHOP HERFT	5
4s.	APPLICATION OF THE 2017 CANON TO BISHOP HERFT’S CONDUCT.....	14
5s.	REPORT REQUIRED UNDER s 12(1) OF THE 2017 CANON NOT PROVIDED	15
6s.	QUESTIONS FOR DETERMINATION.....	15
7s.	DETERMINATION OF THE BOARD	17
8s.	LIST OF APPENDICES REFERRED TO IN THIS REPORT.....	18

1s. INTRODUCTION

- 1.1 The Episcopal Standards Commission (**ESC**) made a report to the Episcopal Standards Board (**Board**) under sections 16 and 34 of the Episcopal Standards (Child Protection) Canon 2017 (**2017 Canon**) dated 18 March 2020 (**First ESC Report**). The 2017 Canon is **Appendix 1** to the First ESC Report (**TB 5 – 10**).¹
- 1.2 The First ESC Report is the subject of a Reference pending before the Board.
- 1.3 The First ESC Report concerned conduct of Bishop Roger Adrian Herft, who was the Bishop of Newcastle between 6 May 1993 and 26 February 2005, in response to allegations of sexual abuse of minors which were reported to him between 17 May 1996 and 25 February 2003 and which were the subject of the report of the Royal Commission into Institutional Responses to Child Sexual Abuse (**the Royal Commission**) in Case Study 42 (**the Royal Commission Report**) (see paragraphs 1.2 – 1.4 of the First ESC Report).
- 1.4 The ESC makes this supplementary report to the Board under sections 16 and 34 of the 2017 Canon).
- 1.5 The ESC received further information arising from the release by the Attorney General of an unredacted version of the Royal Commission Report on Case Study 42 on 20 October 2020 (**unredacted Report**). The unredacted Report relevantly concerned Bishop Herft's failure between 1995 and 1999 to comply with the requirements of the legal and procedural framework which applied to the conduct of Dean Graeme Lawrence.
- 1.6 The referral of information to the ESC by the Rt Rev Dr Peter Stuart, Bishop of Newcastle, by letter dated 7 June 2018 (**TB 49**) (see First ESC report paragraph 1.2) had noted at paragraph 4:

Parts of the Report are redacted. It appears those parts may relate to evidence given and findings made in relation to allegations received [by the Royal Commission] concerning Dean Graeme Lawrence (as is and was), in respect of which Bishop Herft gave evidence. That evidence is included in the transcripts and may, at an appropriate time, be a further matter for the ESC to consider.

- 1.7 This Supplementary Report does not repeat matters which were dealt with and set out in the First ESC Report regarding Bishop Herft or the relevant elements of the legislative and procedural framework for responding to child sexual abuse which operated within the Diocese of Newcastle during the relevant period (see in particular Section 2 of the First ESC Report).

¹ TB references refer to the paginated Tender Bundle provided to the Board for the purpose of the current Reference arising from the First ESC Report – see Index at Appendix 16 (**TB 1814 – 1818**).

1.8 The ESC has determined that the further information discloses examinable conduct as defined in the 2017 Canon namely:

- 1.8.1 Child abuse, by reason of failing to disclose a criminal offence against a child to the police;
- 1.8.2 Child abuse, by reason of failing without reasonable excuse to report child abuse;
- 1.8.3 Failure without reasonable excuse to perform a function under a professional standards process; and
- 1.8.4 Failure without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority.

1.9 The ESC's determination is based on admissions of facts by Bishop Herft and findings of the Royal Commission.

1.10 The structure of this report repeats that of the First ESC Report (see paragraph 1.7):

- 1.10.1 outlines relevant elements of the legislative and procedural framework for responding to child sexual abuse which operated within the Diocese of Newcastle during the relevant period (Section 2s);
- 1.10.2 identifies material in the information which provides evidence of Bishop Herft's failure between 1995 and 1999, to report allegations of child sexual abuse against the then Dean, Graeme Lawrence, to relevant authorities, or to take any step to exercise powers to institute disciplinary proceedings under Clergy Discipline Ordinance against Graeme Lawrence (Section 3s);
- 1.10.3 sets out provisions of the 2017 Canon which apply to Bishop Herft's conduct (Section 4s);
- 1.10.4 records that Bishop Herft declined to provide a report which the ESC required under s 12(1) of the 2017 Canon (Section 5s);
- 1.10.5 sets out questions concerning Bishop Herft's conduct for determination by the Board (Section 6s);
- 1.10.6 makes brief reference to the legislation which empowers the Board to determine this matter (Section 7s); and
- 1.10.7 lists the documents referred to in this Supplementary Report as appendices (Section 8s).

2s. LEGISLATIVE AND PROCEDURAL FRAMEWORK FOR RESPONDING TO CHILD SEXUAL ABUSE WHICH OPERATED WITHIN THE DIOCESE OF NEWCASTLE BETWEEN 1996 AND 2003

2.1 Section 2 of the First ESC Report (**TB 5 – 10**), and the following documents referred to in the Appendices to that Report are repeated and relied on:

- 2.1.1 **Appendix 4** – Clergy Discipline Ordinance 1966 (**TB 855 – 871**),
- 2.1.2 **Appendix 4A** – Clergy Discipline Ordinance 1966 – 2003 (**TB 872 – 887**),
- 2.1.3 1993 Sexual Harassment Policy (**TB 1678 – 1686**)
- 2.1.4 **Appendix 5** – 1995 Principles and Procedures (being a reissue of the 1993 Sexual Harassment Policy) (**TB 889 – 897**),
- 2.1.5 **Appendix 6** – 2002 revision of the 1995 Principles and Procedures (**TB 898 – 908**),
- 2.1.6 **Appendix 11** – Yellow Envelopes Report (**TB 920 – 1006**).

3s. CONDUCT OF BISHOP HERFT

3.1 Supplementary allegations

- 3.1.1 Section 3.1 of the First ESC Report (**TB 11 – 12**) regarding Bishop Herft’s awareness of his statutory obligation is repeated.
- 3.1.2 In addition to s 29(5) of the 2017 Canon referred to at paragraph 3.1.4 of the First ESC Report (**TB 11**), the Board “may inform itself on any matter in such manner as it thinks fit” under s 29(3), which would also permit the Board to inform itself from the Royal Commission material relied upon by the Commission.
- 3.1.3 As noted at paragraph 1.5 above, on 20 October 2020 the unredacted Report was released.
- 3.1.4 The evidence including the unredacted Report shows that in addition to the matters identified in Sections 3.2 and 3.4 of the First ESC Report, Bishop Herft did not, between 1995 and 1999, report allegations of child sexual abuse against the then Dean, Graeme Lawrence, to relevant authorities, nor did he take any step to exercise powers to institute disciplinary proceedings under Clergy Discipline Ordinance.

