



Special Commission of Inquiry into matters relating to the police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland–Newcastle



Report | Volume 1

Margaret Cunneen SC

30 May 2014

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relating to the police
investigation of certain child
sexual abuse allegations
in the Catholic Diocese of
Maitland–Newcastle

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Report of the Special Commission of Inquiry into matters relating to the police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland–Newcastle, 2014

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The painting on the report's cover is *Hope* by artist Lina Basile, survivor of abuse by McAlinden. It is reproduced here with her kind permission.



Special Commission of Inquiry into matters relating to the Police
investigation of certain child sexual abuse allegations in the Catholic
Diocese of Maitland-Newcastle

30 May 2014

Her Excellency Professor the Honourable Marie Bashir AC CVO
Governor of New South Wales
Government House
Macquarie Street
SYDNEY NSW 2000

Your Excellency

**Special Commission of Inquiry into matters relating to the Police investigation of certain child abuse
allegations in the Catholic Diocese of Maitland-Newcastle**

I was appointed by Letters Patent issued on 21 November 2012 under the *Special Commissions of Inquiry Act 1983* ('the Act') to inquire into and report on matters relating to the police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle.

In accordance with those Letters Patent, I inquired into and prepared a report on the subject matter stated in my commission.

I now provide my report to you.

My report consists of three volumes, together with a confidential volume. Pursuant to s. 10(3) of the Act, I recommend that Volumes 1 to 3 of my report be made public. I do so having regard to the legitimate public interest in the matters the Commission examined, which include serious allegations of cover-up and concealing concerning the Catholic Church and the New South Wales Police Force.

Volume 4 of my report contains material that was dealt with on a confidential basis (including evidence taken *in camera*). Publication of such material at this time could prejudice future criminal proceedings. I therefore recommend that publication of Volume 4 be deferred until such time as there has been a determination of any relevant criminal proceedings, or a decision has been made that such proceedings not be commenced. I recommend that, at that time, Volume 4 of the report then be published.

I further recommend that Part G of Volume 4, which deals with the reporting requirements under s. 10(1) of the Act, be sent to the NSW Director of Public Prosecutions.

Yours sincerely

Margaret Cunneen SC
Commissioner

**Special Commission of Inquiry into matters relating to the Police investigation of certain child
sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle**

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It would not have been possible to undertake this Commission's important work without the assistance of my legal and administrative team, whose diligence and dedication has been exemplary.

I extend my profound thanks to my counsel assisting, whose individual talents, when combined, endowed the Commission with legal and procedural knowledge and expertise of the very highest order, together with the care and compassion for which the nature of the Commission called.

Ms Julia Lonergan SC provided me with the benefit of her invaluable guidance and considerable advocacy skills during the Inquiry's extensive hearings and beyond. Her meticulous examination of matters germane to the Inquiry, and her ongoing counsel, has made my task as Commissioner much easier.

The exceptional legal skills and tremendous work ethic of Mr David Kell were greatly appreciated. In addition to his advocacy, Mr Kell assisted the Commission in dealing with complex public interest immunity applications and provided detailed advice on the various legal and factual issues that arose throughout the Inquiry. Ultimately, the contribution of Mr Kell to the work of this Commission cannot be appropriately captured in print.

Mr Warwick Hunt's advocacy during the public hearings, and his sensitive interactions with vulnerable witnesses in both private and in camera hearings, was an important contribution. His expertise in both criminal and child protection law was invaluable in relation to key aspects of the Commission's work.

In addition, the Commission benefited enormously from the erudite legal counsel of Mr Tim Game SC.

I am also grateful to the Crown Solicitor, Mr Ian Knight, for the assistance and support provided throughout the Commission.

Particular mention must be made of Mr Knight's magnificent Special Counsel, Ms Emma Sullivan. She is an extraordinarily talented, learned and analytical lawyer, whose contribution to every aspect of the conduct of the Inquiry has been outstanding. In addition, she dealt with many of those who interacted with the Inquiry with enormous care and sensitivity. Long hours and weekend work were the norm, and Ms Sullivan indefatigably bore that burden with good grace.

Ms Sullivan led a team distinguished by diligence, dedication and charm. I am very grateful to Ms Jessica Wardle, a highly proficient and energetic solicitor who has overseen all of the practical aspects of the legal proceedings and who has liaised with numerous participants and witnesses with inexhaustible equanimity and good humour. I thank Ms Catherine Vale for her legal acumen, organisational skills and fine attention to detail. My sincere thanks are also extended to Ms Ingrid Keyzer, Ms Elizabeth Haas, Ms Maria Lagoudakis and Ms Eden Cortes for their unfailing good humour and professional dedication over long hours and weekends. I am also grateful to Mr Simon Ellis, Mr James Coleman, Ms Izabela Bozym, Ms Gizelle van Zyl and Ms Beatrice Pitpaiaac for their assistance at various stages of the Inquiry.

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Part A Introduction and overview

1 Introduction and principal conclusions

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Introduction

Appointment and terms of reference

- 1.1 Ms Margaret Cunneen SC was appointed Special Commissioner by Letters Patent issued in the name of the Governor of New South Wales on 21 November 2012, pursuant to the *Special Commissions of Inquiry Act 1983* (NSW). Amending Letters Patent dealing with the terms of reference were issued on 25 January 2013.
- 1.2 The amended Letters Patent require the Commissioner to inquire into and report on the following matters:
1. The circumstances in which Detective Chief Inspector Peter Fox was asked to cease investigating relevant matters and whether it was appropriate to do so; and
 2. Whether, and the extent to which, officials of the Catholic Church facilitated, assisted, or co-operated with, Police investigations of relevant matters, including whether any investigation has been hindered or obstructed by, amongst other things, the failure to report alleged criminal offences, the discouraging of witnesses to come forward, the alerting of alleged offenders to possible police actions, or the destruction of evidence.
- 1.3 The amended Letters Patent provide definitions of 'relevant matters', 'Catholic Church' and 'official of the Catholic Church', as follows:

In these Letters Patent:

'relevant matters' means any matter relating directly or indirectly to alleged child sexual abuse involving Father Denis McAlinden or Father James Fletcher, including the responses to such allegations by officials of the Catholic Church (and whether or not the matter involved, or is alleged to have involved, criminal conduct);

'Catholic Church' includes (without limitation) the Church, a diocese of the Church, or an organisation operated under the auspices of the Church or a diocese of the Church; and

'official of the Catholic Church' includes (without limitation):

- (a) any person who acts as a representative of the Catholic Church;
- (b) any officer, staff member, lay assistant or volunteer of the Catholic Church; and
- (c) and a member of the clergy or any religious order of the Catholic Church.

The Commission's processes

- 1.4 The Commission conducted extensive investigations and obtained information from a number of sources, among them victims of Father Denis McAlinden and of Father James Fletcher who had had dealings with church officials. As part of this, the Commission held more than 100 private hearings with witnesses and during May, June and July 2013 held eight weeks of public hearings in Newcastle, involving 44 witnesses. Twenty-six individuals were authorised to appear at those hearings. In addition, 74 in camera hearings were held and further public hearings took place between August 2013 and April 2014. Commission personnel also reviewed more than 100 000 pages of documentary material produced to the Commission.
- 1.5 Consistent with the terms of reference, the Commission examined allegations about conduct by the New South Wales Police Force and the Catholic Church that raised fundamental questions of public interest.

The New South Wales Police Force

- 1.6 A long-serving police officer, Detective Chief Inspector Peter Fox, contended that senior police had ‘stood him down’ from investigating allegations of covering up by church officials of child sexual assaults and ordered him to hand over all related documents. Fox first made this assertion during an interview on ABC Television’s *Lateline* program on 8 November 2012.
- 1.7 The Commission investigated the circumstances in which Fox was asked to cease investigating the matters in question and the appropriateness of such action.
- 1.8 The Commission also examined whether, as Fox alleged, there existed within Northern Region Command of the New South Wales Police Force, and in particular Newcastle City Local Area Command, a group of senior police – in effect, a ‘Catholic mafia’ – who were determined that there be no investigation, or no proper investigation, of child sexual assault offences associated with the Catholic Church and the alleged concealment of such offences by senior church officials.
- 1.9 By October 2010 the Strike Force Lantle investigation had been established, as approved by the Northern Region Commander, and was to be conducted by detectives from Newcastle City Local Area Command. The task was to investigate alleged concealment by church officials of child sexual assault by clergy. The Commission examined Fox’s assertion that Strike Force Lantle was a ‘sham’ and had been ‘set up to fail’. Fox based his assertion, in part, on his view that certain officers appointed to the strike force did not have the requisite competence or experience for the task.

The Catholic Church

- 1.10 The Commission also examined matters relating to the Catholic Church, particularly the Diocese of Maitland–Newcastle and whether church officials were, in effect, involved in concealing or failing to report to police suspected sexual abuse of children by McAlinden and Fletcher.
- 1.11 As noted, the Commission obtained information from a number of sources, among them victims of McAlinden and of Fletcher who had dealings with the Church, as well as Fox, who had raised the allegations of a ‘cover-up’ relating to those priests. In this regard, on 8 November 2012 Fox sent an open letter to the then New South Wales Premier, Mr Barry O’Farrell MP, asserting that in his own experience the Catholic Church:

... covers-up, silences victims, hinders police investigations, alerts offenders, destroys evidence and moves priests to protect the good name of the church.¹

Fox also stated:

The whole system needs to be exposed; the clergy covering-up these crimes must to be brought to justice and the network protecting paedophile priests dismantled. There should be no place for evil or its guardians to hide.²

- 1.12 On the *Lateline* program later that day, Fox endorsed the allegations about the Catholic Church that he had raised in his letter to the Premier – that is, to his knowledge, church officials had been involved in cover-ups, the silencing of victims, hindering police investigations, alerting offenders, destroying evidence, and moving priests to protect the good name of the church. Fox made mention of McAlinden and Fletcher in his interview.

¹ Open letter to Premier O’Farrell from Detective Chief Inspector Peter Fox, ex 231. A copy of Fox’s letter to the Premier is Appendix A to this report. A version of the letter was published in the *Newcastle Herald* on 8 November 2012.

² Open letter to Premier O’Farrell from Detective Chief Inspector Peter Fox, ex 231.

- 1.13 Both McAlinden and Fletcher had been incardinated into the Catholic Diocese of Maitland–Newcastle. That Diocese has had a troubled history in connection with child protection and the sexual abuse of children perpetrated by priests attached to the Diocese, among them McAlinden and Fletcher.³
- 1.14 As the Commission’s investigations revealed, McAlinden had a history of sexually abusing children during five decades. He was a chronic paedophile offender. At all times during this period he was a priest incardinated into Maitland–Newcastle Diocese. The earliest reported incident of sexual abuse by him was in 1949 and the latest in 1996.
- 1.15 McAlinden died in a nursing home in 2005, without having ever been charged with offences in New South Wales. Many individuals have identified themselves as victims of McAlinden. The Diocese’s child protection unit, Zimmerman Services (established in 2007), has had contact with at least 28 such victims. The Commission is aware of a number of other McAlinden victims, but the total number will never be known. The fact that he spent various periods ‘on loan’ from the Diocese, in remote and overseas locations such as the Philippines and Papua New Guinea where he had access to children, is one reason why the total number of McAlinden victims cannot be determined. Given his prolific offending, it is readily conceivable that the total number of McAlinden’s victims is more than a hundred.
- 1.16 Fletcher also had an extensive history of sexually abusing children in the Diocese, exclusively abusing young males and particularly altar boys. His offending history dates back at least to the 1970s. The Commission is aware of the identities of at least five victims of Fletcher, each of whom was as a child sexually abused by him over a number of months, and often years.
- 1.17 Fletcher was ultimately convicted and sentenced in New South Wales in 2004, having been found to have committed nine offences relating to the sexual abuse of a minor who had been an altar boy. The sentencing judge described the offences as involving a gross and inexcusable breach of trust. In time, a number of other Fletcher victims came forward. Fletcher died in January 2006 after having suffered a stroke in gaol.
- 1.18 In a public apology delivered during the Commission’s public hearings⁴, the current Bishop of the Diocese of Maitland–Newcastle, William Wright, acknowledged that McAlinden and Fletcher were predators who committed acts of sexual abuse against children and used their position in the Diocese to gain access to children and to conceal their acts.
- 1.19 Wright also acknowledged that when matters were reported to them church authorities sometimes failed to act or to act effectively to protect other children from abuse by McAlinden and Fletcher. He further accepted that such officials sometimes failed to support abused children and their families. Such an acknowledgment was rightly made.
- 1.20 At the conclusion of his public evidence before the Commission, Bishop Michael Malone, Wright’s immediate predecessor, also read a public statement of apology⁵ in which he expressed sorrow and regret for the actions of the Catholic Church in its response to and treatment of child sexual abuse.
- 1.21 The Commission examined the extent to which officials of the Catholic Church facilitated, assisted or cooperated with police investigations of any matter relating directly or indirectly to alleged child sexual abuse involving McAlinden or Fletcher, including the responses to such allegations by church officials. This involved, in the main, an examination of the conduct of

³ Other notorious clergy paedophiles associated with the Diocese are Father Vincent Ryan and NP3, each of whom received lengthy prison sentences for sexually abusing children.

⁴ See Appendix L.

⁵ See Appendix T.

officials currently or formerly attached to Maitland–Newcastle Diocese and consideration of whether and, if so, the extent to which these officials facilitated, assisted or cooperated with any relevant police investigations – including whether any officials hindered or obstructed such investigations by, among other things, failing to report alleged offences.

- 1.22 The lengthy nature of McAlinden’s offending history, and to a lesser extent that of Fletcher, called for examination of conduct by Diocesan officials over some six decades; this included determining the extent to which these officials had knowledge of reported or suspected child sexual abuse by McAlinden or Fletcher where the revealing of that knowledge would have facilitated a police investigation.
- 1.23 This report details the Commission’s investigations and findings in relation to these and other matters examined.

Principal conclusions

Term of reference 1

- 1.24 Detective Chief Inspector Fox is an experienced police officer who from 2002 to 2004 led the police investigation that ultimately resulted in the conviction of Father James Fletcher for multiple offences of child sexual assault.
- 1.25 At a meeting of senior police held at Waratah police station on 2 December 2010 Fox received an instruction that, for all practical purposes, required him to cease investigating allegations that church officials had concealed child sexual assault offences committed by McAlinden and Fletcher. He was also instructed to hand over all related documentation. On 30 March 2012 senior police affirmed the instruction to Fox to cease investigating.
- 1.26 On 8 November 2012, when interviewed on ABC Television’s *Lateline* program, Fox raised the subject of his having been ‘stood down’ from investigating such matters. He also made allegations to the effect that there existed within Northern Region Command of the New South Wales Police Force, including in Newcastle City Local Area Command, a group of senior police who were concerned to ensure that there be no investigation, or no proper investigation, of child sexual assault offences associated with the Catholic Church and the alleged concealment of such offences by senior church officials.
- 1.27 Consistent with this contention, Fox alleged that Strike Force Lantle –which had been established by senior police in September 2010 to investigate the church concealment allegations relating to McAlinden and Fletcher – was a ‘sham’ that had been ‘set up to fail’, including through senior police deliberately appointing officers to the strike force who did not have the competence and experience for the task. These assertions squarely put at issue senior police’s commitment to the Lantle investigation. For these reasons the development, timing and progress of the Lantle investigation were the subject of close scrutiny by the Commission. An assessment of ‘the circumstances’ in which Fox was instructed to cease investigating ‘relevant matters’, within the meaning of the first term of reference, requires close analysis of the then existing police investigation (Lantle) that was being conducted into such matters and from which Fox was excluded.

Strike Force Lantle

- 1.28 Strike Force Lantle had its genesis in information a senior journalist, Ms Joanne McCarthy, provided to police at Lake Macquarie Local Area Command in April and May 2010. The information raised questions about whether church officials had failed to report to police their knowledge of the alleged sexual abuse of children by McAlinden. The allegations subsequently extended to include concealment of alleged conduct by Fletcher.

- 1.29 From about May to September 2010 the New South Wales Police Force deliberated on whether there should be an investigation into the church concealment allegations and, if so, what its parameters should be and who should conduct it – that is, which local area command or specialist squad should have investigative responsibility.
- 1.30 In August 2010 the Northern Region Commander, Assistant Commissioner Carlene York, decided there should be an investigation of the church concealment allegations and allocated it to Lake Macquarie Local Area Command. Later, on 2 September 2010, York reversed her decision and allocated the investigation to Newcastle City LAC, the decision being based on better availability of resources at the latter command and the fact of the concealment offences being alleged to have occurred within that command’s geographical territory. Shortly after making this decision York determined that the investigation should proceed by way of a strike force.
- 1.31 In consultation with his commander, Superintendent Max Mitchell, Detective Chief Inspector Brad Tayler, the crime manager at Newcastle City LAC, decided that Detective Sergeant Kirren Steel would be the lead investigator (the officer in charge) of the Lantle investigation. The investigation proper did not begin, however, until 13 October 2010, when Steel returned from leave to take up her role. From that time until about mid-December 2010 Steel engaged in investigative tasks connected with Lantle.
- 1.32 By late December 2010 three police officers who were associated with the Lantle investigation – Tayler, Steel and Detective Senior Sergeant Justin Quinn – had taken sick leave, giving rise to a front-page headline in the *Newcastle Herald* of ‘Newcastle’s police “strikeforce”’. It was claimed that Lantle was at that point a strike force in name only, having no working detectives. Of the three named officers, only Steel was an investigator appointed to Lantle. Tayler, as crime manager, and Quinn, as investigations manager, each held senior supervisory roles in Newcastle City LAC that involved oversight of a large number of investigations, of which Lantle was but one.
- 1.33 Having closely examined the circumstances in which each officer took sick leave, the Commission is satisfied that the situation arose as a consequence of genuine and unrelated medical considerations. Further, it was not something senior police (Mitchell and Tayler) could reasonably have anticipated. Senior police did not appoint Steel as the lead investigator on Lantle knowing or believing that she would later take sick leave. Further, during her time with Lantle, Steel displayed appropriate commitment to the investigation.
- 1.34 On 30 December 2010 Detective Sergeant Jeffrey Little of Newcastle City LAC was appointed officer in charge of Lantle. Initially, the investigation was carried out under the supervision of Detective Chief Inspector Wayne Humphrey; from about March 2011 onwards Detective Inspector Graeme Parker held the position of crime manager at Newcastle City LAC and oversaw the investigation. From December 2010 Detective Inspector Paul Jacob of the Sex Crimes Squad, State Crime Command, provided expert advice to Lantle from time to time.
- 1.35 As events unfolded the increasing complexity of the Lantle investigation became apparent, involving, as it did, concealment allegations against senior church officials in connection with child sexual assault offences. The historical nature of the allegations, the number of witnesses and individuals of interest involved, and the high-profile nature of the investigation all contributed to this complexity.
- 1.36 On 8 October 2012 the New South Wales Police Force forwarded the Lantle brief of evidence to the Office of the Director of Public Prosecutions with a view to obtaining advice about the adequacy of evidence to prosecute certain members of the Catholic Church for offences related to the concealment of child sexual assault. To date, the Office of the DPP has not provided advice on whether charges are to be preferred against any person. The Lantle investigation continues.

- 1.37 As to timing, the Commission accepts that the time police took to start the Lantle investigation proper (about five months, from April–May to October 2010), while not ideal, was not unreasonable in the circumstances, having particular regard to the evidence of independent expert Mr Ian Lloyd QC and the historical nature of the complaints, the complexity of the matter, competing demands, and the need for careful review of the initial material (as conducted by Inspector Anthony Townsend) to determine if an investigation was indeed warranted.

Strike Force Lantle: not a ‘sham’ that was ‘set up to fail’

- 1.38 The Commission rejects the contention, advanced by Fox and maintained in hearings before the Commission, that Strike Force Lantle was a ‘sham’ that was ‘set up to fail’. In this respect the Commission finds that Detectives Steel and Quinn were experienced and competent detectives, and their involvement with the strike force – in the case of Steel as lead investigator and in the case of Quinn as investigations manager having supervisory oversight – was appropriate. Fox’s assertion in an email to McCarthy that Quinn had never been a detective or criminal investigator was false. By mid-2010 Quinn had a number of years’ experience as a detective and investigator and had particular experience in dealing with child sexual assault matters. Similarly, Steel had more than six-and-a-half years’ experience as a detective before being appointed acting inspector. In addition, no question arises as to the competency of other officers appointed to or associated with Lantle – namely, officers Tayler, Parker, Little and Detective Senior Constable Jason Freney.
- 1.39 The Commission also accepts the evidence of the independent expert, Mr Ian Lloyd QC, that the Lantle investigation conducted by the New South Wales Police Force, with Little as office in charge from December 2010, and the associated brief of evidence provided to the Office of the DPP were of a high standard.
- 1.40 Fox’s assertion that Lantle was a ‘sham’ and ‘set up to fail’ is consistent with his view, as he expressed it to McAlinden victim AJ, that there existed a ‘Catholic police mafia’. The Commission finds no credible evidence to support the notion that there are senior police in Northern Region Command of the New South Wales Police Force, including Newcastle City Local Area Command, who were prepared to take steps to try to ensure that alleged child abuse offences involving Catholic church officials were not investigated or not properly investigated. The evidence is firmly to the contrary and is further supported by the existence of a widespread police investigation – Strike Force Georgiana, established in 2007 in Lake Macquarie Local Area Command within Northern Region Command – and its considerable success in investigating and prosecuting alleged child sexual offences committed by officials of the Catholic Church. A further major police investigation with in Lake Macquarie LAC, Strike Force Lozano, involving alleged child sexual offences and the Catholic Church, was similarly under way by mid-2010.

Circumstances leading up to 2 December 2010

- 1.41 From about June 2010 Fox made inquiries into, and by at least about mid- to late July 2010 had begun his own investigation of, alleged concealment by church officials in connection with McAlinden and Fletcher. The investigation was clandestine in nature since, despite taking lengthy statements from witnesses AK, AJ and AL (each of them victims of McAlinden who had subsequent contact with church officials) and from Mr Michael Stanwell (a former school principal), Fox did not initially tell his superiors about the investigation he was carrying out and did not make any entry about it in the COPS system (the police computer database). This was because, Fox said, he did not trust the police environment at that stage.
- 1.42 On 16 September 2010 through the chain of command Fox received a ‘ministerial request’, emanating from the Minister for Police, seeking information and comment on a letter written by a relative of a Fletcher victim about possible covering up of crimes of paedophile Catholic

priests. Properly viewed, the ministerial request was a request for information and not an instruction to Fox to begin an investigation.

- 1.43 By 16 September 2010 Fox knew that Newcastle City Local Area Command, and in particular Detective Sergeant Steel, had been allocated an investigation into matters involving the church concealment allegations. On the day he received the ministerial request he sent an email to Steel, copying in relevant senior police, including his commanding officer (Superintendent Charles Haggett). In the email Fox referred to the ministerial request and to Steel's investigation (Lantle) and revealed for the first time the existence of his own investigations relating to McAlinden and Fletcher. Fox provided some limited details of his current investigations and suggested that he and Steel meet on his return from leave to 'put our material and heads together on this'.
- 1.44 After sending his email to Steel, Fox went on four weeks' leave, spending time overseas. During that period Fox's commanding officer (Haggett) and the then Acting Commander of Newcastle City LAC (Humphrey), having been alerted to Fox's email, went to Fox's office at Port Stephens Local Area Command and searched for documents relating to the church concealment allegations and the ministerial request. As it transpired, such documents could not be obtained because Fox had locked them in his safe. Haggett, accompanied by Humphrey, was within his rights to enter Fox's office, particularly when Fox was on leave, to look for documents relating to the church concealment allegations that might be relevant to the Lantle investigation.
- 1.45 On 18 October 2010, on Fox's return from leave, Haggett requested that Fox hand over all documentation he had gathered on any church conspiracy matter. Notwithstanding this request, Fox provided to Haggett only the ministerial request file and did not provide copies of the witness statements he had taken from AJ, AK, AL and Stanwell.
- 1.46 On 25 November 2010 Fox submitted a seven-page report for senior police, cataloguing instances of asserted collusion, obstruction and non-cooperation by church officials in connection with his previous investigations. He called for the establishment of a task force to carry out a full investigation into the conduct of the Catholic Church's Maitland–Newcastle Diocese, referred to his 'excellent knowledge basis' and stated that he would assist with any such inquiry or investigation.
- 1.47 On 1 December 2010 Haggett informed Fox there was to be a meeting at Waratah police station the next day and that he (Fox) was to attend and bring all his church-related documents. Notwithstanding that request, Fox deliberately failed to take the documents with him to the meeting. Before attending, Fox was hopeful that he would be given an active role in the church concealment investigation (Strike Force Lantle).

The meeting at Waratah police station, 2 December 2010

- 1.48 On 2 December 2010 Fox attended the scheduled meeting at Waratah police station, within Newcastle City Local Area Command. Superintendent Mitchell, as commander of Newcastle City LAC, chaired the meeting. In addition to Fox and Mitchell, seven officers attended the meeting. The Commission heard evidence from all but one of them (Haggett, being medically unfit to give evidence) and obtained production of all notes made or other documents created in connection with the meeting.

1.49 The meeting covered the following:

- Mitchell made it clear that Newcastle City LAC had carriage of the Strike Force Lantle investigation – including as relating to complaints by AK, AL and Mr Peter Gogarty⁶ – and that this had been at the direction of the Northern Region Commander, Assistant Commissioner York.
- Mitchell emphasised the high level of risk the investigation entailed for the organisation, the New South Wales Police Force, in terms of importance and visibility and the need for the investigation to be managed well.
- Mitchell emphasised the importance to the investigation of Fox providing all relevant information, including witness statements, to the Lantle team.
- Fox agreed to provide all relevant information and documents to the Lantle investigation team.
- Fox spoke of his experience in his investigations and voiced his opinion that, in view of the magnitude of the problem, a task force should be established.
- Mitchell instructed that in order to preserve the confidentiality of the investigation nobody was to speak to the media – including to McCarthy of the *Newcastle Herald*. This was an instruction to all officers present.
- Mitchell said he was to be advised in the event that McCarthy contacted police.
- Consistent with Newcastle City LAC having carriage of the investigation, it was noted that it was the task of Newcastle investigators – and not others – to collate all the available information. Mitchell told Fox he could ring the witnesses to let them know that Taylor's team (Strike Force Lantle) would be dealing with them from that time on.

1.50 The Commission is satisfied that at the meeting on 2 December 2010 Mitchell instructed Fox as follows:

- to hand over to Newcastle investigators all documents he had – including witness statements – relating to the church concealment allegations
- to have no further contact with witnesses other than to notify them that he was no longer the investigator for the matter
- not to speak with the media – including McCarthy – about the police investigation of the church concealment allegations and to report any contact from McCarthy to him (Mitchell).

1.51 It does not ultimately matter whether the edict given to Fox was in each instance characterised as a direction or an instruction. Fox was given a lawful instruction by a superior officer (Mitchell) and he was expected to comply with it. Fox understood this.

1.52 The practical effect of the first and second instructions Mitchell issued was to remove Fox from further investigating the church concealment allegations (as arising from the materials provided by McCarthy and the statements taken from AJ, AK, AL and Gogarty) that were considered to fall within the parameters of the Strike Force Lantle investigation. For all practical purposes, this equated to an instruction that Fox cease investigating the church concealment allegations being considered by Lantle. This was the inevitable outcome of Fox being told by Mitchell that the

⁶ Mr Gogarty told the Commission he did not wish to be allocated a pseudonym during the Inquiry's proceedings and for the purposes of this report.

matter was to be investigated by Newcastle City Local Area Command, that he was to hand over all documents relating to the matter, and that he was to have no further contact with the witnesses – apart from telling them he would no longer be involved. This characterisation of the instruction is consistent with a later affirmation of the position by senior police in March 2012 (see below) and with Assistant Commissioner York’s written response to particular questions raised by the *Lateline* program of 8 November 2012.

