ANGLICAN CHURCH OF AUSTRALIA
EPISCOPAL STANDARDS BOARD
DETERMINATION IN RELATION TO
EPISCOPAL STANDARDS COMMISSION'S
REFERRAL CONCERNING BISHOP KEITH FRANCIS SLATER

Matter:	Episcopal Standards Commission's Referral concerning the Right Reverend Keith Francis Slater
Hearing Date:	11 February 2025
Decision Date:	17 March 2025
Tribunal members	The Honourable Paul de Jersey AC CVO KC The Right Reverend Dr Matthew Brain Ms Seak-King Huang
Decision:	The Board is satisfied under section 49(1)(d) of the Episcopal Standards (Child Protection) Canon 2017 that Bishop Slater is unfit to remain in Holy Orders and the Board determines and directs that Bishop Slater be deposed from the exercise of Holy Orders (section 49(1)(m) of the Canon).
Parties:	The Episcopal Standards Commission (Applicant) represented by Mr Bill Ilkovski, instructed by Mr Martin Drevikovsky (Interim Director of Episcopal Standards) Bishop Keith Francis Slater (Respondent), unrepresented

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DETERMINATION IN RELATION TO
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REFERRAL CONCERNING
THE RIGHT REVEREND KEITH FRANCIS SLATER

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 a report dated 8 August 2024 reproduced in Annexure 1 (**the ESC Report**).

2 The ESC Report followed an investigation undertaken by the ESC (**the ESC Investigation**) in response to information from the Right Reverend Dr Murray Harvey, Bishop of Grafton (**Bishop Murray**) by letter dated 5 May 2020 concerning the conduct of a former Bishop of Grafton, the Right Reverend Bishop Keith Slater (**Bishop Slater**) in response to allegations of historical child abuse of which he was aware during the period from 2003 to 2013.

Questions posed by the ESC to the Board

3 In the ESC Report, the ESC raised certain questions for determination by the Board in the context of its investigation under the Episcopal Standards (Child Protection) Canon 2017 (**the 2017 Canon**) into Bishop Slater's conduct in relation the allegations by complainants identified in the ESC Report as "CD", "CC" and "CB" of sexual abuse at the North Coast Children's Home, Lismore over the 1940's-1980's (**NCHH**). These matters were also considered in the hearings conducted by:

(a) the Royal Commission into Institutional Responses to Child Sexual Abuse (**the Royal Commission**), published in the report of Case Study 3 of the Royal Commission published in October 2015; and

(b) the Diocese of Grafton's Professional Standards Board leading to its determination published in September 2015 (**the Grafton PSB decision**).

4 In particular, the questions fall into two groups:

(a) Whether Bishop Slater's conduct in relation to the three complainants amounted to "examinable conduct" as defined in the 2017 Canon (**the Examinable Conduct Questions**). The questions raised in relation to the three complainants are identical. They are as follows (with some paraphrasing):[1]

Q1. Did Bishop Slater fail to report the allegation of abuse to a member of the Diocese of Grafton's Professional Standards Commission (**the PSC**)?

Q2. If so, did Bishop Slater:

a. Engage in conduct within paragraph (b)(i) of the definition of examinable conduct in the 2017 Canon, namely, failure without reasonable excuse to report as prescribed in paragraph (ix) of the definition of "child abuse" in the National Register Canon 2007 (**the 2007 Canon**)?

b. Engage in conduct within paragraph (b)(ii) of the definition of examinable conduct in the 2017 Canon, namely, conduct that impedes or undermines a professional standards process?

c. Engage in conduct within paragraph (b)(iii) of the definition of examinable conduct in the 2017 Canon, namely, failure without reasonable excuse to perform a function under a professional standards process?

(b) Further questions (**the Consequential Questions**) as follows:[2]

Q1. Is the Board satisfied of any of the matters specified in sections 49(1)(a) to (d) of the 2017 Canon?

Q2. If so, which, if any of the steps specified in sections 49(1)(e) to (m) of the 2017 Canon are appropriate for the Board to take?

[1] From paragraphs 6.1.4, 6.2.2 and 6.3.2 of the ESC Report.
[2] From paragraph 6.4 of the ESC Report.

Date of hearing, representation and appearances

5 The hearing of the ESC's referral concerning the respondent was conducted by the Board on 11 February 2025 (following directions hearing on 23 October 2024). It was an open hearing with members of the public able to join to observe proceedings.

6 Mr Bill Ilkovski appeared for the ESC and was instructed by Mr Martin Drevikovsky (Interim Director of Episcopal Standards).

7 Bishop Slater did not appear at the hearing, nor was he represented at the hearing. The Board is satisfied that reasonable efforts were made to give Bishop Slater an opportunity to appear. For completeness, the Board records the letters dated 2 September 2024, 4 October 2024 and 13 January 2025 from Bishop Slater. Specifically, in his 4 October 2024 letter, Bishop Slater advised the Board that he did not wish to be represented or be involved in the directions hearing in this matter. Further, Bishop Slater provided, and the Board received,[3] a copy of a letter he wrote to the Chair of the Professional Standards Committee of the Diocese of Grafton in 2014 ahead of hearings of the Board in 2015 into allegations of misconduct by Bishop Slater in handling claims for redress. (**Bishop Slater's 2014 submission**). This is attached as Annexure 2. In his letter of 13 January 2025, Bishop Slater again stated that he did not wish to appear or be represented at the hearing.

Part 2 – Relevant Canonical provisions

Constitution and appointment of the Board

8 The Board was constituted and appointed in accordance with Part 6 of the 2017 Canon to consider the questions referred to it by the ESC in accordance with Part 7 of the 2017 Canon.

Canonical basis for referral from the ESC

9 The 2017 Canon and the 2007 Canon (relevant because it provides the definitions of key terms used in 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. The Diocese of Grafton has adopted the canons.

[3] Under section 29(4) of the 2017 Canon, the Board may receive evidence of a witness in the form of an a signed statement without the need for the personal attendance of the witness.

10 The Board is satisfied that the Examinable Conduct Questions and the Consequential Questions have been validly referred to it by the ESC. Notably:

(a) While Bishop Slater has retired from his office as bishop, the Board has jurisdiction in this matter because "Bishop" as defined in the 2017 Canon extends to former members of the House of Bishops.[4] Bishop Slater has not relinquished or been deposed from Holy Orders, so the ESC is not barred from referring the questions to the Board.[5]

(b) Section 19(1) of the 2017 Canon provides that the function of the Board includes to:

(i) inquire into and determine a question referred to it pursuant to section 16 of the 2017 Canon which provides that the ESC may, after it has commenced investigation, refer to the Board the fitness of a bishop, whether temporarily or permanently, to hold office or to remain in Holy Orders.[6] The Examinable Conduct Questions and the Consequential Questions are about the fitness of Bishop Slater to remain in Holy Orders.

(ii) make a determination referred to in section 49 of the 2017 Canon. Section 49 provides that if the Board determines that it is satisfied of any of the matters in sections 49(1)(a) to (d) of the 2017 Canon, which are as follows:

"(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".

then it may make any of the determinations under sections 49(1)(e) to (m) of the 2017 Canon which are as follows:

"(e) direct that the bishop be counselled;

[4] Section 2 of the 2017 Canon.
[5] Section 17(2) of the 2017 Canon.
[6] Section 16(b) of the 2017 Canon.

(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."

Nature of the Board's role

11 The function of the Board has been explained in paragraph 10(b) above. It is important to emphasise that the Board's role is limited to responding to the Examinable Conduct Questions and the Consequential Questions. The Board has a very different function than the scope and purpose of:

(a) the Royal Commission in relation to its Case Study 3 about the Diocese of Grafton's response to child sexual abuse at NCHH; or

(b) the Grafton Professional Standards Board **(the Grafton PSB**) in relation its determination as described in paragraph 3(b) above which was to consider certain allegations of misconduct in handling of claims for redress by Bishop Slater.

12 In terms of approach, pursuant to the 2017 Canon:

(a) In its proceedings, the Board "must act with fairness and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit".[7]

(b) In making its determination, the Board "shall take into account: (a) the conduct of the bishop as it finds it to have been; (b) in the material before the Board, any other fact or circumstance relevant to the determination of the question before it; and (c) any failure by the bishop to comply with a provision of this Canon …".[8]

13 For its deliberations, Counsel for the ESC helpfully drew the Board's attention to several matters, notably:

(a) The state of satisfaction referred to in section 49(1) of the 2017 Canon is directed towards the present fitness of bishops and is not a *purely* disciplinary matter.

(b) There is a protective element that is shared whether the inquiry is into a present fitness or discipline; the intention is to protect the welfare of parishioners and the community and the standing of the church. The Board views this protective element as important and in particular, as important for those people in the church (parishioners and the church community) and those outside the church (who are not parishioners or part of the church community but who encounter the church and its people). Counsel for the ESC submitted that this protective element has a particular ascendency in the case of bishops because it is to be expected that a bishop should be held to a higher duty. The Board agrees with this submission.

(c) The Board in its determination in the referral concerning the former Bishop Roger Herft[9] (**the Herft Determination**) laid out a useful way for the Board to make its determination in this case since the facts of both cases are similar in that they relate not to acts of commission amounting to misconduct but to whether the respondent discharged his responsibility as a bishop and the respondent in both cases is a person who is no longer engaged in a professional capacity as a bishop. In the Herft Determination, it was stated that matters could be determined in the following way:

[7] section 29(3) of the 2017 Canon
[8] section 48 of the 2017 Canon.
[9] https://anglican.org.au/governance/tribunals/episcopal-standards-board/

"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;

(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."

Part 3 - Information before the Board

Information made available to the Board

14 In considering its response to the Examinable Conduct Questions and the Consequential Questions, the Board has relied on:

(a) the information provided in the ESC Report (including the comprehensive description of what is "examinable conduct"[10]) and in the annexures with the ESC Report (except

[10] paragraphs 1.6 and 1.7 of the ESC Report – see Annexure 1.

the Grafton PSB of September 2015 (**the Grafton PSB decision**) for the reasons set out in paragraph 15 below);

(b) oral submissions of Counsel appearing for the ESC at the hearing, also provided in written form (the **Hearing Submission**); and

(c) information from Bishop Slater himself.

Findings of the Grafton Professional Conduct Board

15 An annexure provided with the ESC Report is the Grafton PSB decision which found that allegations of misconduct in handling the claims for redress against Bishop Slater were proven and recommended that Bishop Slater be deposed from Holy Orders. The ESC Report points out that the Appellate Tribunal of the Anglican Church of Australia subsequently found in January 2017 that the Grafton PSB decision was a nullity for want of jurisdiction and raised the question of whether section 29(5) of the 2017 Canon permits the Board to have regard to the record or the findings of the Grafton PSB.[11] The Board's view on this question is that it should not have regard to the record or the findings of the Grafton PSB.

16 However, the Board received Bishop Slater's 2014 submission from Bishop Slater in October 2024. See further comment in paragraph 18 below.

Information from Bishop Slater

17 Additionally, the ESC Report refers in several instances to admissions made by Bishop Slater and documents relating to these were provided with the ESC Report, as follows:

(a) admissions of failure in his duty to the Royal Commission in a hearing in November 2013; and

(b) admissions in a media statement on his resignation from office of Bishop of Grafton in May 2014;

(c) admissions and concessions on all matters alleged against him in the Grafton PSB hearing in 2015.

18 As noted above the Board received Bishop Slater's 2014 submission. Although this submission was originally made to the Grafton PSB, the Board's view is that it (being

[11] See paragraph 1.5 of the ESC Report– see Annexure 1.

information provided specifically by Bishop Slater to the Board for this matter) is information that the Board can properly receive.

Responsibilities and conduct of bishops

19 In considering its response to the Examinable Conduct Questions and the Consequential Questions, the Board considered in detail the responsibilities and conduct of bishops of the Anglican Church of Australia. In this, the Board was greatly aided by a paper written by The Right Reverend Dr Matthew Brain, a member of the Board in this matter, as set out in Annexure 3 (**Bishop Brain's paper**).

20 Counsel for the ESC submitted that it is to be expected that a bishop should be held to a higher standard of behaviour, consistently with the high expectations of the Church implicit in the consecrations of bishops. The Board agrees with this position.

Part 4 – Response of the Board

Examinable Conduct questions in relation to CD

21 In relation to the Examinable Conduct Questions relating to CD, the Board's response is as follows:

Q1. Did Bishop Slater fail to report CD's allegation of abuse to a member of the PSC?

Response: Yes.

Explanation: The basis for the response of the Board is as follows:

(i) Under section 24(1) of the Professional Standards Ordinance 2004 of the Diocese of Grafton (**the PSO**), Bishop Slater as a member of the Clergy and as a Bishop[12], had a responsibility to refer any information (defined to include information of alleged conduct of any church worker[13] involving sexual harassment, sexual assault or sexually inappropriate behaviour[14]) (**Abuse Information**) in his possession or knowledge to a member of the

[12] Section 2(a) of the PSO defines "Church authority" to include the Bishop
[13] Section 2(1) of the PSO defines "church worker" to include a member of the clergy and any person who holds a position or performs a function with the actual or apparent authority of a Church authority or Church body. See paragraph 2.3.2 of the ESC Report – see Annexure 1.
[14] See paragraph 2.3.2 of the ESC Report– see Annexure 1.

PSC as soon as possible unless there are reasonable grounds to believe the information is already known to the PSC.[15]

(ii) Information came into Bishop Slater's possession and knowledge on 12 August 2007 when he received letters written by CD from an intermediary which described the abuse CD suffered.[16] The Board's view is that the letters from CD contain details of the type which fall within what constitutes Abuse Information which should have been referred by Bishop Slater to a member of the PSC. This Abuse Information (about CD's allegations of abuse while he was a child resident at NCCH) included allegations of sexual harassment, sexual assault or sexually inappropriate behaviour against a member of the clergy at the NCCH and other personnel of the NCCH who are "church workers".

(iii) The Board's view is that, as a matter of fact, Bishop Slater did not refer the Abuse Information in relation to CD in his possession and knowledge to any member of the PSC as required of him or that he did not have a reasonable excuse for not doing so. According to the ESC:

- no action was taken on the matter until 29 January 2008 when Bishop Slater's Commissary wrote to CD's intermediary.[17]
- Bishop Slater stated in late February 2008, after some communication between himself and CD's intermediary, that he would refer the matter to the Professional Standards Director[18] (a member of the PSC under section 10(1) of the PSO). There was no evidence that Bishop Slater made such a referral or that he had reasonable excuse for not doing so.[19]

Q2. If so, did Bishop Slater:

a. engage in conduct within paragraph (b)(i) of the definition of examinable conduct in the 2017 Canon, namely, failure without reasonable excuse to report as prescribed in paragraph (ix) of the definition of child abuse in the 2007 Canon?

[15] See paragraph 2.3.2 of the ESC Report – see Annexure 1.
[16] See paragraph 6.1.1 of the ESC Report – see Annexure 1.
[17] See paragraph 6.1.3 of the ESC Report – see Annexure 1.
[18] See paragraph 6.1.3 of the ESC Report – see Annexure 1.
[19] See paragraph 6.1.3 of the ESC Report – see Annexure 1.

Response: Yes.

Explanation: In the response to Q1 above, the Board's view is that Bishop Slater failed to refer Abuse Information in relation to CD as he was required to do so under the PSO. In considering whether Bishop Slater's failure was without reasonable excuse, the Board considered Bishop Slater's 2014 submission. Notably:

(i) Bishop Slater's 2014 submission does not contain any comment or information about CD specifically.

(ii) At the start of the submission, Bishop Slater stated that "there were personal failings within the corporate systemic failure of the process within the Diocese" and that "[a]ny inappropriate [sic] decisions, actions or omissions were not intentional nor undertaken with malice." He then wrote in relation to a "group-claim" which arose prior to 2008 in relation to NCCH that it was his "understanding that the PSC/ PSD were aware of the manner in which the 'group-claim' was being handled" and then about challenges faced by the Diocese (its financial position was dire and there was an "extreme level of stress" on a small group of personnel) and himself personally in terms of ill-health in relation to how six other claims which arose after 2008 were handled.

(iii) Bishop Slater wrote that it was in 2013 that "[he] reviewed the Professional Standards process and recognised the administrative and pastoral inadequacies and mismanagement of these matters within the Diocese, and [his] part in them." and at the end of his submission, he wrote about clouded process and response, collective responsibility and systemic failure. He stated, "Unfortunately the process and responses were clouded by the legal question, and the financial crisis of the Diocese. Failure to be able to bring such closure for claimants weighs heavily upon me, as it must upon the Diocese, for together we have been involved in decisions and actions, and ultimately in a systemic failure regarding these Professional Standards matters." The obligation in section 24(1) of the PSO to refer Abuse Information to a member of the PSC is a clear and straightforward one: it simply required that Abuse Information be provided to a member of the PSC as soon as possible. And the obligation is one that attaches to an office holder rather than of a Diocese at large (see response Q2(a) in relation to CD above); in this case, Bishop Slater, as a member of the Clergy and a Church authority, has that obligation because of the office he held.