3.1.5 In relation to each strand of incidents, Bishop Herft failed to fulfill his obligations under the legislative and procedural framework described in Section 2 of the First ESC Report.

3.1.6 The evidence discloses, and Bishop Herft accepted, that during the time he was the Bishop of Newcastle:²

3.1.6.1 he was made aware on three separate occasions of allegations that Dean Lawrence had sexually abused children:

- (a) First, he was told by Mr Robert Wall in 1995 that two boys had separately approached him and alleged that Mr Lawrence had sexually abused them;
- (b) Second, he was told by then Archbishop Goodhew in around 1996 that there were allegations, disclosed by Reverend Kelly to Archbishop Goodhew, that Dean Lawrence had engaged in sexual activity with young boys;
- (c) Third, he was told by Bishop Clark in 1999 that there was an allegation that, while Dean Lawrence was in Griffith, he had been a perpetrator of child sexual abuse, and

3.1.6.2 he spoke with Dean Lawrence about the allegations on each of those occasions.³

3.1.6.3 Dean Lawrence denied the allegations.

3.1.6.4 Bishop Herft took no other action in relation to the disclosures made to him.

3.1.7 The matters set out in Section 3.4 and Section 4 of the First ESC Report are repeated and relied on.

3.1.8 The evidence of the relevant conduct of Bishop Herft identified for purposes of this matter comprises:

- (a) Admissions by Bishop Herft in evidence before the Royal Commission listed in **Appendix 8** as supplemented in **Appendix 13 (TB 1803 - 1809)**;

² unredacted Report p 184 (TB 1840)[cf TB 237]

³ Transcript of R Herft, Case Study 42, 29 August 2016 at 17308:19–38

- (b) Findings of the Royal Commission listed in **Appendix 9** as supplemented in **Appendix 14 (TB 1810 -1811)**; and
- (c) The matters identified below;
- (d) A chronology supplementary to that in **Appendix 10** is **Appendix 15** to this Report (**TB 1812 -1813**).

3.1.9 The facts relating to the disclosures regarding Dean Graeme Lawrence are outlined in section 3.6⁴ below.

3.6 Allegations regarding Dean Graeme Lawrence

3.6.1 Mr Graeme Lawrence was ordained as a deacon in the Diocese of Riverina in 1965 and in 1966 ordained a priest. He was rector at St Alban's Church in the Parish of Griffith in 1975 and in 1978 also became an archdeacon. Between 1978 and May 1984 he was commissary on occasions when the Bishop of Riverina was absent.

3.6.2 Bishop Holland appointed Mr Lawrence as dean of Newcastle Cathedral and as his commissary in June 1984. He remained in that position until he retired in December 2008. He was deposed from Holy Orders by Bishop Farran in 2012.⁵

3.6.3 Disclosure of allegations against Dean Lawrence by Mr Robert Wall in 1995:

3.6.3.1 The evidence for this incident is set out in:

- (a) Exhibit 42-75 Witness statement of Roger Adrian Herft dated 25 July 2016 (**TB 467**) at [170] – [185] pages 36 – 39 (**TB 502-505**);
- (b) Exhibit 42-76 Supplementary Witness Statement of Roger Adrian Herft dated 12 August 2016 (**TB 517**) at [28] – [34] pages 4- 5 (**TB 520 – 521**);
- (c) transcript of evidence pages C17287 – 17293 (**TB 659 – 665**); C17298 – 17302 (**TB 701 – 705**); C17320 – 17322 (**TB 723 – 725**); C17372 – 17373 (**TB 775 – 776**), the disclosures by Mr and Mrs Wall are covered at pages C17287 – 17290;

⁴ The numbering deliberately follows on from the numbering in Section 3 of the First ESC Report

⁵ Report p 12 (**TB 65**), unredacted Report pp 118-120 (**TB 1829 – 1831**) [cf TB 171 – 172]

- (d) Exhibit 42-0030, 'Statement of Robert Wall', Case Study 42, STAT.1117.001.0001_R at [5], [7] (**Item 7-1**) (**TB 1864**);
- (e) Exhibit 42-0067, 'Letter from Bishop Herft to Mr and Mrs Wall' dated 13 July 1995, Case Study 42, ANG.0347.001.0001 (**Item 7-2**) (**TB 1867**);
- (f) Exhibit 42-0071, 'Supplementary Statement of Robert Wall', STAT.1124.001.0001_R (**Item 7-3**) (**TB 1868 - 1869**);
- (g) unredacted Report pages 32, 179-180 (**TB 1820, 1835 - 1836**) [cf TB 85, 232-233] including findings.

3.6.3.2 A summary of the facts follows:

- (a) Mr Robert Wall and his wife (the Walls) were leaders of a diocesan youth camp during the period that Bishop Herft was the Bishop of Newcastle. Mr Wall stated that, in around 1994 or 1995, he and his wife were approached by two boys on separate occasions about a month apart. They told the Walls that they had been sexually abused by Dean Lawrence. The boys did not detail what had happened to them and they did not want the Walls to tell anyone else. The Walls said they would inform the bishop but would not disclose their names.
- (b) Within a week of the boys' disclosures, the Walls arranged with Brother James Howey to meet with Bishop Herft at the bishop's registry.
- (c) Mr Wall stated that at this meeting Bishop Herft seemed 'disinterested' in what he and his wife were saying and more interested in standing up for Dean Lawrence. He said that Bishop Herft asked for the details and names of the complainants, but the Walls said they would not disclose those names to him.
- (d) Mr Wall said that Bishop Herft responded that, if they did not disclose the names and continued to complain about Dean Lawrence, they would face legal action for defamation of character.