- 1.53 No direction or instruction was issued to Fox that he was to cease investigating church paedophilia generally – that is, outside the investigation being conducted by Newcastle City LAC – or that he was not to talk with people about church paedophilia. This is also consistent with Fox’s evidence, which the Commission accepts, that no such broad-ranging direction or instruction was issued to him. Subject to any contrary directions from a superior officer, Fox remained free to pursue investigations of other church paedophilia matters that did not overlap with the parameters of the Strike Force Lantle investigation.
- 1.54 On 26 March 2012 Fox sent an email to Superintendent John Galton, who had by then succeeded Mitchell as commander of Newcastle City LAC, asking if the directions Mitchell had issued in December 2010 were still in place. On 30 March 2012 Galton responded by email, confirming that, until lifted, the directions remained in place. Assistant Commissioner York approved Galton’s email before it was sent. Galton’s email amounted to an affirmation of an instruction to cease investigating the church concealment allegations that were being investigated by Strike Force Lantle.

The appropriateness of the instructions issued to Detective Chief Inspector Fox

- 1.55 The Commission is satisfied that it was appropriate for Mitchell to issue the instructions he issued to Fox that had the effect of requiring Fox to cease investigating the church concealment allegations.
- 1.56 By December 2010 Newcastle City LAC was, through Strike Force Lantle, already investigating the church concealment allegations. The Northern Region Commander, Assistant Commissioner York, had determined this in September 2010, before Fox revealed his previously clandestine investigation.
- 1.57 Further, allocation of the investigation to Newcastle City LAC was justified on the basis that the alleged concealment had taken place within the geographical boundaries of Newcastle City LAC and because Newcastle City LAC was considered better resourced than other potential local area commands (such as Lake Macquarie LAC) to conduct the investigation. Port Stephens LAC, to which Fox was attached, did not have the capacity in 2010 to carry out the investigation.
- 1.58 There was a substantial overlap between Fox’s inquiries and investigation and the Strike Force Lantle investigation. Both involved the investigation of allegations of concealment by church officials of child sexual assault offences committed by McAlinden and Fletcher. As a matter of common sense, it would clearly have been undesirable for two competing investigations into these allegations to proceed: there was a need for a single, directed investigation. The real question arising was not whether there should be two investigations but whether Fox should somehow have been otherwise involved as part of the Strike Force Lantle team.
- 1.59 The Commission is satisfied that it was appropriate for Mitchell (and York) not to bring Fox across to be placed on the Lantle investigative team. Strike Force Lantle already had a lead investigator – Steel from October to December 2010 and thereafter Little. Steel was appropriately qualified for the role, as was Little.
- 1.60 Further, Fox was a detective chief inspector, a designation one step down from superintendent. As a detective chief inspector, he was expected to be mainly involved in the supervision of more

junior investigating officers, rather than taking direct investigative steps. Fox was in too senior a position to take a role such as that of lead investigator in the strike force: this was properly the role of a detective sergeant (such as Steel and later Little) under the supervision of the existing crime manager in Newcastle City LAC.

- 1.61 Fox's role as crime manager similarly weighed against him having any role as an investigator in Lantle. A crime manager is expected to be able to take an overall, strategic view of an investigation, rather than being involved in day-to-day investigative steps such as taking witness statements. Further, Lantle was already subject to supervisory oversight by the crime manager (Tayler) and the investigations manager (Quinn) at Newcastle City LAC. There was no need for an additional senior officer in a supervising role.
- 1.62 Geographical considerations also counted against Fox's inclusion in the strike force. He was based not at Newcastle City LAC but at Port Stephens LAC. He had obligations there as crime manager. To bring him across to work on a strike force in another command would have been highly unusual and would have left Port Stephens LAC – itself already facing resourcing and staffing difficulties – with the problem of finding a replacement to act as crime manager during Fox's absence.
- 1.63 At the same time, however, if Fox was not a member of Lantle, he could otherwise provide documents and information for the benefit of the investigation. This in fact occurred in April 2012, with Little communicating with Fox about such matters. Fox accepted that this communication constituted a form of consultation with him. The Commission finds, however, that the Lantle investigators should have taken steps at an earlier time to speak with Fox, by way of formal interview or otherwise, in order to find out what further information he could offer the investigation.
- 1.64 It was also appropriate for Mitchell to issue an instruction to all officers present at the 2 December 2010 meeting, including Fox, not to speak with the media. The church concealment investigation was relatively complex and high profile. It involved consideration of the conduct of senior church officials and had been the subject of much media interest. It presented risks for the New South Wales Police Force if not managed and conducted properly. Further, as Fox acknowledged, it was standard procedure in sensitive investigations for control to be exercised over which police officers were permitted to speak to the media; he also agreed that information leaks can undermine investigative steps being taken.

Additional considerations

- 1.65 Having regard to the matters just discussed, the Commission is comfortably able to make its findings in relation to the appropriateness of the instructions Mitchell issued. Additional considerations arising from the evidence, however, further support the conclusion that the instructions were appropriate.
- 1.66 In this respect a number of aspects of Fox's conduct underscored the appropriateness of his not being included in the Lantle investigation and of the related directions Mitchell issued to the effect that Fox cease investigating the matters that were the subject of the Lantle investigation. Thus, both before and after the meeting of 2 December 2010 Fox inappropriately disclosed police information to McCarthy. This included emails by Fox to McCarthy on 22 July, 18 October, and 24 November 2010; the 24 November email forwarded to McCarthy a copy of Fox's proposed report to senior police (which he submitted the following day) and invited her to comment on it. Further, on 2 December 2010, after the meeting, Fox sent an email to McCarthy contrary to Mitchell's instruction not to contact the media about matters relating to the Lantle investigation. There are other instances of Fox's inappropriate disclosure of police information to McCarthy from December 2010 to August 2012, including his conduct on 9 April 2011 in providing to McCarthy a copy of the police statement taken from AJ.

- 1.67 In this respect, Fox also acted inappropriately in providing to McCarthy a copy of AJ's witness statement without AJ's consent. Further, in May 2011 Fox made false statements to a police complaints investigator charged with considering whether Fox had breached the direction or instruction not to speak with the media.

Term of reference 2

Overview

- 1.68 The Commission finds that senior officials of the Catholic Church had information relating to suspected child sexual abuse by McAlinden and Fletcher that would have facilitated and/or assisted a relevant police investigation.

- 1.69 In brief, the Commission's principal findings in connection with McAlinden are as follows:

- **Bishop Leo Clarke**, head of the Maitland–Newcastle Diocese from 1976 to 1995, was aware from 1976 that McAlinden had admitted to sexually abusing children. In 1993 Clarke was told that McAlinden had admitted to instances of sexually abusing children. From 1976 onwards the Diocese, through Clarke, had information that would have facilitated a police investigation of McAlinden.

Throughout the 20 years he was bishop, Clarke failed to report McAlinden to the police or to any church outsiders. A motivating factor in this failure was concern that such reporting would bring scandal on the Church.

In view of his involvement with matters relating to McAlinden since 1976, Clarke was well placed to appreciate the continuing risk McAlinden posed to children and the apparently intractable nature of his offending. Clarke was in receipt of reports about sexual offending by McAlinden from multiple complainants, in disparate locations and over an extended period.

Additionally, in 2003, when Detective Chief Inspector Fox interviewed him, Clarke had information in relation to a number of past allegations and incidents that would have been of material interest to police, but he did not provide that information to Fox.

During the period of inaction by the Diocese and Clarke, McAlinden continued to sexually abuse children, in the late 1970s, the 1980s and into the 1990s. Clarke retired in 1995 and died in 2006.

Clarke's conduct – and thus also that of the Diocese of which he was head – was inexcusable.

- **Monsignor Patrick Cotter**, Vicar Capitular and interim head of the Diocese before Clarke, was from at least 1976 aware of serious complaints made about McAlinden's sexually inappropriate conduct with children while he (McAlinden) was parish priest in Foster–Tuncurry. Cotter retired in 1987 and died in 2007.

In a letter dated May 1976 to Clarke (as bishop-elect) Cotter recorded that, among other things, McAlinden had been 'interfering' with young girls and had an 'inclination' towards younger females but not towards the mature female.

The 'Cotter–Clarke letter' also demonstrates that the Diocese, through Cotter, agreed to execute what Cotter referred to as a 'cover-up' of the 'resignation' of McAlinden as parish priest at Foster–Tuncurry. The device, apparently proposed by McAlinden himself, was a move 'on loan' to Geraldton Diocese in Western Australia. The Diocese subsequently arranged for McAlinden's departure on loan to Papua New Guinea. Later, McAlinden

returned to work as a priest at other parishes in Maitland–Newcastle Diocese and continued to sexually abuse children.

From 1976 Cotter had information that would have facilitated a police investigation of McAlinden. He took no steps to report McAlinden to the police. His conduct in arranging permission for McAlinden to resign and to go on loan outside the Diocese revealed a willingness on his part not to disclose to any church outsiders, including the police, the continuing risk McAlinden posed to children lest this bring scandal on the Church.

Cotter's conduct in failing to report McAlinden to the police was inexcusable.

- **Monsignor Allan Hart**, Vicar General of the Diocese from 1990 to 1995 and a current priest of the Diocese, was aware from at least 1993 that McAlinden had sexually abused AJ when she was a child. Hart had been aware of previous allegations of McAlinden sexually abusing children. He also became aware, through Clarke, that McAlinden had made admissions about sexually abusing children when Father Brian Lucas interviewed him in 1993.

While Hart reported AJ's complaint in 1993 to his bishop, Clarke, he took no steps to report McAlinden to police or to counsel and encourage AJ or Clarke to take such steps. He should have done so. AJ would have reported McAlinden to the police had she received the support and encouragement of senior church officials such as Hart.

- **Father Brian Lucas**, General Secretary of the Australian Catholic Bishops Conference and a lawyer, was Secretary to the Archdiocese of Sydney in 1993 and a member of the Special Issues Resource Group, which under a 1992 Church protocol had responsibility for investigating allegations of child sexual abuse by priests. By 1993 Lucas had an established role in persuading priests accused of having sexually abused children to resign from ministry.

In 1993 Lucas met with AJ and received details of an instance of sexual abuse McAlinden committed on her when she was a child. This was information Lucas needed in order to confront McAlinden and so persuade him to resign.

Lucas met with McAlinden in February 1993. Lucas proffered no recollection of the meeting and took no notes of it. This was consistent with his general practice of deliberately not taking notes of his meetings with priests accused of child sexual abuse. The purpose of this practice was to avoid the creation of documentary records, and a consequence of it was that documents that could later reveal to church outsiders (including the police or complainants in civil litigation) matters that might bring scandal on the Church – including admissions of child sexual abuse by a priest – did not come into existence.

Notwithstanding Lucas's stated non-recollection of the meeting with McAlinden, there is reliable evidence confirming that at the meeting McAlinden made admissions of having sexually abused children. Consistent with his stated practice, Lucas reported these admissions to Clarke. Lucas was also consulted, at least by Hart, about the Diocese's plan to relocate McAlinden overseas.

From 1993 onwards Lucas possessed information, including admissions of sexually abusing children, that would have been of interest to the police and would have facilitated a police investigation of McAlinden. Lucas failed to report McAlinden to the police. He should have done so in 1993, as should have the Diocese.

Further, even if Lucas had believed AJ was reluctant to report McAlinden to the police, Lucas could subsequently have taken steps to report McAlinden by way of a blind-report (which provided an option for reporting without identifying victims) when that system of reporting

became established in conjunction with the Church's Professional Standards Office in 1997. Lucas did not do so.

In 1993 Lucas also obtained details of the child sexual abuse of another McAlinden victim, AL. In connection with AL's reported abuse, Lucas similarly failed to report McAlinden to the police, including by way of a blind-report from 1997. Even if provided in blind-report format, such information would have facilitated a police investigation of McAlinden and, indeed, would have been the first report about him to police in New South Wales.

The approach Lucas took, supported by the Diocese, of attempting to have McAlinden resign from ministry rather than being reported to the police, was short-sighted and failed to have proper regard to the continuing risk McAlinden posed to children. This risk to children would have persisted even if McAlinden had resigned from ministry and had been moved to a new location.

In their conduct in connection with McAlinden in 1993 Lucas and the Diocese failed to have proper regard to what should have been the overriding consideration – the protection of children.

- **Bishop Michael Malone**, head of the Diocese from 1995 to 2011, was aware from 1995 that McAlinden was reported to have sexually abused children and had admitted to such conduct. This was apparent from correspondence Malone read in late 1995 and early 1996, including a letter from McAlinden dated 5 December 1995. Further, in his office Malone had a file on McAlinden that he described in 2002 as 'so big you can't jump over it'.

Malone failed to take steps to report McAlinden to police at any time between 1995 and August 1999, even though he must have known the Diocese had information that would have facilitated and/or assisted a police investigation of McAlinden.

Malone arranged to blind-report McAlinden to the police in August 1999 through the Church's Professional Standards Office. This was the first report by the Diocese to the police relating to McAlinden. But Malone provided notice of allegations relating to only two McAlinden victims, AK and AL. There is no good reason why he did not report AK and AL to the police until 1999.

In June 2002 Malone received details from a further McAlinden victim, AC, of having been sexually abused when she was a child. Malone did not arrange to report information about AC to the police until March 2003 and, even then, failed to advise the police that AC was willing to have her complaint used in corroboration of the evidence of other McAlinden victims who came forward, although she herself did not wish to make a direct complaint. The information Malone conveyed to police about AC was both late and inaccurate.

- 1.70 Significant matters relating to Fletcher are dealt with in the confidential volume of this report in order to protect potential future criminal proceedings. In this respect the Commission finds that, pursuant to s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW), there is sufficient evidence warranting the prosecution of a senior church official in connection with the concealment of child sexual abuse relating to Fletcher.
- 1.71 In connection with Fletcher, the Commission's principal findings in relation to Malone, as set out in the public part of the report, are as follows:
- 1.72 In 1996 and 2000 Malone received separate reports raising concerns about Fletcher's inappropriate behaviour with boys and on each occasion failed to undertake appropriate investigations to explore the veracity of the reports.

- 1.73 On 4 June 2002 Malone alerted Fletcher to a police investigation of him (Fletcher) and disclosed that AH (a Fletcher victim) was the complainant. Malone's conduct was inappropriate – a fact Malone accepted before the Commission. His conduct had the potential to cause significant disruption to the police investigation of Fletcher.

Knowledge of McAlinden's propensity for child sexual abuse

- 1.74 A substantial body of evidence before the Commission confirmed that senior Diocesan officials were aware at various times of reports or complaints that McAlinden had sexually abused children, the first instance of reported abuse occurring in 1954 and involving victim AE. It took more than 40 years, however, for the Diocese to report to police any aspect of McAlinden's offending history (such reporting ultimately occurring through Malone in August 1999). The evidence reveals a disturbing story of repeated inaction and failure on the part of church officials to report McAlinden to police. The Commission's principal findings in this regard follow.

The 'Cotter–Clarke letter', 1976

- 1.75 On 17 May 1976 Monsignor Patrick Cotter, then vicar capitular, wrote to Bishop Leo Clarke, then bishop elect, about certain 'de sexto' incidents associated with McAlinden in Forster–Tuncurry parish. In the letter Cotter noted that McAlinden had 'an inclination to interfere (touching only) with young girls aged 7 to 12' and also said that after a long session with him (Cotter) McAlinden 'slowly, very slowly ... admitted to some indiscretions but then agreed that it was a condition that had been with him for many years'. Cotter added, '... knowing Father Mac, as we do, we think ... [the condition] cannot be real serious, nor do we believe that there is any danger of a development into assault or rape'. In the letter Cotter also endorsed a proposal by McAlinden to cover up the circumstances relating to the Forster–Tuncurry complaints and his immediate 'resignation' as a consequence, by sending him to Western Australia for 'one or two years', after which time he would return to the Diocese.
- 1.76 This letter confirms that senior officials of the Diocese – being at least Cotter, as vicar capitular, and Bishop Clarke – were aware of serious complaints about McAlinden's behaviour with children as well as his admission to 'indiscretions'. The information contained in the letter would undoubtedly have facilitated a police investigation of McAlinden (and, if disclosed, would have assisted the police investigation of McAlinden that was in fact initiated in 1999). The failure of Diocesan officials – in particular, Cotter and Clarke – to report McAlinden's conduct to police at that time or subsequently was inexcusable.
- 1.77 Following the failure to report him to police, McAlinden continued to sexually abuse children in the late 1970s, 1980s and 1990s.

Continuing abuse: Papua New Guinea, Western Australia and then a return to the Diocese, 1976 to 1988

- 1.78 Ultimately, McAlinden did not go to Western Australia in 1976 but went instead to Papua New Guinea on a flight paid for by the Maitland Clergy Central Fund but invoiced to Clarke. McAlinden remained in Papua New Guinea until 1981, when the Diocese gave permission for him to be sent 'on loan' to Geraldton Diocese in Western Australia. McAlinden continued to sexually abuse children (namely, AR) while in Western Australia.
- 1.79 From March to December 1984 McAlinden was posted to Hamilton, New Zealand, where he sexually abused another young girl.
- 1.80 In May 1987 Mr John Hatton MP wrote to then Archbishop of Sydney, Edward Clancy, regarding concerns about McAlinden's behaviour in Merriwa, New South Wales where McAlinden served as parish priest in 1985 and 1986. The Diocese's handling of the 'McAlinden problem' during the

period 1986 to 1987 is dealt with in the confidential volume of this report; this including McAlinden's referral to a consultant psychiatrist for evaluation in mid-1987.

- 1.81 In 1988 McAlinden spent a further period in Western Australia, this time in Bunbury Diocese. There is no evidence that Clarke alerted the Bishop of Bunbury Diocese to any concerns about McAlinden's propensity to sexually abuse children, despite Clarke's awareness about that fact.

Acquittal of criminal charges: Western Australia, 1992

- 1.82 In September 1991 McAlinden was charged in Western Australia with three counts of indecent dealing with AR when she was aged 9 to 10 years. He was ultimately acquitted of all three charges on 16 July 1992. The Bishop of Bunbury kept Clarke informed of developments relating to the criminal proceedings. By this time Clarke knew of (at least) allegations relating to McAlinden's sexual abuse of children from 1954 and 1976 and the Merriwa allegations of 1987.

Further allegations, 1993

- 1.83 In February 1993 Clarke recalled McAlinden from Western Australia. This followed a disclosure by a further victim, AJ, to then vicar general Monsignor Hart of McAlinden's sexual abuse of her in 1961 or 1962 as an 11- or 12-year-old girl. Clarke withdrew McAlinden's faculties, such that he could no longer engage in priestly ministry or present himself as a priest.
- 1.84 Later in 1993 another McAlinden victim, AL, reported her complaint of child sexual abuse by McAlinden to Hart and Sister Paula Redgrove. Hart told Clarke of this further victim.
- 1.85 In 1993 Clarke retained Father Brian Lucas to assist with the McAlinden problem. As noted, Lucas was General Secretary of the Australian Catholic Bishops Conference, a lawyer, and a member of the Special Issues Resource Group, which, under a 1992 church protocol instituted by the Australian Catholic Bishops Conference, had responsibility for investigating allegations of child sexual abuse by priests. By 1993 Lucas had an established role to persuade priests accused of having sexually abused children to resign from the ministry.
- 1.86 Lucas interviewed AJ by telephone and obtained details from her about the abuse she had suffered. By this time Lucas knew of McAlinden's acquittal in Western Australia. He then confronted McAlinden in an attempt to 'seduce' him into leaving priestly ministry. The evidence reveals that Lucas obtained admissions from McAlinden as to his sexual abuse of children – although Lucas himself said he had no memory of the meeting. Lucas then reported to Clarke that McAlinden had made such admissions.
- 1.87 Lucas's practice was not to take notes when dealing with priests accused of child sexual abuse – an approach the Commission found unsatisfactory – and there were therefore no notes recording details of his meeting with McAlinden. By means of this practice Lucas intended to avoid the creation of documentary evidence. It meant that documents that might later reveal to church outsiders, including civil authorities, matters that could reflect poorly on and bring scandal on the Church did not come into existence.
- 1.88 At some point in 1993 Lucas also met with AL and received from her an account of the sexual abuse she had suffered as a child. AL was unwilling, however, to report her complaint to police because she did not want her mother to know.
- 1.89 The Diocese's response to the McAlinden problem was for him to 'retire' and be relocated overseas. By March 1993, then, McAlinden had left Australia and was living in the United Kingdom. The evidence revealed that Hart (then vicar general) had a central role in making and executing the arrangements for dealing with McAlinden. This was contrary to Hart's evidence before the Commission, in which he sought to distance himself from the appearance of having any responsibility for management of the matter at the Diocesan level in a manner inconsistent

with the actual state of affairs. Lucas was also consulted about execution of the plan to relocate McAlinden to the United Kingdom: in evidence he, too, sought to distance himself from the appearance of having any involvement in the relocation plan.

- 1.90 Hart, Clarke and Lucas failed to report McAlinden to the police in 1993. Such information as those church officials possessed in relation to AJ's and AL's complaints of sexual abuse would obviously have facilitated a police investigation of McAlinden or assisted a police investigation once it had begun. AJ did not want to report her complaint to police, and she explained that this decision was based on her devotion to the Church. The Commission accepts her evidence that she would have in fact reported McAlinden to the police had she received the blessing, support and pastoral care of Clarke, Hart and Lucas. In addition, by 1997 the option of blind-reporting McAlinden to police was available, allowing church officials to report allegations of McAlinden's sexual abuse without identifying the victim. Neither Clarke nor Lucas took the opportunity to blind-report McAlinden at any time from 1997. Nor did Lucas ever inform Bishop Malone (who assumed the episcopacy in November 1995) of information that he (Lucas) possessed in relation to McAlinden – including the admissions obtained from McAlinden and the complaints from AJ and AL – in order to assist Malone with blind-reporting McAlinden to police. No satisfactory explanation was given for this failure on the part of Lucas.
- 1.91 In view of Lucas's stated focus of protecting children from the continuing risk McAlinden posed – which undoubtedly should have been the overriding concern – it was incumbent on Lucas to report McAlinden to the police despite the wishes of the victim, as is the current approach to reporting. The 'solution' of having McAlinden instead 'leave' the priesthood was short-sighted and failed to have regard to the continuing risk to children he presented.

Attempts to laicise McAlinden, 1995

- 1.92 McAlinden worked as a priest in the Philippines between 1994 and 1995 and sought approval to be incardinated into San Pablo Diocese, notwithstanding Clarke's removal of his faculties in 1993. Clarke refused the proposal, although initially he gave the bishop of that diocese no details about why he did so. It was not until May 1995, when threats were made to involve the civil authorities, that Clarke told the Bishop of San Pablo about serious allegations against McAlinden and the consequent need for him to retire to England. Minutes from a Diocesan deans meeting in August 1995 reveal that the decision was then made to move towards McAlinden's laicisation.
- 1.93 Clarke initiated a canon law process to laicise McAlinden in October 1995. It was in this context that Clarke wrote to McAlinden, stating, 'Your good name will be protected by the confidential nature of this process'. The letter also pleaded with McAlinden to cooperate – '... for the sake of souls and the good of the Church' – noting that 'some people are threatening seriously to take this whole matter to the police'.
- 1.94 When Malone assumed the episcopacy in November 1995 he inherited responsibility for continuing the laicisation process against McAlinden. The process was unsuccessful, though, largely because of McAlinden's unwillingness to cooperate with it, coupled with the difficulty of locating him.

Reports to police, 1999

- 1.95 Although Malone knew about AL and AK in 1995 and in 1997 was informed of another complaint against McAlinden in relation to the sexual abuse of a young boy, he did not take steps to report any of McAlinden's alleged crimes to the police before August 1999, when a blind-report was made to the police concerning AL and AK through the Professional Standards Office. Rather than this being the result of a principled approach to reporting, the impetus for reporting was frustration with McAlinden's continued unwillingness to cooperate with the laicisation process.

The Commission considers that Malone's failure to report AK's and AL's complaint until August 1999 constituted a failure to facilitate a relevant police investigation.

Reports by AE and AC

- 1.96 In October 1999 AE made a formal complaint to the Church and to police about the sexual assaults McAlinden committed against her in 1953 and 1954. This led to then Detective Senior Constable Watters' investigation of McAlinden in and from 1999.
- 1.97 In June 2002 Malone became aware of a further McAlinden victim, AC, who reported that she had been indecently assaulted by McAlinden in the 1950s. AC provided a statement of complaint to the Church concerning her sexual abuse; in it she noted her willingness to have her complaint used to corroborate other victims' accounts.
- 1.98 Malone did not, however, instruct the Professional Standards Office to pass on that information to the police until March 2003. Further, when the information was conveyed to police it contained inaccuracies and failed to refer to AC's offer to have her complaint used in corroboration of other victims' accounts.
- 1.99 On reading McAlinden's file in late 1995 and early 1996 Malone must have become aware that McAlinden had admitted to having sexually abused children. In the light of this, Malone's failure to report McAlinden to police earlier than he did (in August 1999) was a failure to report criminal conduct to police. In view of Malone's comment to AC in 2002 that McAlinden had a file 'so big you can't jump over it', he must have realised information in the file could have assisted police in their investigation of McAlinden.
- 1.100 In this regard, by October 1999 Malone was aware that the police were investigating McAlinden in connection with AE's complaint. Although he had caused the Professional Standards Office to blind-report AK's and AL's complaints to police in August 1999, Malone did not pass on to investigating police other information on the McAlinden file or AC's offer to provide corroborative evidence. This amounted to a failure on the part of Malone and the Diocese to facilitate and/or assist the police investigation of McAlinden.
- 1.101 It should be acknowledged, however, that by 2005 Malone was showing leadership in dealing with child sexual abuse in the Diocese and was trying to redress the problem. In 2007 he was instrumental in establishing Zimmerman Services, the child protection arm of the Diocese – an important development.

Bishop Clarke's desire to avoid scandal and keep matters 'in house'

- 1.102 As the head of the Diocese for almost 20 years, from 1976 to 1995, Clarke was the repository of a considerable amount of knowledge concerning McAlinden's offending. The problems relating to McAlinden began with Clarke's episcopacy in 1976 (the Forster–Tuncurry incidents) and ended with his knowledge of at least AL's agitation for action to be taken in connection with McAlinden working in the Philippines. Among other pieces of knowledge Clarke possessed were the 1954 allegation of AE (referred to in the report of psychiatrist Dr Derek Johns in November 1987), the Merriwa allegations in 1987, AJ's complaint in 1993, and the admissions McAlinden made to Lucas in 1993.
- 1.103 In the light of this knowledge, Clarke was in a better position than anyone to appreciate the continuing risk McAlinden posed to children as a result of the extent and apparently intractable nature of his offending. As McAlinden's bishop, he was also uniquely placed to know about and influence McAlinden's geographic movements. Further, he must have been aware that, in reality, no constraints were placed on McAlinden's access to children. Nevertheless, there is no evidence that Clarke, or others working in the Diocese during his episcopacy, ever analysed the aggregation of information about McAlinden's offending and moved to protect children by

reporting McAlinden to the police until a blind-report was made by Malone in August 1999 (as noted).

- 1.104 The Commission finds that from May 1976 until his retirement in November 1995 Clarke failed to notify police of instances of alleged criminal behaviour by McAlinden. There is little doubt that what Clarke knew about McAlinden was information that would have facilitated or assisted a police investigation of McAlinden. By failing to provide that information to police, Clarke and the Diocese of which he was head failed to facilitate an investigation of McAlinden and failed to assist or facilitate the police investigation of McAlinden once on foot in October 1999.

Section 10 of the Special Commissions of Inquiry Act: other church officials

- 1.105 In accordance with s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW), the Commission considered the sufficiency of evidence warranting the prosecution of Hart, Lucas, Redgrove and Malone in connection with their respective knowledge of reports of potential offences committed by McAlinden. In summary, however, the Commission found there was not the sufficiency of evidence required by s. 10 of the Act in relation to any of those individuals.
- 1.106 The Commission also found that, for the purposes of s. 10 of the Act, there was sufficient evidence warranting the prosecution of a senior church official for offences relating to knowledge of potential offences committed by Fletcher. This is dealt with in the confidential volume of the report so as not to prejudice potential future criminal proceedings.