(iv) The Board's view is that while the circumstances of the Diocese and Bishop Slater's own personal circumstances at the relevant time were challenging, these did not amount to reasonable excuse for Bishop Slater not to refer the Abuse Information in relation to CD to a member of the PSC.

b. Engage in conduct within paragraph (b)(ii) of the definition of examinable conduct in the 2017 Canon, namely, impeding or undermining a professional standards process?

Response: Yes.

Explanation: The basis for the response of the Board is as follows:

(i) The Board's view is that the process under the PSO is a "professional standards process" for the purposes of paragraph (b)(ii) of the definition of examinable conduct in the 2017 Canon. "Professional standards process" is defined to mean "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".[20] The PSO (passed by the Diocesan Synod in 27 June 2004 to adopt the General Synod's model ordinance) is a diocesan ordinance which sets out a process in relation to information relating to child abuse. It was in existence at the time the information in relation to CD's allegations came into the possession and knowledge of Bishop Slater.

(ii) The processes of the PSC are well described in the ESC Report.[21] The first step in the process under the PSO is that Abuse Information be provided to a member of the PSC as soon as possible unless there are reasonable grounds to believe the information is already known to the PSC. The Board's view is that by not providing the Abuse Information in relation to CD to any member of the PSC, Bishop Slater impeded or undermined the process under the PSO. The PSC never took any of the steps it was required or empowered in relation to the Abuse Information relating to CD such as, investigating the information in a timely manner and referring the information to a relevant law enforcement, prosecution or child protection authority or determine if there is "examinable conduct" and investigate.[22] The very "mechanisms for

[20] Section 2 of the 2017 Canon.
[21] See paragraphs 2.3.3-2.3.5 of the ESC Report – see Annexure 1.
[22] Sections 20(1) and 25 of the PSO. See paragraph 2.3.4 of the ESC Report – see Annexure 1.

assessing whether a church worker's conduct calls into question their fitness for office and for determining the appropriate response to address any unfitness", as the ESC describes the purpose of the PSO,[23] was not brought into action. It was impeded.

(iii) In Bishop Slater's 2014 submission, he wrote about the "group claim" relating to NCCH as being outside of the "normal Professional Standards process" but also that "it was [his] understanding that the PSC/PSD were aware of the manner in which the "group-claim" was being handled". The relevant requirement under the PSO[24] is that *any* Abuse Information is to be referred by a member of the Clergy or Church authority (such as the Bishop) to a member of the PSC as soon as possible unless there are reasonable grounds to believe the information is already known to the PSC. The process under the PSO does not provide for a determination by the member of Clergy or Bishop, or anyone else, if the matter is outside of the process of the PSC. There appears to have been a lack of understanding of the process under the PSO.

c. Engage in conduct within paragraph (b)(iii) of the definition of examinable conduct in the 2017 Canon, namely, failure without reasonable excuse to perform a function under a professional standards process?

Response: Yes.

Explanation: The basis for the response of the Board is that the requirement to refer Abuse Information in relation to CD to a member of the PSC is a function of Bishop Slater as a member of the Clergy and a Church Authority under the professional standards process of the PSO. The Board's view that Bishop Slater did not have reasonable excuse to omit referring the information to a member of the PSC is set out the response to Q2(a) above.

[23] See paragraph 2.3.1 of the ESC Report – see Annexure 1.
[24] Section 24(1) of the PSO

Examinable Conduct questions in relation to CC

22 In relation to the Examinable Conduct Questions relating to CC, the Board's response is as follows:

Q1. Did Bishop Slater fail to report CC's allegation of abuse to a member of the PSC?

Response: Yes.

Explanation: The basis for the response of the Board is as follows:

(i) As stated above, under section 24(1) of the PSO, Bishop Slater as a member of the Clergy and as a Bishop[25], had a responsibility to refer any Abuse Information in his possession or knowledge to a member of the PSC as soon as possible unless there are reasonable grounds to believe the information is already known to the PSC.[26]

(ii) Information about CC's allegations came into Bishop Slater's possession and knowledge from at least 18 February 2011. While CC had addressed letters to the "Anglican Diocese of Grafton" before 4 February 2011 and on that date, according to the ESC, Bishop Slater met with the Diocesan Solicitor and Diocesan Registrar to discuss a response to CC. The Board's view is that the letters from CC contain details of the type which fall within what constitutes Abuse Information which should have been referred by Bishop Slater to a member of the PSC. This Abuse Information (about CC's allegations of abuse while he was a child resident at NCCH) included allegations of sexual harassment, sexual assault or sexually inappropriate behaviour against at least four members of the clergy and other personnel of the NCCH who are "church workers".

(iii) The Board's view is that, as a matter of fact, Bishop Slater did not refer the Abuse Information in relation to CC in his possession and knowledge to any member of the PSC as required of him and that he did not have any reasonable excuse for not doing so. According to the ESC, there is no evidence that Bishop Slater referred this Abuse Information to a member of

[25] Section 2(a) of the PSO defines "Church authority" to include the Bishop
[26] See paragraph 2.3.2 of the ESC Report – see Annexure 1.

the PSC.[27] The Royal Commission had also found that Bishop Slater did not make such a reference.[28]

Q2. If so, did Bishop Slater:

a. engage in conduct within paragraph (b)(i) of the definition of examinable conduct in the 2017 Canon, namely, failure without reasonable excuse to report as prescribed in paragraph (ix) of the definition of child abuse in the 2007 Canon?

Response: Yes.

Explanation: The basis for the response of the Board is the same as for the response to Q2(a) in relation to CD above.

b. Engage in conduct within paragraph (b)(ii) of the definition of examinable conduct in the 2017 Canon, namely, impeding or undermining a professional standards process?

Response: Yes.

Explanation: The basis for the response of the Board is the same as for the response to Q2(b) in relation to CD above.

c. Engage in conduct within paragraph (b)(iii) of the definition of examinable conduct in the 2017 Canon, namely, failure without reasonable excuse to perform a function under a professional standards process?

Response: Yes.

Explanation: The basis for the response of the Board is the same as for the response to Q2(c) in relation to CD above.

Examinable Conduct questions in relation to CB

23 In relation to the Examinable Conduct Questions relating to CB, the Board's response is as follows:

Q1. Did Bishop Slater fail to report CB's allegation of abuse to a member of the PSC?

Response: Yes.

[27] See paragraph 6.2.1 of the ESC Report – see Annexure 1.
[28] Royal Commission Finding 14, see paragraph 3.4 of the ESC Report – see Annexure 1.

Explanation: The basis for the response of the Board is as follows:

(i) As stated above, under section 24(1) of the PSO, Bishop Slater as a member of the Clergy and as a Bishop[29], had a responsibility to refer any Abuse Information in his possession or knowledge to a member of the PSC as soon as possible unless there are reasonable grounds to believe the information is already known to the PSC.[30]

(ii) Information about CB's allegations came into Bishop Slater's possession and knowledge when he received the letter sent by CB to him on 5 March 2011 . The Board's view is that the letter from CB contains details of the type which fall within what constitutes Abuse Information which should have been referred by Bishop Slater to a member of the PSC. This Abuse Information (about CC's allegations of abuse while he was a child resident at NCCH) included allegations of sexual harassment, sexual assault or sexually inappropriate behaviour against one member of the Clergy and other personnel of the NCCH who are "church workers".

(iii) The Board's view is that, as a matter of fact, Bishop Slater did not refer the Abuse Information in relation to CB in his possession and knowledge to any member of the PSC as required of him and that he did not have a reasonable excuse for not doing so. According to the ESC, there is no evidence that Bishop Slater referred this Abuse Information to a member of the PSC.[31] The Royal Commission had also found that Bishop Slater did not make such a reference.[32]

Q2. If so, did Bishop Slater:

a. Engage in conduct within paragraph (b)(i) of the definition of examinable conduct in the 2017 Canon, namely, failure without reasonable excuse to report as prescribed in paragraph (ix) of the definition of child abuse in the 2007 Canon?

Response: Yes.

Explanation: The basis for the response of the Board is the same as for the response to Q2(a) in relation to CD above.

[29] Section 2(a) of the PSO defines "Church authority" to include the Bishop
[30] See paragraph 2.3.2 of the ESC Report – see Annexure 1.
[31] See paragraph 6.3.1 of the ESC Report – see Annexure 1.
[32] Royal Commission Finding 14, see paragraph 3.4 of the ESC Report – see Annexure 1.

b. Engage in conduct within paragraph (b)(ii) of the definition of examinable conduct in the 2017 Canon, namely, impeding or undermining a professional standards process?

Response: Yes.

Explanation: The basis for the response of the Board is the same as for the response to Q2(b) in relation to CD above.

c. Engage in conduct within paragraph (b)(iii) of the definition of examinable conduct in the 2017 Canon, namely, failure without reasonable excuse to perform a function under a professional standards process?

Response: Yes.

Explanation: The basis for the response of the Board is the same as for the response to Q2(c) in relation to CD above.

Consequential Questions

24 In relation to the Consequential Questions, the Board's response is as follows:

Q1. Is the Board satisfied of any of the matters specified in sections 49(1)(a) to (d) of the 2017 Canon?

Response: Yes.

Explanation: The Board is satisfied with section 49(1)(d) of the 2017 Canon: that Bishop Slater is unfit to remain in Holy Orders. The Board's reasons for this conclusion are:

(i) Certainly, by the time the Abuse Information in relation to CD, CC and CB came into Bishop Slater's possession and knowledge, there should be no doubt in the mind of such a senior leader within the Church as a Diocesan Bishop that such information must be taken seriously and the required action must be taken in a timely manner. The PSO was enacted in 2004, many years before Bishop Slater came into possession and knowledge of the Abuse Information in relation to CD, CC and CB.

(ii) The action that was required to be taken by Bishop Slater under the PSO is clear and not onerous: section 24(a) simply requires that as a member of the

Clergy and as Bishop, he refers the information to a member of the PSC and he does so as soon as possible.

For completeness, the Board's view is that the matters in section 49(1)(a)-(c) of the 2017 Canon are irrelevant given Bishop Slater has resigned from his office and retired.

Q2. If so, which, if any of the steps specified in sections 49(1)(e) to (m) of the 2017 Canon are appropriate for the Board to take?

Response:

(i) The Board determines and directs that Bishop Slater be deposed from the exercise of Holy Orders (section 49(1)(m) of the 2017 Canon).

25 When considering the consequences for Bishop Slater, the Board considered at length the conduct and responsibilities of a bishop, in particular, Bishop Brain's paper. While stark, there is much clarity in this statement: *"To accept episcopal ordination is to accept a weighty task. To neglect matters willingly accepted brings weighty consequence."*[33] The Board's view is that the failure on the part of Bishop Slater is clear (see the Board's response to Consequential Question Q1 in paragraph 24 above) and further, the failure was not rectified and the effect of the initial failure has compounded over time.

26 The Board also deliberated on the issue of proportionality of sanction to the failure, the effect the failure has had upon those it has impacted and the effect upon Bishop Slater himself.[34] It is pertinent in this matter that Bishop Slater no longer performs activity for which holy orders are necessary. It would be disproportionate to inflate a sanction because one is no longer acting as a bishop. However, it is also pertinent that Bishop Slater has not appeared before the Board to answer questions regarding intention, restitution and future plans to act. This constrains the variety of sanctions available to the Board and requires that assessment of sanction must occur only on the papers submitted by Bishop Slater. Therefore, with respect to the four questions in Bishop Brain's paper[35], the Board's view is as follows:

(a) What responsibility for the discipline of the diocese was assumed? *Viz.* Was it derived, penultimate or ultimate? The responsibility for discipline rested with Bishop

[33] Paragraph 18(e) of Bishop Brain's paper, Annexure 3.
[34] Paragraph 32 of Bishop Brain's paper, Annexure 3.
[35] See paragraph 32 of Bishop Brain's paper, Annexure 3

Slater in as much as it was his responsibility to refer the Abuse Information of which he had been made aware in a timely way.

(b) What damage has been done to complainant and to the Church? *Viz.* Who has been harmed and whose maturity in Christ hampered, what effect has been had upon the complainant(s), and who else should have acted to promote that maturity? The initial failure by Bishop Slater to act to report allegations of abuse has been compounded by eighteen years of jurisdictional contention. This delay has had the potential to magnify the effect of the abuse reported by the complainants. It precipitated the situation whence the complainants fell out of due care of the church. It has also had the continuing effect of causing ill-repute to the Anglican Church of Australia, and the church at large.

(c) How has the mission of the Church been set back? *Viz.* Whose Church, as it has been governed, does it reflect, and has the failure to act betrayed a misplaced sense of priority. The proceedings antecedent to this process do not indicate that the contrition and responsibility expressed by the respondent have been adequately owned. The materials provided in lieu of appearance make much of busyness and distraction, each legitimate, however the needful attention to the people in Bishop Slater's care were neglected. On balance attention to the care of people should have overridden structural or institutional concerns.

(d) Is this a failure of faith ritual and ceremonial, or it is a breach of the specific responsibility to uphold the discipline of the Church? Bishop Slater's failure is of a specific responsibility to uphold the discipline of the Church. This responsibility is clearly defined and pertains directly to Bishop Slater's office as a diocesan bishop.

27 For completeness, the Board addresses the following matters which Counsel for the ESC submitted the Board should evaluate when considering consequences:

(a) Counsel for the ESC submitted that that much of Bishop Slater's 2014 submission contain "relevantly mitigating matters". The Board agrees that the submission offered Bishop Slater's view of the circumstances. However, as pointed out above (see the response to Q2(a) in relation to CD above) the requirement of section 24(1) of the PSO is a clear and straightforward one; it simply requires that Abuse Information be provided to a member of the PSC as soon as possible (see the response to Q2(a) in relation to CD above).

(b) Counsel for the ESC submitted that Bishop Slater had accepted a moral responsibility and showed public contrition (through public apologies (including at the Royal Commission) and resignation from his episcopy). The Board views these in a positive light. However, the Board's view is that acknowledgement of and contrition about failings is a separate matter to accountability. Further, while Bishop Slater has retired and no longer holds a licence or any authority to officiate, without being deposed of Holy Orders, he remains able to use, and be acknowledged by, the title "Bishop". Deposing him of Holy Orders is appropriate to enliven the "protective element" (see paragraph 13(b) above) for the welfare of parishioners and the community (within and outside the Church), and for the standing of the church.

(c) Counsel for the ESC submitted that the relevant conduct of Bishop Slater which is examinable conduct is not personal misbehaviour or morally opprobrious per se. The Board's view is that whether there is personal misbehaviour or whether the conduct is morally opprobrious is not relevant to the examinable conduct in this matter. As stated above, the obligation to refer Abuse Information attaches to an office: that of a member of the Clergy or a Church Authority (including Bishop). Further, the Board is also of the view that the distinction between failure in personal life and in office in the case of a bishop (and any clergy) is a thin one. Many of the responsibilities of a Bishop are personal or emanate from a commitment relating to personal conduct. There is basis in Scripture for this: 1 Timothy 3. Certainly, several of the oaths of a bishop are personal, all considered necessary, for the discharge of certain duties (for example, the oath to "forsake ungodliness and worldliness, and live moderately, righteously, and in a godly manner; so that by … example and good works [the bishop] may show forth the love of God to others")[36] Additionally, the Board disagrees that a failure to refer Abuse Information would not be considered to be morally opprobrious in the eyes of a reasonable person in or outside the Church.

(d) Counsel for the ESC submitted that while Bishop Slater's failure to refer the Abuse Information to a member of the PSC is serious, there is no evidence that this failure was advertent, or intended to prevent the commencement of any professional standards process under the PSO. The Board's view is that the relevant words of the 2017 Canon does not refer to any requirement as to intentionality or for that matter, any particular state of mind such as deliberateness, wilfulness, inadvertence, negligence or recklessness, for example.

[36] The fifth oath in An Australian Prayer Book.

(e) Counsel for the ESC submitted that the gravity of Bishop Slater's failure to refer the allegations to a member of the Professional Standards Committee should be weighed against the fact that the allegations made by the complainants were of historical sexual abuse; there was no evidence that the failure permitted the perpetrators continue to cause harm or remain in ministry or prevented a meaningful response to the allegations. The Board's view is that at best there was no such evidence.