- (e) Bishop Herft accepted that he sent a letter dated 13 July 1995 to the Walls at their then address.⁶ The letter stated that Bishop Herft had raised the allegations with 'the priest', who had denied them. The letter also stated that, for the matter to be pursued further, the complainants would need to make a formal complaint.
- (f) Bishop Herft had no recollection of receiving allegations from the Walls or of meeting with them.⁷
- (g) Bishop Herft accepted that he must have met with the Walls to discuss the allegations, as he had a diary entry for that day listing a meeting with the Walls.⁸
- (h) Bishop Herft also had no recollection of meeting with Dean Lawrence to discuss the Walls' allegations⁹ and no recollection of his conversation with Dean Lawrence. Bishop Herft accepted that he must have spoken with Dean Lawrence about the allegations.¹⁰
- (i) Bishop Herft did not do anything to follow up his letter to the Walls in July 1995. He could not explain why that was the case.¹¹
- (j) Bishop Herft did not inform the Police of the allegations. Bishop Herft did not cause an appropriate investigation into the allegations to be conducted.

3.6.4 Disclosure of allegations against Dean Lawrence by Reverend Kelly in around 1996:

3.6.4.1 The evidence for this incident is set out in:

- (a) Exhibit 42-75 Witness statement of Roger Adrian Herft dated 25 July 2016 (**TB 467**) at [170] – [185] pages 36 – 39 (**TB 502-505**);

⁶ Transcript of R Herft, Case Study 42, 12 August 2016 at 17292:13–46.

⁷ Transcript of R Herft, Case Study 42, 29 August 2016 at 17289:19–30.

⁸ Transcript of R Herft, Case Study 42, 29 August 2016 at 17299:43–46, 17300:1–2

⁹ Transcript of R Herft, Case Study 42, 29 August 2016 at 17298:38–17299:12

¹⁰ Transcript of R Herft, Case Study 42, 29 August 2016 at 17299:43–46, 17300:1–2, 17299:5–9.

¹¹ Transcript of R Herft, Case Study 42, 29 August 2016 at 17301:6–10

- (b) Exhibit 42-76 Supplementary Witness Statement of Roger Adrian Herft dated 12 August 2016 (**TB 517**) at [28] – [34] pages 4- 5 (**TB 520 – 521**);
- (c) Exhibit 42-0001, ‘Letter from Reverend Brian Kelly to Archbishop Harry Goodhew dated 18 December 1996’, STAT.0221.001.0031_R (**Item 7-5**) (**TB 1875**);
- (d) Exhibit 42-0001, ‘Letter from Reverend Brian Kelly to Archbishop Harry Goodhew dated 18 February 1997’, STAT.0221.001.0030_R (**Item 7-6**) (**TB 1876**);
- (e) Exhibit 42-0065, ‘Statement of Richard Goodhew’, Case Study 42, STAT.1053.001.0001 at [19], [27] (**Item 7-7**) (**TB 1877 - 1884**);
- (f) transcript of evidence pages C17302 – 17305 (**TB 705 – 709**), C17321 – 17322 (**TB 723 – 724**), C17372 – 17373 (**TB 775 – 776**), the disclosures by Reverend Kelly are covered at page C17302;
- (g) unredacted Report pages 33, 181-182 (**TB 1821, 1837 - 1838**) [cf TB 86, 234-235] including findings.

3.6.4.2 A summary of the facts follows:

- (a) The Reverend Brian Kelly, the Rector of Engadine in the Diocese of Sydney, wrote to Bishop Harry Goodhew, then the Archbishop of Sydney, on 18 December 1996. In his letter, Reverend Kelly confirmed that earlier that day he had discussed with the archbishop allegations of ‘sexual misconduct by a clergyman in the Newcastle diocese’. He said, ‘it has been communicated to me by a member of my church that the Reverend Graeme Russell (who I gather is the Dean of Newcastle Cathedral) has engaged in sexual activity with young boys’. He noted that the family was reluctant to press formal allegations.
- (b) Reverend Kelly wrote a further letter to then Archbishop Goodhew dated 18 February 1997 noting that he had received no advice as to the outcome of the matter.
- (c) A handwritten file note signed with the initials of Bishop Goodhew appears on a copy of the 18 February 1997 letter. The file note said:

Phoned Brian Kelly 5/3/97

said 1. I had spoken with Bp Herft.

2. The Bp had indicated that he would like the people concerned to make contact with him.

3. Bp has already talked with the Rev GRL, who had denied any wrong doing in the past. I do not know if the discussion related to persons other than those now expressing concern.

- (d) Reverend Kelly died in 1999.
- (e) Bishop Goodhew did not dispute the accuracy of Reverend Kelly's summary of their discussions in his letter.
- (f) Bishop Herft had no recollection of speaking with then Archbishop Goodhew about these allegations.¹² He accepted he had spoken with Archbishop Goodhew¹³ and that he must have spoken with Dean Lawrence.¹⁴ Bishop Herft had no recollection of his conversation with Dean Lawrence.¹⁵
- (g) Bishop Herft did not inform the Police of the allegations. Bishop Herft did not cause an appropriate investigation into the allegations to be conducted.

3.6.5 Allegations against Dean Lawrence disclosed in 1999:

3.6.5.1 The evidence for this incident is set out in:

- (a) Exhibit 42-75 Witness statement of Roger Adrian Herft dated 25 July 2016 (**TB 467**) at [170] – [185] pages 36 – 39 (**TB 502-505**);
- (b) Exhibit 42-76 Supplementary Witness Statement of Roger Adrian Herft dated 12 August 2016 (**TB 517**) at [28] – [34] pages 4- 5 (**TB 520 – 521**);
- (c) Exhibit 42-0001, Filenote of Archbishop Goodhew dated 20 July 1999, Case Study 42, STAT.0221.001.0022 (**Item 7-8**) (**TB 1885**);

¹² Transcript of R Herft, Case Study 42, 29 August 2016 at 17303:36–17304:1.

¹³ Transcript of R Herft, Case Study 42, 29 August 2016 at 17303:36–17305:9, 17307:37–42.

¹⁴ Transcript of R Herft, Case Study 42, 29 August 2016 at 17304:38–17305:17, 17308:14–17

¹⁵ Transcript of R Herft, Case Study 42, 29 August 2016 at 17303:40–17304:1, 17305:11–17, 29–37, 17307:37–42, 17308:6–12

- (d) Statement of Bishop Harry Goodhew, STAT.1053.001.0001_R at [33] **(Item 7-7) (TB 1877 - 1884)**;
- (e) Statement of Bishop Bruce Clark, STAT.1055.001.0001_R at [4], [6], [7] **(Item 7-10) (TB 1886 - 1887)**;
- (f) transcript of evidence pages C17306 – 17308 **(TB 709 – 711)**, C17308 – 17309 **(TB 711 – 712)**, C17320 – 17322 **(TB 723 – 725)**, C17372 – 17373 **(TB 775 – 776)**; the disclosure by Bishop Clark is covered at pages C17306 – 17307;
- (g) unredacted Report pages 34, 182-183 **(TB 1822, 1838 - 1839)** [cf TB 87, 235-236] including findings.