Fletcher's propensity for child sexual abuse

- 1.107 The Commission received evidence that from 1976 at least one official of Maitland–Newcastle Diocese had knowledge of Fletcher's propensity for sexually abusing young boys in the early 1970s. This is dealt with in the confidential volume of the report for the reason just noted.

Notifications in 1996, 2000 and 2002

- 1.108 In 1996, during a conversation with Mr Patrick Roohan, the principal of a school at Singleton, Malone was warned about a suspicion relating to Fletcher's 'inappropriate behaviour with boys'. The Commission considers that Malone made inadequate inquiries in relation to this first notification about Fletcher, having failed to speak with those who were best placed to provide information about the matter, including Fletcher himself.
- 1.109 On 13 December 2000 Malone had a conversation with BI, the father of AH, who told him AH might have been molested by Fletcher. The Commission considers that Malone significantly underestimated the seriousness of BI's report, which related to an assertion that AH had stayed overnight at the presbytery with Fletcher and had woken up naked. In the Commission's view, Malone should have taken steps to investigate the allegations at the time, including approaching both Fletcher and AH. Such steps were obviously warranted in view of the fact that this was the second adverse report Malone had received about Fletcher's conduct with young boys.
- 1.110 On 4 June 2002 BI told Malone that AH had made allegations to the police about his (AH's) abuse by Fletcher. Malone agreed that in his mind he married this conversation with what BI had told him in 2000 in relation to AH's allegations. By this time, a police investigation into Fletcher had begun.

The misleading pastoral message, 16 May 2003

- 1.111 Bishop Malone issued a pastoral message to parishioners after the charging of Fletcher on 14 May 2003 in relation to AH's complaint. The message stated that in June 2002, when he had first been notified of the police investigation into Fletcher, he (Malone) had sought advice from the Professional Standards Office and consulted the Director of Schools (Mr Michael Bowman) and

the 'local school principal' (Mr William Callinan) and that, on the basis of the advice he received and a risk assessment, he had decided to leave Fletcher where he was.

- 1.112 In his evidence before the Commission Malone said he had met with Callinan on 20 June 2002 and warned him that Fletcher 'shouldn't be alone with kids and should stay away from the school'. Callinan disputed that this meeting ever occurred and said the first he heard of such an interaction was in a telephone conversation with Malone on 19 March 2003.
- 1.113 Callinan was a credible witness. In contrast, inconsistencies in Malone's account of his approach to dealing with Fletcher – in failing to stand him down directly, in extending his responsibilities to include Lochinvar parish, and in failing to warn Callinan's counterpart at the primary school in Lochinvar in the manner Malone contended he had warned Callinan – are such that the Commission finds his evidence cannot be reconciled with the asserted discussion with Callinan on 20 June 2002. The Commission accepts Callinan's evidence to the effect that there was in fact no conversation with Malone on 20 June 2002.
- 1.114 Malone's evidence in this regard was dissembling and constituted an attempt to disperse responsibility (in effect) for his decision not to stand Fletcher down in June 2002 after becoming aware that the police were investigating him for child sexual abuse. The Commission also takes the view that Malone added the words '+ Will C' at some later time to the entry in his diary for 20 June 2002, with the intention of creating a false record to support his version of events – that is, that he consulted Callinan about the decision not to stand Fletcher down.
- 1.115 The Commission also finds that, contrary to Malone's assertion in his pastoral message, there was similarly no consultation in June 2002 with the Director of Schools, Bowman.
- 1.116 The Commission further finds that the Director of the Professional Standards Office, Mr John Davoren, and Malone spoke about Fletcher in or about November 2002 and not June 2002, as Malone asserted. Thus decisions Malone made in June 2002 were not based on advice he received, as he asserted in his pastoral message.
- 1.117 Malone's release of the pastoral message in May 2003 – in which he referred to seeking advice from Davoren and to his consultations with Callinan, Bowman and Davoren in June 2002 – was designed to provide a credible basis for the decision he made to leave Fletcher in parish service, despite being aware of the serious allegations of child sexual abuse then outstanding against Fletcher.

Police investigations

Detective Inspector Watters' investigation of McAlinden

- 1.118 In October 1999 Detective Inspector Mark Watters, then a detective senior constable at Maitland police station, began an investigation into a complaint AE made about sexual assaults perpetrated on her by McAlinden in 1953 and 1954, when she was a child. AE had made an official complaint with Towards Healing on 8 October 1999, and the Church encouraged her to speak with police.
- 1.119 Watters made inquiries of Maitland–Newcastle Diocese as to McAlinden's whereabouts and was advised that he was in Ireland and was not working as a priest as a result of 'other alleged incidents ...' Watters did not follow up those other alleged incidents at the time. He said it was not his usual practice to pursue such leads or follow up information of that nature until the arrest of a suspect had been effected. The investigative steps Watters took at the time included making inquiries of Telstra and Centrelink in an attempt to locate McAlinden and writing to the Bishop's Chancery at the Diocese to confirm his verbal inquiries.

- 1.120 On 1 December 1999 a warrant was issued for McAlinden's arrest; it was based on a last known address, although his actual whereabouts remained unknown.
- 1.121 In 2 February 2000 Watters suspended the investigation of AE's complaint, primarily because of the difficulties with determining McAlinden's whereabouts but also because AE had told him she wished to retract her complaint since the matter was causing her too much stress.
- 1.122 Detective Chief Inspector Fox was Watters' direct supervisor at Maitland police station in 1999, and they had conversations about the McAlinden investigation.
- 1.123 Between 1999 and 2005 Watters was unaware of an information report that had been entered on the New South Wales Police Force computer database known as COPS on 18 November 1999. This report was based on the notification to police made on or about 24 August 1999 by the Professional Standards Office to the NSW Police Child Protection Enforcement Agency in relation to complaints made by two McAlinden victims, AK and AL. The report recorded that as at that date McAlinden was in England but also that it was suspected he would return to Australia and 'reside somewhere in the Bunbury region of Western Australia'.
- 1.124 On 27 June 2005, as part of Operation Peregrine II (a police operation focusing on outstanding warrants), Centrelink provided to police information about McAlinden's whereabouts in Western Australia. This information was conveyed to Watters, and in September 2005 Watters sought approval from his supervisors to extradite McAlinden from Western Australia to face child sexual abuse charges.
- 1.125 By this time Watters was also aware of other complaints about McAlinden, including the allegations by AK, AL and AC (through his communications with the Professional Standards Office in August 2005) and also by AF (her allegations against McAlinden having been investigated by Detective Senior Constable Jacqueline Flipo from 2001 to 2003). Watters used these further complaints to support the application for McAlinden's extradition in September 2005, which was endorsed by the Crime Manager in Lower Hunter Local Area Command, Detective Chief Inspector Humphrey, and approved by the Commander, Superintendent Haggett.
- 1.126 In September 2005 Watters then sought assistance from Western Australia Police in serving the warrant for McAlinden's arrest and extradition. McAlinden was, however, found to be suffering from terminal cancer and was too ill to be extradited. He died on 30 November 2005.
- 1.127 The Watters investigation was subject to certain limitations. These are relevant because they provide part of the context in which potential assistance by church officials is to be considered. Specifically, it was not until 2005 that Watters followed up the information relating to 'other alleged incidents' associated with McAlinden; statements from any other victims relating to these incidents would have been of assistance in obtaining resources to locate McAlinden and in initiating a criminal process against him. In addition, police did not follow up the Centrelink request in relation to McAlinden in 1999, and neither Watters nor any other officer took comprehensive steps to put in train the procedure for enacting a PASS alert in 1999 (a process organised through the Australian Federal Police to 'flag' whether the person who is the subject of the alert is seeking to enter or leave Australia). It is not possible to state whether the investigation would have achieved a different outcome in the absence of these limitations – other than to say there might have been an increased prospect of McAlinden's whereabouts having been determined earlier by police if matters had been pursued differently.
- 1.128 Contrary to assertions Fox made, the Commission finds that Fox's role in Watters' investigation of McAlinden was very limited and did not involve any investigative function. Fox was a supervising police officer who gave advice and guidance to Watters about the general conduct and direction of the investigation.

- 1.129 During the first half of 2003 Fox visited the former Bishop Clarke in connection with his own (Fox's) investigation of Fletcher and discussed with him the possibility of there being other McAlinden victims. Documentary evidence shows Clarke knew about past allegations from at least 1976 and that these would have been of material interest to police, but he did not pass this information on to Fox. The Commission is satisfied that Clarke had sufficient mental acuity at the time of his meeting with Fox to understand the nature of Fox's inquiries about other McAlinden victims. It finds that Clarke misled Fox by failing to provide information about allegations and incidents from at least 1976 and, in so doing, failed to facilitate or assist the police investigation of McAlinden.
- 1.130 There is no evidence showing that the Diocese knew of McAlinden's specific whereabouts from 8 October 1999 until shortly before his death in November 2005. The Commission accepts that the Diocese was forthcoming in relation to Watters' requests for information in 1999 and that the Professional Standards Office was cooperative in providing the notification to NSW Police in August 1999 and in providing to Watters in August 2005 information about AK, AL and AC. At no time, however, did the Diocese volunteer to provide any biographical or documentary material that was available within the holdings of the Diocese and would have been of interest to investigating police.

Detective Senior Constable Flipo's investigation of McAlinden

- 1.131 In July 2001 Detective Senior Constable Jacqueline Flipo, then stationed at Lake Macquarie Local Area Command, began an investigation into a complaint by AF of sexual abuse by McAlinden. AF reported that McAlinden had sexually abused her from 1978, when she was aged 8 or 9 years, until she was 11. Flipo was unable to locate information disclosing McAlinden's whereabouts at that time or in the succeeding months.
- 1.132 In September 2002 Flipo spoke to Ms Elizabeth Doyle in the bishop's office of the Diocese about McAlinden's whereabouts and was given the addresses of UR18 and UR48, relatives of McAlinden. The Commission finds that Doyle cooperated with the investigation by providing assistance to Flipo in the form of information about the Diocese's knowledge of McAlinden's whereabouts and the addresses of UR18 and UR48. There is no evidence that at that time the Diocese had any other or better information about McAlinden's whereabouts that should have been conveyed to police during the Flipo investigation.
- 1.133 Flipo made inquiries with the Department of Immigration and with UR18 and surmised on the basis of the information she received that McAlinden was living in both Ireland and Western Australia, travelling between the two destinations.
- 1.134 From September to October 2002 Flipo caused searches to be carried out with the Registry of Births, Deaths and Marriages and the Department of Immigration. She also arranged to obtain corroborative statements relating to AF's complaint. On 28 October 2002, after speaking with one of McAlinden's relatives, Flipo was told that McAlinden lived in Western Australia and had done so for seven years. She did not locate McAlinden at the time.
- 1.135 In December 2002 a decision was made to reallocate AF's matter to Hornsby police station in Kuring-gai Local Area Command, but it appears that in January 2003 the matter was instead filed at Charlestown police station with no further action being taken. The Commission identified certain limitations in relation to Flipo's investigation of McAlinden, including that the matter was not ultimately transferred to Hornsby for further investigation.

Detective Chief Inspector Fox's investigation of Fletcher

- 1.136 From June 2002 until about December 2004 Detective Chief Inspector Peter Fox had primary carriage of the police investigation into allegations of child sexual abuse committed by Fletcher.

The investigation was launched after AH, a victim of Fletcher, filed a complaint with police on 3 June 2002.

- 1.137 In both oral and documentary evidence before the Commission and in previous public statements, Fox asserted, in essence, that church officials hindered, obstructed and/or failed to assist his investigation into Fletcher. The Commission determined that the majority of those assertions were without foundation. They are summarised below.

The 'tip-off' assertion

- 1.138 Shortly after Fox began his investigation of Fletcher, on 4 June 2002 Bishop Michael Malone and Father James Saunders alerted Fletcher to the police investigation of him and disclosed the identity of the complainant. Fox asserted that the 'tip-off' caused a 'major disruption' to the police investigation of Fletcher – including by giving Fletcher the opportunity to destroy evidence – but not to such an extent that the prosecution was unsuccessful.
- 1.139 The Commission examined Malone's motivation for alerting Fletcher to the police investigation. Malone gave evidence that it was not his intention to interfere with or thwart a police investigation but that his visit was motivated by pastoral concern for Fletcher and the desire to obtain a response (such as an admission) from Fletcher that might circumvent the need for a police investigation. He said that in hindsight his approach to Fletcher was a mistake and something he regretted.
- 1.140 The Commission accepts Malone's evidence that by his conduct he did not intend to hinder or obstruct the police investigation and that he did not immediately appreciate the importance of a police investigation retaining its confidentiality. It nonetheless finds that Malone acted inappropriately, as he himself acknowledged, in alerting Fletcher to the existence of the police investigation and the identity of the complainant.
- 1.141 It is difficult to quantify the extent to which Malone's conduct adversely affected the Fletcher investigation. Fletcher was, however, ultimately successfully prosecuted, so, despite Malone's inappropriate conduct, the impact of the tip-off was not such as to affect the outcome of the investigation.
- 1.142 Although Fox asserted that the tip-off was of such seriousness that he prepared a brief against Malone for the Office of the Director of Public Prosecutions for consideration of charges of hindering a police investigation (but it was 'elected not to proceed' against Malone), the Commission finds that Fox exaggerated the extent of any action he took in reporting to the Office of the DPP and/or preparing a brief against Malone.

Bishop Malone's failure to stand Fletcher down

- 1.143 Fox asserted that on 20 June 2002, during his investigation of Fletcher, Malone refused his request to remove Fletcher from his parish or restrain him from visiting schools. Malone instead extended Fletcher's responsibilities to include not only Branxton parish but also Lochinvar parish.
- 1.144 The NSW Ombudsman prepared a report in April 2004 concerning Malone's decision making in relation to Fletcher. Some excerpts and findings from that report were received in evidence before the Commission. In oral evidence, Malone accepted the Ombudsman's findings that he had failed to adequately assess or deal with the risks Fletcher posed to children and to give due consideration to the advice of police (namely, Fox) to remove Fletcher from his contact with children.

Assertions of collusion and concealment

- 1.145 In documents in evidence before the Commission, including from 2003 and 2010, Fox asserted that five priests of the Diocese – Bishop Malone and Fathers Saunders, Harrigan, Burston and Searle – colluded when providing statements to police in connection with Fox’s investigation of Fletcher. He maintained these assertions in oral evidence before the Commission – except in relation to Harrigan, whom he agreed was in fact doing his best to tell the truth in his police statement and was helpful and forthcoming.
- 1.146 The Commission found Fox’s assertions of collusion were made without a proper foundation and were not established on the evidence. Contrary to his assertions that the statements of those priests were consistently lacking in important details, that was not in fact the case. Nor was there any evidence indicating that those clergy had withheld evidence from or intentionally misled or hindered the police investigation of Fletcher in relation to the statements they provided to Fox in 2003. On the contrary, the evidence indicated that Bishop Malone and Fathers Burston, Saunders and Harrigan had sought to cooperate with and assist Fox’s investigation of Fletcher.
- 1.147 Further, the Commission found no basis to a claim by Fox that former police officer Donald Brown shared his view of collusion among the five clergy. This was a statement made to add weight to Fox’s own views (set out in a report to the NSW Ombudsman), and it should not have been made. Fox’s assertions of collusion and a lack of assistance on the part of Father Robert Searle in 2003 were also made without proper foundation.
- 1.148 In connection with an incident that occurred in 1997 or 1998, in which AH, in an inebriated state, yelled certain things outside the Nelson Bay presbytery while Father Searle was inside, the Commission finds that AH did make certain obscene remarks about priests and sex and that these were heard by Searle (although no finding can be made as to the precise words said). This incident became significant because of Fox’s assertion that Searle backed away from having earlier told Fox about the “‘filthy things’ that kids to young boys’ in a statement he gave to police some days after first telling Fox about the incident. Fox’s evidence on this was unsatisfactory in a number of respects – including the circumstances in which Searle’s statement was obtained and Fox’s contradictory evidence on whether he confronted Searle about the content of his police statement. Fox’s claim that, in essence, Searle did not cooperate with the Fletcher investigation was not established on the evidence.

Pornographic material found at Lochinvar presbytery and the asserted destruction of evidence

- 1.149 In both documentary and oral evidence before the Commission Fox asserted that Father Desmond Harrigan destroyed pornographic material that might have been evidence received from Fletcher. The pornography in question was found to be Harrigan’s own property. Properly viewed, whether or not Harrigan destroyed it was not relevant to the Fletcher investigation. The Commission found that the evidence did not support Fox’s assertions in this regard.

Alleged ostracising of a nun

- 1.150 Fox asserted that a nun, former Sister Janice Larkey, was ostracised by the Church because of the assistance she provided to police in the Fletcher investigation and was ‘forced to leave’ her religious Order, the Order of St Joseph. The Commission found, however, that Larkey was already contemplating leaving her religious Order before providing a statement to police and was not required to leave the Order because of the assistance she provided to police. The Commission rejected Fox’s assertion that Larkey was ostracised by the Order of St Joseph and forced to leave because of her involvement in the Fletcher investigation.

A good priest leaving the priesthood

- 1.151 Fox asserted that a ‘good priest’, Father Glen Walsh – who was pivotal in having another Fletcher victim, AB, come forward, which helped secure Fletcher’s conviction – clashed with senior clergy, including Malone, and had since elected to leave the priesthood. Contrary to Fox’s assertion, Walsh did not in fact leave the priesthood following his disclosure to police: he remains incardinated into the Diocese.

Reprisals, shunning and ostracism

- 1.152 Fox asserted in various documents before the Commission and in oral evidence that police investigations, including the investigation of Fletcher, had been adversely affected by reprisals on victims and their families as a result of reporting child sexual abuse. Other witnesses – namely Malone and AH’s mother, BJ – also described instances of shunning or reprisals. This included BJ describing how, after AH’s disclosure about Fletcher, her house had been pelted with eggs and she had been assaulted in the toilets at East Maitland courthouse during Fletcher’s trial. That evidence of ostracism and shunning by some parts of the parish community following AH’s disclosure of Fletcher’s sexual abuse of him was accepted. The Commission also accepted Fox’s evidence that, speaking generally, such conduct might ultimately affect the willingness of victims of child sexual abuse perpetrated by clergy to report abuse. There is, however, no evidence to suggest that this ostracism was directly encouraged or condoned by the Diocese.

The credibility of certain witnesses

- 1.153 The Commission makes adverse findings in relation to the credibility of Detective Chief Inspector Peter Fox, Father William Burston and Monsignor Allan Hart. Each was found to be an unimpressive and/or unsatisfactory witness in some respects. These matters are dealt with in Chapter 20.

2 The terms of reference

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The Letters Patent

- 2.1 Ms Margaret Cunneen SC was appointed Special Commissioner by Letters Patent issued in the name of the Governor of New South Wales on 21 November 2012, pursuant to the *Special Commissions of Inquiry Act 1983* (NSW). The original terms of reference focused attention on police investigations relating solely to Father Denis McAlinden, a deceased priest of the Catholic Diocese of Maitland–Newcastle.
- 2.2 On 25 January 2013 further Letters Patent were issued that, among other things, extended the Commission’s terms of reference to include police investigations relating to Father James Fletcher, another deceased Catholic priest of Maitland–Newcastle Diocese. Fox had referred to both McAlinden and Fletcher in the *Lateline* interview.
- 2.3 The amended Letters Patent require the Commission to inquire into and report on the following terms of reference:
1. The circumstances in which Detective Chief Inspector Peter Fox was asked to cease investigating relevant matters and whether it was appropriate to do so; and
 2. Whether, and the extent to which, officials of the Catholic Church facilitated, assisted, or co-operated with, Police investigations of relevant matters, including whether any investigation has been hindered or obstructed by, amongst other things, the failure to report alleged criminal offences, the discouraging of witnesses to come forward, the alerting of alleged offenders to possible police actions, or the destruction of evidence.

In these Letters Patent:

‘relevant matters’ means any matter relating directly or indirectly to alleged child sexual abuse involving Father Denis McAlinden or Father James Fletcher, including the responses to such allegations by officials of the Catholic Church (and whether or not the matter involved, or is alleged to have involved, criminal conduct);

‘Catholic Church’ includes (without limitation) the Church, a diocese of the Church, or an organisation operated under the auspices of the Church or a diocese of the Church; and

‘official of the Catholic Church’ includes (without limitation):

- (a) any person who acts as a representative of the Catholic Church;

- (b) any officer, staff member, lay assistant or volunteer of the Catholic Church; and
- (c) and a member of the clergy or any religious order of the Catholic Church.

- 2.4 These amended Letters Patent provided for a reporting date of 30 September 2013. The date was subsequently extended to 31 May 2014.¹
- 2.5 Appendix C sets out the Letters Patent dated 21 November 2012, 25 January 2013, 28 August 2013 and 12 February 2014, together with the amalgamated terms of reference.

The first term of reference

- 2.6 The first term of reference² requires the Commission to inquire into and report on ‘the circumstances in which Detective Chief Inspector Peter Fox was asked to cease investigating relevant matters and whether it was appropriate to do so’.
- 2.7 Among the matters raised for investigation by the first term of reference are the following:
- Was Fox in fact asked (or instructed) to cease investigating relevant matters? If so, by whom and when?
 - What were the ‘circumstances’ in which Fox was asked (or instructed) to cease investigating relevant matters?
 - Was it ‘appropriate’ that Fox be asked (or instructed) to cease investigating relevant matters?
- 2.8 The ‘circumstances’ to be considered include matters such as Fox’s background and experience in investigating matters involving the Catholic Church and clergy abuse of children; the existence of any police investigation of relevant matters that had already begun (and in which Fox was not involved), the location at which the alleged concealment offences occurred; and Fox’s rank (detective chief inspector), role (crime manager) and geographical location (Port Stephens). The ‘circumstances’ also include consideration of Fox’s contentions, as maintained in hearings before the Commission, that Strike Force Lantle was a ‘sham’ and had been ‘set up to fail’.
- 2.9 An assessment of the appropriateness of Fox having been asked (or instructed) to cease investigating relevant matters requires, at least in part, an assessment of the reasons that prompted senior police to issue such an instruction or request.
- 2.10 The question of appropriateness requires assessment principally of matters relied on or known by senior police. It also invites, however, consideration of factual circumstances that became known to the Commission during the public hearings, even if they were not previously known or relied on by senior police, but that would have been relevant to the issuing of the instruction or request.³
- 2.11 A question also arises as to whether, in determining the issue of appropriateness, the Commission might have regard to matters relating to Fox that occurred after the instruction or request was made. As detailed in Chapter 10, this arises in the context of two particular matters occurring after the initial instruction to cease investigating relevant matters in December 2010. The first was Fox’s inappropriate disclosure of police information to Ms Joanne McCarthy, a senior journalist. The second was Fox’s conduct in 2011 in lying to a police complaints investigator about not having communicated with the media – in particular, Ms McCarthy. The

¹ See Letters Patent issued on 28 August 2013 and 12 February 2014, Appendix C.

² See Appendix B for the amalgamated terms of reference.

³ See, by analogy, *Shepherd v Felt and Textiles of Australia Ltd* (1931) 45 CLR 359.

Commission determined that those matters, which were such as to cast doubt on Fox's integrity as a police officer, could properly be taken into account as relevant to his suitability for inclusion in the Church concealment investigation. However, the Commission's findings in relation to the first term of reference are not dependent on those two matters.

The second term of reference

2.12 The second term of reference requires inquiry into the following:

whether, and the extent to which, officials of the Catholic Church facilitated, assisted, or co-operated with, Police investigations of relevant matters, including whether any investigation has been hindered or obstructed by, amongst other things, the failure to report alleged criminal offences, the discouraging of witnesses to come forward, the alerting of alleged offenders to possible police actions, or the destruction of evidence.

'Police investigations of relevant matters'

2.13 The concept of 'police investigations' is a central element of the second term of reference. As a starting point, it was necessary for the Commission to identify whether police investigations had in fact been carried out in relation to 'relevant matters' – being any matter relating directly or indirectly to alleged child sexual abuse involving McAlinden or Fletcher – and the nature and extent of those investigations.

2.14 For the purposes of term of reference 2, four relevant police investigations were identified:

- the Watters investigation of McAlinden, from 1999 to 2005
- the Flipo investigation of McAlinden, from 2001 until 2003
- the Fox investigation of Fletcher, from 2002 to 2004
- the Strike Force Lantle investigation of alleged concealment by certain officials of the Catholic Church of sexual abuse offences committed by McAlinden and Fletcher, from 2010.

2.15 Having identified the existence of relevant police investigations, it was necessary for the Commission to inquire into the nature and extent of each investigation, including:

- When was the investigation carried out?
- What was the subject of the investigation?
- Which police officers were involved?
- What steps were taken during the investigation?
- Which church officials, if any, were (to the knowledge of police) aware of such police investigation?
- Which church officials, if any, were spoken to by the police?
- What documentation or other information, if any, was sought from or provided by church officials as part of such police investigation?
- Did church officials, in their contact with investigators carrying out the relevant police investigation, facilitate, assist or cooperate with or otherwise hinder or obstruct that investigation?

The extent of facilitation, assistance or cooperation

- 2.16 The second term of reference requires consideration of ‘... the extent to which ... officials of the Catholic Church facilitated, assisted, or co-operated with Police investigations’ and extends to negative aspects such as whether church officials ‘hindered’ or ‘obstructed’ police investigations, including by failing to report alleged offences, discouraging witnesses from coming forward, alerting alleged offenders to possible police actions, or destroying evidence. Further, any limitations of the relevant police investigation might affect the capacity of church officials to facilitate, assist or cooperate with that investigation.
- 2.17 As noted, the second term of reference also focuses attention on the extent to which church officials ‘facilitated’ police investigations of relevant matters. In its ordinary sense, the term ‘facilitate’ means to bring about or make more easily achieved.
- 2.18 In *Milne v R* [2014] HCA 4 the High Court considered a provision of the Commonwealth Criminal Code that referred to property that was used to ‘facilitate’ the commission of an indictable offence. The Court said at [33], ‘The relevant ordinary meaning of “facilitate” in this case is “[t]o render easier the performance of (an action), the attainment of (a result); to afford facilities for, promote, help forward (an action or process)”.’⁴
- 2.19 The conduct of church officials in not bringing to the attention of police information relating to suspected or alleged sexual abuse of children by McAlinden or Fletcher is properly a matter for inquiry by the Commission even if, at the time of the omission by the official in question, no police investigation was under way. Had it been brought to the attention of police, such information would have facilitated – that is to say, brought about, promoted or made more easily achieved – a police investigation of relevant matters.

The interaction between the two terms of reference

Evidentiary separation

- 2.20 As noted in Chapter 3, the Commission held discrete public hearings for each term of reference. Evidence adduced and documents tendered in the public hearings relating to a term of reference were received for the purposes of that term of reference only. When the same document related to both terms of reference, it was tendered separately in the public hearings for each term of reference.

The Strike Force Lantle brief of evidence

- 2.21 The Special Commission of Inquiry was announced against the backdrop of an existing police investigation, Strike Force Lantle. As part of the Lantle investigation, the New South Wales Police Force prepared a brief of evidence that was submitted to the Office of the Director of Public Prosecutions in October 2012 for the purpose of receiving advice on the sufficiency of evidence to prosecute specific individuals. During the course of the Commission’s public hearings the Lantle brief of evidence was received into evidence as a confidential exhibit in relation to the first term of reference for the limited purpose of identifying the documentation to which the Commission’s expert, Mr Ian Lloyd QC, had regard when preparing his report on the adequacy of the Lantle investigation as evidenced by the brief.

⁴ Their Honours cited the *Oxford English Dictionary* (2nd ed, 1989, vol. 5 at 649). The *Macquarie Dictionary* defines ‘facilitate’ as ‘to make easier or less difficult; help forward’. Similarly, the *Australian Oxford Dictionary* defines it as ‘to make easy or less difficult or more easily achieved’.