Determination date:17 March 2025

Episcopal Standards Board of the Anglican Church of Australia

President The Honourable Paul de Jersey AC CVO KC

Members: The Right Reverend Dr Matthew Brain
Ms Seak-King Huang

ANNEXURE 1

REPORT OF THE EPISCOPAL STANDARDS COMMISSION TO THE EPISCOPAL STANDARDS BOARD CONCERNING THE RIGHT REVEREND KEITH FRANCIS SLATER DATED 8 AUGUST 2024

With personal and sensitive information redacted

EPISCOPAL STANDARDS COMMISSION

IN THE MATTER OF

BISHOP KEITH FRANCIS SLATER

AND

IN THE MATTER OF

THE EPISCOPAL STANDARDS CHILD PROTECTION CANON 2017

REPORT TO THE EPISCOPAL STANDARDS BOARD

DATED 8 AUGUST 2024

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1. INTRODUCTION

1.1 PUROSE OF THIS REPORT

This is a report under section 34 of the Episcopal Standards (Child Protection) Canon 2017 ("the **Canon**") for the purpose of referring to the Episcopal Standards Board pursuant to section 16 of the Canon questions regarding the fitness of Bishop Keith Francis Slater to hold office or to remain in Holy Orders. The questions arise from conduct of Bishop Slater in response to allegations of historical child abuse which occurred at the North Coast Children's home at Lismore.

1.2 BACKGROUND

1.2.1 Information Received from Bishop Harvey

By letter dated 5 May 2020, Bishop Murray Harvey, Bishop of Grafton, provided information to the Director of the ESC concerning the conduct of Bishop Keith Slater, a former Bishop of Grafton, in response to allegations of historical child abuse of which he was aware during the period from 2003 to 2013 (the **Information**).[1]

Broadly, the abuse is alleged to have occurred at the North Coast Children's Home in Lismore (the **NCCH**) between the 1940's and 1980's. The Information alleges that between about 2003 and 2013 Bishop Slater had engaged in conduct falling within paragraphs (b)(i),[2] (ii), (iii) and (iv) of the definition of examinable conduct in section 2 of the Canon.[3]

The Information was based on findings in :

(a) the report of Case Study 3 of the Royal Commission into Institutional Responses to Child Sexual Abuse published in October 2015;[4] and

(b) the Determination of the Grafton Diocese's Professional Standards Board published in September 2015.[5]

The Information grouped the findings under the heads of examinable conduct:

Paragraph (ii):	Royal Commission finding 12.
Paragraph (iii):	Royal Commission findings 6, 11 and 14.
	Professional Standards Board Allegations 3 and 6.

[1] Document 1
[2] See also the definition of "child abuse" under Schedule Three (a)(ix) of the National Register Canon 2007.
[3] Document 2
[4] Document 3
[5] Document 4

Paragraph (iv): Royal Commission Finding 26.

1.3 NCCH and the Diocese of Grafton

An outline of the history of NCCH and its connection with the Diocese of Grafton is set out on pages 12 to 18 of the Royal Commission's report. It is clear that there is a link between the Diocese of Grafton and the NCCH for the purposes of the facts in these referrals.

Under the heading "Key points" on page 12, the Royal Commission summarised the intent and scope of the report:

> *This section introduces the North Coast Children's Home in Lismore, New South Wales, which housed children who were often orphaned or abandoned. We look at how these children experienced frequent abuse between 1940 and 1985, and examine the Home's close ties to the Anglican Church's Diocese of Grafton. We outline how the Church responded when allegations of abuse at the Home emerged.*

The Royal Commission's Finding 2 concluded:

> *At all relevant times, the North Coast Children's Home was:*
>
> - *strongly associated with the Anglican Church and its predecessor, the Church of England*
> - *controlled by the Board of Management, including the Rector of St Andrew's Church Lismore in the Diocese of Grafton.*
>
> *The Diocese of Grafton, through its officers and members who were also on the Home's Board of Management, shared responsibility with the board for the Home's children.*

The Diocese of Grafton had legal advice that it did not have legal liability to the residents of NCCH who suffered abuse and conducted its responses to allegations of abuse on that basis throughout. However, the Diocese accepted it had a moral responsibility for such abuse and adopted a redress scheme to assist survivors of abuse in 2005. Approximately a year earlier, along with most dioceses, the Diocese of Grafton had passed an ordinance and adopted a protocol to deal with allegations of sexual abuse. Much of the Royal Commission's interest was focused on how the Diocese implemented the redress scheme, the legislation and the Protocol.

At the outset, NCCH was an unincorporated association. The original constitution of NCCH was drafted and instituted in 1920.[6] The link with the Diocese of Grafton is unmistakable. In 1951, the constitution was amended and the link to the Diocese remained.[7]

NCCH was incorporated on 16 May 1989 under the *Associations Incorporation Act 1984* (NSW) with a new constitution;[8] the links were no longer central. The constitution was amended again

[6] Document 5
[7] Document 6
[8] Document 7

in 2005,[9] in 2009 and in 2011.[10] To date, no copy of the 2009 amendment has been found. The links with the Diocese remained as under the 1989 constitution.

Furthermore, NCCH operated on church trust property. The Diocese became concerned that use of the property was in breach of the terms of the trusts on which the property was held. Consequently, a dispute arose with the NCCH. The parties resolved the dispute and executed a deed of settlement and release on 12 May 2017 which, in effect, recognised that the relationship between NCCH and the Diocese was, effectively, severed with the 1989 incorporation and constitution. [11] The Diocese accepted responsibility for redress to survivors of abuse at NCCH occurring up to 15 May 1989.

Bishop Slater's role in the implementation of the redress scheme does not fall within the scope of this report, however questions as to the exercise of his duties in response to allegations of child abuse remain and this report focuses on the performance of his duties in response to those allegations of child abuse.

1.4 Bishop Slater

Keith Francis Slater was born in 1949.

He was ordained Deacon on 13 April 1975 and ordained Priest on 14 December 1975.

He was consecrated Bishop and installed as Bishop of Grafton on 14 November 2003.

He resigned his episcopacy in the Diocese of Grafton on 17 May 2013.

Thereafter, Bishop Slater moved to live at [redacted] in the Diocese of Southern Queensland.

Bishop Slater does not hold a licence nor does he hold any other authority to officiate within the Diocese of Southern Queensland.

1.5 Jurisdiction under the Episcopal Standards (Child Protection) Canon 2017

The General Synod passed the Canon in 2017, the first session after the Royal Commission's report of Case Study 3 was published.

Section 9 provides:

> *Subject to this Canon, where the ESC considers that the subject matter of information constitutes examinable conduct it shall investigate the information.*

Section 2 defines "information":

> ***information*** *means information of whatever nature and from whatever source relating to the alleged misconduct or omission of a Bishop wherever or whenever occurring;*

Section 2 defines "Bishop":

[9] Document 8
[10] Document 9
[11] Document 10

Bishop *means a bishop who is or was a member of the House of Bishops or an assistant to the Primate;*

Bishop Slater is a former member of the House of Bishops.

Paragraph (b) of the definition of examinable conduct in section 2 defines examinable conduct in relation to a former member of the House of Bishops:

(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;

(v) subject to section 60(2) of the Constitution, the failure without reasonable excuse to give effect to a recommendation given to the Bishop under a professional standards process;

(vi) ordaining or authorising to function a member of the clergy or permitting to function a church worker contrary to, or in the absence of, a recommendation of a screening authority, or with actual knowledge or reasonable grounds for suspecting that the screening authority may not have properly discharged its statutory functions in making its relevant recommendation;

(vii) the Bishop ordaining or authorising to function a member of the clergy, or permitting to function a church worker, who poses a serious risk to the safety of children with actual knowledge or reasonable grounds for suspecting that the person poses that risk.

(viii) 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;

Section 49 (1) empowers the Episcopal Standards Board to give certain directions or to make certain recommendations if it is satisfied 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.

If the Board is satisfied of any of the matters in (a) to (d) above, then it may take any of the steps set out in in ss 49 (e) to (m):

(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 form such time and for such period determined by the Board;

(h) direct that the bishop resign from office, within such time as is specified by the Board;

(i) direct that the operation of a determination referred to in paragraphs (f) and (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.

Sections 50 and 50A provide mechanisms to give effect to a determination or direction of the Episcopal Standards Board:

50. The Board shall cause a copy of each determination and direction to be provided:

(a) to the Primate;

(b) to the relevant Metropolitan;

(c) to the respondent;

(d) to the relevant administrator;

(e) to the ESC;

(f) where appropriate, to any relevant complainant;

(g) in the case of a former Bishop, to the relevant diocesan bishop; and shall cause relevant details to be forwarded for entry into the national register.

50A. The relevant Metropolitan and, where applicable, the relevant diocesan bishop, is authorised and must give effect to the determination of the board.

Section 2 defines "relevant Metropolitan" and "relevant diocesan bishop":

relevant Metropolitan *means:*

……

(c) in relation to a former Bishop;

(i) the Metropolitan of the Province in which the Bishop is authorised to function or resides; or

(ii) if the Bishop is authorised to function or resides in an extra provincial diocese, the Primate.

relevant diocesan bishop *in relation to a former Bishop means the bishop of the diocese in which the former Bishop is authorised to function or resides.*

Section 2 defines "former Bishop":

> **former Bishop** *means a Bishop whose conduct falls within paragraph (b) of the definition of examinable conduct*;

Section 69 provides:

> *The provisions of this Canon affect the order and good government of this Church within a diocese and do not come into force in a diocese unless and until the diocese adopts this canon by ordinance of the synod of the diocese.*

The Synod of the Diocese of Brisbane, where Bishop Slater resides, adopted the Canon on 23 September 2017.[12] Accordingly, the Canon has come into effect in the Diocese of Brisbane and the Archbishop of Brisbane is therefore both the relevant Metropolitan and the relevant diocesan bishop for purposes of ss 50 and 50A.

The Episcopal Standards Board can therefore be satisfied that it has jurisdiction in respect of the information.

1.6 Heads of Examinable Conduct under the Episcopal Standards (Child Protection) Canon) 2017 which are Engaged by the Information

Only paragraphs (i) to (iv) of the definition of examinable conduct set out in 1.2 above are engaged by the allegations in the Information and other conduct coming to light in the ESC's investigation. They are set out here again for convenience:

> *(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;*

[12] Document 11

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;

Bolding in subparagraphs (i) to (iv) above denote a defined term. The two defined terms are:

- child abuse; and
- professional standards process

which are defined in section 2 of the Canon:

> ***"child abuse"*** *has the same meaning as in the National Register Canon 2007.*
>
> ***"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.*

The term "child" is also a defined term:

> ***"child"*** has the same meaning as in the National Register Canon 2007;

The Third Schedule to the National Register Canon 2007 defines "child" and "child abuse" as follows:

> ***"child****" means anyone under the age of 18;*
>
> ***"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 abuse reporting offence****; or*
>
> *(ix) failure without reasonable excuse to report child abuse; or*
>
> *(x) image-based abuse;*

(b) possessing, producing or distributing child exploitation material in circumstances that have been found to constitute, or may constitute, a criminal offence;

however done, including by or through the use of the internet, electronic means and other like technology.

Bolding in subparagraph (viii) denotes a defined term. The Third Schedule to the National Register Canon 2007[13] defines "a child abuse reporting offence" as follows:

> ***"child abuse reporting offence"*** *means a criminal offence against the law of the Commonwealth, a State or a Territory, or against the law of another country which is equivalent to a criminal offence against the law of the Commonwealth, a State or a Territory, involving the failure by a person to report child abuse.*

Only paragraphs (viii) and (ix) of the definition of "child abuse" are engaged by the allegations in the Information and other conduct coming to light in the ESC's investigation.

1.7 Fundamental Issues Raised for Consideration by the Definition of Examinable Conduct

The fundamental issues which the Canon raises for consideration are whether Bishop Slater engaged in any conduct or omission involving:

(a) child abuse, that is:
   i. a child abuse reporting offence; or
   ii. failure without reasonable excuse to report child abuse; or

(b) conduct that impedes or undermines a professional standards process; or

(c) the failure without reasonable excuse to perform a function under a professional standards process; or

(d) 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.

1.8 Previous Investigations into the Conduct of Bishop Slater in Response to Allegations of Child Abuse at NCCH

On 22 November 2012, after the announcement that the Royal Commission had been established, Bishop-In-Council of the Diocese of Grafton appointed the Professional Standards

[13] Document 12

Committee of the Diocese (the **PSC**) to establish a working group to undertake an audit of sexual abuse in the Diocese.[14]

On 16 January 2013, the then Acting Registrar of the Diocese of Grafton, Ms [redacted], reported to the Diocese's Senior Leadership Team a number of deficiencies in the handling of claims for redress discovered when she examined diocesan records, including alleged failures to report matters to the Director of Professional Standards; to report matters to the police; and to institute proceedings under disciplinary and professional standards legislation and protocol. No record of that meeting has been found.

On 15 May 2013, Bishop Slater and Ms [redacted] jointly wrote a letter to the Royal Commission to provide information about the handling of allegations of abuse at NCCH. Two letters dated 1 and 14 May 2013 which Ms [redacted] had written to the Primate provided detail.[15]

Additionally on 15 May 2013, Bishop Slater and Ms [redacted] jointly wrote a letter to the ESC informing it of the substance of Ms [redacted]'s discoveries and attaching Ms [redacted]'s two letters to the Primate dated 1 and 14 May 2013.[16]

On 17 May 2013, Bishop Slater resigned from the office of Bishop of Grafton and issued a media statement in which he made certain admissions regarding the handling of the redress claims and made an apology for the part he had played.[17]

On 12 June 2013, the ESC determined that, as Bishop Slater had resigned as Bishop of Grafton, it lacked power to investigate the matters raised in the joint letter of 15 May 2013. On 17 June 2013, the ESC informed the Administrator of that determination.[18]

Between 18 and 27 November 2013, the Royal Commission heard evidence in Case Study 3 which investigated the Diocese of Grafton's response to claims for redress for alleged child sexual abuse alleged to have occurred at the NCCH. The investigation traversed alleged failures to report allegations of abuse to members of the PSC or to the Director of Professional Standards; to report allegations of abuse to the police; and to institute proceedings under disciplinary and professional standards legislation and protocols. During the hearing before the Royal Commission, Bishop Slater made admissions of failure in his duty and made another apology. In its report on Case Study 3, the Royal Commission made a number of findings specifically concerning Bishop Slater's conduct and findings about the Diocese's handling of the claims which involved Bishop Slater.

Subsequently, in response to the Royal Commission's report, the Diocese of Grafton's PSC launched an investigation under the Diocese's Professional Standards Ordinance 2004 (the **PSO**) as to Bishop Slater's conduct in handling the claims for redress and referred questions to the Professional Standards Board directed at Bishop Slater's fitness to remain in Holy Orders.

At the hearing before the Professional Standards Board, Bishop Slater did not contest allegations of fact concerning his conduct but made submissions in order to explain and to mitigate his conduct.

[14] Document 13
[15] Document 14
[16] Document 15
[17] Document 16
[18] Document 17

In September 2015, the Professional Standards Board delivered its determination.[19] The Professional Standards Board found the allegations against Bishop Slater proven and recommended to the then Bishop of Grafton, Bishop Sarah Macneil, that Bishop Slater be deposed from Holy Orders.

On 14 October 2015, Bishop Macneil executed an instrument deposing Bishop Slater from Holy Orders.

Bishop Slater appealed to the Appellate Tribunal. On 19 January 2017, the Appellate Tribunal delivered its decision.[20] The Appellate Tribunal held that the Professional Standards Board's determination was a nullity for want of jurisdiction. Accordingly, the purported deposition of Bishop Slater from Holy Orders was of no effect.

Later in 2017, the General Synod passed the Canon (the **Child Protection Canon**) which addressed the jurisdictional gap which the Appellate Tribunal had uncovered.

Reference should be made to an investigation which did not take place. The Appellate Tribunal considered the ESC's determination that it lacked jurisdiction to investigate the information in the joint letter sent to it by Bishop Slater and Ms [redacted] on 15 May 2013.[21] The Appellate Tribunal held that the information the ESC received did not comprise a complaint which might serve as the basis for a charge to be promoted under the Special Tribunal Canon 2007. However, at paragraph 132 of its decision, the Appellate Tribunal expressed the view that the ESC had power under section 16(d) of the Episcopal Standards Canon 2007 to refer the matter to the bishop of the diocese in which Bishop Slater resided.