3.6.5.2 A summary of the facts follows:

- (a) In a file note dated 20 July 1999, Archbishop Goodhew recorded allegations raised against an unnamed priest who had formerly lived in Griffith and who in 1999 lived in Newcastle. The file note recorded that an assistant in the Parish of Engadine had grown up in Griffith and, on a visit to the town, had told an assistant priest in Griffith that ‘there had been a number of families in Griffith, members of whom had been sexually harassed by that clergyman’. Bishop Goodhew stated that these allegations concerned Dean Lawrence sexually abusing boys.
- (b) In his file note of 20 July 1999, Bishop Goodhew recorded that the assistant priest in Griffith had passed the allegation on to Bishop Bruce Clark of the Diocese of Riverina, who then phoned him.
- (c) Bishop Clark stated that in around the late 1990s he received an anonymous call in which the caller alleged that Dean Lawrence was a ‘sexual abuser’. The anonymous caller did not specifically mention children and offered no details. Bishop Clark stated that he telephoned Bishop Herft regarding these allegations and that Bishop Herft undertook to follow up the allegations. Bishop Clark stated that Bishop Herft later told him that he had raised the allegations with Dean Lawrence, who had denied them.

- (d) Bishop Herft accepted that he must have spoken with Bishop Clark about the allegations.¹⁶ He also accepted that he must have spoken with Dean Lawrence about the matter.¹⁷ Bishop Herft had no recollection of any of these conversations.¹⁸
- (e) Bishop Herft did not inform the Police of the allegations. Bishop Herft did not cause an appropriate investigation into the allegations to be conducted.

3.6.6 Failure to take appropriate action regarding allegations of child sexual abuse made against the Dean of the Cathedral

3.6.6.1 In addition to the matters set out in 3.6.3, 3.6.4 and 3.6.5, relevant evidence is set out in:

- (a) transcript of evidence pages C17443 (**TB 1236**); C17452 (**TB 1245**); C17459 - 17460 (**TB 1252 – 1253**);
- (b) unredacted Report pages 35 – 36, 184 – 186 (**TB 1823 - 1824, 1840 - 1842**) [cf TB 88-89, 237-239] including findings.

3.6.6.2 Further to the matters set out in 3.6.3, 3.6.4 and 3.6.5, Bishop Herft treated the allegations against Dean Lawrence in a way that was different from the way he treated matters the subject of the Yellow Envelopes (referred to in Section 2.7 of the First ESC Report).¹⁹

3.6.6.3 In summary:

- (a) No file notes are available of Bishop Herft's conversations regarding the allegations made against Dean Lawrence, either with those who made the disclosures to Bishop Herft or with the dean.

¹⁶ Transcript of R Herft, Case Study 42, 29 August 2016 at 17307:37–42

¹⁷ Transcript of R Herft, Case Study 42, 29 August 2016 at 17304:38–17305:17, 17308:14–17

¹⁸ Transcript of R Herft, Case Study 42, 29 August 2016 at 17303:40–17304:1, 17305:11–17, 29–37, 17307:37–42, 17308:6–12

¹⁹ unredacted Report p 185 (**TB 1841**) [cf TB 238]

- (b) Bishop Herft should have made file notes of each of those conversations.²⁰
- (c) Bishop Herft did not make any entries in his personal diary notes about the matter(s).²¹
- (d) No Yellow Envelope for Dean Lawrence is available.²²
- (e) There should have been a Yellow Envelope for Dean Lawrence.²³
- (f) Bishop Herft knew of no reason why there would not be an envelope for Dean Lawrence.²⁴
- (g) The allegations against the Dean were never made known to CASM and were never provided to Ms Sanders when she created a new recordkeeping system.²⁵

3.6.6.4 As at 3.6.3.2 (j), 3.6.4.2 (g) and 3.6.5.2 (e), Bishop Herft did not inform the Police of the allegations against Dean Lawrence, thereby infringing section 316 of the Crimes Act and did not cause an appropriate investigation into the allegations to be conducted.

4s. APPLICATION OF THE 2017 CANON TO BISHOP HERFT'S CONDUCT

4.1 Section 4 of the First ESC Report (TB 19-20), is repeated.

4.2 In particular, under s 16(b) of the 2017 Canon, the ESC "may refer to the Board the fitness of the Bishop, whether temporarily or permanently, to hold office or to remain in Holy Orders".

²⁰ Transcript of R Herft, Case Study 42, 29 August 2016 at 17305:39–47

²¹ Transcript of R Herft, Case Study 42, 29 August 2016 at 17311:40–17311:47; Exhibit 42-0001, 'Letter from Archbishop Roger Herft to Michael Elliott dated 4 October 2010', Case Study 42, STAT.0221.001.0025 (Item 7-13) (TB 1890 - 1891)

²² unredacted Report p 185 (TB 1841) [cf TB 238]

²³ Transcript of R Herft, Case Study 42, 30 August 2016 at 17443:11–17443:20.

²⁴ Transcript of R Herft, Case Study 42, 30 August 2016 at 17443:22–17443:24.

²⁵ unredacted Report p 185 (TB 1841) [cf TB 238] Transcript of R Herft, Case Study 42, 30 August 2016 at 17459:34–17460:16.

5s. REPORT REQUIRED UNDER s 12(1) OF THE 2017 CANON NOT PROVIDED

- 5.1** By letter dated 6 January 2021 the ESC required Bishop Herft under s 12(1) of the 2017 Canon to provide a detailed report in relation to the further matters of examinable conduct arising from the unredacted Report. Bishop Herft expressed objections by letter dated 25 February 2021. The ESC sought to correct apparent misunderstandings in that letter and provided further information by letter dated 16 March 2021. In the event no report was provided by Bishop Herft.
- 5.2** The correspondence with Bishop Herft is **Appendix 20 (TB 1997 - 2015)**.