- 2.22 In addition, the Commission reviewed relevant records of interview from the Lantle brief of evidence for the limited purpose of considering whether there were any material discrepancies on matters of interest to the Commission in connection with the second term of reference between certain answers given in those records of interview and the evidence given before the Commission. Following this review, one record of interview was tendered as a confidential exhibit in the second term of reference and the relevant church official was subject to questioning in this regard.
- 2.23 It should also be noted that, through its own compulsory processes, the Commission obtained from various sources beyond the New South Wales Police Force a large quantity of documentation, much of which was tendered in the public hearings. As it transpired, this included a small number of documents (not being statements taken by police) that were also in the Strike Force Lantle brief of evidence.

3 The conduct of the Inquiry

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- 3.1 On 9 November 2012 the New South Wales Premier announced the establishment of a special commission of inquiry in response to allegations made by Detective Chief Inspector Peter Fox in an interview on ABC Television’s *Lateline* program on 8 November 2012.
- 3.2 This chapter describes how the Commission carried out its work, consistent with the terms of reference.

The Commission's personnel

- 3.3 Ms Julia Lonergan SC, Mr David Kell and Mr Warwick Hunt were appointed counsel assisting the Commission. Mr Tim Game SC was engaged as a consultant to the Commission. The New South Wales Crown Solicitor, Mr Ian Knight, was retained as solicitor assisting the Commission. Ms Emma Sullivan, special counsel, Ms Jessica Wardle, senior solicitor, and Ms Kate Vale, solicitor, constituted the primary legal team; they were supported by Ms Ingrid Keyzer, Ms Gizelle van Zyl, Ms Elizabeth Haas, Mr James Coleman and Mr Simon Ellis. Ms Maria Lagoudakis, Ms Eden Cortes and Ms Beatrice Pitpaiaic provided administrative support.
- 3.4 Additionally, the Commission benefited from assistance provided by Dr Rodger Austin, a canon lawyer, and Mr Ian Lloyd QC, a former Senior Crown Prosecutor. Both experts provided written reports on specified topics and gave oral evidence during the Commission's public hearings (see Appendixes D and E).

Advertising the Inquiry

- 3.5 On 1 and 5 December 2012 the Commission placed an advertisement in major Australian newspapers showing the Inquiry's terms of reference and calling for written submissions. Dates for the initial sitting of the Inquiry and for public hearings were also given. See Appendix F.
- 3.6 Following the issuing of the amended Letters Patent expanding the terms of reference, on 2 February 2013 the Commission placed further advertisements, setting out the amended terms of reference and announcing the public opening of the Inquiry on 13 February 2013 in Sydney. The advertisement also noted that the public hearings would be held in Newcastle, the dates to be notified on the Commission's website.
- 3.7 Established on 25 January 2013 the Commission's website¹ was hosted by the New South Wales Department of Attorney General and Justice.² Through it, the Commission was able to publish important information about the Inquiry, including the terms of reference, details relating to the public hearings (such as transcripts, exhibits, witness and issues lists, and practice directions) and contact details for providing submissions to the Commission and for access to victim support services.

Obtaining information

Documentary records

- 3.8 From the announcement of the Inquiry until the conclusion of evidence taking in April 2014, the Commission reviewed over 100 000 pages of material it had received for the purposes of the Inquiry. Much of that documentation was obtained through use of the Commission's compulsory powers conferred by the *Special Commissions of Inquiry Act 1983* and the Letters Patent.
- 3.9 Some documentation was voluntarily provided by bodies such as the Catholic Diocese of Maitland–Newcastle. Typically, when documents were voluntarily provided the Commission took further steps, including the issuing of summonses, to ensure the completeness of the production.

¹ See http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/pages/sisa_index.

² Now known as Department of Police and Justice.

Diocesan archives and related material

- 3.10 During a number of days in January 2013 Commission personnel reviewed the archives of the Catholic Diocese of Maitland–Newcastle, held at 841 Hunter Street, Newcastle (see Figure 3.1). This included inspecting files dating back to the 1950s. Commission personnel also reviewed documents held in other parts of the Diocesan premises, among them a large proportion of the material held in the Maitland Clergy Central Fund building.
- 3.11 This review yielded a number of documents of significant interest to the Commission and provided some important investigative leads.
- 3.12 Commission personnel also inspected files held at the offices of Zimmerman Services, the Diocese’s child protection unit, and material held in the ‘secret archives’ in the office of Bishop William Wright, the current bishop of the Diocese.

Submissions

Initial written submissions

- 3.13 Apart from submissions from people who were authorised to appear at the public hearings (as noted below), the Commission received a range of written submissions from people seeking to provide information relating to child sexual abuse. Many of the submissions, including from victims, were provided in circumstances of confidentiality, and for this reason the Commission did not publish a list of the submissions received.



Figure 3.1 A section of the archives of the Catholic Diocese of Maitland–Newcastle³

³ Photo courtesy of Steve Christo, Steve Christo Photography.

- 3.14 Some of the submissions fell outside the Commission’s terms of reference and, on receipt of a signed consent form from the person making the submission, were referred to the Royal Commission into Institutional Responses to Child Sexual Abuse pursuant to pre-established information-sharing arrangements (see paras 3.75 to 3.76).
- 3.15 Although a deadline of 1 March 2013 was set for receipt of submissions, the Commission received submissions after that date when a satisfactory explanation for the delay was given.
- 3.16 The submissions provided background information for the early stages of the Commission’s investigations. None of the submissions was received as evidence.

Submissions provided after the public hearings

- 3.17 After the conclusion of the Commission’s primary public hearings in August 2013 individuals and organisations authorised to appear before the Commission were permitted to provide written and/or oral submissions in September 2013, in accordance with the procedure outlined in Amended Practice Note 3, ‘Submissions to the Inquiry and notices of potential adverse findings’ (as set out in Appendix G).
- 3.18 Individuals and organisations authorised to appear before the Commission who from February 2014 received notices of potential adverse findings also had the opportunity to provide written submissions in response to such notices.
- 3.19 The Commission was assisted by the provision of these submissions and had close regard to them for the purposes of this report.

Summonses to produce documents

- 3.20 Commission personnel reviewed a very large quantity of documents produced in response to summonses issued before and during the public hearings. In some instances, this included multiple summonses served over time on specific institutions, requiring further documentation as the investigation progressed. In total, some 130 summonses were issued to 55 individuals and organisations. Appendix H lists the individuals and organisations summonsed to produce documents to the Commission.

Victims’ participation and Diocesan knowledge

- 3.21 The Diocese of Maitland–Newcastle has acknowledged – through Bishop Wright, and his immediate predecessor, Bishop Michael Malone – that both Father Denis McAlinden and Father James Fletcher were predators who sexually abused children over extended periods while serving in or incardinated into the Diocese.
- 3.22 The Commission’s second term of reference focuses on whether, and the extent to which, officials of the Catholic Church (principally being officials formerly or currently attached to Maitland–Newcastle Diocese) facilitated, assisted or cooperated with police investigations of ‘relevant matters’. The phrase ‘relevant matters’ was defined to mean any matter relating directly or indirectly to alleged child sexual abuse involving McAlinden or Fletcher, including the responses to such allegations by officials of the Catholic Church (and whether or not the matter involved or is alleged to have involved criminal conduct). Thus, the Commission’s primary focus was not on child sexual abuse by clergy per se; rather, it was the facilitation, assistance or cooperation (or otherwise) by church officials in relation to police investigations of relevant matters.
- 3.23 In view of this, it was important for the Commission to try to identify the knowledge held by the Diocese, through Diocesan officials and records, at any particular time in connection with the conduct of or risk posed by McAlinden and Fletcher. In particular, it was necessary to determine

what might have been known by specific church officials who were or could have been involved with police investigations at relevant times.

- 3.24 In addition to documentary sources, victims and their families who played a role in the events in question offered an important means of obtaining information about the knowledge held by church officials at various times. In relation to victims and their families, the Commission investigated a number of things:
- In terms of the alleged abuse, what happened and when?
 - To whom was the conduct reported within the Church?
 - What, if anything, did the church official tell the person would be done as a result of receiving the report?
 - Whether consideration was given to reporting the matter to police, whether it was in fact reported and, if so, when?
- 3.25 The Commission therefore sought to engage with victims⁴ – often appropriately referred to as ‘survivors’ – and their families, including through the Inquiry Information Centre (see below), through working with other witnesses who had made contact, and through Zimmerman Services (in particular, Ms Maureen O’Hearn, the Diocese’s Coordinator of Healing and Support).
- 3.26 The Commission made it clear to victims that they would not be compelled to participate in the Inquiry against their will. This approach was consistent with an appreciation by the Commission of the long-term impact of child sexual abuse on victims.
- 3.27 At the Commission’s public hearings pseudonyms were used to protect the identities of victims and their families. The Commission was also alert to the need to avoid publishing any personal information that might tend to identify a victim. In addition, where necessary, non-publication orders were made under the *Special Commissions of Inquiry Act 1983 (NSW)* to preserve the confidentiality of particular information relating to victims.
- 3.28 The Commission was also able to liaise with Victims Services (a division of the Department of Attorney General and Justice) to provide support for victims and their families. Commission personnel referred a number of victims to Victims Services for this purpose.

The Inquiry Information Centre

- 3.29 On 27 February 2013 the Commission announced the establishment of an Inquiry Information Centre at the Justice Access Centre in Wallsend, a suburb of Newcastle. The Commission issued a media release that, among other things, invited people with relevant information to come forward and be heard. Appendix I sets out the media release.
- 3.30 The Commission’s purpose in establishing the Information Centre was to offer members of the general public, victims and their families an opportunity to speak confidentially to Commission personnel, to provide information pertinent to the Inquiry, and to gain a better understanding of the Commission’s processes and its interaction with the national Royal Commission.
- 3.31 The Information Centre was open and attended by Commission personnel on several days from March to June 2013. Details of the dates and times of opening were posted on the Commission’s

⁴ The Commission dealt with victims who related to the terms of reference. Those who did not were referred to the Royal Commission.

website and publicised in local media. Victims Services supported the Inquiry Information Centre through the provision of counselling.

- 3.32 Involvement with the local Hunter–Manning community through the Information Centre sessions proved a valuable source of information for the Commission and resulted in a number of investigative leads before the Commission began its public hearings.
- 3.33 In some instances people wanted to meet with Commission personnel before deciding whether to participate in the Inquiry and divulge sensitive personal information. Others sought clarification about the connection between the Commission and the Royal Commission. Through the Information Centre, Commission personnel were also able to gain greater insight into the impact of child sexual assault on victims and their families and the strength and resilience often displayed by such people. Some of those who attended the Information Centre were referred to the Royal Commission (or other agencies, such as the New South Wales Police Force, as appropriate).
- 3.34 The Commission received positive feedback about the operation of the Information Centre. Ms Maureen O’Hearn reported that victims and family members had found their involvement with Commission personnel, through the Information Centre, to be a ‘positive experience’ that had been crucial in allowing them to tell their story in the lead-up to the private and public hearings (see Appendix J).

The private hearings

- 3.35 In its investigative stage the Commission held more than 100 private hearings, involving some 95 witnesses in total. The hearings were held for various purposes. In some instances the aim was to obtain and explore investigative leads before considering what evidence should ultimately be led at the public hearings, thus filtering out evidence not otherwise of sufficient relevance. In this way the private hearings offered a useful mechanism for ensuring efficiency in the conduct of the public hearings.
- 3.36 In other cases private hearings were held with victims or their family members who, because of the sensitivity of the subject matter, were uncertain about giving evidence publicly or were unwilling to do so. In total, the Commission held 51 private hearings specifically with victims or their family members.
- 3.37 Most of the private hearings took place before the public hearings began, but a number were also held during the public hearings (generally after normal sitting hours) and after their conclusion. Although information obtained during private hearings informed the Commission generally about matters to be explored and provided background information, in most cases it did not form part of the evidence to which the Commission ultimately had regard for the purposes of this report.⁵

The public hearings

- 3.38 Each of the terms of reference raises matters of public interest. In relation to the first term of reference, as discussed in Chapter 1, Detective Chief Inspector Fox made allegations of impropriety on the part of the New South Wales Police Force, including claims to the effect that there existed within the senior police hierarchy in Northern Region a ‘Catholic mafia’ whose members were determined that child sexual abuse allegations involving Catholic clergy should not be investigated or properly investigated. The second term of reference raised matters

⁵ In certain cases, the private hearing transcript was tendered into evidence.

concerning, among other things, responses by church officials to allegations of child sexual abuse on the part of McAlinden and/or Fletcher, including allegations, raised by Fox, that church officials had concealed crimes of child sexual abuse, silenced victims, hindered police investigations, alerted offenders to police investigations, and destroyed evidence.

- 3.39 Given the nature of the matters at issue, the Commission determined that public hearings should be held so as to provide transparency through the open testing of the allegations that were the subject of the terms of reference.
- 3.40 The public hearings were the means by which the Commission received the evidence on which the findings and conclusions presented in this report are based.
- 3.41 Because the terms of reference primarily centre on, first, the Newcastle Local Area Command of the New South Wales Police Force and, second, the Catholic Diocese of Maitland–Newcastle, the Commission also decided it was appropriate to hold the principal public hearings in Newcastle. In adopting this approach, the Commission was mindful that many of the individuals most directly affected by the Inquiry’s processes lived in the Hunter–Manning region.
- 3.42 The Commission also decided it was appropriate to hold separate hearings for the Inquiry’s two, essentially distinct, terms of reference. Further, evidence adduced and documents tendered in the public hearings for the first term of reference were received for the purposes of that term of reference only; similarly, evidence adduced and documents tendered in the public hearings for the second term of reference were received for the purposes of that term of reference only. When the same document related to both terms of reference, it was tendered separately in the public hearings for each term of reference.
- 3.43 Directions hearings were held in advance of the public hearings for each term of reference.
- 3.44 On 7 June 2013, before the beginning of the public hearings for the second term of reference, the Commission issued to authorised parties a non-exhaustive ‘Indicative list of issues re TOR 2 public hearings’ detailing the general parameters and focus of those hearings. Appendix K sets out that list.
- 3.45 There were eight weeks of public hearings in Newcastle, involving 44 witnesses, from 6 to 12 May and 24 to 28 June 2013 for the first term of reference and from 1 July to 1 August 2013 for the second term of reference. Further public hearings were held on 23 August 2013, 9 September 2013 and 11 December 2013.
- 3.46 With one exception, pseudonyms were used throughout the hearings to protect the confidentiality of victims and their families. The exception was Mr Peter Gogarty, a victim of Fletcher, who wanted his name to be used.
- 3.47 Each hearing day two court reporters took down a transcript of proceedings; this was electronically distributed to authorised parties on the same day. Additionally, the transcript was generally published on the Commission’s website the following morning, with redactions as necessary to protect victims’ identity or personal information.
- 3.48 The public hearings were well attended by members of the community and various media outlets from print and television; on some days only standing room was available.



Figure 3.2 Day 1 of the public hearings relating to term of reference 1, 16 May 2013, Newcastle Supreme Court⁶

⁶ Photo courtesy of Andrew Manger, AJM Photo.



Figure 3.3 The Supreme Court building located in Newcastle⁷

An apology by Bishop Wright

3.49 A notable aspect of the public hearings was the delivery on 1 July 2013 of an unreserved apology by Bishop William Wright for the offending conduct of McAlinden and Fletcher and for past failures by officials of the Diocese. Appendix L sets out Bishop Wright’s apology, as recorded in the Inquiry transcript.

Practice and procedure relating to the public hearings

3.50 Before the public hearings began the Commission issued two practice notes in relation to its procedures:

- ‘Practice Note 1 – authorisation to appear at public hearings’, which dealt with the process for authorisation to appear at the public hearings and related matters
- ‘Practice Note 2 – conduct of public hearings’, which dealt with procedural matters relating to the public hearings.

3.51 In accordance with Practice Note 1, the Commission received a number of applications from individuals and organisations seeking authorisation to appear at the public hearings. Consistent with the requirements of procedural fairness, those individuals and organisations whose interests were likely to be affected by the Commission’s findings were granted authorisation to appear; this allowed them to participate in the public hearings by challenging evidence through cross-examination or by making submissions as to witnesses to be called or evidence to be tendered. These authorised parties were invariably given leave to be represented by counsel or solicitors.

3.52 Practice Note 2 was designed to facilitate the efficient control of proceedings while also ensuring procedural fairness.

⁷ Photo courtesy of Steve Christo, Steve Christo Photography

- 3.53 Appendix M sets out the individuals and organisations authorised to appear before the Commission. Twenty four parties received such authorisation – six for the first term of reference and 18 for the second term of reference.
- 3.54 On 29 August 2013 the Commission issued a further practice note, ‘Practice Note 3 – submissions to the Inquiry and notices of potential adverse findings’. Practice Note 3 was amended on 5 November 2013. Appendix G sets out the three practice notes.

Witnesses

- 3.55 Counsel assisting determined which witnesses were to be called to give evidence at the public hearings and examined those witnesses. For the public hearings witness list (including persons who gave evidence in camera), see Appendix N.
- 3.56 Statements and documents used during the public hearings were served, wherever practicable, before the hearing began, in the form of proposed tender bundles, which contained various redactions throughout, either for relevance or on the basis of confidentiality.
- 3.57 In some instances statutory declarations were tendered into evidence without there being a need to call the relevant witness – for example, if authorised parties said they did not require a particular witness for cross-examination.

Non-publication orders

- 3.58 Although the Commission’s approach to the public hearings was guided primarily by the principle of transparency, in some instances it was necessary to conduct closed-court (that is, in camera) hearings or to impose limitations on the publication of particular evidence. Non-publication orders were generally made so as to protect victim confidentiality or confidential medical information relating to witnesses or so as not to prejudice current or future criminal proceedings.

In camera public hearings

- 3.59 The Commission was announced against the background of Strike Force Lantle, an existing police investigation into alleged concealment by officials of the Catholic Church.
- 3.60 Indeed, by October 2012 investigators attached to Strike Force Lantle had submitted a brief of evidence to the Office of the Director of Public Prosecutions for consideration of whether charges should be brought against any person or persons. The Strike Force Lantle investigation continues.
- 3.61 In these circumstances it was necessary for the Commission to take the evidence of some witnesses on particular topics in camera (without the media or the general public being present) and subject to non-publication orders in order to ensure that any potential future criminal proceedings were not compromised, including by influencing any evidence witnesses might give at such proceedings.
- 3.62 The Commission held in camera hearings over about 130 hours in total, involving some 32 witnesses. Many of the witnesses who gave evidence on particular topics at in camera hearings also gave evidence at the public hearings.
- 3.63 After the public hearings the Commission reviewed the transcripts of evidence received in camera and, where and to the extent possible, lifted the non-publication orders over some transcripts after consultation with relevant parties or witnesses. Such transcripts were then made available to the media and the general public through the Commission’s website. This was consistent with the Commission’s commitment to transparency and public accountability.

Media liaison

- 3.64 From the time of its announcement the Special Commission of Inquiry attracted considerable media interest.
- 3.65 Through its media liaison officer, Mr Scott Crebbin, the Commission developed protocols for dealing with media organisations to ensure that information about the Commission and the Inquiry's processes – in particular, the public hearings – was provided to all media organisations that had registered their interest.
- 3.66 A pooled camera was operated to supply to television networks footage of the formal opening of the public hearings on 13 February 2013 and the specific openings of the public hearings for the first term of reference on 5 May 2013 and the second term of reference on 1 July 2013.⁸ Mr Crebbin also facilitated prompt media access to public exhibits during the public hearings.

Publication of the Commission's report

- 3.67 Section 10(3) of the *Special Commissions of Inquiry Act* allows for a recommendation to be made in relation to publication of the entirety or any part of a report.
- 3.68 The Commission's report consists of four volumes, the first three being 'public volumes' and the fourth being a confidential volume. The Commissioner recommends that the first three volumes be published. The Commissioner takes this view given the significant, legitimate public interest in the work undertaken by the Commission and the subject matter of the public hearings in connection with both the first and second terms of reference which relate to serious allegations of cover-up and concealing concerning two important institutions: the NSW Police Force and the Catholic Church.
- 3.69 Volume 4 of the report contains material that has been dealt with on a confidential basis (including evidence taken in camera). Publication of such matters at this time could prejudice potential future criminal proceedings by pre-trial publicity and potentially influencing the evidence of witnesses. The Commissioner recommends that publication of volume 4 be deferred until such time as there has been a determination of any relevant criminal proceedings, or a decision made that such proceedings not be commenced. The Commissioner recommends that, at such time, volume 4 of the report be published, given the legitimate public interest in the matters considered by this Special Commission of Inquiry.

Miscellaneous matters

- 3.70 It was necessary for the Commissioner to decide various applications from time to time, including non-publication orders, contested access to confidential medical records, and matters relating to claims of public interest immunity. Before the public hearings the Commission also had to consider potential contempt on the part of specific individuals and organisations.
- 3.71 During the public hearings for the first term of reference a relatively novel question arose concerning an alleged contempt of the Commission by Detective Chief Inspector Fox, who tweeted information from inside the hearing room while evidence was being given by another witness. Counsel for the New South Wales Police Force applied for the matter to be referred to the Registrar of the Supreme Court to consider bringing proceedings against Fox for contempt. In the circumstances, the Commissioner was not persuaded that the question of Fox's tweet should be referred to the Registrar of the Supreme Court. The Commissioner's decision, dated

⁸ For the formal opening of the Commission of Inquiry on 13 February 2013, see Appendix P.

11 June 2013, was published on the Commission's website. Appendix O sets out a copy of that decision.

The national Royal Commission

- 3.72 On 12 November 2012 the then Prime Minister, the Hon. Julia Gillard MP, announced a national Royal Commission into Institutional Responses to Child Sexual Abuse. By Letters Patent dated 11 January 2013 the then Governor-General, Her Excellency the Honourable Quentin Bryce AC CVO, named a six-member commission to investigate such responses and related matters.
- 3.73 All Australian states issued Letters Patent (or their equivalent, Instruments of Appointment) to appoint the six commissioners to conduct such an inquiry under their respective laws.

The Royal Commission's terms of reference

- 3.74 The Royal Commission's terms of reference require and authorise the commissioners to inquire into, among other things, any private or non-government organisation (including a religious organisation such as a diocese) that is or was involved with children and consider the institutional responses to allegations and incidents of child sexual abuse and related matters.

Information sharing

- 3.75 This Special Commission of Inquiry's amended Letters Patent dated 25 January 2013 provide for an information-sharing regime between the Commission and the Royal Commission, as follows:

AND, We further authorise you to establish such lawful arrangements as you consider appropriate in relation to the National Royal Commission, including for the referral or sharing of evidence and information, including of matters that may come to your attention which may fall outside the scope of the above terms of reference but which may be of relevance to the National Royal Commission or matters which, whilst falling within the scope of the above terms of reference, you consider would be more appropriately referred to the National Royal Commission.

- 3.76 Information-sharing arrangements were accordingly established with the Royal Commission, whereby information this Commission received and considered to be outside its terms of reference but that potentially fell within the Royal Commission's terms of reference, was referred to the Royal Commission for its consideration.

The referral process

- 3.77 Under the information-sharing regime the referral process worked as follows. Victims and their family members contacted this Special Commission to provide information. If the Commission considered the information related to matters outside the Commission's terms of reference but it potentially fell within the Royal Commission's terms of reference, the Commission wrote to the individual informing them of this and that the information would be referred to the Royal Commission, if the person consented to this course.
- 3.78 Individuals who said they wanted the matters they had raised to be referred to the Royal Commission were asked to sign a consent form. Once the signed consent form was received, the Commission referred the information to the Royal Commission. These individuals were then notified that this had been done.
- 3.79 This Commission referred to the Royal Commission information from some 25 individuals for further assessment and investigation.
- 3.80 Commission personnel also advised members of the public who contacted the Commission about how to approach the Royal Commission.

Information provided by Detective Chief Inspector Fox

- 3.81 Detective Chief Inspector Fox provided to the Commission some information in documentary form that fell outside the Commission's terms of reference but was potentially within the Royal Commission's terms of reference. On 1 May 2013, with Fox's consent, the Commission referred that information to the Royal Commission.
- 3.82 Additionally, on 28 May 2013 senior counsel assisting the Commissioner, Ms Julia Lonergan SC, conducted a private interview with Fox for the purpose of obtaining an overview of further matters Fox had raised in relation to child sexual assault in the Hunter region that potentially fell within the terms of reference of the Royal Commission. On 31 May 2013 the transcript of that interview was provided to the Royal Commission.

4 The Holy See and the production of documents

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- 4.1 As part of its investigations the Commission sought from the Holy See (commonly referred to as ‘the Vatican’) and from its diplomatic representative in Australia, the Apostolic Nuncio, the production of documents relating to Father Denis McAlinden or Father James Fletcher, or both.

The Holy See

- 4.2 The Holy See is analogous to a sovereign state. It has what is effectively a centralised bureaucracy, the Roman Curia, consisting of various departments known as dicasteries. The Holy See enters into diplomatic relations with sovereign states such as Australia.

The Congregation for the Doctrine of the Faith

- 4.3 The department of the Roman Curia that might be expected to have any documents relating to McAlinden and Fletcher¹ is known as the Congregation for the Doctrine of the Faith (CDF); it is located at the Vatican. Dr Rodger Austin, the Commission’s canon law expert, described the role of the Congregation for the Doctrine of the Faith as being to promote and safeguard the Catholic doctrine on faith and morals.² He added:

The CDF fulfils this task by ensuring the Catholic faith is taught in its integrity, and that erroneous teachings or those which seem to be contrary or dangerous to the Catholic faith are investigated and addressed.

The CDF also examines offences against faith and more serious ones in behaviour or the celebration of the sacraments which have been reported to it and, if need be, proceeds to the declaration or imposition of canonical sanctions according to the norm of both common or proper law ...

Among the more serious canonical offences or crimes against any morals reserved to the CDF are: the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years ...

¹ Austin, Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 13 February 2014, ex 319, pp 3 and 4.

² *ibid*, p 3.

The competency of the CDF is exclusive in respect of these crimes.

Whenever a Bishop receives a report of one of these crimes [that is, including reported child sexual abuse by a priest] which has at least the semblance of truth, once the preliminary investigation has been completed ... he is to send the documentation to the CDF which, unless it deals with the case, will direct the Bishop how to proceed further.³

- 4.4 As Dr Austin noted, the CDF's competency in relation to child sexual abuse by clerics is exclusive, so no other dicastery of the Roman Curia can deal with such a matter. Dr Austin further said:

It is my experience that if documentation about a particular matter is sent to a Congregation which is not competent, the matter will be forwarded to the competent dicastery and the person who sent the documentation informed accordingly.

I would not expect any dicastery other than the CDF to have documentation relating to complaints of child sexual abuse by the two clerics, James Fletcher and Denis McAlinden.⁴

The Apostolic Nuncio

- 4.5 An apostolic nunciature is a top-level diplomatic mission (equivalent to an embassy) representing the Holy See in a foreign state. An apostolic nuncio is head of an apostolic nunciature and is a bishop or archbishop appointed by the Pope. Archbishop Paul Gallagher has been the Apostolic Nuncio in Australia since December 2012.

- 4.6 Dr Austin said the following of an apostolic nuncio's role:

The Apostolic Nuncio has a primary function of learning to know the circumstances pertaining to the life and mission of the Church within his territory and of keeping the Roman Pontiff informed accordingly ...

The Apostolic Nuncio is responsible for communicating documents, directives and initiatives from the Apostolic See to the Bishops. At the same time communications between the diocesan Bishops and the Apostolic See are sent via the Apostolic Nuncio.