The ESC considered this aspect of the Appellate Tribunal's decision to determine whether it should have in the past referred or it should at that time refer the matter to the bishop of the diocese in which Bishop Slater resided. A memorandum prepared by the then Convenor of the ESC and dated 26 January 2017 shows that the ESC agreed that the information it had received in May 2013 did not comprise a complaint under the Special Tribunal Canon 2007 but that it did not have the power to refer the information to the bishop of the diocese in which Bishop Slater resided because one of the elements of section 16(d) of the Episcopal Standards Canon 2007 - namely that the ESC had commenced an investigation, and had not been satisfied by the time Bishop Slater resigned.[22] Neither the Appellate Tribunal nor the ESC referred to the fact that the bishop of the diocese in which Bishop Slater then resided, the Archbishop of Brisbane, was already in possession of the information which had been provided to the ESC - namely, Ms [redacted]'s letters dated 1 and 14 May 2013.

As stated in Part 1.3 above and Part 2.4 below, the scope of the investigations by the Royal Commission and the Grafton Professional Standards Board were wider than the scope of the investigation (under the definition of examinable conduct in the Canon) that the ESC is permitted to undertake.

[19] Document 4
[20] Document 18
[21] Document 15
[22] Document 19

1.9 Sources of Information use for ESC Investigation and Limits of their Use

Section 29(5) of the Canon provides:

> *(5) The Board may inform itself from the record of any court, tribunal or commission of inquiry and may adopt any findings, and accept as its own, the record of any court, tribunal or commission of inquiry.*

In the ordinary course, the Board would have available to it the record and findings of:

(a) The Royal Commission and
(b) the Grafton Professional Standards Board.

The application of s 29(5) of the Canon in the use of these materials is not as simple as might appear. Some issues arise for consideration.

First, the Board can inform itself from the record of the Royal Commission. Having regard to the way in which the information was received from Bishop Harvey, it is uncontroversial to refer the record and findings of the Royal Commission.

Second, the Appellate Tribunal decided that the determination of the Grafton Professional Standards Board was a nullity. The question therefore arises whether s 29(5) of the Canon permits the Board to have regard to the record or the findings of the Professional Standards Board. Paragraphs 45 and 46 of the Appellate Tribunal's decision lead to the conclusion that it may not:

> *45. Jurisdictional error may occur when a body or tribunal embarks upon a proceeding or imposes a particular remedy or sanction without authority to do so. But it may also be demonstrated by showing that the body or tribunal has misconceived the nature of the function it was established to perform: Kirk v Industrial Court (NSW) (2010) 239 CLR 531 at 573-4. The legal consequence of such error is that the decision of the body or tribunal is a nullity, an event with no legal consequences.*
>
> *46. According to Gaudron and Gummow JJ (McHugh J agreeing) in Minister for Immigration and Multicultural Affairs v Bhardwaj (2002) 209 CLR 597 at 614-5* (footnote omitted)*:*
>
> > *"There is…no reason in principle why the general law should treat administrative decisions involving jurisdictional error as binding or having legal effect unless and until set aside. A decision that involves jurisdictional error is a decision that lacks legal foundation and is properly regarded, in law, as no decision at all.*

2. REGULATORY FRAMEWORK IN THE DIOCESE OF GRAFTON FOR RESPONDING TO ALLEGATIONS OF CHILD ABUSE 2003 – 2013

2.1 Introduction

Paragraphs (i) – (iv) of the definition of the heads of examinable conduct require that Bishop Slater's conduct must be investigated by reference to the regulatory framework which governed responses to allegations of child sexual abuse. That framework encompasses both Church law and protocols and laws of the State of New South Wales. This part of the report sets out the regulatory framework.

Consideration of the regulatory framework has to be informed by the heads of examinable conduct defined in the Canon and summarised in Parts 1.5 and 1.6:

a. To determine whether Bishop Slater committed a child abuse reporting offence, it is necessary to investigate what laws of the Commonwealth or the State of New South Wales in effect between 2003 and 2013 created a criminal offence involving the failure to report child abuse.

b. To determine whether Bishop Slater failed, without reasonable excuse, to report child abuse, it is necessary to investigate what legislation, protocols, policies and the like in force in the Diocese of Grafton in the period 2003 to 2013 imposed obligations on Bishop Slater to report child abuse.

c. To determine whether Bishop Slater impeded or undermined a professional standards process or failed, without reasonable excuse, to perform a function under a professional standards process necessitates investigating what:

    (a) canons of the General Synod

    (b) ordinances of the Diocese of Grafton

    made provision for determining the fitness for office of clergy or lay persons where the conduct that is the subject of the process relates to child abuse; and

    (c) which processes under Chapter IX of the Constitution of the Anglican Church of Australia where the conduct that is the subject of the process relates to child abuse

    were in force in the Diocese in the period 2003 to 2013.

d. To determine whether Bishop Slater engaged in any conduct in paragraph (iv), it is necessary to examine what laws of the Commonwealth or the State of New South Wales required the reporting of child abuse to the police or other authority in the period 2003 to 2013.

When Bishop Slater commenced his episcopacy in November 2003, the only regulatory provision of the Diocese capable of addressing allegations of child abuse was the Clergy

Discipline Ordinance 1966 (the **CDO**).[23] The CDO provided for charges to be laid against members of the clergy for offences, to be determined by the Diocesan Tribunal.

The CDO is an ordinance made under Chapter IX of the Constitution and, therefore, a process under that ordinance is a professional standards process within the meaning of paragraphs (ii) and (iii) of the definition of examinable conduct in the Canon.

Before the commencement of Bishop Slater's episcopacy, the General Synod had been devising a model ordinance for adoption by dioceses to address conduct of church workers (either clergy or laity) which calls into question their fitness to remain in office or employment and, in the case of clergy, their fitness to remain in Holy Orders. Child abuse was one class of conduct relevant to the question of fitness.

On 27 June 2004, the Synod of the Diocese adopted the General Synod's model ordinance by passing the Professional Standards Ordinance 2004 (the **PSO**).[24]

The PSO provides processes for determining the fitness for office of clergy or lay persons and, therefore, a process under that ordinance is a professional standards process within the meaning of paragraphs (ii) and (iii) of the definition of examinable conduct in the Canon. The PSO addresses sexual misconduct.

Section 6 of the PSO provides for the Synod to adopt a protocol for implementation of the PSO. On 29 July 2004, the Bishop-in-Council resolved to adopt the Protocol for Dealing with Complaints of Sexual Abuse (the **Protocol**)[25] which, *inter alia*, sets out principles and processes for the working of the CDO and the PSO in cases where sexual abuse is alleged.

The papers for the meeting of Bishop-in-Council on 19 July 2004 which adopted the Protocol stated that the Protocol was to be adopted pursuant to section 6 of the PSO.[26] The Protocol governs responses to cases of sexual abuse only. It does not address other kinds of abuse.

The Protocol is not an ordinance of the Grafton Diocesan Synod and, therefore, the processes it prescribes are not professional standards processes within the meaning of paragraphs (ii) and (iii) of the Canon.

Nevertheless, the Protocol is relevant to this enquiry because it regulated the response to allegations of sexual abuse and the roles of relevant diocesan bodies and the Bishop. The Royal Commission's report in case Study 3 makes frequent reference to the Protocol.

The Grafton Diocesan Synod set out the relationship between the CDO and the PSO in s 3(4) of the CDO which provides:

> *In the event that an offence within the meaning of the ordinance is also a matter of examinable conduct within the meaning of the Professional Standards Ordinance 2004 the provision* [sic] *of that later Ordinance shall prevail.*

[23] Document 20
[24] Document 21
[25] Document 22
[26] Document 23

Thereby, the provisions of the PSO take precedence over the CDO. This has consequences for determining what Bishop Slater's duty was in a particular case where a report of child abuse was received. Parts 2.2 to 2.4 below set out relevant parts of the CDO, the PSO and the Protocol.

The General Synod adopted Faithfulness in Service (**FIS**) on 7 October 2004 as the Code of Conduct for observance by Bishops.[27] Provisions of FIS which relate to reporting sexual abuse are discussed in Part 2.5 below, however the FIS is not relevant to this inquiry as it does not apply to cases of historical abuse.

The Commission has found no law of the Commonwealth or the State of New South Wales in force between 2003 and 2013 which required the reporting of historical child abuse to the police or other authority.

2.2 CLERGY DISCIPLINE ORDINANCE 1966 ("CDO")

2.2.1 Purpose of the CDO

The preamble to the CDO states that the purpose of the Ordinance is:

> *To provide for the Trial of Clergy for Ecclesiastical Offences.*

2.2.2 To whom the CDO applied

Section 4(1) provided:

> *A charge that he or she has committed an offence may be made as provided by this Ordinance against any member of the clergy to whom this Ordinance applies.*

"Member of clergy to whom this Ordinance applies" is defined in section 3(1):

> ***"Member of clergy to whom this Ordinance applies"*** *means:*
>
> *(a) a member of clergy licensed by the Bishop and resident in the Diocese.*
>
> *(b) a member of clergy resident in the Diocese.*
>
> *(c) a member of clergy in respect of whom a charge is made arising from an act or actions of the member in the Diocese.*
>
> *(d) a member of clergy who within 2 years before a charge is laid was licensed by the Bishop or was resident in the Diocese.*
>
> *(e) a member of clergy who is in prison as a convicted person at the time the charge is laid, but who within 2 years before such imprisonment was licensed by the Bishop or was ordinarily resident in the Diocese.*

[28] This clause does not distinguish between disciplinary proceedings against clergy under the CDO and proceedings against church works under the PSO.

2.2.3 What is an offence?

The term "Ecclesiastical Offences" was not defined in the CDO. However, section 3(1) defined "offence":

> ***"offence"*** *means any of the following:*
>
> *(a) breach of faith ritual ceremonial or discipline;*
>
> *(b) unchastity;*
>
> *(c) drunkeness* [sic]*;*
>
> *(d) habitual or wilful neglect of ministerial duty after written admonition in respect thereof by the Bishop;*
>
> *(e) bankruptcy;*
>
> *(f) wilful failure to pay just debts;*
>
> *(g) conduct, whenever occurring:*
>
> *(i) which would be disgraceful if committed by a member of the clergy, and;*
>
> *(ii) which at the time the charge is preferred is productive or, if known publicly would be productive, of scandal or evil report.*
>
> *(h) any offence punishable by law being a malum in se;*

A *malum in se* is a 'wrong' or an 'evil in itself'. The phrase is used to refer to conduct assessed as sinful or inherently wrong by nature, independent of regulations governing the conduct. It is distinguished from *malum prohibitum*, which refers to acts that are wrong only because they are prohibited by law.

2.2.4 Precedence of the Professional Standards Ordinance 2004

The PSO takes precedence over the CDO where an offence is also examinable conduct. Section 3(4) provides:

> *In the event that an offence within the meaning of the ordinance is also a matter of examinable conduct within the meaning of the Professional Standards Ordinance 2004 the provision* (sic) *of that later Ordinance shall prevail.*

2.2.5 Limitation periods for charges against clergy convicted of criminal offences

Section 5 provides limitation periods for bringing charges against members of the clergy convicted of a criminal offence:

> *(1) If a member of the clergy to whom this Ordinance applies is convicted in a criminal court of an offence which is punishable by law a charge against that member that he or she has committed that offence may not be made at any time after the lapse of six calendar months after such conviction.*
>
> *(2) Save as aforesaid no charge that an offence has been committed may be made more than two years after that offence has been committed.*

2.2.6 Who may make a charge?

Section 6(2) sets out who may make a charge under the CDO:

> *A charge of an offence other than breach of faith ritual or ceremonial may be made by:*

(a) The Bishop's own mere motion; or

(b) a person appointed by the Bishop; or

Nothing in the CDO imposes a duty on the Bishop to make a charge in any particular case where the alleged conduct would warrant a charge being made.

2.2.7 Limit of the Application of the CDO

The limitation periods in section 5 of the CDO prevented Bishop Slater from making charges in the diocesan tribunal against members of the clergy who perpetrated child abused on residents in the NCCH during the relevant period, namely, from the 1940s to the 1980s.

2.3 PROFESSIONAL STANDARDS ORDINANCE 2004 ("PSO")

2.3.1 Purpose of PSO

The PSO does not contain a provision expressing its purpose such as the preamble to the CDO. One may shortly state the PSO's purpose to be to provide mechanisms for assessing whether a church worker's conduct calls into question their fitness for office and for determining the appropriate response to address any unfitness.

2.3.2 Duty to provide "information" to the PSC

Section 24 of the PSC provides**:**

> *24. (1) A member of the Clergy and a Church authority in the diocese shall as soon as possible refer any information in his, her or its possession or knowledge to a member of the PSC unless there are reasonable grounds to believe that the information is already known to the PSC.*

Section 2(1) defined "member of the clergy" and "information":

> ***"member of the Clergy"*** *means a person in Holy Orders;*

Being a person in holy orders, Bishop Slater was a member of the Clergy and, therefore, owed the duty in s 24(1).

> ***"information"*** *means information of whatever nature and from whatever source*
>
> *relating to:*
>
> *(a) alleged conduct of a Church worker wherever or whenever occurring involving sexual harassment or assault, or sexually inappropriate behaviour;*
>
> *(b) alleged inappropriate or unreasonable conduct or omission of a Church worker who had knowledge of conduct of another Church worker involving sexual harassment or assault, or sexually inappropriate behaviour; or*
>
> *(c) an alleged process failure;*

"Process failure" is defined as:

"process failure" *means the failure by a Church body or Church authority prior to this Ordinance coming into effect to deal appropriately with or to investigate matters referred to in paragraphs (a) or (b) of the definition of information;*

Section 2(1) also defined "church worker" and "church body":

"Church worker" *means a person who is or who at any relevant time was:*

(a) a member of the clergy; or

(b) a person employed by a Church body; or

(c) a person holding a position or performing a function with the actual or apparent authority of a Church authority or Church body;

but excludes a bishop subject to the jurisdiction of the Special Tribunal of the Church;

"Church body" *includes a parish, school, any body corporate, organization or association that exercises ministry within, or on behalf of, the Church;*

It is doubtful that the NCCH was a church body as defined.

Section 10(1) provided that the Director of Professional Standards (DPS) was a member of the PSC.

2.3.3 Professional Standards Committee ("PSC") – composition and operation

Sections 10 and 11 govern the composition and operation of the PSC:

10. (1) The PSC shall have at least three members one of whom is the Director.

11. (1) The Director shall be the convenor of the PSC.

(2) The PSC may meet from time to time as determined by the Director or a majority of its members and may conduct its business by telephone or electronic communication.

(3) The procedures of the PSC shall be as determined by the PSC.

…….

(6) The PSC shall act in all things as expeditiously as possible.

2.3.4 PSC's powers and duties

Section 20 sets out the PSC's powers and duties:

(1) Subject to the provisions of this Ordinance the PSC has the following powers and duties:

(a) to implement the protocol to the extent that the protocol is not inconsistent with this Ordinance;

(b) to receive information;

(c) to act on information in accordance with the provisions of this Ordinance, and the protocol to the extent that it is not inconsistent with this Ordinance;

……

(f) to investigate information in a timely and appropriate manner;

……

(j) to refer any information in its possession to a member of a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia to which the information is or may be relevant;

(2) The power and duty of the PSC to exercise its functions under this Ordinance arises in respect of:

(a) conduct wherever it is alleged to have been engaged in by a Church worker resident or licensed in the diocese, or engaged by a Church authority;

(b) an omission, whenever it is alleged to have occurred, by a Church worker resident or licensed in the diocese, or engaged by a Church authority;

(c) conduct which is alleged to have occurred within the diocese wherever the Church worker involved in the alleged conduct may reside;

(d) conduct, wherever it is alleged to have been engaged in, or an omission, wherever it is alleged to have occurred, by a Church worker, wherever the Church worker may reside -

(i) in respect of or affecting a person resident in the diocese;

…….

Section 25 required the PSC to investigate examinable conduct:

25. Subject to this Ordinance, where the PSC considers that the subject matter of information constitutes examinable conduct it shall investigate the information.

Section 2 defines "examinable conduct":

"examinable conduct" *means conduct wherever or whenever occurring the subject of information which, if established, might call into question:*

(a) the fitness of a Church worker, whether temporarily or permanently, now or in the future to hold a particular or any office, licence or position of responsibility in the Church or to be or remain in Holy Orders or in the employment of a Church body; or

(b) whether, in the exercise of a Church worker's ministry or employment, or in the performance of any function, the Church worker should be subject to certain conditions or restrictions;

Section 54 empowered the PSC, after investigation, to refer questions to the Professional Standards Board:

54. (1) After investigation in accordance with section 25 or under a corresponding provision of an Ordinance of another diocese the PSC or an equivalent body may refer to the Board, or to an equivalent body which has jurisdiction, one of more of the following questions:

(a) the fitness of a Church worker, whether temporarily or permanently to hold a particular or any office, licence or position of responsibility in the Church or to be or remain in Holy Orders or in the employment of a Church body;

(b) whether in the exercise of a Church worker's ministry or employment, or in the performance of any function the Church worker should be subject to certain conditions or restrictions.