6s. QUESTIONS FOR DETERMINATION

- 6.1** The ESC refers to the Board for determination firstly, the facts and matters of Bishop Herft's further alleged conduct during the time he was Bishop of Newcastle; and secondly, in light of those facts as found by the Board, whether Bishop Herft is fit to hold office or to remain in Holy Orders.

Question 13

Did Bishop Herft, while he was a member of the House of Bishops, receive information in about 1995 that two boys had separately approached and alleged that Mr Lawrence had sexually abused?

Question 14

If the answer to question 13 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon, paragraph (a)(viii) of the definition of "child abuse" and the definition of "child offence" in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon and paragraph (a)(ix) of the definition of "child abuse" in the Third Schedule to the National Register Canon;

- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s 2(1) of the 2017 Canon; or
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s 316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s 2(1) of the 2017 Canon?

Question 15

Did Bishop Herft, while he was a member of the House of Bishops, receive information in around 1996 from Archbishop Goodhew that there were allegations, disclosed by Reverend Kelly to Archbishop Goodhew, that Dean Lawrence had engaged in sexual activity with young boys?

Question 16

If the answer to question 15 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s 2(1) of the 2017 Canon; or
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s 316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s 2(1) of the 2017 Canon?

Question 17

Did Bishop Herft, while he was a member of the House of Bishops, receive information in 1999 from Bishop Clark that there was an allegation that, while Dean Lawrence was in Griffith, he had been a perpetrator of child sexual abuse?

Question 18

If the answer to question 17 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s 2(1) of the 2017 Canon; or
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s 316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s 2(1) of the 2017 Canon?

7s. DETERMINATION OF THE BOARD

7.1 The matters for determination by the Board in relation to this Supplementary Report are (as set out in section 7 of the First ESC Report (**TB 27**), namely:

If, after investigating the questions referred to it, the Board is satisfied of any of the matters in s 49(a) to (d) of the 2017 Canon, the Board may determine accordingly and may give any of the directions or make any of the determinations stipulated in s 49(e) to (m).

8s. LIST OF APPENDICES REFERRED TO IN THIS REPORT

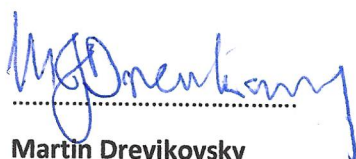
Appendices to the First ESC Report

- Appendix 1** Episcopal Standards (Child Protection) Canon 2017 (TB 29 – 47)
- Appendix 2** Letter from the Diocese of Newcastle dated 7 June 2018 (TB 48)
- Appendix 3** Information received from the Diocese of Newcastle (TB 49 – 50)
- Appendix 3A** Royal Commission Report (TB 51 – 454)
- Appendix 4** Clergy Discipline Ordinance 1966 (TB 855 – 871)
- Appendix 4A** Clergy Discipline Ordinance 1966 – 2003 (TB 872 – 887)
- Appendix 5** Principles and Procedures for Dealing with Accusations of Sexual Harassment by Ministers in the Diocese of Newcastle March 1995 (TB 889 – 897)
- Appendix 6** Principles and Procedures for Dealing with Accusations of Sexual Harassment by Ministers in the Diocese of Newcastle March 2002 (TB 898 – 908)
- Appendix 7** Protocol for Storage of Records of Issues Managed by the Diocesan Committee to Monitor Allegations of Sexual Misconduct (TB 909 – 910)
- Appendix 8** Admissions by Bishop Herft (TB 911 – 914)
- Appendix 9** Findings of the Royal Commission (TB 915 – 916)
- Appendix 10** Chronology (TB 917 – 919)
- Appendix 11** Anglican Diocese of Newcastle Professional Standards Office “The Yellow Envelopes Report” dated 13 March 2015 (TB 920 – 1006)
- Appendix 12** Correspondence between ESC and Bishop Herft:
- 12.1** Letter from the ESC to Bishop Herft dated 22 July 2019 (TB 1007 – 1010)
 - 12.2** Letter from Bishop Herft to the ESC dated 21 October 2019 (TB 1011)
 - 12.3** Letter from the ESC to Bishop Herft dated 27 November 2019 (TB 1012 – 1013)
 - 12.4** Letter from Bishop Herft to the ESC dated 17 December 2019 (TB 1014 – 1015)
 - 12.5** Letter from the ESC to Bishop Herft dated 24 December 2019 (TB 1016)
 - 12.6** Letter from Bishop Herft to the ESC dated 7 January 2020 (TB 1017)

Appendices to this Supplementary Report

- Appendix 13** Supplementary Admissions by Bishop Herft (TB 1803 - 1809)
- Appendix 14** Supplementary Findings of the Royal Commission (TB 1810 -1811)
- Appendix 15** Supplementary Chronology (TB 1812 - 1813)
- Appendix 16** Tender Bundle Index for First ESC Report with appendices and further documents dated 21 October 2020 (comprising TB pp 1-1783) (TB 1814 - 1818)
- Appendix 17** Pages 30, 32-36, 179-186 and 233 of the unredacted version of the Royal Commission into Institutional Responses to Child Sexual Abuse Report on Case Study 42 principally relied on; also pages 44, 46, 62-63, 118-120, 173 174-176, 200-207, 218-224, 232, 234 – all annotated to show prior redactions (TB 1819 - 1860)
- Appendix 18** Index to Further Documents re Royal Commission Case Study 42 Unredacted Report (TB 1861 - 1863)
- Appendix 19** Documents 7-1 to 7-19 as set out in the Index being Appendix 18 this Report (TB 1864 - 1996)
- Appendix 20** Further Correspondence between ESC and Bishop Herft:
- 20.1** Letter from the ESC to Bishop Herft dated 6 January 2021 (TB 1997 - 2000), with attachment 2 only:
1. Pages 32-36, 179-186 and 233 of the unredacted Report – now see as part of Appendix 17 to this Report
 2. draft Statement of Facts (TB 2000 - 2011)
 3. Index to Further Documents re Royal Commission Case Study 42 Unredacted Report – now see as Appendix 18 to this Report (repaginated)
 4. Documents 7-1 to 7-19 as set out in the Index – now see as Appendix 19 to this Report (repaginated)
- 20.2** Letter from Bishop Herft to the ESC dated 25 February 2021 (TB 2012 - 2013)
- 20.3** Letter from the ESC to Bishop Herft dated 16 March 2021 (TB 2014 - 2015)

Dated: 3 May 2021



Martin Drevikovsky

Convenor of the Episcopal Standards Commission

ANNEXURE 2

Episcopal Standards Commission's (ESC) Referral to the Episcopal Standards Board (ESB) concerning Roger Herft

QUESTIONS FOR DETERMINATION AND ANSWERS

The ESC refers to the Board for determination firstly, the facts and matters of Bishop Herft's alleged conduct during the time he was Bishop of Newcastle; and secondly, in light of those facts as found by the Board, whether Bishop Herft is fit to hold office or to remain in Holy Orders.