For example, documentation that is to be sent by a diocesan Bishop in Australia to the CDF in respect of a crime of child sexual abuse committed, or allegedly committed, by a cleric is sent to the CDF through the Apostolic Nunciature in Canberra.⁵

Correspondence with the CDF and the Apostolic Nuncio

- 4.7 The Commission corresponded with both the CDF and the Apostolic Nuncio in Australia, requesting the production of relevant documents; the correspondence is reproduced in Appendix Q.⁶
- 4.8 It was thought that the Apostolic Nunciature in Australia possessed material of potential relevance. This was because the Commission's investigations revealed that in May 1995 Bishop Leo Clarke had written to the then Apostolic Nuncio, Archbishop Franco Brambilla, asking that he contact his counterpart in the Philippines in order to assist in making contact with the Bishop of San Pablo Diocese, Bishop Bantigue, whom Clarke was having difficulty contacting, with a view to conveying the message that McAlinden's faculties were to be removed and that he was to be asked to return to England.⁷ Similarly, Bishop Michael Malone sought Brambilla's

³ *ibid.*

⁴ *ibid.*, p 4.

⁵ *ibid.*

⁶ That correspondence was tendered in evidence: relevant correspondence between the NSW Crown Solicitor and the Apostolic Nunciature Australia, Manuka, ACT, dated 30 August – 14 November 2013, ex 254; letter from Gallagher to the NSW Crown Solicitor attaching documents relating to Fletcher and McAlinden, dated 6 December 2013, ex 254A.

⁷ Letter from Clarke to Brambilla, dated 23 May 1995.

assistance in June 1995 in order to communicate with the Bishop of San Pablo Diocese in relation to McAlinden.⁸ These events are discussed in Chapter 12.

4.9 By letter dated 29 August 2013 to Archbishop Gerhard Müller, Prefect of the CDF, the Commission asked for a copy of relevant documentation held by the CDF – in particular, the following:

... copies of any documents in the CDF's archives (or any other repository which may hold such materials and to which the CDF has access), which refer or relate to complaints relating to either Father Fletcher or Father McAlinden in relation to:

- (1) the Sixth Commandment of the Decalogue; and/or
- (2) any allegations, complaints, suspicions or reports regarding child sexual abuse.⁹

4.10 By letter dated 30 August 2013 the same request was made to Gallagher, the Apostolic Nuncio in Australia.¹⁰

4.11 By letter dated 2 September 2013 Gallagher replied that he would submit the request to his superiors and write again on receipt of a reply from Rome.¹¹

4.12 By letters dated 22 October 2013 the Commission wrote separately to both Gallagher and Müller to follow up the request for documentation.¹²

4.13 By letter dated 13 November 2013 Gallagher responded to the Commission:

This Diplomatic Mission appreciates the desire of the Commission to understand more deeply the nature of the questions under examination. The Holy See encourages the cooperation of ecclesiastical entities, and their representatives in these efforts.

It is necessary however to recall that the Apostolic Nunciature to the Commonwealth of Australia is the high diplomatic representative of the Holy See to the Commonwealth. While the desire to obtain the information sought is understandable, this mission – like the diplomatic missions of the Commonwealth to sister sovereigns – is afforded the protections provided by international agreements, including the Vienna Convention of Diplomatic Relations. This is particularly the case in light of Article 24 of said convention, which provides that “[t]he archives and documents of the mission shall be inviolable at any time and wherever they may be.” Article 24 thus states a high principle of international relations without which diplomatic missions would no longer be able freely to carry out their domestic and international responsibilities.

This high principle notwithstanding, the Apostolic Nunciature will nevertheless be pleased to consider specific requests for information regarding the painful events in question, bearing in mind the expectation that it would not be appropriate to seek internal communications.¹³

4.14 By letter dated 14 November 2013 the Commission reaffirmed its request for documentation, as expressed in the letter of 29 August 2010. In relation to Gallagher's reference to the Vienna Convention on Diplomatic Relations, the Commission noted that its request for assistance had not sought to invoke any compulsory processes (an approach accepted as neither appropriate

⁸ Letter from Brambilla to Malone, dated 22 June 1995, ex 219, tab 252.

⁹ Relevant correspondence from the NSW Crown Solicitor to the Congregation for the Doctrine of the Faith, Rome, Italy, dated 29 August and 22 October 2013, ex 253.

¹⁰ Relevant correspondence between the NSW Crown Solicitor and the Apostolic Nunciature Australia, Manuka, ACT, dated 30 August – 14 November 2013, ex 254.

¹¹ *ibid.*

¹² Relevant correspondence between the NSW Crown Solicitor and the Apostolic Nunciature Australia, Manuka, ACT, dated 30 August – 14 November 2013, ex 254; relevant correspondence from the NSW Crown Solicitor to the Congregation for the Doctrine of the Faith, Rome, Italy, dated 29 August and 22 October 2013, ex 253.

¹³ Relevant correspondence between the NSW Crown Solicitor and the Apostolic Nunciature Australia, Manuka, ACT, dated 30 August – 14 November 2013, ex 254.

nor effective in the circumstances). Clarification was also sought as to the meaning of the reference to 'internal communications' in Gallagher's letter of 13 November 2013. The Commission's letter also asked for confirmation of whether Gallagher's correspondence was to be regarded as a response on behalf of the CDF or whether the reply related only to the Apostolic Nunciature in Australia.¹⁴

4.15 By letter dated 6 December 2013 Gallagher responded:

In response to your letter of 14 November 2013, I am forwarding copies of the documents held in the archives of this Apostolic Nunciature relating to the cases of Fathers Denis McAlinden [and] James Fletcher. As you will see, these consist in either correspondence between the Bishop of Maitland–Newcastle and the then Nuncio, or between other parties and the Apostolic Nunciature.

The "internal communications", to which I referred in my letter of November 13 last, are those between the Apostolic Nunciatures in Australia and in the Philippines. Such communications are confidential, as is the case for those of the diplomatic missions of any Country. I do however wish to inform you that the Apostolic Nuncio in Australia intervened in the manner desired by the then Bishop of Maitland–Newcastle, as may be gathered from the documentation.

With regard to the requests of the Commission directed to the Congregation for [the] Doctrine of the Faith, may I inform you that the cases of these priests were notified to said Congregation only in 2012, by which time both men had been dead for more than six years. The Congregation for [the] Doctrine of the Faith has no competence to proceed canonically in the cases of deceased clerics.¹⁵

Documentation provided by the Apostolic Nuncio

- 4.16 The relevant documents provided by the Apostolic Nuncio were already known to the Commission, having been obtained from other sources during the Commission's investigations.
- 4.17 Documents in evidence before the Commission bear out Gallagher's statement that the then Apostolic Nuncio, Brambilla, intervened in the manner requested by Clarke and subsequently Malone – namely, to convey communications to the Bishop of the San Pablo Diocese.¹⁶
- 4.18 The Commission understood Gallagher's response – apparently made also on behalf of the Congregation for the Doctrine of the Faith – to mean that the CDF had no relevant documentation because Fletcher and McAlinden had been notified to the CDF in 2012, some years after their respective deaths.
- 4.19 As noted, the Commission's canon law expert, Dr Austin, confirmed that the competency of the CDF in respect of child sexual abuse by clerics is exclusive: no other dicastery can deal with such matters.¹⁷

¹⁴ *ibid.*

¹⁵ Letter from Gallagher to the NSW Crown Solicitor attaching documents relating to Fletcher and McAlinden, dated 6 December 2013, ex 254A.

¹⁶ Letter from Brambilla to Clarke, dated 25 May 1995, ex 219, tab 245; letter from Malone to Brambilla, dated 20 June 1995, ex 219, tab 251); letter from Brambilla to Malone, dated 22 June 1995, ex 219, tab 252).

¹⁷ Austin, Dr R, 'Report prepared for the Special Commission of Inquiry', dated 13 February 2014, ex 319, p 4.

5 Legal considerations

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5.1 This chapter provides an overview of the laws and legal principles applicable to those sections of the *Special Commissions of Inquiry Act 1983* (NSW) dealing with the receipt of evidence at public hearings and, for the purposes of the Commission’s report, the basis on which findings of fact are made.

5.2 In addition to reporting on the subject matter of its inquiry generally, the Commission is required to form a view pursuant to s. 10(1) of the *Special Commissions of Inquiry Act* ‘as to whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence’.¹ This chapter also considers the legal framework relevant to that consideration, including extracting principles associated with the relevant offences of concealment – those being the common law offence of misprision of felony and the

¹ Chapter 13 provides an analysis of whether conduct of particular church officials permits a finding pursuant to s. 10(1) of the *Special Commissions of Inquiry Act*. In addition, the confidential volume of the report contains further analysis under s. 10(1) pursuant to which the Commission determined that there is sufficient evidence warranting the prosecution of a specified person for specified offences. That analysis in respect of that individual is dealt with in the confidential volume in order to protect the integrity of any relevant future criminal proceedings.

offence of concealing serious indictable offence,² pursuant to s. 316 of the *Crimes Act 1900* (NSW).

Findings of fact

Limitations in relation to evidence received at public hearings

5.3 Section 9 of the *Special Commissions of Inquiry Act* prescribes a number of limitations in relation to the Commissioner's receipt of evidence in the course of a public hearing, as follows:

- (1) As far as practicable, a Commissioner shall, in the course of a hearing in public, only receive evidence in accordance with this section.
- (2) The Commissioner shall only receive evidence that appears to relate to a matter specified in the relevant commission.
- (3) The Commissioner shall only receive as evidence, and (as far as practicable) only permit to be given in evidence, matter that, in the opinion of the Commissioner, would be likely to be admissible in evidence in civil proceedings.
- (4) Despite subsection (3), the Commissioner is required, when preparing a report in connection with the subject-matter of the commission, to disregard (in the context of dealing under section 10 with offences that may or may not have been committed) evidence that, in the opinion of the Commissioner, would not be likely to be admissible in evidence in relevant criminal proceedings.

5.4 The Commission had regard to these statutory requirements in the conduct of its public hearings and in the preparation of this report.

The standard of proof

5.5 The standard of proof applicable to the Commission's work is the civil standard, requiring that matters be proven on the balance of probabilities. Although the ordinary civil standard of proof applies, where applicable the seriousness of the findings that might be made necessitates consideration of the seminal remarks of Dixon J in *Briginshaw v Briginshaw*:

When the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality ... it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequences of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect references.³

5.6 Observations by the High Court in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* are also pertinent:

The ordinary standard of proof required of a party who bears the onus in civil litigation in this country is proof on the balance of probabilities. That remains so even where the matter to be proved involves criminal conduct or fraud. On the other hand, the strength of the

² Until 1 January 2000 section 316 included the term 'serious offence' (rather than 'serious indictable offence'). See para 5.42 below.

³ (1938) 60 CLR 336 at 361–2.

evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is necessary 'where so serious a matter as fraud is to be found'. Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.⁴

- 5.7 At common law there are only two standards of proof: the civil standard of proof on the balance of probabilities and the criminal standard of proof beyond reasonable doubt.⁵ The *Briginshaw* standard is not a third standard of proof; rather, it is concerned with the quality or sufficiency of the evidence necessary to discharge the civil standard.
- 5.8 This Special Commission of Inquiry considers the principles thus outlined to be applicable to its fact-finding processes.

No parties or 'onus of proof' in inquisitorial proceedings

- 5.9 It should be noted that, in view of the inquisitorial nature of the present inquiry, the concept of one party bearing an onus of proof has no application in the sense typically encountered in civil or criminal proceedings. Indeed, strictly speaking, there are no 'parties' as such in the Inquiry; rather, there are specified individuals who are granted authorisation to appear at public hearings of the Commission (in accordance with s. 12 of the *Special Commissions of Inquiry Act*). As Hall stated in the context of the Independent Commission Against Corruption:

Equally, there is no 'outcome' of the inquiry dependent upon what is established by whom. The Commission is required to do no more than determine whether a consideration of the whole of the material in its possession is or is not persuasive to the requisite degree to enable a finding ... to be made. Of course, that not infrequently requires the Commission to assess the credibility and reliability of witnesses notwithstanding that there is no onus on a participant to refute a particular allegation. The assessment of the credibility of what is said in answer to allegations made, of course, is a necessary part of the fact-finding process.⁶

- 5.10 Such remarks are equally apposite to the work of this Commission.

Section 10(1) of the Special Commissions of Inquiry Act

- 5.11 Pursuant to s. 10(1) of the *Special Commissions of Inquiry Act 1983*, the Commission has a duty to report to the Governor as follows:

It is the duty of a Commissioner, within such period or periods as may be specified in the relevant commission, to make a report or reports to the Governor in connection with the subject-matter of the commission, and in particular as to whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence.

The nature of the evidence to be considered

- 5.12 Section 9(4) of the *Special Commissions of Inquiry Act*, read in conjunction with s. 9(3), prescribes the category of evidence to be considered for the purposes of s. 10(1).

⁴ (1992) 110 ALR 449, per Mason CJ, Brennan, Deane and Gaudron JJ.

⁵ *Polglaze v Veterinary Practitioners Board of NSW* [2009] NSWSC 347 at [31].

⁶ Hall, Peter M, QC, *Investigating Corruption and Misconduct in Public Office: commissions of inquiry – powers and procedures*, (Lawbook Co, Sydney, 2004, p 170).

5.13 Sections 9(3) and 9(4) provide as follows:

- (3) The Commissioner shall only receive as evidence, and (as far as practicable) only permit to be given in evidence, matter that, in the opinion of the Commissioner, would be likely to be admissible in evidence in civil proceedings.
- (4) Despite subsection (3), the Commissioner is required, when preparing a report in connection with the subject-matter of the commission, to disregard (in the context of dealing under section 10 with offences that may or may not have been committed) evidence that, in the opinion of the Commissioner, would not be likely to be admissible in evidence in relevant criminal proceedings.

5.14 Section 9(4) requires the Commission to perform a predictive task by determining from the evidence it received pursuant to s. 9(3) that which would not be likely to be admissible in relevant criminal proceedings and to disregard that evidence for the purposes of s. 10(1) of the Act. This includes consideration of matters such as relevance and whether the evidence would be inadmissible in criminal proceedings because it is hearsay and not otherwise admissible by virtue of an exception to the rule against hearsay, pursuant to the *Evidence Act 1990* (NSW).

5.15 The New South Wales Court of Appeal considered the operation of s. 10(1) in *Jackson v Slattery*.⁷ The proceedings arose in the context of a special commission of inquiry into the circumstances in which the Minister for Corrective Services had granted particular individuals early release from prison.

5.16 Hutley JA stated that when s. 10(1) speaks of evidence in a criminal proceeding it does not contemplate the actual record of evidence given before the commission. Rather, what has to be considered under s. 10(1) is whether evidence similar to that given before the commission *could*, assuming all legal steps were taken to make it available, be given in a criminal trial.⁸

5.17 In the decision of *Jackson* the court gave guidance as to the interaction between the general obligation to report arising under s. 4(1) of the *Special Commissions of Inquiry Act* and the particular duty under s. 10(1). The claimants, who were witnesses before the inquiry and potentially implicated in the wrongdoing, contended that the commissioner, in reporting, could only consider evidence that was admissible in a criminal court. The court rejected that argument, Hutley JA stating (at 604):

The argument for the claimants, therefore, depends entirely upon the proposition that s 10(1) is the governing section of the Act and other provisions are ancillary to it. The functions of the Commissioner are set out in s 4, not s 10. It is s 4 which gives to the Commissioner the scope of his responsibility. What s. 10 does, in my opinion, is to deal with what counsel for the opponent described as a miscellany of matters touching reports. Section 10(1) does not set out the sole duty of the Commissioner, but every Commissioner has a duty which s 10(1) brings to his attention ... In my opinion, s 10 is wholly subsidiary to s 4 and it in no way limits the responsibilities of the Commissioner appointed under s 4. Section 10(1) gives him an extra duty ... I am of the opinion that the principal argument for the claimants is without substance.

5.18 To similar effect, Glass JA said (at 609):

The unlimited powers of the Governor so far as concerns the subject matter designated by him for inquiry and report cannot in my view be cut down by s 10(1) of the Act which refers not to the Governor's powers but to the Commissioner's duty. The duty to report upon whether a prosecution is warranted is not so expressed as to be his only duty or to exhaust the duties which the Governor under s 4(1) may authorize and require him to perform.

⁷ *Jackson v Slattery* [1984] 1 NSWLR 599: Hutley and Glass JJA delivered separate, substantive judgments. Samuels JA concurred with both Hutley and Glass JJA.

⁸ *Jackson v Slattery* [1984] 1 NSWLR 599 at 605.

5.19 One further point warrants mention. Hutley JA observed that it was fundamental to the claimants' submissions that in reporting pursuant to ss. 4 and 10 of the *Special Commissions of Inquiry Act* only evidence admissible in a prosecution should be considered. In response to this submission, Hutley JA stated (at 605):

I doubt whether s 10(1) precludes [the commissioner] from relying upon inadmissible evidence in determining whether there is evidence warranting a prosecution because inadmissible evidence which he may have received may help him in deciding whether or not evidence which is admissible is credible or not credible.

5.20 Although *Jackson v Slattery* might suggest that a commission could have regard to evidence not likely to be admissible in relevant criminal proceedings for the limited purpose stated therein, in the present inquiry the Commission did not consider any such inadmissible material in reaching a view about whether there is 'any or sufficient evidence' warranting the prosecution of a specified person for a specified offence.

5.21 In *Balog and Stait v Independent Commission Against Corruption*⁹ the High Court considered a provision formerly contained in the *Independent Commission Against Corruption Act 1988* (NSW) (ICAC Act) that was in terms similar to those of s. 10(1) of the *Special Commissions of Inquiry Act*, except that it included additional reference to 'warranting consideration of ... the prosecution'. Thus, s. 74(5) of the ICAC Act relevantly provided:

A report may include a statement of the Commission's findings as to whether there is or was any evidence or sufficient evidence warranting consideration of – (a) the prosecution of a specified person for a specified offence.

5.22 The applicants sought a declaration that, on a proper construction of the ICAC Act, the commissioner was precluded from making a finding, in any report, that the applicants were guilty of a criminal offence, other than making a finding within s. 74(5) of the Act (that is, that there is or was any or any sufficient evidence warranting consideration of prosecution).

5.23 The High Court (Mason CJ, Deane, Dawson, Toohey and Gaudron JJ) reasoned that the Independent Commission Against Corruption was intended to be primarily an investigative body and was not intended to report a finding of guilt or innocence. This was supported by 'the quite guarded' language of s. 74(5), of which the court said:

The use of the expression 'any evidence or sufficient evidence warranting consideration' suggests that it is someone else's evaluation of the evidence – that of the person who is to consider it – which is to determine whether a person is to be prosecuted or not and that the function of the Commission is to investigate and assemble the evidence rather than to evaluate it for itself, save for the limited purpose of deciding whether it warrants further consideration.¹⁰

5.24 The Court held that the Independent Commission Against Corruption was entitled to report on the results of its investigations; it was merely precluded from expressing any finding relating to guilt or innocence other than under s. 74(5). Of significance is the following further paragraph from the judgment:

... Because it speaks of prosecution, the evidence referred to in s.74(5)(a) is by implication admissible evidence. It is hardly to be supposed that if the Commission were to reach a finding that there was insufficient admissible evidence to warrant consideration of the prosecution of a specified person for a specified offence, the section nevertheless

⁹ (1990) 169 CLR 625.

¹⁰ *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, 633.

contemplates that it should go on to express a finding, upon inadmissible evidence, that the same person had committed the offence in question.¹¹

- 5.25 The duty cast on this Special Commission of Inquiry by s. 10(1) of the *Special Commissions of Inquiry Act* requires that the Commission determine whether there is or was sufficient or any evidence warranting the prosecution of a specified person for a specified offence. Consistent with *Balog*, the Commission is not obliged to make detailed findings about the evidence that might ultimately be reviewed by a prosecutorial authority. Further, whether or not a particular person *should* be prosecuted is not a matter for the Commission to decide; rather, if applicable, it is a matter to be determined by the relevant prosecuting agency (the Office of the Director of Public Prosecutions) based on the material then being considered.

Concealment offences relevant to consideration of s. 10(1) of the Special Commissions of Inquiry Act

- 5.26 The two offences relevant to the Commission's consideration under s. 10(1) of the *Special Commissions of Inquiry Act* are the common law offence of misprision of felony and the statutory offence of concealing serious indictable offence, contrary to s. 316 of the *Crimes Act 1900* (NSW).

Misprision of felony

- 5.27 The common law offence of misprision of felony existed in New South Wales until it was abolished by the *Crimes (Public Justice) Amendment Act 1990* on 25 November 1990 (see s. 341 of the *Crimes Act*).¹² The abolition was prospective only, so misprision of felony remains an available charge for offences committed before the *Crimes (Public Justice) Amendment Act* came into force (s. 340 of the *Crimes Act*).¹³

The nature of the offence

- 5.28 The offence of misprision of felony consists of a failure to disclose the commission of a felony to the appropriate authorities. It constitutes a rare example of the imposition of criminal liability at common law by virtue of a failure to act in circumstances where, independently of the offence, there was no legal duty to act. Misprision of felony was a common law misdemeanour triable on indictment.¹⁴
- 5.29 In *Sykes v DPP*¹⁵ the House of Lords reviewed the law of misprision of felony, and Lord Goddard observed:

... a person is guilty of the crime if knowing that a felony has been committed he fails to disclose his knowledge to those responsible for the preservation of the peace, be they constables or justices, within a reasonable time and having a reasonable opportunity for so doing. What is a reasonable time and opportunity is a question of fact for a jury, and also whether the knowledge that he has is so definite that it ought to be disclosed. A man is neither bound nor would he be wise to disclose rumours or mere gossip, but, if facts are within his knowledge that would materially assist in the detection and arrest of a felon, he must disclose them as it is a duty that he owes to the state.¹⁶

¹¹ *ibid.*

¹² See *Crimes (Public Justice) Amendment Act 1990*, ss. 2–3, sch 1; GG No 141 of 9.11.1990, p 9816.

¹³ Section 340 provides, 'The offences at common law abolished by this Division are abolished for all purposes not relating to offences committed before the commencement of this Part (as substituted by the *Crimes (Public Justice) Amendment Act 1990*)'.

¹⁴ See *R v Brown* (NSWCCA, McInerney, Hulme and Barr JJ, unreported, 9 December 1998).

¹⁵ [1962] AC 528.

¹⁶ [1962] AC 528 at 569.

- 5.30 The offence is subject to strict limitations, to which Lord Denning adverted in *Sykes v DPP*:

I am not dismayed by the suggestion that the offence of misprision is impossibly wide; for I think it is subject to just limitations. Non-disclosure may sometimes be justified or excused on the ground of privilege. For instance, if a lawyer is told by his client that he has committed a felony, it would be no misprision in the lawyer not to report it to the police, for he might in good faith claim that he was under a duty to keep it confidential. Likewise, with doctor and patient, and clergyman and parishioner.¹⁷ There are other relationships which may give rise to a claim in good faith that it is in the public interest not to disclose it. For instance, if an employer discovers that his servant has been stealing from the till, he might well be justified in giving him another chance rather than reporting him to the police. Likewise with the master of a college and a student. But close family or personal ties will not suffice where the offence is of so serious a character that it ought to be reported.¹⁸

Elements of the offence

- 5.31 The elements of the offence of misprision of felony – all of which must be proved beyond reasonable doubt by the prosecution – are discussed below.

The commission of a felony

- 5.32 At all relevant times until 1 January 2000 s. 9 of the *Crimes Act* defined a felony in the following terms:

Whenever by this Act a person is made liable to the punishment of penal servitude, the offence for which such punishment may be awarded is hereby declared to be and shall be dealt with as a felony, and wherever in this Act the term **felony** is used, the same shall be taken to mean an offence punishable by penal servitude.¹⁹

- 5.33 In short, then, to determine whether a felony has been committed it is necessary to establish whether the primary offence was punishable by penal servitude (as distinct from a term of imprisonment) at the relevant time.
- 5.34 The traditional distinction between a felony and a misdemeanour was abolished by statute in New South Wales in 2000.²⁰ Penal servitude was also abolished in New South Wales by the same amending legislation²¹ but was previously defined in s. 453 of the *Crimes Act* as, in the case of male offenders, hard labour on the roads or other public works of New South Wales ‘either in or out of irons’. The *Crimes Act* variously provided for penal servitude or imprisonment for offences against its provisions. Section 580F of the *Crimes Act* now provides that a reference to penal servitude is to be taken to be a reference to imprisonment.²²
- 5.35 Misprision of felony is an offence that can be committed by persons other than eyewitnesses.²³ An accused must be shown to have knowledge of the felony. The jury should be instructed that mere suspicion is not enough, but a judge is not to embark upon an elaborate explanation, to

¹⁷ These categories of possible exception relate to privileged communications rather than a more general exception.

¹⁸ *Sykes v DPP* [1962] AC 528 at 564.

¹⁹ Note that until the enactment of the *Crimes (Death Penalty Abolition) Amendment Act 1985* (NSW) the words ‘death or’ were also included before words ‘penal servitude’ in the definition in s. 9 of the *Crimes Act 1900*. Section 10 of the *Crimes Act* provided a definition of a misdemeanour as being, in effect, an offence punishable by imprisonment (as distinct from penal servitude) or the imposition of a fine.

²⁰ *Crimes Legislation Amendment (Sentencing) Act 1999* (NSW), s. 5, sch 3, part 2, cl [68]: inserting s. 580E into the *Crimes Act*. The amending Act was assented to on 8 December 1999 and s. 580E commenced operation on 1 January 2000.

²¹ *Crimes Legislation Amendment (Sentencing) Act 1999* (NSW), s. 5, sch 3, part 2, cl [68]: inserting s. 580F into the *Crimes Act*.

²² Section 580F(3) provides ‘Subject to the regulations, in any Act or instrument, a reference to penal servitude is taken to be a reference to imprisonment.’

²³ *The Queen v Lovegrove* (1983) 33 SASR 332 at 337–338.

the jury, of cognitive theory or the processes by which information turns to suspicion and suspicion turns to knowledge.²⁴

Knowledge of the commission of the felony by another person

5.36 The knowledge requirement for misprision of felony is the subjective knowledge of the accused and not the knowledge that objectively can be attributed to the hypothetical reasonable person.²⁵ Further, mere suspicion of a crime is insufficient to satisfy the required elements of the offence. In *R v Wozniak*²⁶ the NSW Court of Criminal Appeal stated:

The Appellant's appeal to the suggested cultural norm of Australia that you do not 'dob your mates in' has this much relevance to the common law offence upon which he stood charged. By the law, a person does have to 'dob' even his mates in if he knows that they have been involved in a serious crime which amounts to a felony. But he does not have to do so if he merely suspects his mates' involvement in such a crime but is not sure. The policy behind the requirement of actual knowledge, not mere suspicion, is obvious. The law holds back from converting our society into one of informers. The consequence of an obligation cast too widely or expressed too broadly would be an undue burden upon the individual. Such a burden could be destructive of trust and would undermine legitimate human relationships. That is a reason why the obligation to bring the knowledge of serious crimes to the attention of the authorities does not arise upon suspicion or the possession of information falling short of knowledge.²⁷

Knowledge of facts that would materially assist in the detection and arrest of the felon at the material time

5.37 The accused must have facts within his or her knowledge that would materially assist in the detection and arrest of the felon at the material time. Illustrative of this is the case of *R v Stone*²⁸ where, although the accused had knowledge of a felony that he concealed from authorities, the prosecution failed because the felon (without the accused knowing it) had already surrendered to police. Accordingly, it could not be said that the accused had information that would assist in the detection of a felony. Similarly, in *The Queen v Lovegrove Cox J* stated:

A person who knows of the existence of a felony must tell the authorities what he knows about both the crime and the criminal. Of course, he must know, and realise that he knows, something worth telling – something that would materially assist the police in identifying a crime and tracking down the person responsible. He is not obliged to tell police what they already know, or what he believes they already know ...²⁹

5.38 The duty is therefore to disclose facts (as opposed to rumours or mere suspicions) that would be of material assistance to the police or another similar authority in detecting the existence of a felony and of the felon in relation to the felony.

Concealment of that knowledge

5.39 In *Sykes v DPP*³⁰ the court held that the crime is committed where a person fails to disclose known facts within a reasonable time and having had a reasonable opportunity to do so. In *R v Crimmins*³¹ the offender attended hospital for a gunshot wound and, under questioning by police, admitted that he knew who shot him and where it had occurred but refused to disclose

²⁴ *R v Wozniak* (1989) 16 NSWLR 185 at 188.