2.3.5 Director of Professional Standards ("DPS")

Section 22 sets out the DPS's functions*:*

The Director shall have the following functions:

(a) to manage the implementation of the protocol in respect of any information;

(b) to be the executive officer of the PSC;

(c) to convene but not to chair meetings of the PSC;

(d) such other functions and duties as may be determined by the Bishop-in-Council or the PSC.

2.3.6 Conclusion

Paragraph 24 (1) of the PSO required Bishop Slater to report allegations of sexual abuse to a member of the PSC so that the PSC could perform its functions.

2.4 PROTOCOL FOR DEALING WITH COMPLAINTS OF SEXUAL ABUSE ("THE PROTOCOL")

Section 6 of the PSO provides for a protocol to be adopted to provide mechanisms to respond to information:

(1) The Bishop-in-Council shall from time to time consider and approve a protocol for implementation in relation to information.

(2) The protocol must include:

(a) procedures for receiving information;

(b) the appointment, role and function of contact persons;

(c) provision for informing complainants and victims of alleged conduct the subject of information, and respondents, of rights, remedies and relevant procedures available to them;

(d) provision for assisting or supporting, as appropriate, all persons affected by alleged conduct the subject of information;

(e) an explanation of the processes for investigating and dealing with information;

(f) provisions for dealing fairly with respondents;

(g) processes for referral to mediation and conciliation in appropriate circumstances;

(h) processes for dealing with alleged process failure;

(i) provisions for regular information, reports, advice and recommendations to the Bishop and any other relevant Church authority at each stage of the process of dealing with information;

(j) procedures for working, where necessary, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia.

Relevant parts of the Protocol are extracted below.

2.4.1 Part 2 Commonly asked questions

2.6 *The Director of Professional Standards' job is to make sure your complaint is handled well.*

2.8 Who is covered by this Protocol?

It covers all clergy, lay workers, volunteers and office holders working, volunteering or performing duties within any parish, church organization, church school or other church linked organization.

2.4.2 Part 4 Principles

4.6 A Worker who witnesses Sexual Abuse or who suspects that a person has been Sexually Abused must report it to their Organisation Head.

4.7 The Diocese will take disciplinary action against Workers who Sexually Abuse others.[28]

4.10 The Diocese will co-operate with State authorities in resolving Allegations of Sexual Abuse.

Part 4 does not apply to historical abuse.

2.4.3 Part 5 Key understandings

5. Criminal Law: Where a member of the public has Allegations of criminal misconduct, it is better for everybody if the Allegations are referred to the police. The Director of Professional Standards must refer all Allegations of Paedophilia to the police except where the Alleged Perpetrator is dead.[29]

2.4.4 Part 6 Adherence

The Diocese requires all Organisations to comply with this Protocol.[30]

2.4.5 Part 7 Scope

This Protocol applies to all Allegations of Sexual Abuse made about Workers and to all Allegations of Sexual Abuse made against an Organisation (including all incorporated bodies associated with, controlled by or reporting to the Diocese, including, without limiting the scope of the Professional Standards Ordinance or this Protocol bodies such as Anglicare and its associated incorporated bodies and the schools of the Diocese) or the Diocese whether the Allegations are about events that are:

[28] This clause does not distinguish between disciplinary proceedings against clergy under the CDO and proceedings against church works under the PSO.
[29] The Protocol did not require anyone to report non-sexual forms of abuse to any authority (Diocesan or secular).
[30] The Protocol did not require individuals generally to comply with the Protocol. Rather, the Protocol imposed duties in particular circumstances on individuals. For example, Part 12 of the Protocol specifies an individual receiving information of alleged sexual abuse.

- *known to have occurred;*
- *suspected to have occurred;*
- *ongoing or likely;*
- *perpetrated by a person who is deceased.*[31]

2.4.6 Part 8 "Sexual Abuse"

The expression "Sexual Abuse" within this Protocol means[32]*:*

- *any Abusive behaviour with a Child for the sexual gratification of the perpetrator;*
- *any Abusive behaviour with an adult for the sexual gratification of the perpetrator where the perpetrator is in a position of authority over the child;*

The expressions also include:

- *Conduct of a person covered by the Professional Standards Ordinance 2004 wherever or whenever occurring involving sexual harassment or assault, or sexually inappropriate behaviour; and*
- *Inappropriate or unreasonable conduct or omission of a person covered by the Ordinance who had knowledge of conduct of another church worker involving sexual harassment or assault, or sexually inappropriate behaviour.*

2.4.7 Part 12 Who Reports Sexual Abuse?

If someone witnesses Sexual Abuse they must report it to their Organisation Head immediately. If someone receives information about Sexual Abuse they must report the information to their Organisation Head immediately. If the Organisation Head is the subject of the Allegation or it is not possible to report to the Organisation Head, report it to the DPS.

A recipient is not required to report information if the recipient knows the information to be untrue.

If a recipient does not intend to report the information they must inform the Complainant so that the Complainant may themselves report the information under this Protocol.

If a recipient is unsure whether to report the information or not, they should report the information.

Part 12 does not apply to historical abuse.

2.4.8 Part 14 What the Director of Professional Standards does

14.1 Qualifications:

[31] The Protocol only applied in cases of alleged sexual abuse. However, cl 5.15 of FIS required reporting of all types of child abuse to the DPS and civil authorities.
[32] The Protocol's definition of "sexual abuse" does not correspond with the definition under "information" in cl 2(1) of the PSO.

Some or all of administrative, management, leadership, counselling, legal, interpersonal skills

14.2 Reports to:

Professional Standards Committee and Bishop-in-Council

14.3 Role:

….

- *ensure all complaints of Sexual Abuse are dealt with in accordance with this Protocol;*
- *to be the Executive Officer of the Professional Standards Committee*
- *to convene, but not chair the meetings of the Professional Standards Committee;*
- *assist in preparation of reports for the Professional Standards Committee;*
- *appoint any necessary Investigators to assist the Professional Standards Committee or Board;*
- *support and advise other people who act under this Protocol.*

14.6 Reporting to State Authorities

If an Allegation shows that a Child for whom an Organisation is responsible has been sexually abused by a person (whether or not the person is a Worker) and the Sexual Abuse has caused significant harm to the Child:

If the Organisation is a school ensure the Organisation Head reports to an appropriate State Authority.

If the Organisation is not a school and the Sexual Abuse is not a criminal offence report[33] *the Allegations to a relevant State Authority such as the Department of Families or Department of Education*

If the Organisation is not a school and the Sexual Abuse is a criminal offence then report[34] *the Allegations to a police officer.*

14.10 Police

Allegations of Sexual Abuse of Children are reported as noted under "Reporting to State Authorities" above.

Do not report other Allegations to police unless there are special reasons and the Professional Standards Committee [sic].[35]

Professional Standards Committee instructs the Director of Professional Standards to do so. The Complainant or victim may do this themselves if they choose to do so.

[33] One may infer the Protocol intends for reporting to be conducted by the Organisation Head.
[34] One may infer the Protocol intends for reporting to be conducted by the Organisation Head.
[35] Individuals were required to not report Allegations to the police and not do anything whilst a matter was pending police investigation. *This was to be done by the DPS on the PSC's instructions*.

Do not do anything in relation to the matter while police action is pending if the Director of Professional Standards' actions may interfere with police actions. It may be constructive to provide Pastoral Support and counselling while police are acting. It would be sensible to liaise with police about this.

The second and third paragraphs are not complete. If the draftsman intended that only the DPS should report sexual abuse to the police unless the PSC instructed otherwise, the paragraphs could have read:

> *Do not report other Allegations to police unless there are special reasons and the Professional Standards Committee instructs the Director of Professional Standards not to do so. The Complainant or victim may do this themselves if they choose to do so.*

14.11 Assessment

On receipt of the police report into the complaint, make a recommendation to the Professional Standards Committee about any need for internal assessment.[36]

The Director of Professional Standards would not normally recommend internal assessment be carried out while a police investigation is in train.

When police action is completed and internal assessment is completed recommend action to the Professional Standards Committee.

The Protocol is silent on what should occur if:

a. The police did not provide a report;

b. The DPS did not recommend an internal assessment;

c. The DPS recommended an internal assessment but the PSC either determined none should be carried out or did not address the recommendation.

2.4.9 Part 17 What the Professional Standards Committee does

17.1 Qualifications:

Appointed by Bishop-in-Council. There should be at least one cleric on the committee licensed by the Bishop to officiate in the Diocese. It will have at least three members. If possible, the members should include:

- *at least one member with expertise in Sexual Abuse issues;*
- *at least one member with legal expertise.*

[36] Note that "internal assessment" is not defined in the Protocol.

The Chair of the Committee preferably should be a cleric.

17.2 Reports to:

Bishop-in-Council and General Manager/Registrar.

17.3 Role:

To act in accordance with Part 4 of the Professional Standards Ordinance 2004, this

includes:

- *directs generally the Director of Professional Standards regarding the operation of the Protocol;*
- *receives reports relating to Sexual Abuse from Director of Professional Standards;*
- *investigates information relative to complains of sexual abuse in a timely and appropriate manner*
- *advises the Director of Professional Standards as requested;*
- *reviews investigations;*
- *keeps the Bishop informed of all matters under the Protocol*;
- *keeps General Manager/Registrar informed about all things relating to insurance and property and finance;*
- *acts in accordance with directions from Bishop-in-Council*
- *overseas* [sic] *and/or recommends appropriate educational programmes within the Diocese to ensure full understanding and compliance with the Protocol and Ordinance.*

17.4 Duties:

- *meet as required, but at least quarterly, to consider reports from Director of Professional Standards;*
- *prepares reports into any investigation;*
- *decides whether to refrain from further investigation;*
- *refer questions under section 54 of the Professional Standards Ordinance to the Professional Standards Board;*
- *advises any relevant Church authority or body as to the financial or other needs of a person affected by Sexual Abuse as defined by this Protocol;*

If the Director of Professional Standards recommends that disciplinary proceedings be undertaken against an Alleged Perpetrator, refer the matter to the Organisation Head of the Organisation where the Alleged Perpetrator is a Worker.

If the Alleged Perpetrator is a Licensed Person, refer the matter to the Bishop.

Review the operation of the Protocol every 18 months. Recommend changes to the Protocol to the Bishop-in-Council as they are considered necessary

2.4.10 Part 22 What the Bishop does

22.1 Qualifications:

The person from time to time exercising the powers of the Anglican Bishop of Grafton

22.2 Reports to:

Bishop-in-Council and Synod.

22.3 Role:

- *to oversee the Protocol and ensure it is working properly*
- *to take disciplinary action where a Licensed Person is involved*
- *to communicate with the media on behalf of the Diocese*

22.4 Duties:

Receives regular reports from the Professional Standards Committee.

Initiates disciplinary action under the Canons against Licensed Persons if requested by the Professional Standards Committee and if it is, in the opinion of the Bishop, appropriate.

The Ordinances of the Diocese of Grafton that provide for disciplinary action against Licensed Persons include:

- *Clergy Discipline Ordinance*

The Bishop may also be able to initiate action under the Canons of the General Synod of Australia or under the rules of any other Diocese within the Anglican Communion throughout the world.

Report results of disciplinary action to Professional Standards Committee.

Provides information about Licensed Persons who have been Alleged Perpetrators to complaints [sic] *of Abuse if anyone seeks a reference for them with a view to engaging their services.*

2.4.11 Schedule 1 - Definition of Organisation, Associated Organisation and Organisation Head

Organisation:

A Diocesan Organisation or an Associated Organisation, (including all incorporated bodies associated with, controlled by or reporting to the Diocese, including, without limiting the scope of the ordinance or protocol bodies such as Anglicare and its associated incorporated bodies and the schools of the Diocese).

Associated Organisation:

Legal entities other than Diocesan Organisations, including schools and agencies which:

- *use the word "Anglican" in their name with the approval of the Diocese; or*
- *use the word "Anglican" in describing their activities with the approval of the Diocese; or*
- *are partly or completely owned by the Diocese; or*

• *received funding from the Diocese.*

Organisation Head:

> *The person responsible for the leadership and management of a Diocesan Organisation or an Associated Organisation. Examples: a school- the principle, a parish- the parish priest, a committee at Diocesan level- the General Manager.*

NCCH was not a Diocesan Organisation or Associated Organisation. Bishop Slater was not, at any relevant time, classifiable as the Organisation Head of NCCH. Therefore, the Protocol did not require Bishop Slater to report historical allegations of sexual abuse at NCCH to any relevant authority.

2.4.12 Limits on Application of Reporting Provisions of the Protocol

The Protocol does not apply to cases of historical abuse. If that conclusion is incorrect, then the Protocol requires only the Director of Professional Standards (on instructions by the PSC) and Organisation Heads to report abuse to police or other authorities.

2.5 FAITHFULNESS IN SERVICE ("FIS")

2.5.1 Introduction

On 7 October 2004, the General Synod passed Resolution 59/04 adopting Faithfulness in Service (**FIS**) as the Code of Conduct for observance by Bishops.

On 25 October 2007, the General Synod passed the Episcopal Standards Canon 2007, section 3 of which provides:

> *The General Synod or the Standing Committee shall from time to time by resolution approve a Code of Conduct for observance by Bishops, which does not make provision for any matter concerning faith, ritual or ceremonial, provided that any changes to the Code of Conduct made by the Standing Committee shall be referred to the next session of General Synod for ratification.*

Section 30(b) of the Constitution of the Anglican Church of Australia provides:

> *If General Synod declares that the provisions of any other canon affect the order and good government of the Church within, or the church trust property of a diocese, such canon shall not come into force in any diocese unless and until the diocese by ordinance adopts the said canon.*

Section 69 of the Episcopal Standards Canon 2007 provides:

> *The provisions of this canon affect the order and good government of this Church within a diocese and shall not come into force in a diocese unless and until the diocese adopts this canon by ordinance of the synod of the Diocese.*

On 18 May 2008, the Synod of the Diocese of Grafton adopted the Episcopal Standards Canon 2007. The adopting ordinance took effect on 18 May 2008.

FIS does not have any characteristics of a professional standards process as defined in the Episcopal Standards (Child Protection) Canon 2017.

2.5.2 Relevant provisions of FIS

The following provisions of FIS have a bearing on the question whether Bishop Slater had a duty to report allegations of abuse to relevant authorities.

> *4.29 You may have a legal obligation to report criminal offences to the applicable civil authorities (the issue of child abuse is addressed in Section 5).*
>
> *5.8 If you have overall authority in a church body, you are to ensure that:*
>
> ….
>
> *all applicable requirements of the civil authorities, the church authority and the church body are complied with;*
>
> ….
>
> *5.14 If you know or reasonably suspect that a child is at risk of harm from child abuse, you are to report this to the appropriate civil authorities.*
>
> ….
>
> *5.15 If you know or reasonably suspect that another member of the clergy or a church worker has abused a child, you are to report this to the appropriate civil authorities and the Director of Professional Standards.*

Clause 2 of FIS which defines Key Terms contains the following definitions:

> ***child*** *means anyone under the age of 18.*
>
> ***child abuse*** *means the following conduct in relation to a child:*
>
> - *bullying;*
> - *emotional abuse;*
> - *harassment;*
> - *neglect;*
> - *physical abuse;*
> - *sexual abuse; or*
> - *spiritual abuse.*
>
> ***church body*** *includes a parish, school, or any body corporate, organisation or association that exercises pastoral ministry within, or on behalf of, or in the name of, the Church.*
>
> ***church worker*** *means a lay person:*
>
> ….

in respect of whom the diocesan synod, the diocesan council, the church authority or the church body has adopted this Code.

civil authorities *means the police and the relevant State or Territory government child protection authority.*

These provisions of FIS are relevant to a consideration whether Bishop Slater engaged in conduct described in paragraph (a) (ix) of the definition of child abuse in Schedule 3 of the National Register Canon 2007 and has therefore engaged in child abuse, being the first head of examinable conduct discussed in parts 1.5 and 1.6 above.

2.5.3 Limits on Application of Reporting Provisions of FIS

FIS first came into force in October 2004 and as a code of conduct is intentionally forward looking. Under clause 5.14, knowledge and/or reasonable suspicion must be acted upon when the person is, in fact, *a child*. Historical risk of harm is not applicable.