Question 1

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about 26 November 1998 that Father Peter Rushton was [or had been] in possession of a quantity of child pornography? **Answer: YES**

Question 2

If the answer to question 1 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of "child abuse" and the definition of "child offence" in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of "child abuse" in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon? **Answer: YES**

Question 3

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about October 2002 that Father Peter Rushton had sexually abused young boys? **Answer: YES**

Question 4

If the answer to question 3 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon? **Answer: YES**

Question 5

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about February 2003 as to multiple allegations that Father Peter Rushton had sexually abused young boys? **Answer: YES**

Question 6

If the answer to question 5 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon? **Answer: YES**

Question 7

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about 17 May 1996 that Father George Parker or an unidentified priest in the Diocese of Newcastle had sexually abused two boys? **Answer: YES**

Question 8

If the answer to question 7 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;

- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon? **Answer: YES**

Question 9

Did Bishop Herft, while he was a member of the House of Bishops, receive information on or about 12 January 1999 that Father George Parker or an unidentified priest in the Diocese of Newcastle had sexually abused two boys? **Answer: YES**

Question 10

If the answer to question 9 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) failed without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and

- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon? **Answer: YES**

Question 11

Did Bishop Herft, while he was a member of the House of Bishops, receive information, that persons identified in the Yellow Envelope System maintained in the registry of the Diocese of Newcastle, had engaged in sexual abuse of children? **Answer: YES**

Question 12

If the answer to question 11 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s2(1) of the Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s2(1) of the Canon; and
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s2(1) of the Canon? **Answer: YES**

Question 13

Did Bishop Herft, while he was a member of the House of Bishops, receive information in about 1995 that two boys had separately approached and alleged that Mr Lawrence had sexually abused? **Answer: YES**

Question 14

If the answer to question 13 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s 2(1) of the 2017 Canon; or
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s 316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s 2(1) of the 2017 Canon? **Answer: YES**

Question 15

Did Bishop Herft, while he was a member of the House of Bishops, receive information in around 1996 from Archbishop Goodhew that there were allegations, disclosed by Reverend Kelly to Archbishop Goodhew, that Dean Lawrence had engaged in sexual activity with young boys? **Answer: YES**

Question 16

If the answer to question 15 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;
- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s 2(1) of the 2017 Canon; or
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s 316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s 2(1) of the 2017 Canon? **Answer: YES**

Question 17

Did Bishop Herft, while he was a member of the House of Bishops, receive information in 1999 from Bishop Clark that there was an allegation that, while Dean Lawrence was in Griffith, he had been a perpetrator of child sexual abuse? **Answer: YES**

Question 18

If the answer to question 17 is in the affirmative, did Bishop Herft:

- (a) fail to disclose a criminal offence committed against a child to the police, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon, paragraph (a)(viii) of the definition of “child abuse” and the definition of “child offence” in the Third Schedule to the National Register Canon;

- (b) fail without reasonable excuse to report child abuse, thereby engaging in child abuse within the meaning of paragraph (b)(i) of the definition of examinable conduct in s 2(1) of the 2017 Canon and paragraph (a)(ix) of the definition of “child abuse” in the Third Schedule to the National Register Canon;
- (c) fail without reasonable excuse to perform a function under a professional standards process within the meaning of paragraph (b)(iii) of the definition of examinable conduct in s 2(1) of the 2017 Canon; or
- (d) fail without reasonable excuse to comply with a law of a State requiring the reporting of child abuse to the police or other authority, namely, s 316 of the Crimes Act 1900 (NSW), within the meaning of paragraph (b)(iv) of the definition of examinable conduct in s 2(1) of the 2017 Canon? **Answer: YES**

ANNEXURE 3

APPENDIX 8

ADMISSIONS BY BISHOP HERFT

No	Admission in Royal Commission Report	Page Reference	Head of Examinable Conduct under s(2)(1)(b) of the Canon
1.	<p>Q: Can I ask you something about the state of your knowledge while you were the Bishop of the Diocese of Newcastle. In what situations did you understand that you had an obligation to report allegations of child sexual abuse to the police?</p> <p>A: I think the situation in the Diocese when I came in 1993 was that there were very little records of any form or shape and we began a process called the Committee to consider Allegations of Sexual Misconduct [CASM] and that particular policy was very clear from its very inception, that any matters of child abuse should be reported to the police. [et seq.]</p>	Pages C17221–23	(i), (iii) and (iv)
2.	<p>Q: [regarding section 316 of the Crimes Act 1900] This provision was actually published in one of your Diocesan policy documents?</p> <p>A: Yes</p>	C17244	(i), (iii) and (iv)
3.	<p>Q: Do you agree with the proposition that Ms. Sanders kept you advised about complaints made to CASM?</p> <p>A: Yes, she would have, yes.</p>	C17265	(i), (iii) and (iv)
4.	<p>Q: [CASM Yellow Envelopes] You were well aware from late 2001 onwards, that not one person but it sounds like a number were contacting the diocese on an anonymous basis to allege that priests in your diocese were sexually abusing their sons?</p> <p>A: I can't recall whether it was...</p>	C17266	(i), (iii) and (iv)