²⁵ *ibid.*

²⁶ (1989) 16 NSWLR 185 at 194.

²⁷ *ibid.*

²⁸ *R v Stone* [1981] VR 737 at 741; see also *R v Crimmins* [1959] ALR 674 where the Full Court of the Supreme Court of Victoria (Herring CJ, O'Bryan and Dean JJ) held that the scope of the common law duty was to inform the police of the commission of a felony and provide information that might assist the police in ascertaining and prosecuting the offender.

²⁹ (1983) 33 SASR 332 per Cox J at 336.

³⁰ [1962] AC 528; *The Queen v Lovegrove* (1983) SASR 332 and *Sykes v DPP* [1962] AC 528.

³¹ *R v Crimmins* [1959] VR 270 (19 February 1959).

those details, saying he would ‘cop it sweet’ and attend to the matter himself. The Victorian Supreme Court found that it was a sufficient concealment on the part of the accused to have concealed the identity of the person who committed the felony and the place where it was committed:

It all comes back ... to the duty of the citizen to disclose a felony of which he had knowledge. He fails on this duty if he fails to make known to the authorities facts that he knows of the felony that might lead to the apprehension of the felon. The name of the felon and the place where the felony took place were known to Crimmins on his own admission. By concealing these facts, Crimmins, though he had disclosed the fact that he had been feloniously wounded, was concealing the felony as effectually as if he had refused to give information as to the way in which he came by his wounds.³²

- 5.40 In *Wozniak* the court also noted that the crime of misprision of felony tended to be interpreted very strictly in favour of an accused person:

Before, or where there has been no, statutory reform, judges in Australia have tended to interpret the crime of misprision of a felony very strictly: see, eg, *R v Stone* [1981] VR 737. The reason for this approach was explained by Cox J in *R v Lovegrove* at 342-343 ... as being born of the need to reconcile the general policy underlying the crime with the understandable pressure upon those who happen to learn of the felony but are not themselves concerned in its commission.³³

Section 316 of the Crimes Act: concealing serious indictable offence

The nature of the offence

- 5.41 Section 316 of the *Crimes Act 1900* (NSW) is one of a number of public justice offences inserted into the *Crimes Act* in 1990.³⁴ The stated purpose of the legislative package introducing these offences was to create a comprehensive description of the law dealing with public justice offences, which was considered ‘fragmented and confusing, consisting of various common law and statutory provisions, with many gaps, anomalies and uncertainties’.³⁵ When first enacted on 25 November 1990, s. 316(1) of the Act provided as follows:

If a person has committed a serious offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.³⁶

- 5.42 Effective from 1 January 2000,³⁷ s. 316 was amended to refer to ‘serious indictable offence’ and provide as follows (in which form it remains):

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

³² *ibid*, at 274.

³³ (1988) 16 NSWLR 185 at 189.

³⁴ *Crimes Act 1900* (NSW) Part 7, inserted by the *Crimes (Public Justice) Amendment Act 1990* (NSW) s. 3, sch 1.

³⁵ New South Wales, Parliamentary Debates (Hansard) Legislative Assembly, 17 May 1990, the Hon JRA Dowd, Attorney General, Second Reading Speech at 3692.

³⁶ When s. 316 was introduced in 1990, the term ‘serious offence’ was defined, by s. 311(1), to mean ‘an offence punishable by imprisonment or penal servitude of 5 years or more or for life’.

³⁷ *Crimes Legislation Amendment (Sentencing) Act 1999* (NSW), s. 5, sch 3, [20], [45].

...

- (4) A prosecution for an offence against subsection (1) is not to be commenced against a person without the approval of the Attorney General if the knowledge or belief that an offence has been committed was formed or the information referred to in the subsection was obtained by the person in the course of practising or following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection.
- (5) The regulations may prescribe a profession, calling or vocation as referred to in subsection (4).

- 5.43 'Serious indictable offence' is defined in s. 4 of the *Crimes Act* as an indictable offence that is punishable by imprisonment for life or for a term of five or more years.
- 5.44 The *Crimes Regulation 2010* (NSW) stipulates that for the purposes of s. 316(5) of the *Crimes Act 1900*, a prescribed profession, calling or vocation includes 'a member of the clergy of any church or religious denomination' (clause 4(f)).

Elements of the offence

- 5.45 In order to establish an offence under s. 316 of the *Crimes Act* the prosecution must prove the following five elements beyond reasonable doubt.

A serious indictable offence has been committed

- 5.46 If there is insufficient evidence to prove that a serious indictable offence (as defined in s. 4 of the *Crimes Act*) has been committed, the prosecution must fail.³⁸ Notably, however, where a serious indictable offence has been committed, s. 313 of the *Crimes Act* provides that 'it is not necessary for the prosecution to establish that the accused knew that the offence was a serious indictable offence'.

Another person knows or believes that the offence has been committed

- 5.47 There is a conceptual distinction between suspicion, belief and knowledge.³⁹
- 5.48 Section 316 of the *Crimes Act* requires proof of knowledge or belief that a serious indictable offence has been committed. In *R v Raad*⁴⁰ the New South Wales Court of Criminal Appeal stated that knowledge is 'a state of mind of a far greater confidence in the truth of that which is believed than the state of mind which could be described more accurately as mere suspicion'.⁴¹ Similarly, in *George v Rockett*⁴² the High Court stated that the facts that can reasonably ground a suspicion might be insufficient to ground a belief. Suspicion is a state of conjecture or surmise where proof is lacking, whereas belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition.⁴³ In *White Constructions (ACT) Pty Ltd v White*, the court said:

Knowledge is distinct from belief (as in turn belief is distinct from suspicion), notwithstanding that it may be said, in general terms, that there is a spectrum of 'understanding' ranging from knowledge at one end to suspicion at the other, and that the dividing points between the component parts of that spectrum may not always be easy to identify.⁴⁴

³⁸ *Leota v R* [2007] NSWDC 146 at [41] (Woods QC DCJ).

³⁹ See, for example, *Ruddock v Taylor* (2005) 222 CLR 612 at [75] McHugh J; *Azar v DPP* [2014] NSWSC 132 at [27]–[28].

⁴⁰ *R v Raad* [1983] 3 NSWLR 344.

⁴¹ *ibid* at [346], per Street CJ.

⁴² *George v Rockett* (1990) 170 CLR 104.

⁴³ *George v Rockett* 93 ALR 483, 490–491; [1990] HCA 26 at [14].

⁴⁴ *White Constructions (ACT) Pty Ltd v White* (2004) ACSR 220; [2004] NSWSC 71 at [320], McDougall J.

- 5.49 Similarly, in *Leota v R*⁴⁵ Woods DCJ confirmed the proposition that s. 316 of the Act does not require that police be advised in relation to suspicions of general wrongdoing. Criminality arises only if the requisite mental state exists, being knowledge not only of the fact of the serious offence having been committed but also of it having been committed by a particular person.
- 5.50 Briefly stated, then, whether a person knows or believes that a serious indictable offence has been committed depends on their subjective state of mind. If, taking into account all the circumstances, the person merely suspects that a serious indictable offence has been committed, there is no legal obligation to report the information to the police or another appropriate authority. If, however, the person believes that a serious indictable offence has been committed, the person is required to report that information.

The person has information that might be of material assistance in securing the apprehension or the prosecution or conviction of the offender

- 5.51 The word ‘might’ in this element of the offence suggests that the threshold for whether information should be provided to police is fairly low. A broad range of information ‘might’ be of assistance to police or another appropriate authority. Conversely, however, the use of the word ‘material’ requires that the information be practically useful. There is ‘an emphasis on practical reality rather than on the hypothetical’.⁴⁶ This means that information that does not further an investigation by police or another authority is unlikely to be considered of ‘material assistance’. For example, if police have already obtained the information from another source, it will not further assist their investigation and therefore is not of ‘material assistance’.⁴⁷

The person failed to bring such information to the attention of the police or appropriate authority

- 5.52 This element of the offence requires a failure by the accused to bring the information to the attention of a member of the police or other appropriate authority.⁴⁸

The offender did not have a reasonable excuse for failing to do so

- 5.53 ‘Without reasonable excuse’ is not an element to be established initially by the prosecution in any potential criminal proceeding. Rather, a defendant may seek to rely on *reasonable excuse* and, if so, bears an evidentiary burden to elicit or point to evidence that legitimately raises the question of reasonable excuse. If reasonable excuse is so raised the prosecution is then obliged to negative the reasonable excuse raised beyond reasonable doubt, as part of its general onus to prove the elements of the offence beyond reasonable doubt.
- 5.54 Briefly stated, on general principles, in deciding whether a particular excuse is reasonable, the question to be asked is whether a reasonable person in all the circumstances would accept the excuse.⁴⁹ In *Taikato v The Queen* the High Court stated:

The reality is that when legislatures enact defences such as “reasonable excuse” they effectively give, and intend to give, to the courts the power to determine the content of such defences. Defences in this form are categories of indeterminate reference that have no

⁴⁵ [2007] NSWDC 146 at [35].

⁴⁶ *Leota v R* [2007] NSWDC 146 at [47].

⁴⁷ *R v Lovegrove and Kennedy* (1983) 9 A Crim R 226 at 230 (per Cox J).

⁴⁸ Given the statutory context and purpose, the Commission regards the term ‘other appropriate authority’ in s. 316 as contemplating an investigative or prosecuting agency. This does not extend to the Church, which did not have a relevant role in the investigation, apprehension or prosecution of offenders. Depending on the circumstances and the systems in place, a report to a body other than an investigative or prosecuting agency might raise an issue of ‘reasonable excuse’.

⁴⁹ *Bryan v Mott* (1975) 62 Cr App R 71.

content until a court makes its decision. They effectively require the courts to prescribe the relevant rule of conduct after the fact of its occurrence.⁵⁰

Other cases have emphasised that in various statutory contexts the term ‘reasonable excuse’ is to be given a wide construction.⁵¹ It has also been held that a bona fide mistake of fact or law based on reasonable grounds can amount to a reasonable excuse.⁵² A reasonable excuse is, however, to be distinguished from a lawful excuse (that being a purpose authorised by law).⁵³

5.55 The difficulty in determining the application of the concept of a reasonable excuse in the context of s. 316 of the *Crimes Act* was recognised by the New South Wales Court of Criminal Appeal in *R v Crofts*,⁵⁴ with Meagher JA stating:

It [s. 316] is a section which has many potential difficulties, the chief of which is the meaning of the words ‘without reasonable excuse’, difficulties which are magnified when one endeavours to contemplate how those words would apply to the victim of the crime.

5.56 In a similar vein, Gleeson CJ stated:

... The evaluation of the degree of culpability involved in a contravention of s. 316 of the *Crimes Act* could, depending upon the circumstances of the individual case, be an extremely difficult exercise. For that matter, as Meagher JA has mentioned, depending upon the circumstances of an individual case, it may be extremely difficult to form a judgment as to whether a failure to provide information to the police was “without reasonable excuse”.

⁵⁰ *Taikato v R* [1996] HCA 28 at 466; (1996) 186 CLR 545. That matter concerned the defendant’s attempt to argue the application of the defence of lawful excuse or reasonable excuse in connection with her possession of an illegal item, contrary to s. 545E (now 93FB) of the *Crimes Act* (possession of dangerous articles other than firearms).

⁵¹ *Ganin v New South Wales Crime Commission* (1993) 32 NSWLR 423 at 436; *R v Tawill* [1974] VR 84; (1973) 22 FLR 284 at 88 (VR), 289–290 (FLR).

⁵² *Featherstone v Fraser* (1983) 6 Petty Sessions Review 2966 per Yeldham J.

⁵³ *Taikato v The Queen* (1996) 186 CLR 454; 90 A Crim R 323; 70 ALJR 960; 139.

⁵⁴ [1995] NSWCCA, unreported, 10 March 1995.

6 Canon law concepts, diocesan structures and the Catholic Diocese of Maitland–Newcastle

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Canon law

- 6.1 Canon law is the basic law of the Church; it is promulgated by legislative authorities within the Church and determines the Church’s structure, constitution and governance. It is the primary means by which the actions of members of the Church are internally regulated¹ and is substantially, but not wholly, codified. Subject to various revisions, the 1917 Code of Canon Law applied until it was replaced by the 1983 Code of Canon Law, which continues to apply.²
- 6.2 The relationship between canon law and civil law (that is, the ordinary law of the land) is complex. In many important respects, however, canon law does not displace civil law obligations. Thus, for example, the 1983 Code of Canon Law places no restrictions on any civil

¹ TOR 2, T2219.20–45 (Dr Austin).

² TOR 2, T2219.47–T2220.17 (Dr Austin); Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 3 July 2013, ex 209, paras 2–6 (see also Appendix D).

law obligation of a church official to report to civil authorities (such as the police) allegations of child sexual abuse committed by a priest.³

- 6.3 Within a diocese, two consultative bodies are prescribed by canon law – the Council of Priests and the College of Consultors. When Bishop Leo Clarke was Bishop of the Diocese he had a Council of Priests and a College of Consultors; Bishop Michael Malone gave evidence that, in practice, he combined the two bodies, such that the same priests acted as consultors and members of the Council.⁴

The Council of Priests

- 6.4 The Council of Priests is primarily concerned with the general governance of the diocese.⁵ It is a consultative body that advises the bishop primarily in relation to the pastoral welfare of people.⁶ A Council of Priests is mandatory in each diocese and consists of a group of priests who represent the priests incardinated into the diocese and priests who are exercising priestly ministry in the diocese.⁷ The bishop is required to consult with the Council of Priests on important matters associated with governance of the diocese and matters prescribed by particular canons.⁸

The College of Consultors

- 6.5 The College of Consultors is drawn from the Council of Priests and consists of between six and 12 members appointed by the bishop.⁹ The bishop must consult the consultors in particular circumstances defined by canon law¹⁰ – for example, before he appoints or dismisses the diocese’s financial officer.¹¹ The consultors have particular importance if the diocese is vacant (that is, bereft of a bishop) and when a diocesan administrator is elected by the College of Consultors or appointed by the Pope;¹² in this case, the administrator must liaise with the consultors in connection with a range of decisions.¹³
- 6.6 Father James Saunders, a former consultor and vicar general of the Diocese of Maitland-Newcastle from 2001 until 2006,¹⁴ told the Commission that in the case of that Diocese the consultors had more of a role in relation to the particular parts of the diocese with which they were connected and could offer advice to the bishop about matters such as the appointment of priests to particular parishes (in contrast with the more general governance role of the Council of Priests).¹⁵ The Diocese’s website explains the role of the College of Consultors:

³ TOR 2, T2229.20–29 (Dr Austin); Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 3 July 2013, ex 209, para 25 (putting to one side the unique situation in which the church official obtained such knowledge during sacramental confession).

⁴ TOR 2, T841.20–22 (Malone).

⁵ TOR 2, T1154.15–23 (Saunders).

⁶ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 16 January 2014, ex 301, p 5; 1983 Code of Canon Law, Canon 495, para 1.

⁷ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 16 January 2014, ex 301, p 5.

⁸ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 16 January 2014, ex 301, p 5; 1983 Code of Canon Law, Canon 500, para 2.

⁹ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 16 January 2014, ex 301, p 5; 1983 Code of Canon Law, Canon 502, para 1.

¹⁰ *ibid.*

¹¹ 1983 Code of Canon Law, Canon 494.

¹² *ibid.*, Canons 421 and 501, para 2.

¹³ The diocesan administrator must have the consent of the College of Consultors to remove the chancellor and other notaries (1983 Code of Canon Law, Canon 485) and issue dimissorial letters for ordination (1983 Code of Canon Law, Canon 1018). After the diocese has been without a bishop for more than one year the diocesan administrator can grant excommunication, incardination or grant permission to move to a particular church only with the consent of the College of Consultors (1983 Code of Canon Law, Canon 272).

¹⁴ Diocese of Maitland clergy appointment document of Saunders, undated, ex 112.

¹⁵ TOR 2, T1154.18–31 (Saunders).

In addition to the council of priests, the Bishop also has a group of Consultors. This smaller unit is similar to the council and provides a ready source of advice to the Bishop in urgent matters, or where a smaller group is more appropriate.

The Bishop is bound by Canon Law to confer with his Consultors regarding the stewardship of diocesan resources and other governance matters.¹⁶

The nature and structure of the Catholic Church in Australia

- 6.7 Generally speaking, the teaching of the Catholic Church is that the Church is not a single monolithic structure but is instead a communion of individual or particular churches known as dioceses.¹⁷ Each particular church within the universal Church is considered a distinct entity in and of itself, and each leader of a particular church is subject to and has personal accountability to the Pope.
- 6.8 The Catholic Church in Australia is divided into seven geographic and administrative archdioceses, which in turn embrace 21 smaller dioceses.¹⁸ The capital cities of the six Australian states are archdioceses, as is the national capital, although the geographical bounds of an archdiocese can extend beyond those of the capital city in question.
- 6.9 Each archdiocese and diocese is led by a bishop, the leader of each of the seven archdioceses being designated an archbishop. The archbishop has specific limited functions but no powers of governance outside his own diocese.

A diocese

- 6.10 Dioceses are the most common form of a particular church. A diocese – for example, the Catholic Diocese of Maitland–Newcastle – is a legal entity under canon law.¹⁹ The Commission’s canon law expert, Dr Rodger Austin, described a diocese thus:

The church is a total community of people divided into groupings that we call dioceses. A diocese for – let’s also use the word ‘particular church’ as distinct from the ‘universal church’. Each diocese, as a rule, is based on territory, so it’s the people living within a certain territory who belong to that diocese.²⁰

- 6.11 In theological terms, a diocese can also be seen as that portion of the people of God entrusted to a bishop to be shepherded by him with the cooperation of the priests.²¹

The parishes

- 6.12 Within a particular diocese, a parish is a community of the faithful whose pastoral care has been entrusted to a parish priest, under the authority of the diocesan bishop.²² The parish is generally a territorial area. In consultation with his Council of Priests (see para 6.4), a diocesan bishop can establish, suppress or alter parishes within his diocese.²³ A bishop is the proper pastor of a diocese as a whole; a parish priest is the proper pastor of a parish, but he is under the authority of the bishop.

¹⁶ Catholic Diocese of Maitland–Newcastle, *Council of Priests* (2014), <<http://www.mn.catholic.org.au/parishes-priests/council-of-priests>>.

¹⁷ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 3 July 2013, ex 209, para 7.

¹⁸ Australian Catholic Bishops Conference, *Dioceses* (undated), <<http://www.catholic.org.au/dioceses>>.

¹⁹ 1983 Code of Canon Law, Canon 373.

²⁰ TOR 2, T2220.43–2221.1 (Dr Austin).

²¹ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 3 July 2013, ex 209, para 7.

²² 1983 Code of Canon Law, Canon 515, para 1.

²³ *ibid*, Canon 515, para 2.

The diocesan bishop

6.13 The diocesan bishop is the leader of his particular church (diocese) and is subject to and has personal accountability to the Pope.²⁴ Dr Austin described the bishop's role thus:

The bishop has three basic roles. One is to teach the faith of the church. Another one is to be leader of the worshipping community and a third part is to govern the community, not just by making laws, but by example, by exhortation They are three aspects of the one ministry, if you like.²⁵

6.14 Malone, a former bishop of Maitland–Newcastle Diocese, explained that the role of bishop is a broad one and involves making decisions relating to priests incardinated into the diocese. This extends to matters to do with the working life and welfare of incardinated priests. The bishop decides which parishes such priests are assigned to and when, on questions of training and leave, and on whether a priest might be 'lent' to another diocese. He also retains continuing authority over and responsibility for a priest during the course of the priest's life, including in retirement. Another important function of the bishop is the disciplining of priests when necessary.²⁶ The bishop has all the authority required to fulfil his pastoral duties; his authority within his diocese is limited only by canon law and any directive of the Pope.²⁷

6.15 All bishops and their dioceses are obliged to work collaboratively for the good of the universal Church. In Australia such collaboration is facilitated in particular through the Australian Catholic Bishops Conference.²⁸

A vicar general

6.16 A vicar general can be described as the person who is second-in-charge of a diocese. He is effectively the alter ego of the bishop: when acting, he is acting with the mind of the bishop through his vicarious authority.²⁹ The vicar general is thus the pre-eminent official within the diocesan curia, defined in canon law as the institutions and individuals that assist the bishop in the governance and administration of the diocese.³⁰ The powers of the vicar general are vested in the office, not the individual.³¹ On a day-to-day basis the manner in which the vicar general exercises his powers is ultimately a matter for his bishop.³²

6.17 Under canon law it is mandatory for every bishop to appoint at least one vicar general.³³ If an auxiliary bishop or a coadjutor bishop has been appointed, the bishop is required to appoint him as vicar general.³⁴

6.18 Under canon law the two pre-requisites for appointment as vicar general are that the priest is not less than 30 years old and either has specialist training in canon law or theology or at least is an expert in those disciplines and is known for his sound doctrine, integrity, prudence and practical experience.³⁵

²⁴ *ibid*, Canon 381, para 1.

²⁵ TOR 2, T2221.17–22 (Dr Austin).

²⁶ TOR 2, T1031.47–1034.6 (Malone).

²⁷ 1983 Code of Canon Law, Canon 381, para 1.

²⁸ Australian Catholic Bishops Conference (2014), <<http://www.catholic.org.au>>.

²⁹ TOR 2, T2231.15–2232.1 (Dr Austin).

³⁰ Austin Dr R, 'Report prepared for the Special Commission of Inquiry', dated 16 January 2014, ex 301, p 6.

³¹ 1983 Code of Canon Law, Canon 479, para 1.

³² TOR 2, T2230.44–2231.2 (Dr Austin).

³³ 1983 Code of Canon Law, Canon 475, para 1.

³⁴ Austin Dr R, 'Report prepared for the Special Commission of Inquiry', dated 16 January 2014, ex 301, p 6.

³⁵ 1983 Code of Canon Law, Canon 478, para 1.

A coadjutor bishop

- 6.19 A coadjutor bishop (or bishop coadjutor) is a bishop designated to assist the diocesan bishop in the pastoral governance of the diocese – almost as ‘co-bishop’ of the diocese. The coadjutor bishop is appointed by the Pope and has the right to succeed to the position of diocesan bishop. Thus, the coadjutor bishop immediately becomes bishop of the diocese if the diocese becomes vacant, for example on the death or resignation of the incumbent bishop.³⁶
- 6.20 Malone was appointed Coadjutor Bishop to Clarke in Maitland–Newcastle Diocese in November 1994.³⁷

A vicar capitular

- 6.21 A vicar capitular is a priest chosen to govern the diocese in the event that the diocese becomes vacant (for example, as a result of the death or resignation of the bishop), provided the Pope has not made another provision such as appointing a coadjutor bishop.³⁸
- 6.22 Under the 1917 Code of Canon Law the vicar capitular was elected by the diocesan consultors.³⁹ Under the 1983 Code of Canon Law the College of Consultors elects a cleric to govern the vacant diocese and he is called the diocesan administrator.⁴⁰
- 6.23 From September 1975 to June 1976 Monsignor Patrick Cotter was Vicar Capitular of Maitland–Newcastle Diocese following the death of Bishop John Toohey on 24 September 1975.⁴¹

A parish priest

- 6.24 Under canon law a parish priest is the proper pastor of the parish entrusted to him. He has a duty to provide pastoral care for the community entrusted to him under the authority of the diocesan bishop.⁴² For this identified community, the parish priest can carry out the offices of teaching, sanctifying and ruling with the cooperation of other priests or deacons and with the assistance of lay members of Christ’s faithful, in accordance with canon law.⁴³ A parish priest (like all priests) makes a promise of obedience to his bishop at ordination and has an obligation to be celibate.⁴⁴
- 6.25 Catholic priests are either diocesan priests or religious order priests. Diocesan priests are attached to the diocese in which they are located; religious order priests are affiliated with a particular religious order – such as the Jesuits (members of the Society of Jesus) and can be involved in ministry in a variety of places.
- 6.26 Among a parish priest’s duties are assisting at marriages, administering baptisms, anointing the sick and performing funeral rites. In addition, if granted faculties as explained in paragraph 6.36 below, priests can hear confession (the sacrament of penance).⁴⁵

³⁶ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 16 January 2014, ex 301, p 5.

³⁷ TOR 2, T777.36–8 (Malone).

³⁸ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 16 January 2014, ex 301, p 6.

³⁹ *ibid.*

⁴⁰ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 16 January 2014, ex 301, p 6; 1983 Code of Canon Law, Canon 421, para 1.

⁴¹ Diocese of Maitland clergy appointment document of Cotter, undated, ex 219, tab 516; statutory declaration of Tynan, dated 4 December 2013, ex 255, para 1.

⁴² 1983 Code of Canon Law, Canons 515, para 1, and 519.

⁴³ *ibid.*, Canon 519.

⁴⁴ *ibid.*, Canons 273 and 277, para 1.

⁴⁵ *ibid.*, Canons 965 and 966.

The relationship between diocesan bishop and priest

- 6.27 In the diocese entrusted to his pastoral care a diocesan bishop, as of right, possesses all the ordinary, proper and immediate power required for the exercise of his pastoral office, without prejudice to the supreme authority of the Pope. This power is legislative, judicial and executive.⁴⁶
- 6.28 The inter-related obligations and responsibilities that exist between a diocesan bishop and his priests differ greatly from those seen in hierarchical ‘command and control’ structures typical of other institutions and are not analogous to an employer–employee relationship. A parish priest, however, is subject to the authority of the bishop in fulfilling his duties.⁴⁷ The bishop, in turn, has a duty to oversee the parish priest, including by making pastoral visits to the parish.⁴⁸
- 6.29 Additionally, a diocesan bishop has an obligation to nurture and promote his priests. Pursuant to canon law, there are three ways in which a diocesan bishop must care for his priests: he must ‘defend their rights ... ensure they fulfill the obligations proper to their state ... and see they have the means needed for the development of their spiritual and intellectual life’.⁴⁹
- 6.30 The Church requires that a diocesan bishop ‘relate to his priests not merely as a ruler towards his subjects, but rather as a father and friend’.⁵⁰ Malone explained to the Commission that the relationship between bishop and priest, as reflected in canon law, is a relationship of brotherhood and prayer with a bond based on sharing a ministry.⁵¹ Similarly, Monsignor Allan Hart said bishops have a duty to provide pastoral care for their priests and also have control over where priests may go.⁵² In his evidence to the Commission Dr Austin described the inter-relationship between a parish priest and the bishop of a diocese:

Dioceses are created so that the task of teaching of people and worshipping and governing can continue in small groups. So a diocese is a community of communities, the parishes. A bishop appoints a parish priest to be the pastor, the shepherd of that community, and for that group of people the parish priest fulfils the same three roles that the bishop does for the whole diocese – to be a teacher of the faith, a priest of worship, and to lead the people in governing the parish community.⁵³

Incardination

- 6.31 A man who is a member of the Catholic Church may be ordained as a priest only if he is incardinated into a diocese; that is, every priest must be incardinated into a particular diocese or religious congregation and may not be unattached.⁵⁴ The concept of incardination is one of a permanent commitment to and connection with a particular diocese, even if the priest in question is physically at a different location for a time.⁵⁵ A priest can, however, be excardinated from his diocese in order to be transferred and incardinated into another diocese.⁵⁶
- 6.32 Incardination is usually established through ordination as a deacon. It can be lost only in accordance with procedures established in canon law.⁵⁷ Once ordained, a priest has all the

⁴⁶ *ibid*, Canons 381, para 1, and 391, para 1.

⁴⁷ TOR 2, T2222.5–13 (Dr Austin).

⁴⁸ TOR 2, T2222.33–41 (Dr Austin).

⁴⁹ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 3 July 2013, ex 209, para 11; 1983 Code of Canon Law, Canon 384.

⁵⁰ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 3 July 2013, ex 209, para 11.

⁵¹ TOR 2, T960.23–28 (Malone).

⁵² TOR 2, T1459.17–1460.1 (Hart).

⁵³ TOR 2, T2221.39–47 (Dr Austin).