Additionally, FIS could not apply to historical matters at NCCH given the definition of "church worker" in clause 2. In accordance with clause 5.15, church workers must be laity "in respect of whom the diocesan synod, the diocesan council, the church authority or the church body has adopted [FIS]." As FIS could not have been adopted, it does not apply to historical child abuse at NCCH.

2.6 Conclusion

Section 24(1) of the PSO is the only provision in the Diocese of Grafton's regulatory framework that clearly imposed an obligation on Bishop Slater to report allegations of historical child abuse to a relevant authority.

3. DO THE FINDINGS OF THE ROYAL COMMISSION AND THE PROFESSIONAL STANDARDS BOARD IDENTIFIED IN THE INFORMATION PROVIDED BY BISHOP HARVEY FALL WITHIN THE DEFINITON OF EXAMINABLE CONDUCT IN LIGHT OF THE REGULATORY FRAMEWORK?

3.1 Royal Commission Finding 6:

> *Bishop Keith Slater, then Bishop of Grafton, and the Diocese of Grafton should have managed the process under the 2004 Protocol for Dealing with Complaints of Sexual Abuse when the group claim was being handled between the Diocesan and claimants' solicitors.*

As pointed out earlier in this report, the Protocol was not a professional standards process as defined in the Canon. Failure to manage processes under the Protocol does not fall within any of the heads of examinable conduct.

3.2 Royal Commission Finding 11:

> *Bishop Keith Slater did not follow the Pastoral Care and Assistance Scheme in responding to* [redacted].

As the basis for Finding 11, the Royal Commission set out:

> *After rejecting the offer under the group claim, Mr* [redacted] *sought counselling and payment in line with the Pastoral Care and Assistance Scheme. Bishop Slater suggested that Mr* [redacted] *was betraying the group claimants by renegotiating.*
>
> *In June 2010, Mr* [redacted] *accepted the same offer that was being made to the group claimants. The Diocese then offered him that same settlement (with interest) plus $5,000 for counselling and a $7,730 Medicare reimbursement.*

The Pastoral Care and Assistance Scheme does not fall within the definition of a professional standards process in the Canon. Accordingly, failure to follow the Scheme does not fall within the definition of examinable conduct.

3.3 Royal Commission Finding 12:

> *In 2012, when considering the request from* [redacted] *for information, Bishop Keith Slater acted to protect the interests of the former members of the Home's committee, including an elderly former member.*

The Royal Commission made this finding in the context of examining responses to individual claims for redress. In the paragraph preceding the finding, the Royal Commission set out the basis for Finding 12:

> *Mr* [redacted] *continued to press the Church about his settlement. He sought documents such as the Home's Constitution to better understand the issue of liability. Bishop Slater resisted giving this information because he was concerned about the possibility of legal action against committee members, including one who was elderly.*

Protecting individuals from civil litigation by declining to provide information about the Constitution of the NCCH does not fall within any of the heads of examinable conduct under the Canon.

3.4 Royal Commission Finding 14:

> *Bishop Keith Slater did not refer either CB's or CC's claims to the Professional Standards Committee, which was contrary to clause 24(1) of the Professional Standards Ordinance 2004.*

On its face, Finding 14 falls within paragraphs (i) to (iii) of the definition of examinable conduct. This matter is explored in Parts 6.1, 6.2 and 6.3 of this report.

3.5 Royal Commission Finding 26:

> *From 2011 to 2013, Bishop Keith Slater did not refer allegations of criminal conduct made by CB and CC to NSW Police. This was inconsistent with the 2004 Professional Standards Ordinance and Protocol for Dealing with Complaints of Sexual Abuse.*

On its face, Finding 26 falls within the two relevant elements of paragraph (i) of the definition of examinable conduct in the Canon. This matter is explored in Parts 6.1, 6.2 and 6.3 of this report.

3.6 Professional Standards Board Allegation 3:

> *In 2011, having directly received written complaints by CB and CC alleging historical sexual abuse failed to cause those complaints to be dealt with in accordance with the Anglican Diocese of Grafton's Professional Standards Ordinance 2004 and failed to inform NSW Police.*

At paragraph 56, the Professional Standards Board noted in respect of the allegations made against Bishop Slater:

> *All the matters alleged by the PSC were admitted and conceded. No submissions were made as to why the respondent failed in these ways, save as to say he could give no explanation.*

On its face, paragraph 56 may be taken as a finding of the Professional Standards Board. This finding of the Professional Standards Board in relation to Allegation 3 comprises two parts:

(a) Bishop Slater failed to comply with a professional standards process within paragraphs (ii) and (iii) of the definition of examinable conduct; and

(b) Bishop Slater failed to inform NSW Police of allegations of sexual abuse which, on its face, falls within paragraphs (i) and (iv) of the definition of examinable conduct.

As discussed above, no law of the Commonwealth or the State of New South Wales requiring the reporting of historical child abuse to the police or other authority has been found and the provisions of FIS do not apply to historical child abuse. Therefore, only part (a) of Allegation 3 will be explored in detail in Parts 6.1, 6.2 and 6.3 of this report.

3.7 Professional Standards Board Allegation 6:

Between 31 December 2005 and 1 January 2013, failed to ensure observance of the Sydney Pastoral Care and Assistance Scheme.

The Sydney Pastoral Care and Assistance Scheme did not require reporting of allegations of sexual abuse to a diocesan body or officer or to a civil authority and it did not fall within the definition of a professional standards process. Accordingly, failure to ensure observance of the Scheme does not comprise conduct falling within the definition of examinable conduct.

3.8 Conclusion

Of the conduct identified in the information provided by Bishop Harvey, the following require investigation:

(a) Royal Commission Findings 14 and 26 and
(b) Part (a) of Professional Standards Board Allegation 3.

4. ADDITIONAL FINDING OF THE ROYAL COMMISSION AND THE PROFESSIONAL STANDARDS BOARD WHICH FALLS FOR CONSIDERATION

Finding 25 in the Royal Commission's report of Case Study 3 discloses conduct which appears to fall within the definition of examinable conduct in the Canon but which was not referred to in the Information:

Royal Commission Finding 25:

> *From September 2005 until April 2013, no disciplinary action was taken against Reverend* [redacted] *by the Diocese of Grafton or the Diocese of Newcastle. During the same period, the Diocese of Grafton took no disciplinary action against Reverend* [redacted].

On its face this additional finding falls within paragraph (ii) and (iii) of the definition of examinable conduct and is explored in Part 6.2 of this report.

5. COMPLAINTS OF CHILD ABUSE WHICH CAME TO BISHOP SLATER'S NOTICE IDENTIFIED FROM RECORDS OF THE DIOCESE OF GRAFTON

During the course of the investigation, it became apparent that the PSC of the Diocese of Grafton was investigating the conduct of Reverend [redacted] - the Registrar of the Diocese during much of Bishop Slater's episcopacy - in response to allegations of abuse at NCCH. An overlap was observed between the conduct of Bishop Slater and Reverend [redacted].

It was not always clear who was involved in the administration of a complaint. The Commission therefore requested the Director of Professional Standards of the Diocese of Grafton to identify cases where:

(a) The complaint was addressed to Bishop Slater and he took sole or primary administrative responsibility; and

(b) Another person had the primary administrative responsibility, but Bishop Slater also played an active role.

The Director of Professional Standards identified the following cases which were not already the subject of specific findings of the Royal Commission or the Professional Standards Board:

(a) CD (File PS20/002)
(b) [redacted] (File PS20/058)
(c) [redacted] (File PS20/056)
(d) CE (File PS20/025)
(e) CF (File PS20/026)
(f) CG (File PS20/030)

The only one of these cases which falls within the legislative framework of the Diocese of Grafton for the purposes of the Canon is the case of CD.

6. QUESTIONS FOR DETERMINATION BY THE BOARD

In view of the discussion above, the following three matters raise questions for determination by the Board:

(a) CD (August 2007; File PS20/002)
(b) CC (February 2011; File PS 20/001); and
(c) CB (March 2011; File PS20/029);

These matters are set out in the order in which they came to Bishop Slater's attention.

6.1 EXAMINABLE CONDUCT – CD

6.1.1 Facts

CD was a resident at the NCCH Home from 1978 to 1983. On 12 August 2007, an intermediary, Mr [redacted], sent Bishop Slater letters written by CD describing the abuse he suffered at the NCCH.[37] The letters recorded physical, psychological, and sexual abuse alleged against:

i. Clergy: Reverend Father [redacted];

ii. Staff:

a. [redacted];
b. [redacted];
c. Other unnamed night staff;

iii. Other residents of the North Coast Children's Home, including:

a. [redacted]
b. [redacted];
c. [redacted];
d. [redacted];
e. [redacted];
f. [redacted];
g. [redacted] and
h. [redacted];

iv. Secondary abusers who watched the rape of another child.

[37] Document 24

Allegations of secondary abuse were made against residents who had watched the rape of another child resident of the NCCH. CD stated that he personally had witnessed the rape of a child resident.

As of 12 August 2007, Reverend [redacted] was no longer resident in the Diocese of Grafton and did not hold a licence from Bishop Slater. Reverend [redacted] was resident in the Diocese of Brisbane and held various positions in that Diocese in the period from 2002 to 2017.

6.1.2 Context of Contact between CD and Bishop Slater

Prior to the Mr [redacted] sending letters written by CD to Bishop Slater, on 23 May 2007 Mr [redacted] wrote a letter to the then Primate, Archbishop Aspinall, Archbishop of Brisbane and Metropolitan of Queensland.[38]

The letter described the abuse suffered at NCCH by four unnamed people who had responded to advertisements the Intermediary had placed in the national and country press requesting people abused at NCCH to come forward. Mr [redacted] also informed the Primate that he believed further advertisements he had sent to the press would cause other abused victims to contact him for advice.

On 30 May 2007, Archbishop Aspinall, Archbishop of Brisbane, noted that the abuse Mr [redacted] had described in his letter of 23 May 2007 included "*criminal offences of a most serous kind*", further stating:

> *These matters should be reported to the police. I would encourage you to ask these people to approach the police if they are able to, to ask other survivors to report their abuse to the police. I have asked my Director of Professional Standards to advise the police directly of the information you have provided to me.*"[39]

On 31 May 2007, the Director of Professional Standards in the Diocese of Brisbane reported the abuse alleged by Mr [redacted] to Taskforce Argos, a unit in the Queensland Police Service and attached the Intermediary's letter of 23 May 2007.[40]

After a communication between Mr [redacted] and Archbishop Aspinall, a meeting was held on 3 July 2007 between the Mr [redacted], his sister (identified as CA), Bishop Slater and Ms [redacted] (a member of the Professional Standards Unit in the Diocese of Sydney).

[38] Document 25
[39] Document 26
[40] Document 27

6.1.3 Communication between CD and Bishop Slater

There is no evidence of any activity relating to CD's complaints until January 2008, some four to five months after Mr [redacted] had sent Bishop Slater the letters written by CD.

The first record of written communication to CD is dated 29 January 2008. Archdeacon [redacted], as Bishop Slater's Commissary, wrote to Mr [redacted] concerning the allegations of abuse and sought CD's written authority for the Intermediary to act on his behalf.

On 5 February 2008, CD wrote to Archdeacon [redacted] and to Bishop Slater, and authorised Mr [redacted] to communicate with the Diocese personally for him.

On 13 February 2008, CD wrote two letters to Bishop Slater setting out, inter alia, details of the abuse CD had suffered whilst resident at the NCCH.[41]

On 21 February 2008, Bishop Slater wrote back to CD acknowledging CD's anger towards the Church and indicating that he was "*deeply sorry for all the hurt you have been through.*"[42] CD said he did not want counselling. Consequently, Bishop Slater indicated he would therefore not refer the matter to the Professional Standards Director.

There is no evidence that Bishop Slater referred CD's allegations of sexual abuse to a member of the PSC as required by section 24(1) of the PSO or that he had a reasonable excuse for not doing so.

On 26 February 2008, CD accepted an offer of redress.[43]

On 9 April 2008, [redacted], the Diocesan Solicitors, sent a deed of release to CD.

6.1.4 Questions for Determination in Relation to CD's Allegation of Sexual Abuse

1. Did Bishop Slater fail to report CD's allegation of abuse to a member of the PSC?

2. If so, did Bishop Slater:

    a. Engage in conduct within paragraph (b)(i) of the definition of examinable conduct in the Canon, namely, failure without reasonable excuse to report as prescribed in paragraph (ix) of the definition of child abuse in the National Register Canon 2007;

[41] Documents 29, 29, 30, 31
[42] Document 32
[43] Document 33

b. Engage in conduct within paragraph (b)(ii) of the definition of examinable conduct in the Canon, namely, impeding or undermining a professional standards process;

c. Engage in conduct within paragraph (b)(iii) of the definition of examinable conduct, namely, failure without reasonable excuse to perform a function under a professional standards process?

6.2 EXAMINABLE CONDUCT - CC

6.2.1 Facts

CC was a resident of the North Coast Children's Home from 1954 to 1971. In a letter dated prior to 4 February 2011 addressed to "Anglican Diocese Grafton," CC made complaints of sexual, physical, and psychological abuse she suffered as a resident of the NCCH by clergy and staff. No perpetrators were identified by name.[44]

On 4 February 2011, the Diocese received a second letter from CC addressed in the same manner.[45] Therein, CC noted having received no reply to his first letter and identified a number of perpetrators of abuse, some by name:

Clergy:

a. Bishop [redacted];

b. Reverend [redacted];

c. Reverend [redacted]; and

d. An unnamed Priest: "the minister who lived on the premises"

i. Staff:

a. [redacted]; and

b. [redacted]

ii. Others:

a. Unnamed Committeemen; and

[44] Document 34
[45] Document 35

b. Unnamed visitors.

CC also outline the types of alleged abuse by clergy:

i. Bishop [redacted] actual abuse and watching while abuse was carried out by others;

ii. Rev'd [redacted]: physical abuse with a belt and watching while abuse was carried out by others; and

iii. Rev'd [redacted]: Watching while abused was carried out by others.

On 18 February 2011, Bishop Slater, Mr [redacted] (the Diocesan Solicitor) and Mr [redacted] (the Diocesan Registrar) discussed the response to CC's correspondence.[46]

Bishop Slater wrote to CC on 24 February 2011 acknowledging the two letters and expressing sympathy for their plight.[47] The Royal Commission noted that Bishop Slater did not refer CC to the DPS for pastoral support, including counselling. Bishop Slater offered to put CC in touch with a local support person "*as you work through your experience and come to a place of peace*".

On 7 March 2011, CC wrote to Bishop Slater declining an offer of a support person and saying that they sought monetary compensation.[48]

On 24 March 2011, the Diocesan Registrar, Mr [redacted], wrote to the Diocesan Solicitors instructing them to draft responses to CC's and CB's requests for compensation.[49] The complaints of CC and CB were dealt with together from about this time.

On 25 March 2011, Mr [redacted] responded to Mr [redacted]'s letter, outlining the Diocese's position and suggesting a meeting with Mr [redacted] and Bishop Slater to discuss the response to CC's complaints.[50]

In his evidence to the Royal Commission, Mr [redacted] recalled a meeting with Mr [redacted] and Bishop Slater shortly after receiving Mr [redacted]'s letter and went on to say:

> "*I cannot recall whether there was ever any discussion about referring the CC and CB matters to the Director of Professional Standards.*"[51]

[46] Document 36
[47] Document 37
[48] Document 38
[49] Document 39
[50] Document 40
[51] Document 41

On 13 April 2011, Mr [redacted] wrote to Mr [redacted] advising that CC had indicated they would accept the offer of pastoral support offer.[52]

The Diocese of Grafton's file relating to CC contained a file note of a telephone conversation between an unidentified person with CC on 24 October 2011, recording details of the abuse CC suffered. The Diocese of Grafton has not been able to identify the author of the file note or the purpose of the conversation.[53]

There is no evidence that Bishop Slater referred CC's allegations of sexual abuse to a member of the PSC as required by section 24(1) of the PSO or that he had a reasonable excuse for not doing so.

Ms [redacted], the then Acting Registrar of the Diocese, referred CC's allegations to the DPS on 22 January 2013 in the course of the investigation instigated by Bishop-in-Council.