	Again, I will have to go back to my memory in terms of this, but there were some that either brought through a contact person or to me directly saying there were these concerns, yes.		
5.	<p>Q: You do recollect that she [Jean Sanders] made you aware of allegations against Peter Rushton?</p> <p>A: That is my recollection, yes. [...]</p> <p>Q: Do you recall whether you were aware that allegations had been made that there was more than one victim of Peter Rushton?</p> <p>A: No, ma'am, I can't recall that [...]</p> <p>Q: Archbishop Herft, isn't it right that the permission to officiate, which you granted to Peter Rushton, could be withdrawn at your will without any sort of Diocesan Tribunal procedure?</p> <p>A: I could have revoked his licence, yes. [...]</p> <p>Q: Weren't you even more keen, now you had become aware of an allegation that he had sexually abused a kid?</p> <p>A: I was keen to attend to it, but I can't – I don't think I would want to go down the deposition or the revoking track at that stage.</p>	C17270-74	(i), (iii) and (iv)
6.	<p>Q: Okay. You agree that in February 2003 you were advised that Peter Rushton had sexually abused at least one person, one boy?</p> <p>A: Yes.</p>	C17281	(i), (iii) and (iv)
7.	<p>Q: I'm just wondering why, in view of all the knowledge you did have, you didn't take a very keen interest in what was in those yellow envelopes?</p> <p>A: I mean the only reason I can give you is that the matters were being handled by the Registrar, the legal representative, and Jean Sanders, and that they would have kept me</p>	C17282	(i), (iii) and (iv)

	aware of matters being reported to the police, et cetera.		
8.			
9. 8.	<p>Q: In 2003 you were told of an allegation that he [Rushton] had sexually abused a child: weren't you on high alert?</p> <p>A; I was on high alert... [...] the complexity of the system was that the contact person had to find a way through to receiving a complaint from the individual and that in itself, was a barrier, I think certainly for me acting.</p>	C17336	(i), (iii) and (iv)
10. 9.	<p>Q: [Report of abuse naming Peter Rushton] Then you see three other people are listed and number four is "Father Peter Rushkin" (sic) at Wallsend Church.</p>	C17340	(i), (iii) and (iv)
11. 10.	<p>Q: But you were made aware of another allegation about Peter Rushton? [third report of abuse]</p> <p>A: Yes</p>	C17342	(i), (iii) and (iv)
12. 11	<p>Q: What could you have done better.....?</p> <p>A: Looking back on the whole matter, given the nature of what I now know, of course, of the horrific abuse perpetrated by Peter Rushton there would not only have been alerts but alarm bells ringing to see that he was brought to the attention of the police in the first instance and from the ecclesial point of view, that he either was taken before a discipline tribunal, or the least that I could do would have been to remove his permission to officiate, yes. [.....]</p> <p>Q: Why weren't these allegations in 2003 about Peter Rushton reported to the police?</p> <p>A: I have no idea why they weren't. My understanding was that the legal</p>	C17343	(i), (iii) and (iv)

	<p>advice would have been for us to report it to the police yes.</p> <p>Q: Do you accept responsibility for the fact that it was not reported to the police?</p> <p>A: Yes, I do.</p>		
12	<p>Q: [Regarding Father Parker as a perpetrator of child sexual abuse – April 1996] You agree what he does in this letter is make you aware that an allegation of sexual abuse had been made against one of your clergy?</p> <p>A: Yes.</p> <p>Q: Occurring it is there said, in 1970? You will agree that Dean Lawrence provided you with his file note on the matter?</p> <p>A: Yes.</p>	C17352-53	(i), (iii) and (iv)
13.	<p>Q: You can take it from me that on that date Mr. Elliott produced 30 envelopes [...] appear to relate to child abuse allegations [...]</p> <p>A.Mmm-hmm.</p> <p>Q. You agree with that?</p> <p>A. Yes, I believe so, yes.</p>	C17372	(i), (iii) and (iv)
14.			
15.			
16.	<p>Q: [...] I want to thank the Commission for holding me personally accountable, holding the church personally accountable and hoping that by the transparency of this engagement and listening to the survivors [...] certainly, there is a special and particular eternal reference in terms of our care for children, so I want to thank your Honour for your patience. Thank you.</p>	C17460-61	(i), (iii) and (iv)

APPENDIX 13

SUPPLEMENTARY ADMISSIONS BY BISHOP HERFT

No	Admission in Royal Commission Report	Page Reference	Head of Examinable Conduct under s(2)(1)(b) of the Canon
17	<p>[1995 dealings with the Walls]</p> <p>Q: Receiving an allegation like this, I assume, puts you on alert in relation to the behaviour of your Dean more generally, would that be right?</p> <p>A: Yes, that would have, yes.</p>	C17290-91	(i), (iii) and (iv)
18	<p>Q. Were you on alert in relation to his behaviour?</p> <p>A. I think I was trying to obtain from these persons further information about what had actually taken place. Your Honour, the Dean at that stage held a very significant, as you rightly observed, position in the Diocese and in the wider community, and for me to proceed with an allegation of this seriousness would have required some - I suppose evidence would have been important for me to try and pursue the matter. This had been reported by two youth leaders who, in their own right, had the right to make some incident reports as far as they were concerned.</p>	C17291	(i), (iii) and (iv)
19	<p>Q. The impression we have is that the Dean over many years has had a great deal of support in the Diocese; is that right?</p> <p>A. Yes.</p> <p>Q. Putting it in blunt terms, he was the beneficiary of a significant power bloc within the Diocese?</p> <p>A. That could be accurate, your Honour.</p> <p>Q. Did you feel unable to effectively respond to that power bloc?</p> <p>A. I felt that I needed some form of concrete evidence, at least for these persons to make the complaint in an</p>	C17291	(i), (iii) and (iv)

No	Admission in Royal Commission Report	Page Reference	Head of Examinable Conduct under s(2)(1)(b) of the Canon
	<p>effective way to me, so that I could pursue that. Because to pursue it, I think, in any other way would, as your Honour has rightly pointed out, be up against a significant power.</p> <p>Q. Which may have threatened your own position in the Diocese?</p> <p>A. I'm not sure whether it would threatened my own position in the Diocese, but it would certainly have caused me to take the careful steps in order to bring that forward.</p>		
20	<p>Q. An allegation is being made that one of the most senior priests in your Diocese has sexually abused at least one child. That is an extremely serious allegation, you agree?</p> <p>A. Yes.</p>	C17300	(i), (iii) and (iv)
21	<p>Q. What did you do to follow up this matter [letter of 13 July 1995]?</p> <p>A. I did not do anything.</p> <p>Q. Why not?</p> <p>A. I have no answer to that</p>	C17300	(i), (iii) and (iv)
22	<p>[allegations disclosed by Reverend Kelly in around 1996 – 1997 dealings with Archbishop Goodhew]</p> <p>Q. ... Archbishop Goodhew [says] in his note [on the 18 February 1997 letter] ... that you'd already spoken with Graeme Lawrence?</p> <p>A. Yes.</p> <p>Q. Do you have any reason to doubt that you told Goodhew that?</p> <p>A. No, I have no reason to doubt that.</p>	C17305	(i), (iii) and (iv)