⁵⁴ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 3 July 2013, ex 209, para 9.

⁵⁵ TOR 2, T2223.11–26 (Dr Austin).

⁵⁶ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 16 January 2014, ex 301, p 5.

⁵⁷ Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 3 July 2013, ex 209, para 9.

obligations and rights pertaining to the status of a cleric in the Church.⁵⁸ While remaining incardinated into his own diocese a priest can exercise priestly ministry in another diocese only in accordance with the norms of canon law.⁵⁹

- 6.33 Incardination into a diocese entails obligations and rights on the part of both the priest and the diocese. Under canon law a priest is bound to obey the bishop and faithfully accept and fulfil the ministry to which the bishop appoints him. The priest must also reside in the diocese unless his absence is expressly authorised.⁶⁰ The diocese, in turn, is obliged to provide remuneration, as well as social welfare for the priest during infirmity, sickness or old age.⁶¹

Celebrets

- 6.34 If a priest intends to work in another diocese, as a matter of general practice he should be given a document known as a 'celebret', which is essentially a character reference signed by the priest's bishop and attesting to the fact that the priest is in good standing. Dr Austin described a celebret thus:

It's a letter of good standing saying that the priest enjoys the faculties of the diocese to which he belongs, that he's going with permission of the bishop and that he's – it's basically a request to accept him wherever he's going, particularly to celebrate the Eucharist.⁶²

- 6.35 Although not a canon law requirement, celebrets have always been required if a priest travels overseas; they are not necessarily required if he travels interstate in Australia.⁶³

Faculties

- 6.36 A priest is dependent on his diocesan bishop in the exercise of his priestly ministry.⁶⁴ Following ordination, he needs 'faculties' in order to exercise this ministry in the diocese into which he is incardinated.⁶⁵ The bishop grants the priest faculties; they provide for him the authorisation to perform certain functions and the delegation to perform services usually reserved for a higher authority. A priest is not automatically entitled to these faculties; they are conferred by the diocesan bishop as a privilege rather than a right.⁶⁶

- 6.37 In relation to the particular faculties a priest enjoys under canon law, Dr Austin told the Commission:

A priest does not need permission to celebrate the Eucharist ... the law itself says if you're ordained a priest, then you can preach the word of God. The previous canon law required a bishop to give you that faculty, but that's changed. If a priest comes to a diocese, whether he's incardinated into it or he is coming to work in it, then he needs the authorisation of the bishop to do certain things. That's to hear the confession, it's to celebrate marriages. They are the sorts of things that require faculties to be empowered to do it within this diocese.⁶⁷

- 6.38 Just as it is the function of the bishop to make a judgment about whether to grant faculties to a priest who is suitable to exercise ministry, so it is the bishop's role to take such faculties away if the priest is considered no longer suitable to exercise ministry. If the faculties of a priest are

⁵⁸ *ibid*, para 8.

⁵⁹ *ibid*, para 9.

⁶⁰ *ibid*.

⁶¹ *ibid*.

⁶² TOR 2, T2226.15–19 (Dr Austin).

⁶³ TOR 2, T2225.29–2226.31 (Dr Austin).

⁶⁴ Austin Dr R, 'Report prepared for the Special Commission of Inquiry', dated 3 July 2013, ex 209, para 10.

⁶⁵ *ibid*.

⁶⁶ *ibid*.

⁶⁷ TOR 2, T2223.34–44 (Dr Austin).

withdrawn he nevertheless remains a priest incardinated into the diocese and can continue to wear priestly garb and celebrate mass in a private capacity.⁶⁸

Laicisation

6.39 Laicisation is a voluntary process regulated by canon law in which a priest requests from the Pope dispensation from his clerical obligations. Dr Austin explained the laicisation concept thus:

There are regulations relating to the process. Canon law speaks about the way in which a priest can in fact be dispensed from his obligations just in a general statement saying you have to get permission from the Roman Pontiff [the Pope]. Outside of the canon law, there is a whole procedure for that to be followed in which the bishop is responsible – normally the bishop into which diocese you are incardinated or it could be wherever the person happens to be living at the time – to get documentation drawn up which requires a curriculum vitae, a whole presentation of the history of the person, et cetera, leading to ‘This is a free decision, and I’m making this request for dispensation from all obligations’. That documentation – records from the seminary, et cetera – all that is put together and the bishop then adds his opinion. That is then sent off to Rome.⁶⁹

6.40 One of the requirements for laicisation is that the bishop (or his priest delegate) interviews the priest under oath.⁷⁰ Laicisation differs from the withdrawal of faculties in that it creates a permanent state of affairs: from the time laicisation is granted, the person ceases to be a priest. He can no longer wear priestly garb (or vestments) or refer to himself as a priest.⁷¹

6.41 The process of laicisation is dependent on cooperation from the priest concerned; in the absence of such cooperation the process cannot be completed.⁷²

The Catholic Diocese of Maitland–Newcastle

6.42 The Catholic Diocese of Maitland–Newcastle featured prominently among the matters that were the subject of the Commission’s investigations. Fathers Denis McAlinden and James Fletcher were each priests of the Diocese when they sexually abused children within the geographical confines of the Diocese (and also, in McAlinden’s case, beyond those confines). Further, at all times until their respective deaths both McAlinden and Fletcher remained incardinated into the Diocese.

6.43 The now superseded Diocese of East Maitland was created by Papal Brief dated 27 May 1847.⁷³ The Diocese of Maitland–Newcastle was created by Papal Brief dated 14 June 1995.⁷⁴ At present the Diocese’s geographical boundaries extend from Lake Macquarie in the south to Taree in the north and as far inland as Merriwa and Murrurundi.⁷⁵ The Diocese is made up of 42 parishes (see Table 6.1).

⁶⁸ TOR 2, T2224.32–47 (Dr Austin).

⁶⁹ TOR 2, T2226.41–2227.9 (Dr Austin).

⁷⁰ TOR 2, T2264.11–13 (Dr Austin).

⁷¹ TOR 2, T2227.11–34 (Dr Austin).

⁷² TOR 2, T2227.36–46 (Dr Austin). Note also that, in addition to laicisation and withdrawal of faculties, a priest can be subject to a decree of dismissal (and thus cease to be a priest) following a penal process before an ecclesiastical tribunal or (since 2001) by the Congregation of the Doctrine of the Faith in Rome, in circumstances where the priest is considered to have committed a serious crime, such as the sexual abuse of a child: TOR 2, T2241.12–2242.46, 2245.9–47, 2267.40–2267.11 (Dr Austin); Austin Dr R, ‘Report prepared for the Special Commission of Inquiry’, dated 3 July 2013, ex 209, paras 20–21.

⁷³ Catholic Diocese of Maitland–Newcastle, *History of Maitland–Newcastle* (2014), <<http://www.mn.catholic.org.au/about/history>>.

⁷⁴ *ibid.*

⁷⁵ Catholic Diocese of Maitland–Newcastle (2014), <<http://www.mn.catholic.org.au>>.

Table 6.1 Parishes in the Catholic Diocese of Maitland–Newcastle

All Saints Blackbutt South	Mayfield West
Beresfield	Mayfield
Blackbutt North	Merriwa
Boolaroo-Warners Bay	Morriset
Broadmeadow	Morpeth
Branxton	Murrurundi
Booragul	Muswellbrook
Cessnock	Myall Coast
Denman	Nelson Bay
Dungog	Newcastle
East Lake Macquarie	Raymond Terrace
East Maitland	Rutherford
Forster Tuncurry	Scone
Gloucester	Singleton
Gresford	Stockton
Hamilton	Sugarloaf
Krambach	Taree
Kurri Kurri	Tighes Hill
Lochinvar	Toronto
MacKillop	Wallsend–Shortland
Maitland	Wingham

6.44 Bishop William Wright has been Bishop of the Diocese since 15 June 2011. He is assisted by 30 priests and eight permanent deacons.⁷⁶

6.45 Among the previous bishops of the Diocese were the following individuals:

- Michael Malone, 1995 to 2011
- Leo Morris Clarke, 1976 to 1995 (died on 3 June 2006)
- John Toohey, 1956 to 1975 (died on 24 September 1975)⁷⁷
- Edmund Gleeson, 1931 to 1956 (died on 4 March 1956).⁷⁸

Zimmerman Services

6.46 Partly in recognition of the chronic nature of the Diocese’s history of child sexual assault by clergy, in 2005 Malone established a dedicated child protection unit, which was initially headed by Ms Helen Keevers. The unit, officially opened on 4 September 2007, became known as Zimmerman House; it was renamed Zimmerman Services on 27 June 2011. Mr Sean Tynan is the current manager.

6.47 Zimmerman Services has three components:

- the Diocesan Child Protection Unit

⁷⁶ Catholic Diocese of Maitland–Newcastle (2014), <<http://www.mn.catholic.org.au>>.

⁷⁷ The Commission notes that Toohey was appointed co-adjutor bishop to the Diocese on 11 March 1948.

⁷⁸ Catholic Diocese of Maitland–Newcastle (2014), <<http://www.mn.catholic.org.au/about/bishop>>; statutory declaration of Tynan, dated 4 December 2013, ex 255, para 1.

- the Healing and Support Unit
- the Insights Group.

6.48 The Diocesan Child Protection Unit offers an intake service by which any member of the Diocese can obtain advice, guidance and support in relation to child protection. It also conducts investigations and inquiries into allegations of abusive conduct against children and some breaches of professional standards by current Diocesan personnel.

6.49 The Healing and Support Unit works with victims of abuse and their families in order to support them and facilitate their journey towards healing. The nature and extent of the work done by Ms Maureen O’Hearn, as Coordinator of Healing and Support, is primarily determined by victims’ needs and wishes. O’Hearn advocates within the Diocese and externally on behalf of victims, supporting them through civil claims or other processes designed to achieve restitution from the Diocese. She also organises counselling for victims during periods of acute instability and crisis.⁷⁹

6.50 The Insights Group was established to explore the effects of child sexual abuse on the faith communities in the Diocese. It works with a number of local communities in which current or former parish priests have been implicated or involved in child sexual assault.

⁷⁹ TOR 2, T2308.47–2315.41 (O’Hearn); statutory declaration of O’Hearn, dated 3 June 2013, ex 213, para 5–6.

7 Impact of child sexual abuse and engagement with victims

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The Commission’s approach to victims

7.1 As explained in Chapter 3, relevant evidence received from victims¹ of Father Denis McAlinden and Father James Fletcher formed an important part of the investigation undertaken by the Commission. Among other things, such evidence assisted in the Commission’s task of ascertaining what information Diocesan officials had at any particular time in relation to the conduct and risk to children posed by McAlinden and Fletcher.

7.2 When opening the Inquiry’s public hearings on 13 February 2013 Commissioner Cunneen SC stated:

The sexual abuse of children is abhorrent. It has a devastating and long-lasting effect on victims and their families and on the community generally. It should not be tolerated or condoned by any modern society. It can be very difficult for children to speak out about

¹ The Commission accepts that some of those who have been sexually abused prefer to refer to themselves as ‘survivors’ given their own journey to recovery. The term ‘victim’ was preferred during public hearings to connote an acceptance of the fact of the abuse rather than the word ‘complainant’ (traditionally used in criminal proceedings).

sexual abuse. When they do, the collective responsibility to take action weighs heavily on all. The sexual abuse of children should no longer be a crime for which the conspiracy of silence continues to the grave. Child sexual abuse by a priest involves a gross breach of trust of the highest magnitude. It breaches the trust of the victims and their families in a manner that is reprehensible and may cause irreparable harm.²

- 7.3 Child sexual abuse can have devastating effects. So much was clear to the Commission from early on in its dealings with victims and their families. The Commission's awareness of the impact of child sexual abuse on victims was reflected in its approach to their involvement with the Inquiry. As explained in Chapter 3, the Commission was mindful of the potentially re-traumatising effect of compelling a victim of child sexual abuse to give evidence. Victims were encouraged, but not compelled, to participate in the Commission's processes.
- 7.4 A number of victims of McAlinden and Fletcher were prepared to give oral evidence to the Commission. Some did so in private hearings; others gave evidence at in camera public hearings – that is, in certain closed-court hearings that authorised parties were invited to attend, depending on their interest in the subject matter, but that were otherwise not open to the public or the media. The Commission also welcomed the involvement of Mr Peter Gogarty, a victim of Fletcher who was granted authorisation to appear at the Inquiry, examining witnesses as well as giving evidence before it.³
- 7.5 The Commission acknowledges those victims and family members who gave evidence of their experiences to assist the Commission in its work – it is accepted that giving evidence of such traumatic matters is a very difficult and stressful experience, which may lead to an unwelcome reliving of incidents that many have sought to forget. This chapter records aspects of such evidence that provide insights into the human cost of child sexual abuse.

The long-term and life-long effects

- 7.6 In her evidence Ms Maureen O'Hearn, Zimmerman Services' Coordinator of Healing and Support, said that for many people the journey towards healing is a life-long one.⁴ It can also be complex.⁵ She explained:

I guess there are a few stages of that journey. I think the first part of that is to consider how long it is that people don't tell their story for, that it remains a secret, so that's sort of one stage. Then when people start to talk ... that's, hopefully, the presenting or the beginning phase of their journey towards healing. I guess my experience is when people first start to talk about it, that they still feel that undeserved sense of shame and embarrassment and still feel that they don't want people to know that that's happened to them, and that gradually, as they tell their story and share their story more, and hopefully that story is met with acknowledgment and belief and acceptance and support, for most people – certainly not all but for most people – that they will more move towards having that, I guess, more integrated experience of their life.⁶

- 7.7 As to why the journey can be so prolonged, Ms O'Hearn said:

... I think for others, whilst the abuse may not dominate their lives, it becomes a part of their lives, but at any time there can be triggers that set that off again, so I think the abuse will never go away and it can't be undone ... Even though it might become a smaller part of the

² TOR 2, T3.45–4.11 (Wright).

³ For reasons relevant to the Inquiry's processes, Mr Gogarty's evidence was given in camera, notwithstanding his willingness to give evidence in public.

⁴ TOR 2, T2318.46–2319.1 (O'Hearn).

⁵ TOR 2, T2310.35–40 (O'Hearn).

⁶ TOR 2, T2310.40–2311.8 (O'Hearn).

person's life, it has the potential to sort of erupt at any time because of those triggers, so it can never be completely over, I guess.⁷

- 7.8 She also said that some people do not have the strength to make that journey, and this can end with suicide.⁸
- 7.9 The Commission's work also revealed the psychological costs for the families of those subjected to child sexual abuse.
- 7.10 Ms O'Hearn told the Commission that people who have experienced sexual abuse feel misplaced shame, which affects their willingness to speak in public about the impact of the abuse.⁹ Even in criminal proceedings, it is often necessary for a victim impact statement to be read by someone other than the victim, who 'want[s] the court to know how they feel, but they don't feel, at that point in time, quite able to deliver that themselves'.¹⁰
- 7.11 Through Ms O'Hearn the Commission received victim impact statements from two of McAlinden's victims – ABR and AQ, abused by McAlinden some 32 years apart.

ABR

- 7.12 ABR is 69 years old. She was raised in a devout Catholic family that attended Mass weekly and participated in church activities.
- 7.13 McAlinden began sexually abusing her soon after he arrived in Taree parish in 1954, when she was 10. ABR described McAlinden ingratiating himself into her family circle and his regular 'dropping in' to see them. He went on summer holidays with the family, and accompanied ABR and another girl on a holiday to Melbourne. ABR's parents died unaware of McAlinden's abuse of their daughter.¹¹
- 7.14 In her victim impact statement, ABR said:
- After Legion of Mary meetings, McAlinden would drive some of the girls home and I was always the last to be taken home. He would drive me to the bush and this is where my nightmare began. He would sexually abuse me and told me it was all right and to be very quiet. I was so scared of him and he said that he could read my mind.
- I believed him when he said that if I told anyone he would know because he could read my mind and I would be in a lot of trouble. Although I was only 10 years old, I knew that priests were held in high esteem and everyone trusted them, so why would anyone believe me?¹²
- 7.15 About four years ago, when media articles about McAlinden were published, ABR told her husband and siblings of the abuse for the first time. She said she had 'filed it away in the back of [her] mind but had never forgotten'.¹³ She was angry with what she perceived to be secrecy on the part of the Church and said the 'suffering goes on now as the truth comes out'.¹⁴

⁷ TOR 2, T2319.7–14 (O'Hearn).

⁸ TOR 2, T2319.5–7 (O'Hearn).

⁹ TOR 2, T2318.8–14 (O'Hearn).

¹⁰ TOR 2, T2318.16–22 (O'Hearn); statutory declaration of O'Hearn, dated 3 June 2013, ex 213, para 14.

¹¹ TOR 2, T2327.23–2328.6 (O'Hearn).

¹² TOR 2, T2328.24–40 (O'Hearn).

¹³ TOR 2, T2329.36–41(O'Hearn).

¹⁴ TOR 2, T2330.4–5 (O'Hearn).

AQ

7.16 AQ, now aged 39 years old, was 11 years old when McAlinden arrived in Adamstown, a suburb of Newcastle, and befriended her parents, who were very involved in parish life. Throughout two years of her time in primary school, in 1986 and 1987, McAlinden sexually abused AQ in the presbytery, at the church, in her home, in the school playground, in his car, and during parish events and family outings, which he was often invited to attend.¹⁵

7.17 In her statutory declaration AQ described the effect on her of the abuse:

I have lived with so much pain because of this abuse of me. Some days I can barely function. The constant media is very hard although I am glad that the culture of secrecy is being exposed.

I am now a 38-year-old mother of four. I have painstakingly tried to remain anonymous whilst dealing with all of this as I do not want the matters at hand to fall on the shoulders of my precious children. I do not want them to carry the burdens of my abuse throughout their lives and relive the pain I have lived with for so long.

...

When news broke that the wrongdoings of McAlinden had been brought to light, I was home alone with three of my children: the front page of the *Newcastle Herald* slapped me in the face hard. I was totally terrified – to the point where I repeatedly threw up for hours and could not talk to anyone for such a long time. My husband was away at the time. I remember it as a blurry, sickening haze. I remember not wanting to be alive.

Who else had he hurt? Were they my friends? My family? I was absolutely terrified. I felt like I was back there, like I was that little girl hiding something. I felt that if anyone knew about me – if someone found out – that I would be in trouble. My terror continued for so long.

I didn't sleep (I still don't do that too well). I didn't eat and just tried to take it day by day.

This went on for a long while until I finally had the courage to tell my husband. It was only with his support that, eventually, I too found the courage to speak out and report what had happened to me, 20 years after the abuse. Life does not stop while I tried to deal with these things. I still have to try to carry on as usual, being a mum, a wife, and trying to run a business. All of these tasks I still find to this day so very hard. To everyone on the outside looking in, I may seem fine. I have become so good at hiding my terror and distress that no-one really knows what goes on in my daily life. On the inside it's pretty messy. It's ugly. I don't think that will ever go away. There is sadness, so much sadness – you become friends with sadness as it's here more days than it's not. You know some days will be better than others but sadness is always there and I suspect it will always be there.

Anger. Anger came later but it stayed for a long while and is not going anywhere. I want to know why? Why did no-one stop him before he got to me? Can someone please tell me?

If only someone had stopped him before he did that to me.

I often wonder what life would have been like had this not happened to me? The pain I live with and do my best to deal with is there every single day. For the rest of my life I will wake up with that pain.¹⁶

7.18 The Commission received further accounts from other victims (and family members), some of which are set out in the following paragraphs.

¹⁵ TOR 2, T2330.12–30 (O'Hearn).

¹⁶ TOR 2, T2330.36–2332.26 (O'Hearn).

AE's husband, BD

- 7.19 AE was a victim of sexual assaults perpetrated upon her by McAlinden in 1953, when she was 11 years of age, which included forced sexual intercourse on four separate occasions. AE complained of the rape to NSW Police on 8 October 1999 (as detailed in Chapters 11 and 16).
- 7.20 AE died in 2007. However in August 2001, her husband BD, prepared a statement setting out the impact of the abuse on AE, himself, and their family unit:

No one can imagine what our life has been like ...

It is so hard for us to lead a normal life with all this on your mind. I am fortunate that I go to work and can try to forget about it but it is still on your mind and you are constantly thinking about it. As I said it is hard for me but it is extremely hard for [AE] because she has no outside interests besides her family to talk to and try to take her mind off this ordeal. We are just two people that live together in the same house now rather than a happily married couple. We try to do things that will take our minds off this, but as I said it is very hard to forget completely, so we don't really enjoy things as much as we should...

After all this was out in [the] open, we were beside ourselves to know how to handle [it]. [AE] was, at times, uncontrollable with screaming & yelling & throwing herself on the floor ... When [AE] first told me about this, I thought I could cope with it at first, I believed I could try to help [AE] get over it, but as time goes on I find it more & more on my mind, especially when AE gets angry & upset...

It is something we will never get over...our lives will not change. How can they, what will be different? It will always be with us.¹⁷

ABC

- 7.21 ABC, now aged 62, gave evidence that McAlinden sexually abused him in Singleton when he was approximately aged 6 and learning how to become an altar boy.¹⁸
- 7.22 The altar boys had to receive training in order to learn how to speak the entire Mass in Latin.¹⁹ ABC said, 'McAlinden used to say, "Come in here, [ABC's first name]. We need to have some Latin lessons. Come and sit on my knee". This is where this began.'²⁰ He told the Commission that McAlinden would take turns with him and two of his school friends.²¹ He said he later found out that both of these boys had committed suicide. He added:

... I'll never run again. I'll never hide again or surrender to this. This is my chance. I have been waiting probably 50 years. I always thought this day would come. I never, ever knew it would, but I thought it would, and that is why I'm here and that's why I've decided to come and tell the truth and speak about this because there are two people that I believe that committed suicide that don't have the voice and I'm their only voice.²²

AP

- 7.23 AP gave evidence before the Commission in camera. Born in 1984, she was raised in a large, devout Catholic family. She first met McAlinden when she was 2 years old and remembers the sexual abuse occurring when she was 'very small', continuing until she was about 12 years old, in

¹⁷ Statement of BD, dated 2 August 2001, ex 238.

¹⁸ TOR 2, T10.4–14 (ABC in camera).

¹⁹ TOR 2, T10.16–21 (ABC in camera).

²⁰ TOR 2, T10.19–21 (ABC in camera).

²¹ TOR 2, T7.4–15 (ABC in camera).

²² TOR 2, T18.25–33 (ABC in camera).

1996 or 1997.²³ In her statutory declaration AP described the impact of the abuse on her and her family:

... Personally, the effects have been disabling. For me to start Kindergarten was a two-year ordeal, because I could not stand to be separated from my mother.

My teen years were an emotional rollercoaster with nightmares, disturbed sleep, bed wetting, and intense anxiety. I could not function like the other children and on one occasion when I was thirteen, I attempted to attend ... camp, but had to leave after just three hours in a fit of hysteria.

I did not sleep alone in my own bed until 2010.

I am now 28 years of age, I have never been married or had children, I have never lived away from my mother or left the family home. When I tried to, I suffered a breakdown and cancelled all arrangements to do so.

I am hyper-vigilant and very protective of children around me. I have suffered severe depress[ion] and anxiety, and on more than one occasion faced thoughts of suicide. I feel for many years, I have not lived, but survived. I have avoided any situation that does not feel safe.

... I have been asked by members of the church including the Bishop, whether my experience has taken away my faith. My thoughts and feelings are this: In life there is good and evil. The teachings and actions of Jesus Christ in my opinion were not evil. My trust was misplaced in those who failed to live up to those teachings and actions and instead perpetrated evil. I still believe that this took my innocence, but those responsible for it will never take away my faith in Jesus.²⁴

AC

7.24 AC, now aged 65 years old, recalls McAlinden's indecent assault of her beginning when she was 6 or 7 years old and continuing until she was 11. When she told her mother about the abuse, her mother responded with disgust and called her a liar.²⁵ Bishop Michael Malone, the previous Bishop of Maitland–Newcastle Diocese, gave evidence to the Commission that he accepted AC's account of her abuse.²⁶

7.25 AC described the effect McAlinden's manipulation and abuse had on her from a young age in a statement that was provided to Malone:

He introduced a premature awareness of sex to a 7 year-old girl whose parents had been divorced since she was two and who was particularly emotionally and psychologically fragile. He did this, first of all by manipulative coaxings and suggestions in the confessional. Authorised by the power of his priestliness, he led that little girl into thoughts of 'impure touchings and thoughts'. He gained her trust, made her feel 'special' and introduced her to adult, sexual kisses; he led her through those years, and I know this may seem over-heated, to love him. He was her absent 'father', and he was her first associations with 'love.' I would not like my words to appear hyperbolic, yet Fr McAlinden penetrated that little girl psychologically and emotionally.²⁷

²³ Statutory declaration of AP, dated 16 August 2013, ex 284, para 25.

²⁴ Statutory declaration of AP, dated 16 August 2013, ex 284, paras 34–41.

²⁵ Handwritten statement of complaint by AC; typed and corrected statement of complaint by AC, dated 12 June 2002, ex 179.

²⁶ TOR 2, T848.46–849.3 (Malone); letter from Malone to AC, dated 20 June 2002, ex 219, tab 346.

²⁷ Letter from AC to Malone, dated 18 August 2002, ex 219, tab 354.

AH

7.26 AH was a victim of Fletcher from 1989, when AH was 13 years old.²⁸ He attended the Commission's public hearings for term of reference two and read his statutory declaration to the courtroom. Speaking of how difficult it was to go to the police about the sexual abuse, he said, 'I had tried to block it out, but there were many times I was tormented by memories and the shame, anger and embarrassment, which had, and still does have, a really bad effect on me at times.'²⁹

7.27 He said he became anxious when he was out, not knowing who knew about the abuse and the allegations:

If people looked at me for longer than a second, I'd get upset and just assumed that they knew what was going on. It's a hard thing to explain. In shopping centres, at preschools, sporting events, work, people seemed to be in a hurry or busy, or if I just tried to have an ordinary conversation with someone, I was always looking through them thinking, 'Do you actually know what's going on in my life at the moment?'³⁰

7.28 AH described having experienced relationship difficulties and also said he had lost his business as a result of many factors associated with the abuse.³¹ He would particularly ruminate about what course his life might have taken had he not been abused:

... but you do ask the question if they had done something about Fletcher years ago instead of moving him around, would he have got to me? Would I have continued on with my cricket and be playing in the Ashes this year? ...

Would I have gone to uni? I tried. And would I have completed a degree? I should have. Would I have had a better or a different relationship with my partner as well? These are questions that I ask myself, and these are the opportunities that have been taken away from me as a result of the abuse and the church's failure, at the end of the day, to handle a priest who was on their radar.³²

7.29 AH also told the Commission of how the abuse had affected his relationship with his brothers:

I feel that I have lost a part of my life and I cannot reclaim that, and I am so many years behind everyone else due to the abuse. I love my brothers. You've all got good jobs, but I'm jealous of what you're doing. [BC], and [BAJ] as well – good blokes, good jobs, but, gee, I think that competitive nature with brothers, being the eldest, I look at the three of you and think, no, I should be in front of you. You probably don't agree, but that's what I feel at times. I've relocated, and it's blacked out here where I am, but just to get out of this area again ... the memories are too much ...³³

7.30 AH told the Commission, 'The breach of trust I have experienced at the hands of the Catholic Church will affect me forever, as I was an innocent little kid with a big hope for the future'.³⁴

Peter Gogarty

7.31 Peter Gogarty (who did not wish to be allocated a pseudonym) was abused by Fletcher on a number of occasions (commencing when he was aged 14), from 1974 until 1978. Gogarty has

²⁸ Remarks on sentencing of Judge Armitage in the matter of *Regina v James Patrick Fletcher*, dated 11 April 2005, ex 219, tab 461, p 1200.

²⁹ TOR 2, T1429.26–30 (AH).

³⁰ TOR 2, T1430.42–1431.2 (AH).

³¹ TOR 2, T1431.37–39 (AH).

³² TOR 2, T1432.20–32 (AH).

³³ TOR 2, T1432.44–1433.9 (AH).