6.2.2 Questions for Determination in Relation to CC's Allegation of Sexual Abuse

1. Did Bishop Slater fail to report CC's allegation of abuse to a member of the PSC?

2. If so, did Bishop Slater:

    a. Engage in conduct within paragraph (b)(i) of the definition of examinable conduct in the Canon, namely, failure without reasonable excuse to report as prescribed in paragraph (ix) of the definition of child abuse in the National Register Canon 2007;

    b. Engage in conduct within paragraph (b)(ii) of the definition of examinable conduct in the Canon, namely, impeding or undermining a professional standards process;

    c. Engage in conduct within paragraph (b)(iii) of the definition of examinable conduct, namely, failure without reasonable excuse to perform a function under a professional standards process?

6.3 EXAMINABLE CONDUCT - CB

6.3.1 Facts

CB was a resident at NCCH from about February 1978 to December 1980. On 5 March 2011, CB sent a letter to Bishop Slater alleging abuse at NCCH of a sexual, physical and psychological nature. The alleged perpetrators were:

i. Clergy: an unnamed priest

[52] Document 42
[53] Document 43

ii. Staff:
   a. Matron [redacted]
   b. An "army sergeant with the scar across her eye"
   c. Other unnamed staff members

iii. Child residents.

Bishop Slater referred CB's letter to the Diocesan Solicitor.[54]

On 24 March 2011 then Diocesan Registrar, Mr [redacted], wrote to the Diocesan Solicitors instructing them to draft responses to CB (and CC's) requests for compensation.[55] The complaints of CB and CC were dealt with together from about this time.

On 25 March 2011, Mr [redacted] responded to Mr [redacted]'s letter, outlining the Diocese's position and suggesting a meeting with Mr [redacted] and Bishop Slater to discuss the response to CB and CC.[56]

Mr [redacted] recalled a meeting with Mr [redacted] and Bishop Slater shortly after receiving Mr [redacted]'s letter and went on to say:

> *"I cannot recall whether there was ever any discussion about referring the CC and CB matters to the Director of Professional Standards."*[57]

On 14 July 2011, CB sent an email to Bishop Slater who was absent from the Diocese. Mr [redacted] forwarded the email to Archdeacon [redacted] as Administrator due to Bishop Slater's absence from the Diocese.[58] Archdeacon [redacted] said he did not respond to CB's email because he believed Bishop Slater could attend to it on his return.[59]

Archdeacon [redacted] only became aware of the substance and detail of CB's abuse in November or December 2012 when Bishop Slater asked him to respond to a further letter from CB.[60]

Archdeacon [redacted] believed the sexual assault complaint of CB had not been acted on after reading CB's letter of 5 March 2011.[61]

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[54] Document 44
[55] Document 44
[56] Document 45
[57] Document 41
[58] Document 46
[59] Document 46, Paragraph 25
[60] Document 46, Paragraph 26
[61] Document 46, Paragraph 28

Ms [redacted], the then Acting Registrar of the Diocese, referred CB's allegations of abuse to the DPS on 22 January 2013 in the course of an investigation instigated by Bishop-in-Council.

There is no evidence that Bishop Slater referred CB's complaint of sexual abuse to a member of the PSB as required by section 24(1) of the PSO or that he had a reasonable excuse for not doing do.

6.3.2 Questions for Determination in Relation to CB's Allegation of Sexual Abuse

1. Did Bishop Slater fail to report CB's allegation of abuse to a member of the PSC?

2. If so, did Bishop Slater:

   a. Engage in conduct within paragraph (b)(i) of the definition of examinable conduct in the Canon, namely, failure without reasonable excuse to report as prescribed in paragraph (ix) of the definition of child abuse in the National Register Canon 2007;

   b. Engage in conduct within paragraph (b)(ii) of the definition of examinable conduct in the Canon, namely, impeding or undermining a professional standards process;

   c. Engage in conduct within paragraph (b)(iii) of the definition of examinable conduct, namely, failure without reasonable excuse to perform a function under a professional standards process?

6.4 Consequential Questions

1. Is the Episcopal Standards Board satisfied of any of the matters specified in sections 49(1)(a) to (d) of the Canon?

2. If so, which, if any of the steps specified in sections 49(1)(e) to (m) are appropriate for the Episcopal Standards Board to take.

Indran Sinnadurai

Episcopal Standards Commission

9 August 2024

ANNEXURE 2

SUBMISSION OF BISHOP KEITH SLATER TO THE CHAIR OF THE DIOCESE OF GRAFTON'S PROFESSIONAL STANDARDS BOARD PRIOR TO THE HEARINGS OF THE BOARD IN 2015 INTO

ALLEGATIONS OF MISCONDUCT BY BISHOP SLATER

IN HANDLING CLAIMS FOR REDRESS.

SUBMITTED BY BISHOP SLATER TO THE EPISCOPAL STANDARDS BOARD IN THE MATTER OF THE EPISCOPAL STANDARDS COMMISSION'S REFERRAL CONCERNING HIM

DATED 8 AUGUST 2024

With personal and sensitive information redacted

[redacted]

The Reverend Canon David Hanger
Chair of Professional Standards Committee
Diocese of Grafton

Dear David,

Greetings in Christ.

I write in response to the letter dated 16 December 2013, received from Mr [redacted], the Professional Standards Director for the Diocese of Grafton, regarding allegations referred to the Professional Standards Committee of the Diocese of Grafton. Thank you for the opportunity to respond to the allegations. I am forwarding my response that follows in detail to you as the Chair of the Committee.

In response to [redacted]'s kindness in encouraging me to nominate a support person or ask for someone to be nominated by him, I need to inform you that I am presently seeing [redacted], Dr [redacted], on a regular basis. She is helping me to deal with [redacted]. You will find attached a letter from Dr [redacted] that I have undergone over the past few years in relation to being the Bishop of the Diocese of Grafton and its impact upon matters in relation to the allegations presently before the Committee.

Before I respond to the allegations I will put down a number of matters that I believe are pertinent to the decisions and actions or non-actions in relation to the sexual abuse matters that are contained in the allegations.

1. The Diocese of Grafton was proactive in legislating and passing the Professional Standards Ordinance and the Protocol in 2004 prior to the General Synod passing of the model Ordinance later in that year.

   The Ordinance and Protocol placed the Bishop in a place of oversight of the process, and yet was designed to keep the Bishop at arm's length from the process. This is an interesting and not easy balance to keep in harmony with the expectations of claimants, and of other authorities.

   As the Bishop I was not privy to the Minutes of the Professional Standards Committee. This was part of keeping the Bishop at arm's length in the process.

   It is to be noted that the Ordinance and Protocol are specific to sexual abuse. The Ordinance was not broadened to encompass other forms of abuse.

   This may be relevant of consideration in any Diocesan review of the Ordinance and Protocol.

2. The structures were put in place with the establishment of the Professional Standards Committee, chaired by Ms [redacted], and the appointment of the Professional Standards Director, Mr [redacted].

   The Professional Standards Director was a part-time appointment. By way of reflection, as I shared with the Royal Commission, I believe that this part-time appointment which was continued over the years has been a significant contributing factor to a systemic failure of the process of dealing with sexual abuse complaints to the Diocese. This is not a criticism of the particular persons who have held the position of Director but more of the structure put in place primarily with regard to the financial capacity of the Diocese to engage a full-time Director – such a decision having been made by the Bishop-in-Council.

   If a full-time Director had been in place then the scope of the Ordinance and Protocol would have been attended to by the Director rather than just what may have been referred to him; i.e. the due processes for which we had no experience and for which we relied upon volunteers at the Committee level would have been bedded down more strongly.

   There would have been closer engagement between the Director and the Professional Standards Committee. This, I believe, would have led to a deeper appreciation by the Professional Standards Committee of its scope and role. In some sense because of the structure established the Committee has also been a part of a systemic failure.

3. Within a small rural Diocese there is a limited range of personnel and expertise available to appreciate and undertake the roles required in the many areas of the life of the Diocese, including the Professional Standards needs.

4. The appointment of a part-time Director led by default to the Diocesan Registrar becoming actively engaged in the process. This would not normally be the case but because of the nature of the appointment of a Director living beyond the Diocese this was allowed and the Registrar became a point of reference.

The above are pertinent background to my following response to the allegations that the Committee has laid before me:

a) *Failed to respond appropriately to survivors of childhood sexual abuse including but not limited to* [redacted], ……..

b) *Failed to report complaints and information in relation to historical child sexual abuse to the Director of Professional Standards of the Diocese of Grafton as per the requirements of the Professional Standards Ordinance 2004.*

a) I note that the Committee is basing these allegations upon evidence provided to the Royal Commission into Institutional Responses to Child Sexual Abuse. I understand also, having been a part of the Royal Commission Public Hearing that evidence revealed at the Hearing cannot be used outside of that Hearing.

I have publicly acknowledged my shortcomings and apologised in my Statement (as per attached) at the time of my resignation (17 May 2013) from the Bishopric of Grafton. For your information, which I freely give, I also made a further apology at the time of the Public Hearing of the Royal Commission. I recognised that there were personal failings within the corporate systemic failure of the process within the Diocese.

It has always been my intention to respond appropriately to any situation that arose whilst appointed to the responsible position I held as the Bishop of the Diocese. Any inapproriate decisions, actions or omissions were not intentional nor undertaken with malice.

Beyond the North Coast Children's Home 'group claim' there is evidence that the Professional Standards process was being implemented; e.g. I recall a particular case to which the Professional Standards committee responded and investigated; referred it to the Professional Standards Board; the Board made its recommendation; and the Bishop enacted the recommendation.

The complaint by Mr [redacted] was received in 2005 and to whom initial pastoral response was made.

During this time the Bishop-in-Council had, according to its Minutes, adopted the Sydney Pastoral Care and Assistance Package.

Within a short time the individual claim by Mr [redacted] had become a 'group claim' of 42 persons made through a solicitor, Mr [redacted] of [redacted]. This then led to research regarding the legal status of the North Coast Children's Home in relation to the Anglican Diocese of Grafton. The legal advice from Mr [redacted] upon which we acted, was that the Diocese was not legally responsible. It was upon this basis that the matter was reported to the Bishop-in-Council, and on recommendation agreed for the 'group claim' to be conducted lawyer-to-lawyer.

This placed the 'group claim' outside of the normal Professional Standards process, despite the fact that the Diocese's legal counsel in correspondence sought to bring awareness of the process to the table.

Even so, it was my understanding that the PSC/PSD were aware of the manner in which the 'group claim' was being handled.

It was also my understanding that relevant matters of sexual abuse had been handed to the police through the PSD/PSC – including Mr [redacted] and Ms [redacted]. It was just recently that I became aware that only some had been handed to the police.

The direction from the police at the time was not to investigate further until the police had made their inquiries and investigations. Nothin further was heard from the police. The PSC/PSD could have been more proactive in following these matters up further after some due time.

Thus this 'group claim' was resolved with the majority of claimants in 2007 with the payment of a Pastoral Care Package (i.e. monetary compensation) and the giving of an apology by the Bishop; and with the claimants signing a Deed of Release.

I have laid this out simply because, on reflection, I recognize that it had cast the die for how the Diocese would respond to future claimants who had been residents of the North Coast Children's Home - a response which was outside the Protocol process.

In relation to Mr [redacted] and Ms [redacted], who had not agreed to the resolution of the 'group claim', I sought to stay connected. This was with the encouragement of the Primate. I agreed to meet with Mr [redacted] and Ms [redacted], in July 2007, on the basis of hearing their stories but not as a process of mediation. It was my intention to undertake this step as a pastoral connection only and to step back and allow a continuing process towards resolution.

In the course of the meeting, at which Ms [redacted] was a support person for Mr [redacted] and Ms [redacted], it became apparent that the relationship between the Registrar and Mr [redacted] particularly had broken down. In due course, although Mr [redacted] disputes this interpretation, I agreed that the Registrar would not be the face-to-face contact for them, nor for any future claimants.

My email response to the Registrar, the Chair of the Professional Standards Committee and The Very Reverend [redacted], a member of the Professional Standards Committee (see attached) indicate my actions were motivated by pastoral concern in seeking to find a way forward towards resolution.

Unfortunately this intervention became protracted and I became drawn into the ongoing process of seeking resolution. This is demonstrated by a series of letters to both Mr [redacted] and Ms [redacted] over the succeeding 5 months – but which unfortunately did not arrive at a resolution.

Subsequently it was not until 2010 that resolution was reached with Mr [redacted]; and I understand that resolution is presently being finalized with Ms [redacted].

b) It is from 2008 when further North Coast Children's Home claimants were forthcoming from a lawyer that we move to consideration of allegation b).

In the period 2008 through to 2013, I think I am aware of six new claimants, plus the ongoing claim of Ms [redacted] - not all of these claims were of sexual abuse.

In responding it is important that I share the context of the Diocese, and thus the context and the stresses under which I, as the Bishop, sought to give oversight and leadership.

I will outline below what I believe to be the salient points which impacted upon the decisions, actions and omissions of the Diocese, and of the Bishop:

1. From the latter part of 2007 the Diocese was beginning to become aware of an emerging financial dilemma in relation to the Clarence Valley Anglican School. This was debated at Synod in 2008 and 2009. Initially it was thought that this could be handled through an injection of funds that we identified at the time, even though the quantum of funds required was as yet unknown. An initial Support Package for the School was put in place.

2. On 31 August 2009, in the light of [redacted]. [redacted] Following this I was on sick leave for 8 weeks recuperating. My doctor indicated that I could expect that it would take 6 to 12 months to totally recuperate providing I was not under undue stress during this time. In the light of the magnitude of the financial challenge which was about to be more fully revealed it took much longer for recuperation to take place.

3. I returned to work at the end of October 2009. At the end of the following month, the Registrar resigned. I appointed an Acting Registrar, Ms [redacted], who held this position through to August 2010.

4. By May 2010 Bishop-in-Council meeting it was very obvious that we were in need of professional assistance in facing the financial challenges. An approach was made to the Diocesan Financial Advisory Group (DFAG), a group of Anglican professionals from throughout Australia who are prepared to offer their expertise and services to the Anglican Church as part of their stewardship.

5. Discussions had taken place with the Primate and other Archbishops and Diocesan representatives addressing how Grafton Diocese might be supported by the wider Church.

6. The new Registrar, Mr [redacted], commenced duties in the Diocese at the end of August 2010. His time was immediately taken up with addressing the Diocesan financial challenge with the support of Mr [redacted] from DFAG; preparations for Synod, and planning with others the strategy for addressing the financial issues. During his time as Registrar, [redacted], the bulk of his time was taken up in this regard with little time to address the other normal activities of a Registrar. In recognition of this the Bishop, and other members of the Senior Staff Team, sought to shoulder the work required.

7. At Synod October 2010 the Diocese agreed to a three-year plan to address the financial challenge that entailed the appointment of an Independent Oversight Committee (IOC). The IOC consisted of persons of expertise from the wider Church along with representatives from Dioceses providing lines of credit for the Grafton Diocesan Investment Fund (GDIF).

8. The IOC began to meet in early 2011, and has subsequently met on a regular basis through to the end of 2013 transacting the business required seeking to bring the Diocese back to a stable financial and administrative position.

9. This three-year period has entailed working at the level of selling properties from within the Diocese in order to raise the required $10 million. This has placed an inordinate strain upon individuals, structures and relationships during this time.

This is the context within which I found myself. With the possibility of the Diocese becoming bankrupt, my attention – and the attention of the Diocese - became fixated upon the dire financial crisis that faced us. Despite the professional guidance of the

IOC, the majority of the work had to be undertaken using the limited personnel resources within the Diocese. This created an extreme level of stress upon staff-members as can be identified by personnel needing to take stress leave during this time. This does not mean that other serious matters were not attended to, but in this stressful climate the best decisions were not always made, and due process was not always followed.

This was so in relation to claimants from North Coast Children's Home, in the period from 2008 onwards. The factors impacting upon such decisions and process were the pattern already set in place through the 'group claim', the financial challenge of the Diocese, and the limited stressed personnel available.

On reflection, personally I now recognise the appropriate course of action, but under the stresses of that time psychologically I was unable to do so. I thought I was managing these events, however in hindsight, I recognise that this was not so. In the light of the immense pressures besetting the Diocese, I recognise that it would have been appropriate to have sought professional support enabling me to receive counseling and assistance in grappling with the on-going stresses and pressures of the time.

It was in 2013 I reviewed the Professional Standards process, and recognised the administrative and pastoral inadequacies and mismanagement of these matters within the Diocese, and my part in them. It was on this basis that I took the decision to resign forthwith from the Bishopric of the Diocese of Grafton.

It was with deep remorse that I acknowledged these decisions and actions in my public statement and apology – 'And as a sign of my recognition of these matters and in the hope that it may contribute towards healing and wholeness for those who are abused…'

Since resigning I have re-lived these past few years again and again in personal reflection, and in preparation for and participation in a Private Hearing and a Public Hearing before the Royal Commission. For those who made complaints to the Diocese, my desire was for them to be able to move towards closure – to healing and wholeness.