No	Admission in Royal Commission Report	Page Reference	Head of Examinable Conduct under s(2)(1)(b) of the Canon
23	<p>Q. Bishop, I think you yourself acknowledge that the allegations you were dealing with were very serious?</p> <p>A. Yes, your Honour.</p> <p>Q. Indeed, as serious as any allegation might be in relation to someone who was your responsibility, being in your Diocese?</p> <p>A. Yes, your Honour</p>	C17305	(i), (iii) and (iv)
24	<p>Q. It is not just the conversation with Archbishop Goodhew that should have been noted; it is all these conversations?</p> <p>A. Yes.</p> <p>Q. You should have made a note of them, shouldn't you?</p> <p>A. Yes. ...</p>	C17305	(i), (iii) and (iv)
25	<p>Q. Well, then, at levels of recording, administration and dealing with the problem, you failed, didn't you?</p> <p>A. Yes.</p>	C17306	(i), (iii) and (iv)
26	<p>[1999 dealings with Bishop Clark]</p> <p>Q. Bishop Clark ... says that you told him you had approached Graeme Lawrence who had denied the allegations.</p> <p>A. Yes</p> <p>Q. Do you have any reason to doubt the accuracy of that part of the statement?</p> <p>A. No, I have no reason to doubt the accuracy of that statement.</p>	C17307-308	(i), (iii) and (iv)
27	<p>Q. Do you accept that if Bishop Clark made you aware of these allegations in 1999, it would have been in 1999 that you checked with Graeme Lawrence about these allegations?</p> <p>A. Yes.</p>	C17308	(i), (iii) and (iv)

No	Admission in Royal Commission Report	Page Reference	Head of Examinable Conduct under s(2)(1)(b) of the Canon
28	<p>[all allegations – 1995, 1996/1997, 1999]</p> <p>Q. ... in 1995 the Walls told you of an allegation against Graeme Lawrence, and your letter to them of that time said you had spoken with Graeme Lawrence?</p> <p>A. Yes.</p> <p>Q. In 1997, Archbishop Goodhew makes a file note that he has spoken with you about allegations against Graeme Lawrence and, again, notes that you have spoken to Graeme Lawrence, and now we have another witness saying that in 1999 further allegations were made known to you about Graeme Lawrence and, according to this witness, you told him that you did speak with Graeme Lawrence?</p> <p>A. Yes.</p> <p>Q. So it sounds like on three separate occasions, spanning a period of some years, you were made aware of allegations about Graeme Lawrence and that you spoke to him on each of those three occasions. Do you accept that?</p> <p>A. Yes.</p>	C17308	(i), (iii) and (iv)
29	<p>Q. You do accept that you took absolutely no steps against or in respect of Graeme Lawrence upon being made aware of allegations that he had sexually abused children?</p> <p>A. That is not accurate. The conversations would have taken place. The records of both the Archbishop of Sydney and the Bishop of Riverina indicate that that has happened. I am confused in my own mind as to why the relevant documentations regarding those matters are not present within the</p>	C17320	(i), (iii) and (iv)

No	Admission in Royal Commission Report	Page Reference	Head of Examinable Conduct under s(2)(1)(b) of the Canon
	<p>Diocese of Newcastle. I find that quite concerning.</p> <p>Q. On the basis of your letter that you wrote to Mr Wall in 1995, you do accept that you spoke with Graeme Lawrence about the allegations and he denied them?</p> <p>A. Yes.</p> <p>Q. That would suggest that you accepted his say-so?</p> <p>A. Yes.</p> <p>Q. You do accept that you spoke to him again after Archbishop Goodhew made you aware of allegations?</p> <p>A. Yes.</p> <p>Q. Is it right that you, again, accepted his say-so?</p> <p>A. Yes.</p> <p>Q. You do accept that you spoke with him again in 1999 following from Bishop Clark's allegations?</p> <p>A. Yes.</p> <p>Q. We may take it that he again denied the allegations. Didn't you have any concern that allegations had been made on three separate occasions?</p> <p>A. Again, the way that we - that I tended to act in the Diocese in respect of these serious matters was that I needed to have the relevant complaints - one, from the individuals concerned; two, that they would come to me in writing in order for me to take action. Now, I know in the light of Professional Standards today, that is not the way that one acts on matters that come before one. There is no longer a complaints-based attentiveness to allegations.</p>		

No	Admission in Royal Commission Report	Page Reference	Head of Examinable Conduct under s(2)(1)(b) of the Canon
30	<p>Q. Did it ever cross your mind that the police should know about what you'd learnt?</p> <p>A. No, I didn't. He was one of the most senior persons in the life of the Diocese of Newcastle and in the Anglican Church and there was a level of trust that I had to have in this individual because whenever I was away from the Diocese, which was a fair amount, he was the one who was the Commissary, so there was a sense in which I trusted him in all matters and when he denied these allegations, I trusted the answer that had been given.</p> <p>Q. Of course, the fact that he had such a senior position and would act in your stead meant that you had a greater responsibility, did you not, to ensure that he was an appropriate person to fill that role?</p> <p>A. Yes. Yes.</p> <p>Q. With allegations of this type brought to you on multiple occasions, did they not just suggest to you that maybe he was the wrong person?</p> <p>A. During my time as Bishop of Newcastle, yes, there were these allegations; there were no formal complaints being made to me regarding an extremely high-profile individual and I had no reason to doubt the fact that what he said to about me was true and that he was trustworthy in terms of what he sought to do for the Diocese. So there was that attitude, I suppose, I had towards Graeme Lawrence.</p>	C17321-22	(i), (iii) and (iv)

No	Admission in Royal Commission Report	Page Reference	Head of Examinable Conduct under s(2)(1)(b) of the Canon
31	<p>Q. ... there should have been a yellow envelope for Graeme Lawrence?</p> <p>A. That would be my expectation, yes.</p> <p>Q. Do you mean by that that you would have expected there to be one in the Diocese's records about --</p> <p>A. Given the correspondence or the file notes that should have been or needed to be there, yes, I would have expected that, yes.</p> <p>Q. Do you know of any reason why there wouldn't be an envelope for Graeme Lawrence?</p> <p>A. I wouldn't be able to speculate on that, ma'am.</p>	C17443	(i), (iii) and (iv)