Unfortunately the process and responses were clouded by the legal question, and the financial crisis of the Diocese. Failure to be able to bring such closure for claimants weighs heavily upon me, as it must upon the Diocese, for together we have been involved in decisions and actions, and ultimately in a systemic failure regarding these Professional Standards matters.

Thank you for the opportunity to make this response.

Peace and all good,

The Right Reverend Keith Slater

ANNEXURE 3

ON THE RESPONSIBILITIES OF A DIOCESAN BISHOP

Prepared by The Right Reverend Dr Matthew Brain

for the Episcopal Standards Board in the matter of the Episcopal Standards Commission's referral concerning The Right Reverend Keith Francis Slater

17 March 2025

ON THE RESPONSIBILITIES OF A DIOCESAN BISHOP

Prepared by The Right Reverend Dr Matthew Brain

for the Episcopal Standards Board in the matter of the Episcopal Standards Commission's referral concerning The Right Reverend Keith Francis Slater (the "Slater matter")

17 March 2025

1 The Determination of the Episcopal Standards Board in relation to the former Bishop Roger Herft of 8 December 2021 (**the Herft Determination**)[1] noted the seriousness of failing to adhere to '…then existing diocesan protocols in relation to the reporting of child sexual abuse…' (para. 120, p38). It then linked this general failure to the particular responsibility held when '…complaints (are) entrusted to somebody in a position of authority in relation to conduct of that kind…' (para. 121, p38).

2 In paragraph 124 (p39) the Herft Determination explicitly uses the preceding principles to hold a bishop in Holy Orders to a high standard of behaviour. The paragraph is worth repeating verbatim;

> *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.*

3 This expectation then gave rise to the conclusion that '…the conduct…true of omission rather than commission; was all too frequent and undoubtedly grave. (para. 125, p39)

4 Finally, the Herft Determination concluded that;

> *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. (para. 128, p39)*

5 The Herft Determination clearly assesses that a bishop holds a special responsibility to act with a particularly high standard of behaviour. It cites the '…expectation of the Church implicit in a bishop's consecration…' (para. 124, p37) as the standard by which conduct must be consistent.

6 ***This paper seeks to draw out what those expectations are, and make that which was cited as implicit, explicit.***

[1] https://anglican.org.au/wp-content/uploads/2021/12/ESB-Determination-Herft-8-December-2021.pdf

7 There are three authorised forms in the Anglican Church of Australia (ACA) for an episcopal ordination; those found in the 1662 Book of Common Prayer (**the BCP**), An Australian Prayer Book (**the AAPB**), and A Prayer Book for Australia (**the APBA**). Significantly the Ordinal attached to the BCP is referred to as the standard for the 'making' of deacons, priests and bishops (I will refer to this as BCP for simplicity). The two later, Australian, prayer books have ordinals included as part of the authorised work. Each of the three prayer books were in force when Keith Slater was consecrated and installed as Bishop of Grafton on 14 November 2003. This discussion can continue knowing that:

(a) The BCP has constitutionally binding force so that the principles laid down by it *cannot* be changed in later authorised services. Both later books will have drawn from the BCP as the formative and normative principle,

(b) The trajectory from BCP to APBA is to lengthen the Exhortation and Examination making matters regarding the duties of a bishop in the governance of a diocese more explicit. I will work from the least explicit to most.

8 In the BCP the Exhortation is short. For our interests it includes the line '…we should not be hasty in laying on hands, and admitting any person to Government in the Church of Christ, which he hath purchased with no less price than the effusion of his own blood…'. Significantly, the idea here is that the Church over which a bishop exercises a governing role is precious and was bought by the relinquishment of Christ's own life.

9 Further, the sixth question asks:

> *WILL you maintain and set forward, as much as shall lie in you, quietness, love, and peace among all men; and such as be unquiet, disobedient, and criminous, within your Diocese, correct and punish, according to such authority as you have by God's Word, and as to you shall be committed by the Ordinance of this Realm?*

This question must be answered in the affirmative.

10 Hence the BCP lays down five principles inherent in a bishop's role:

(a) The bishop has a governing role over at least one part of the Church at large.

(b) The Church is to be regarded as precious because it is bound to Christ's own action and ministration.

(c) Part of the governing role which is being taken up is to correct and punish those who do not adhere to the love which is inherent in an artefact of Christ.

(d) The correction and punishment rests upon authority given by the spiritual jurisdiction of God's Word, *and* the temporal laws of the land.

(e) The bishop is not expected to be successful in all things (see '…as much as shall lie in you…') however '…within your Diocese…' the bishop is promising to enact what lies within their power to enact.

11 In the AAPB the Exhortation leaves the note regarding the Church as being purchased with the blood of Christ, being content to mark it as 'God's Church'. It does note that the Bishop's role is in the 'government' of the church. Significantly the ordinand's prior ordination as priest explicitly notes (pp.609-610):

> *Have always therefore printed in your mind how great a treasure is committed to your care. For they are the sheep of Christ, whom he bought with his death, and for whom he shed his blood. The church and congregation whom you must serve is his bride and his body. And if it should come about that the church, or any of its members, is hurt or hindered as a result of your negligence, you know the greatness of the fault and the judgment that will follow. Accordingly, consider within yourselves the purpose of your ministry to the children of God; and see that you never cease your labour, your care, and diligence, until you have done all that lies in you, according to your bounden duty, to bring all such as are or will be committed to your care, to that understanding in the faith and knowledge of God, and to that maturity in Christ, which leaves no place among you for error in religion or viciousness in life.*

12 A similar expression is used in the BCP, and this is carried through (albeit with slightly different wording) into the APBA.

13 In the Anglican Church ordination is regarded as cumulative in that the charge and vows taken in a prior ordination continue to exist when being placed into a new order. That is, a priest remains a deacon, and a bishop both a priest and deacon. They are bound by their cumulative charges and vows.

14 It should be understood then, that in the AAPB, the BCP and the APBA the charge to which a bishop is ordained carries the risk of negligence which is a great fault. This is because being Christ's body, purchased by Christ's blood, or even prosaically the Church of God, the people who are committed to their care form the church and are reliant on their ministers to present them to '…maturity in Christ…'. Lest this be regarded as a didactic, pastoral or even spiritual exercise alone, the priest's exhortation links 'error in religion' to 'viciousness of life'. Furthermore, recognising the leadership inherent in ordained ministry, the 'you' in the

exhortation, as it relates to the possibility for viciousness in life, is plural (among you, rather than 'in you') the priest and then later bishop has a fearsome role in ordering the corporate life of the Church so that error and viciousness do not hinder maturity in Christ.

15 The pertinent question in the AAPB which relates to the sixth question of the BCP (see above) changes only in leaving out a reference to the 'Ordinances of the Realm' for the single note '…those guilty of offence within your jurisdiction.' (p 619) This reflects a sharpening of focus given the 'un'-established nature of the ACA in Australia. It does not mean that the bishop is devoid of responsibility to secular powers.

16 The APBA makes this charge very clear in an expanded Exhortation which includes (p. 802):

> *As a chief minister and pastor in Christ's Church, you are to guard its faith, unity and discipline, and promote its mission in the world. You are to ensure … and Christ's discipline applied justly, with mercy. You are to lead and guide the priests and deacons under your care … . You are to watch over, protect and serve the people of God … These are the duties of a bishop, and they are weighty. Are you willing to perform them?*

Again, this question must be answered in the affirmative.

17 The APBA continues the AAPB's elision of the sources of authority to enact correction and discipline in the name of quietness, peace and love. It lays this authority solely in God's word.

18 The five principles set out by the BCP have been reinforced so that they may be expressed thus:

(a) The bishop has a governing role over at least one part of the Church at large. **And their role as a minister is to sit as Chief in their place. This carries weighty responsibility.**

(b) The Church is to be regarded as precious because it is bound to Christ's own action and ministration. **The Church is regarded as unequivocally Christ's. The ministry being accepted by the ordinand is one discharged as a servant of Christ and for the purposes of Christ as set out by Christ.**

(c) Part of the governing role which is being taken up is to correct and punish those who do not adhere to the love which is inherent in an artefact of Christ. **This is because the bishop's role is in part protective and even this protective role relates to its fundamental mission.**

(d) The correction and punishment rests upon authority given by the spiritual jurisdiction of God's Word, *and* the temporal laws of the land. **Watching over and protecting God's people (and leading a guiding the ordained ministry) within the diocese is a fundamental responsibility of the bishop. The authority cited in the BCP now focus on the intent which is the effective care and finds sufficient warrant in God's Word.**

(e) The bishop is not expected to be successful in all things (see '…as much as shall lie in you…') however '…within your Diocese…' the bishop is promising to enact what lies within their power to enact. **To accept episcopal ordination is to accept a weighty task. To neglect matters willingly accepted brings weighty consequence.**

19 The Herft Determination draws out duties as fall upon bishops as expressed in their consecration. These must be read in the Slater matter with two further, and clarifying, aspects, *viz.*:

(a) the Constitution of the ACA and the definitions given for the reading of the Canons which govern the ACA, *and* the way that dioceses, bishops and synods work together to regulate the faith, ritual and ceremonial, and discipline of the Church as it is expressed in the ACA, and

(b) the episcopal ordination as it is expressed as a diocesan bishop with its primary role in maintaining the discipline of the Church in a specific jurisdiction (the diocese, in this case the Diocese of Grafton).

20 The ordination of a bishop proceeds only after Oaths and Declarations have been made. These cover a range of matters, however, pertinently the putative bishop of a diocese must *prior to ordination* promise to be bound by the Constitution and Canons of the ACA, and the Ordinances (NSW) of their Province and Synod.

21 When regarding omissions, as in the Slater matter, and as were weighed in the Herft Determination, the key matter to consider is the role that the bishop has in maintaining the *discipline* of the Church.

22 As seen, *discipline* is mentioned frequently in the exhortation, examination and antecedent oaths taken by one being consecrated. This is a term which is defined in the Constitution of the ACA (the relevant clauses were in force at the time of Slater's episcopacy):

> *74 (9)[55] In this Constitution "discipline" means (a) 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 (b) 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.*
>
> [55] *Added by Canon 18, 1998 which came into effect on 14 April 2003.*

23 This definition links to the various Canons and Ordinances (in the case of NSW) which establish Tribunals and set lists of Offences.

24 Through the assent to the Oaths and Declarations taken prior to consecration, and via the affirmative responses to the Exhortation and Examination within the ordination itself a bishop explicitly binds themselves to certain forms of conduct. In a diocesan bishop's case this is to ensure that those actions captured by the various Offences or misdeeds under a code of conduct, *or* violations of secular law as in force within their jurisdiction (as expressed in the various Canons and Ordinances relating to conduct), are placed within the hands of those competent to investigate, try and judge them. It then follows that it falls to the bishop to enact the appropriate penalty.

25 Acts of omission, rather than acts of commission, are likely to loom large as responsibility for the conduct of others increases. In other words, oversight of an institution brings increased likelihood of seeing or hearing of misdeeds *and* responsibility for the safe conduct of said institution making the preponderance of concerning matters likely to be drawn from others rather than oneself.

26 It is important to note here that the ordination services do not discriminate between a diocesan and assistant bishop. The ordination allows for service as either, however, as can be seen the responsibilities assume a high degree of capacity to act for the well-being and peaceful conduct of a diocese. This fits the role of diocesan bishop naturally and is probably assumed in the ordination. As a diocesan bishop the conduct of an episcopal role is very clear as the jurisdiction, especially in relation to discipline, is:

(a) ultimate rather than penultimate or derived,

(b) statutory as it is the *diocesan* bishop who is competent to act in legislation pertaining to diocesan leadership and where assistant bishops act they do so with delegated authority from the diocesan, and

(c) both self-imposed (church on church), and as expressed as it relates to civil jurisdiction.

27 The final point of note is that deacons and priests promise to obey their chief minister (i.e. diocesan bishop). Their responsibility under canonical obedience is to enact what is demanded by their diocesan bishop. This means that the general charge to care for Christ's flock, weighty and fearful as it is, nestles under the ultimate responsibility of the diocesan bishop to enact what is necessary (or at least ensure that what is necessary occurs) for the well-being of the Church.

28 The question posed in response to this final point crystalises the responsibility held by a diocesan bishop: What happens when there is failure or negligence by those whose role is not regulated by a higher authority?

29 We may at this point reprise the five principles drawn from the BCP, AAPB and APBA in the light of the final question:

(a) The bishop has a governing role over at least one part of the Church at large. **And their role as a minister is to sit as Chief in their place. This carries weighty responsibility.** ***It is weighty primarily as the diocesan bishop is the ultimate point upon whom responsibility to act for the Church (as it is expressed in the diocese) rests.***

(b) The Church is to be regarded as precious because it is bound to Christ's own action and ministration. **The Church is regarded as unequivocally Christ's. The ministry being accepted by the ordinand is one discharged as a servant of Christ and for the purposes of Christ as set out by Christ.** ***If the ultimate point of governance (the diocesan bishop) neglects to act so that harm is not remedied, or people are hindered in their growth to maturity in Christ they are at great fault.***

(c) Part of the governing role which is being taken up is to correct and punish those who do not adhere to the love which is inherent in an artefact of Christ. **This is because the bishop's role is in part protective and even this protective role relates to its fundamental mission.** ***The failure to order the Church within the diocese one is placed is not a merely temporal matter, but rather the quietness, peace and love of the temporal Church relates directly to the mission that Church enacts.***

(d) The correction and punishment rests upon authority given by the spiritual jurisdiction of God's Word, *and* the temporal laws of the land. **Watching over and protecting God's people (and leading a guiding the ordained ministry) within the diocese is a fundamental responsibility of the bishop. The authority cited in the BCP now focuses on the intent which is the effective care and finds sufficient warrant in God's Word.** ***A bishop need look no further than biblical warrant to act upon matters which harm the Church.***

(e) The bishop is not expected to be successful in all things (see '…as much as shall lie in you…') however '…within your Diocese…' the bishop is promising to enact what lies within their power to enact. **To accept episcopal ordination is to accept a weighty task. To neglect matters willingly accepted brings weighty consequence.** ***Faithfully discharging this weighty task may not always mean that the bishop is to primary actor in establishing justice. However, they do willingly promise to be an actor even if this means handing over to a different but more competent authority.***

30 It is difficult to escape the conclusion that the presentation of those within their diocese's ambit as mature in Christ lays inherent within a bishop's task and thus fulfils its purpose (mission) as part of the Church. The bishop's ordination, the accompanying Oaths and Declarations, and their installation as a diocesan bishop confer an explicit responsibility to act upon matters which prevent the operation of the Church in such a way. This does not mean that the bishop will be successful in all ways, but that they must do that which lays within their power and not shirk this task.

31 While it may be imagined that this imposes a "strict liability" on the bishop for any failure to act in such a way that is perceived to promote maturity in Christ, this is not so. The errors in the scope of this responsibility relate to those matters which the bishop is placed in orders to have oversight over and is elected and installed to perform.

32 A path of questioning may then be helpful in assessing the weight of information which calls into question the activities of a diocesan bishop which constitute failure to act upon matters which harm the people and mission of the Church. These questions may assist in evaluating whether regret, 'ownership' of and even repentance for neglectful error absolve consequence.

(a) What responsibility for the discipline of the diocese was assumed? *Viz.* Was it derived, penultimate or ultimate.

(b) What damage has been done to complainants and to the Church? *Viz.* Who has been harmed and whose maturity in Christ hampered, what effect has been had upon the complainant(s), and who else should have acted to promote that maturity.

(c) How has the mission of the Church been set back? *Viz.* Whose Church, as it has been governed, does it reflect, and has the failure to act betrayed a misplaced sense of priority.

(d) Is this a failure of faith ritual and ceremonial, or it is a breach of the specific responsibility to uphold the discipline of the Church?

33 The character of any sanction which may befall a bishop found to have been wanting in their duty to protect those in their care should be proportionate to their failure, the effect the failure has had upon those it has impacted and the real effect upon the bishop themselves.

34 A closing remark of clarification regarding the episcopal call to exercise discipline with mercy is warranted. In each of the ordination services mercy is enjoined upon the ordinand. In each case mercy is charged for those who are vulnerable due to poverty, friendlessness or being without protector. The AAPB directs that when the newly consecrated bishop is given the Bible, they are exhorted to: “Be merciful, without being remiss” (page 620). Mercy is not to be cover for due action. Mercy in this sense does not relate to those who have been given a position of power and responsibility and have abused that position.