³⁴ TOR 2, T1433.13–15 (AH).

since been an advocate for sexual abuse victims, and provided the Commission with a statutory declaration describing the impact of the abuse on him and his life:

Is anyone able to understand that what happened to me was not an event, or even a series of events, but rather a reshaping of who I am – a manipulation of me for someone else’s amusement – that this is not my history but my every day?

There are things I can never have, things I can never get back, and I grieve for them. I can never make some choices for myself. I cannot choose who to have my first sexual encounter with. I cannot have anything like a normal sexual development. I can never have the girlfriends I did not have. I can never make up for years of guilt, and self-loathing or my certainty that I was a willing partner in my sinfulness.

Toughest of all is the understanding that there are some things I will never know. Who I might have been without Jim Fletcher – how much of who I am today is shaped by him and his church? I will never know exactly how my abuse has impacted me. So I am left with a never ending search for answers, and an ongoing quest to create a “me” which I can be happy with.³⁵

Guilt

7.32 Another theme emerging from the evidence of victims concerns their own feelings of guilt. Understandably, as children, victims were unable to stop the abuse and often feel guilt at having been unable to save themselves or others from sexual abuse. One victim who gave evidence in camera said:

... I described it as ... the guilt and the guilt collar that I had the burden to wear, knowing that if I had persevered more strongly, would that have stopped [him] abusing other people in the years. And with the media and with those victims coming forward, it is a pretty big guilt collar to wear, but the opportunity to seek the truth is allowing me to loosen that guilt collar that I’m wearing and that’s all I seek.

Effects on the families of victims who reported abuse

- 7.33 Child sexual abuse also has an impact on the families of victims, sometimes fracturing family units and leading to feelings of guilt on the part of parents, who may feel they failed in their role as protectors.
- 7.34 Another way families were affected was through the reaction to them by those within the Church who learned of their disclosure of abuse to the authorities. In this regard, the Commission heard evidence relating to the impact on BJ, the mother of AH, of Fletcher’s sexual abuse of AH.
- 7.35 BJ told the Commission that in 2002, after AH told police of the abuse, she noted subtle changes in her own involvement in parish activities: ‘There was a cooling of greetings, interchange between – you know, out shopping, normally you’d greet people and have a conversation. Suddenly people were in a hurry or disappeared out of the supermarket aisle. We felt – I felt estranged’.³⁶
- 7.36 In early 2003 she noticed changes to the cleaning and reading rosters for Mass, finding she had been left off the lists with no explanation.³⁷ She said, ‘I did ring the presbytery and said, “Are we

³⁵ Statutory declaration of Gogarty, dated 18 October 2013, ex 233, p 1.

³⁶ TOR 2, T1839.24–28 (BJ).

³⁷ TOR 2, T1839.30–41 (BJ).

having a Lenten group this year? I'm happy to have it". That was probably in the lead-up to March or whenever Easter was that year. And nobody rang back. I think I got the message'.³⁸

- 7.37 BJ described receiving anonymous phone calls after Fletcher was arrested, in which the caller would just hang up, something that had never previously happened.³⁹ There were also instances of violence against BJ after Fletcher had been charged. On one occasion she was 'rammed' during a supermarket visit. She explained to the Commission what happened:

I was shopping in Raymond Terrace, and a man and his wife met me. We knew them quite well, but he said something about, 'Your son has caused a lot of trouble', and I went to speak and he rammed his supermarket trolley into my leg and rushed off. His wife followed him, and came back and she said to me, 'Oh, [BJ], you've got to understand he's very upset about Father Jim'. And I said, 'He's upset?' What do you do?⁴⁰

- 7.38 In 2004, during Fletcher's criminal trial relating to his sexual abuse of AH, a further incident occurred that affected BJ:

I went to the toilet through the trial, and a lady who had been a supporter of Fletcher's, because I'd seen her there, somewhere in the court complex, and she was supporting him – she washed her hands and then just gave me a push and knocked me into the water pipe above the basin in the female toilets at East Maitland courthouse and whirled out of the room. I was very stunned but I came out of the room and told the people that she'd just assaulted me. I don't know why she'd do that. I'm the mother. I decided not to – I mean, it was assault, but I wasn't going to – my son was going through an extraordinary amount of stress, talking about his real assault and real abuse. I just put it to one side. I wasn't going to – I didn't want to do anything about it.⁴¹

- 7.39 BJ told the Commission, 'It became clear that it would have been easier for my son not to do anything. It was long and hard, and we had a lot of resistance and we had a lot of ostracisation, and the easiest thing would have been to just let it go. But he, and then us, chose not to do that'.⁴²

- 7.40 In relation to the legal process generally, BJ said the investigating police, court officers and staff of the Office of the Director of Public Prosecutions had treated the family with respect but that she nevertheless felt great anguish as a parent watching her child go through the ordeal of the trial:

There's a lot of publicity. There's a lot of gossip and innuendo. Newcastle is a small place with a very Catholic grapevine, it flourishes, and everyone has a version and they're not hesitant in putting it out there as something they knew or observed. It was a hard enough process, without that. It's a terrible thing to see a child – and I wasn't in the courtroom when he spoke, because I was the next witness – it's a terrible thing to see a much-loved son have to say those words and put it out there for people to think, is he telling the truth or is he not? It was an enormous cost.⁴³

- 7.41 BJ was present when AH read his statutory declaration to the Commission during its public hearings. She told the Commission she was 'extremely proud' of him.⁴⁴

³⁸ TOR 2, T1839.43–1840.1 (BJ).

³⁹ TOR 2, T1840.15–26 (BJ).

⁴⁰ TOR 2, T1840.26–33 (BJ).

⁴¹ TOR 2, T1841.23–36 (BJ).

⁴² TOR 2, T1842.4–8 (BJ).

⁴³ TOR 2, T1860.6–16 (BJ).

⁴⁴ TOR 2, T1842.10–16 (BJ).

Acknowledgment of the hurt and suffering caused

7.42 As noted in Chapter 3, during the opening of the Inquiry’s public hearings for the second term of reference, Bishop William Wright, Bishop of Maitland–Newcastle Diocese, offered an unreserved apology for the predatory conduct of McAlinden and Fletcher and acknowledged the impact of the abuse on victims and their families.⁴⁵

7.43 During the public hearings, Mr Gogarty elicited evidence from Bishop Malone, the previous Bishop of the Diocese, regarding his understanding of the impact of child sexual abuse on Fletcher’s victims:

Q. Bishop Malone, in your experience, having met and talked to victims of James Patrick Fletcher – I know there have been others, victims of other priests, but I’m specifically interested in the victims of Fletcher – could you tell the Commissioner, in your observation, how child sexual assault has affected those people?

A. Oh, yes, there’s a whole raft of ways in which the effect has taken place. The victims with whom I met, and I met with many of them on many occasions, they were extremely -extremely traumatised by the experience. They felt they had been betrayed because a priest had done this to them. They were also conscious of their families, maybe yes, maybe not, believing them were they to come forward to their families. So a number of them kept silence for a number of years precisely for that reason. A number of the victims also found it hard to hold down a job. They also found it hard to hold down relationships and all of these things created a very vulnerable sort of person who was badly traumatised by the abuse.⁴⁶

7.44 Malone also told the Commission that some parishioners had intimidated families of Fletcher’s victims. These parishioners had ignored or shunned the families, and there had been some ‘quasi-violent’ behaviour, one family’s home being pelted with eggs. Malone said, ‘People were very badly divided by all of this’.⁴⁷

Others’ voices

7.45 Although this Commission was concerned with police investigations relating to two particular paedophile priests, it is acknowledged that many other victims of other clergy or people associated with religious institutions might not yet have had the opportunity to be heard. When opening the public hearings for term of reference two on 1 July 2013 Commissioner Cunneen SC said:

While the Inquiry’s terms of reference focus upon matters related to McAlinden and Fletcher and associated police investigations, this Inquiry is acutely aware that there have been victims of priests other than McAlinden and Fletcher. Today I acknowledge those victims and their families and the pain and suffering they endure daily. I trust and expect that their voices will be heard in other forums.⁴⁸

In view of the Commission’s experience in the Hunter-Manning region, the Royal Commission into Institutional Responses to Child Sexual Abuse will be likely to have much work to do in that regard. With the victims’ consent, this Commission referred material relating to 29 victims of the region to the Royal Commission pursuant to the information-sharing arrangements mandated in the Letters Patent establishing this Inquiry (see Chapter 3).

⁴⁵ TOR 2, T21.41–22.21 (Wright).

⁴⁶ TOR 2, T1029.12–30 (Malone).

⁴⁷ TOR 2, T1028.20–31 (Malone).

⁴⁸ TOR 2, T5.33–40.

**Part B Term of
reference 1**

8 The Strike Force Lantle police investigation and related matters

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Introduction

- 8.1 Strike Force Lantle (referred to here simply as ‘Lantle’) is the name given to the formal police investigation, conducted by Newcastle City Local Area Command, into alleged concealment by officials currently and formerly attached to the Catholic Diocese of Maitland–Newcastle of sexual abuse committed by clerics. Lantle remains an ongoing police investigation (see Chapter 19).
- 8.2 Lantle featured prominently in matters the Commission examined in a number of important respects. The Lantle investigators had responsibility for investigating concealment allegations relating to offences committed by deceased priests Father Denis McAlinden and Father James Fletcher. Detective Chief Inspector Peter Fox was, on his account, effectively excluded from investigating such matters from 2 December 2010. This aspect formed an important part of matters that are the subject of the Commission’s first term of reference. An assessment of ‘the circumstances’ in which Fox was instructed to cease investigating ‘relevant matters’, within the meaning of the first term of reference, requires an understanding of the then existing police investigation (Lantle) being conducted into such matters and from which Fox was excluded. In addition, Fox asserted that Lantle was a ‘sham’ and was ‘set up to fail’, including by senior police deliberately appointing to the investigation officers who did not have the necessary competence or experience for the task. Concerns were also raised about Lantle, including in contemporaneous media articles by Ms Joanne McCarthy, that put in issue senior police’s commitment to the investigation. For these reasons the development, timing and progress of Lantle were matters properly deserving of close scrutiny by the Commission.
- 8.3 Further, Lantle constitutes one of the police investigations of matters in relation to which cooperation (or otherwise) by church officials is considered within the Commission’s second term of reference.

Police ranks and organisational structure

- 8.4 In ascending order of seniority, the principal ranks of the New South Wales Police Force are constable, senior constable, sergeant, senior sergeant, inspector, chief inspector, superintendent, chief superintendent, assistant commissioner, deputy commissioner, and commissioner.
- 8.5 The current Commissioner of the NSW Police Force is Mr Andrew Scipione APM. There are three deputy commissioners, with responsibility for field operations, specialist operations and corporate services respectively. There are some 18 assistant commissioners with various

responsibilities. As at December 2010, for example, Assistant Commissioner Carlene York had responsibility for the Northern Region of the NSW Police Force, which covers a large geographical area, consisting of some 13 local area commands, and which includes the Maitland–Newcastle region.

- 8.6 The NSW Police Force consists of some eighty local area commands, as well as a number of specialist commands. Each local area command is responsible for policing and general criminal investigations within a particular geographical area that encompasses a number of local police stations. For example, Newcastle City LAC has responsibility for the greater Newcastle metropolitan region and includes police stations at Newcastle, Stockton and Waratah. The commander of a local area command typically holds the rank of superintendent.

The genesis and development of Strike Force Lantle

- 8.7 The genesis of the Lantle investigation can be traced to information McCarthy provided to police at Lake Macquarie LAC in April and May 2010.

October 2009: Ms McCarthy obtains documents implicating senior church officials

- 8.8 McCarthy is a senior journalist with the *Newcastle Herald* newspaper, part of the Fairfax organisation; she has worked there since 2002 and has gained recognition for her work as a journalist.¹
- 8.9 On 10 June 2006 the *Newcastle Herald* published McCarthy's first article dealing with child sexual abuse in the Catholic Church.² From then until 2010 the newspaper published a number of McCarthy's articles on that topic.³
- 8.10 In about October 2009 McCarthy received some church documents from AL, a victim of McAlinden.⁴ AL had received the documents from Ms Helen Keevers of the Diocese, with the consent of Bishop Michael Malone.⁵ McCarthy regarded the documents as tending to show that certain senior church officials had been involved in trying to remove McAlinden from ministry in 1995 but had not reported his behaviour to police.⁶ On receiving the documents, McCarthy skimmed them, but said she did not fully appreciate their significance until some time in about early to mid-2010,⁷ when she decided to provide them to the police.

April to May 2010: Ms McCarthy provides documents to police

- 8.11 McCarthy gave evidence that by at least about early 2010, in her capacity as a journalist, she had had a number of interactions with Detective Sergeant Kristi Faber and Detective Senior Constable Shaun McLeod of Lake Macquarie LAC in relation to Strike Force Georgiana.⁸ As at mid-2010 Detective Inspector David Waddell held the position of crime manager at Lake Macquarie LAC and was Faber's supervising officer.

¹ In 2012 McCarthy was awarded the Graham Perkin Award for investigative journalism for her body of work relating to child sexual abuse in the Catholic Church in the Hunter region: TOR 1, T1145.29–31 (McCarthy).

² Article entitled 'In the name of the fathers' by McCarthy 10 June 2006, the *Newcastle Herald*, ex 286.

³ See articles entitled 'Parish priest faces inquiry' by McCarthy 31 May 2008, the *Newcastle Herald*, ex 31; 'Priest left arrest warrant, decades of accusations' by McCarthy 29 September 2007, ex 287; 'Secrets of the bishops' by McCarthy 27 April 2010, the *Newcastle Herald*, ex 288.

⁴ TOR 1, T1153.7–21 (McCarthy). Note that the Commission allocated the pseudonym AL in accordance with the process referred to in Chapter 3.

⁵ TOR 1, T1289.19–31 (McCarthy).

⁶ NSW Police document signed by McCarthy and McLeod acknowledging receipt of documents pertaining to McAlinden and alleged criminal issues of church officials within the Catholic Church and attached documents, dated 23 April 2010 (tab 27, ex 216).

⁷ TOR 1, T1154.5–10 (McCarthy).

⁸ TOR 1, T1146; T1147; T1151.24–28 (McCarthy).

Strike Force Georgiana

- 8.12 Strike Force Georgiana (referred to here simply as ‘Georgiana’) was established in September 2007.⁹ Its initial task was to investigate child sexual assault offences alleged to have been committed by NP4, a priest of Maitland–Newcastle Diocese, but its terms of reference expanded to include the investigation of other alleged offenders in connection with child sexual abuse. Georgiana has been an active and successful police investigation. As the evidence before the Commission revealed, by May 2013 it had obtained more than 97 victim statements and was working with more than 100 victims of child sexual abuse. It had also laid 427 charges against 10 offenders, six of whom were Catholic priests and two of whom were Catholic brothers. Six of the offenders were convicted; proceedings against some other offenders are pending. Georgiana remains an ongoing police investigation in Northern Region.¹⁰ Newcastle City LAC and Lake Macquarie LAC are both commands under the umbrella of Northern Region.

Strike Force Lozano

- 8.13 In addition to Georgiana, by 2010 Lake Macquarie LAC had established Strike Force Lozano. The latter involved a major investigation of historical sexual assault offences relating to the Catholic Church, including in connection with the St John of God order at Morisset.¹¹ The investigation initially looked at four persons of interest and about 20 victims but thereafter expanded.¹²

Ms McCarthy provides the church documents to Detective Senior Constable McLeod

- 8.14 On 23 April 2010 McCarthy provided the 16 pages of documents she had received from AL to McLeod at Lake Macquarie LAC.¹³ A document McLeod prepared that day, acknowledging receipt of the documents, recorded the following:

ISSUE: Receipt of documents from Journalist Joanne McCarthy pertaining to Fr Denis McAlinden and alleged criminal issues of Church Officials within the Catholic Church concealing criminal behaviour of Fr McAlinden.

COMMENT: The documentation provided by Ms McCarthy will be reviewed by SF Georgiana investigators in regards to the alleged misbehaviour.

RECOMMENDATION: The documentation be retained for a thorough criminal review of the presented information.¹⁴

- 8.15 On 24 April 2010 McCarthy sent McLeod an email that contained further information relating to McAlinden.¹⁵ McLeod acknowledged receipt of the email on his return to work on 3 May.¹⁶

April to May 2010: communication between Ms McCarthy and Detective Inspector Waddell

- 8.16 At some time between 23 and 28 April 2010 Waddell received the documents McCarthy had provided, either directly from McLeod or from Faber (who was McLeod’s immediate

⁹ Statement of Faber, dated 6 May 2013, ex 45, para 8.

¹⁰ *ibid*, paras 36, 39 and 43.

¹¹ TOR 1, T509.20–35 (Waddell); email from Townsend to Dunn attaching Lake Macquarie detectives staffing submission table dated 25 August 2010, annexure D to ex 6.

¹² TOR 1, T509.21–22 (Waddell).

¹³ McCarthy and McLeod acknowledgment of receipt of documents regarding McAlinden, dated 23 April 2010, ex 216, tab 27.

¹⁴ *ibid*, p 83.

¹⁵ Email chain, ending with email from McCarthy to McLeod forwarding email from McCarthy to Lucas (12:04 PM), dated 24 April 2010, ex 216, tab 28.

¹⁶ Email from McLeod to McCarthy, dated 3 May 2010, ex 216, tab 29.

supervisor).¹⁷ Waddell reviewed the documents.¹⁸ He also reported the matter to his commander, Superintendent Craig Rae.¹⁹

- 8.17 During the same period McCarthy spoke with Waddell. McCarthy said Waddell advised her that if an investigation was to be initiated there needed to be a complaint from a victim.²⁰ McCarthy then had a discussion with AL about providing a written complaint that could be given to the police.²¹ As described shortly, a letter from AL was given to the police on 30 April 2010. A diary entry of 28 April 2010 by Waddell records that he had spoken to McCarthy by telephone that day and told her he had to make an assessment of the evidence and then decide who should investigate the McAlinden matter.²²
- 8.18 On 28 April 2010 the *Newcastle Herald* published an article by McCarthy entitled ‘Pedophile priest victim calls for church inquiry’.²³ The article related to AL but did not name her. It described her as having been sexually abused by McAlinden and said the *Newcastle Herald* had obtained documents showing the Church was aware of McAlinden’s offending, at least in 1995, and failed to alert authorities. In the article McCarthy recorded Waddell as having said the police were reviewing the documents the newspaper had obtained and that ‘if there’s an investigation that needs to be pursued, it will be’.²⁴
- 8.19 On about 30 April 2010 Waddell received from AL a typewritten letter dated that day. The letter constituted a formal complaint that specific senior church officials – including Bishop Malone and former (now deceased) bishop Leo Clarke – knew about McAlinden’s offending but failed to act. In the letter AL asked that an inquiry be held to examine the conduct of church officials.²⁵
- 8.20 On the same day the *Newcastle Herald* published a further article by McCarthy, entitled ‘Pedophile priest victim feels pain of justice denied’.²⁶ The article again related to AL but did not name her. It reported that the victim (AL) had lodged a formal complaint with the police and also referred to and quoted from AL’s 30 April 2010 letter to Waddell, including AL’s statement: ‘On behalf of all victims of Denis McAlinden, I am seeking justice’.²⁷ The article further reported that Waddell was reviewing documents indicating church knowledge of McAlinden’s behaviour (a reference to the material McCarthy had provided to the police).²⁸
- 8.21 On 30 April 2010 Waddell also spoke by telephone with Detective Inspector Paul Jacob of the NSW Police Sex Crimes Squad about the McAlinden matter. As Waddell’s diary entry for that day records, Jacob advised him that it was not a matter the squad could take on, although it could provide specialist consultancy services.²⁹
- 8.22 Waddell obtained copies of emails referring to McAlinden that McLeod had received from McCarthy. He also received other material, including a letter from Mr Peter Gogarty dated

¹⁷ TOR 1, T511.16–23 (Waddell).

¹⁸ TOR 1, T512.36–39 (Waddell); diary entry of Waddell, dated 28 April 2010, ex 7.

¹⁹ TOR 1, T515.15–41 (Waddell); diary entry of Waddell, dated 29 April 2010, ex 7.

²⁰ TOR 1, T1156.20–35 (McCarthy).

²¹ TOR 1, T1156.37–39 (McCarthy).

²² TOR 1, T513.5–31 (Waddell).

²³ Article entitled ‘Pedophile priest victim calls for church inquiry’ by McCarthy 28 April 2010, the *Newcastle Herald*, ex 216, tab 28A.

²⁴ *ibid*, p 104(b).

²⁵ Letter from AL to Waddell, dated 30 April 2010, annexure A to ex 6.

²⁶ Article entitled ‘Pedophile priest victim feels pain of justice denied’ by McCarthy 30 April 2010, the *Newcastle Herald*, ex 216, tab 28B.

²⁷ *ibid*, p 104(d).

²⁸ *ibid*, p 104(e).

²⁹ TOR 1, T518.12–14 (Waddell); diary entry of Waddell, dated 30 April 2010, ex 7.

3 May 2010³⁰ that raised questions about possible concealment by church officials of child sexual offences committed by Fletcher.

- 8.23 The McAlinden and Fletcher matters raised in the materials provided to police in mid-2010 are referred to here as the 'church concealment allegations'.³¹

May 2010: Lake Macquarie Local Area Command resists taking on the church concealment investigation

- 8.24 As crime manager at Lake Macquarie LAC, Waddell formed the view that his command did not have the capacity to carry out a proper investigation of the church concealment allegations. He promptly arranged to forward the concealment documents, via the chain of command, to Newcastle City LAC; they were attached to a report dated 3 May 2010 and marked for the attention of Detective Chief Inspector Brad Tayler, the then crime manager at Newcastle City LAC.³²

- 8.25 Waddell sent the documents to Newcastle City LAC on the basis that he believed any concealment offences would have taken place in Newcastle.³³ He referred to this in his accompanying report:

These documents relate to the offence of conceal serious indictable offence under section 315 of the Crimes Act, relating to members of the Maitland Newcastle diocese of the Catholic Church located in Newcastle. This matter does not come within the term of reference for strikeforce Georgiana and the matter is referred for any further investigation.

I have advised the person reporting, Joanne McCarthy, of the Newcastle Herald, that these documents have been forwarded to the Newcastle City LAC.³⁴

- 8.26 Among the documents he forwarded to Tayler was AL's complaint letter dated 30 April 2010 and the letter from Gogarty dated 3 May 2010.
- 8.27 Following his report of 3 May 2010 Waddell received some further emails, via McLeod, containing information from McCarthy.³⁵ This included an email dated 8 May 2010 from McCarthy to McLeod, advising him that she had spoken with a second McAlinden victim, who was willing to make a statement to police if contacted.³⁶ Waddell forwarded the emails to Tayler at Newcastle City LAC.³⁷

Newcastle City LAC and Lake Macquarie LAC compared

- 8.28 Newcastle City LAC is much larger than Lake Macquarie LAC. Waddell gave evidence that in mid-2010 Lake Macquarie LAC had about 20 detectives; in contrast, Newcastle City LAC had about 30. Indeed, Newcastle City LAC is the largest local area command in New South Wales. It is in fact a conglomerate, reflecting a merger in about 2008 of two previous commands, Waratah and Newcastle.³⁸

³⁰ Statement of Waddell, dated 18 March 2013, ex 6, para 7.

³¹ Similarly, the subsequent investigation can conveniently be referred to as the 'Church concealment investigation'.

³² TOR 1, T510.5–45 (Waddell); memorandum from Waddell to Tayler re 'Complaint of concealing serious offence by McCarthy, Newcastle Herald, in relation to offences committed by McAlinden a Catholic Priest and reported to members of the Maitland Newcastle Diocese of the Catholic Church', dated 3 May 2010, ex 216, tab 30A.

³³ TOR 1, T531.19–41 (Waddell).

³⁴ Memo re complaint of concealing serious offence by McCarthy, dated 3 May 2010, ex 216, tab 30A.

³⁵ Email from Waddell to Tayler re 'FW: from McCarthy, Newcastle Herald', dated 10 May 2010, ex 216, tab 33.

³⁶ *ibid*, p 110.

³⁷ *ibid*.

³⁸ TOR 1, T532.35–533.46 (Waddell).

Detective Inspector Waddell's reasons

- 8.29 In evidence before the Commission Waddell gave three main reasons for his belief that Lake Macquarie LAC (as distinct from Newcastle City LAC) should not investigate the church concealment allegations.³⁹ First, the complaint in question related to alleged concealing of serious offences by officials from Maitland–Newcastle Diocese of the Catholic Church, located in Newcastle. He said that most criminal investigations are allocated to the local area command in which the alleged offences occurred, which in this instance would be Newcastle City LAC.⁴⁰
- 8.30 Second, Lake Macquarie LAC was experiencing serious staff resourcing and associated welfare difficulties. This included problems relating to a number of officers who had had to deal with workload pressures arising from prolonged involvement in two major investigations relating to alleged sexual assaults by church officials – namely, Strike Force Georgiana and Strike Force Lozano. As an example, the Commission heard evidence about welfare problems arising in relation to McLeod, who had been medically discharged from the NSW Police Force in September 2011 after having been on extended leave since 26 July 2010.⁴¹ Waddell told the Commission he did not think Lake Macquarie LAC would be able to commit the necessary resources to the proposed church concealment investigation.⁴²
- 8.31 Waddell's third reason was that the proposed investigation did not fall within the terms of reference of Georgiana or any of the other investigations being conducted by Lake Macquarie LAC at that time.⁴³

Conclusion

- 8.32 The Commission accepts that Waddell genuinely held the views he expressed in his written police reports and in oral evidence before the Commission as to why Lake Macquarie LAC should not be the command responsible for investigation of the church concealment allegations. In this respect, Lake Macquarie LAC already had responsibility for two major strike force investigations – Georgiana and Lozano – relating to alleged sexual assault offences committed by individuals associated with the Catholic Church and was experiencing serious staffing and welfare difficulties. Further, some of these welfare problems had arisen from officers' prolonged involvement with the subject matter of child sexual assault, including in the context of Georgiana. In addition, the location of the alleged offences was within the geographical area of responsibility of Newcastle City LAC, this being an important factor in the allocation of the investigation.
- 8.33 The Commission does not consider that Lake Macquarie LAC's resistance, through Waddell, to taking on the church concealment investigation reflected a view that the allegations in question should not be properly investigated.

May 2010: Ms McCarthy communicates further with the police

- 8.34 On 4 May 2010 Waddell had a further telephone conversation with McCarthy. His diary entry for that day makes reference to the conversation. Counsel assisting questioned Waddell about the conversation. Waddell accepted that he told McCarthy police would be assessing the information she had provided in order to establish what investigations would be carried out. He denied, however, that he told McCarthy it is difficult to prove concealment of a crime. Indeed,

³⁹ These reasons were consistent with those recorded in an email of 18 August 2010 that Waddell sent to his commanding officer, Superintendent Rae: email from Townsend to Dunn re 'FW: Catholic Church', dated 18 August 2010, ex 216, tab 62A.

⁴⁰ TOR 1, T531.18–532.11 (Waddell).

⁴¹ TOR 1, T520–526 (Waddell); letter from Mr Greene, Henry Davis York to the NSW Crown Solicitor re Detective McLeod, dated 12 December 2013, ex 260.

⁴² TOR 1, T531.43–532.34 (Waddell).

⁴³ TOR 1, T533.20–46 (Waddell).

he told the Commission the Georgiana investigation had charged individuals with having concealed serious offences.⁴⁴

- 8.35 In contrast, McCarthy gave evidence that in the conversation Waddell made mention of the challenges of proving concealment matters.⁴⁵ It may also be noted that, as is apparent from other evidence before the Commission, in August 2010 Acting Inspector Stephen Rae had advised McCarthy that ‘section 316 matters were difficult’.⁴⁶ This suggests that police officers did at times speak openly about such things with McCarthy, despite her being a journalist.
- 8.36 The Commission accepts that during the conversation there was at least some brief discussion about the nature of concealment offences. It is not, however, in a position to prefer the evidence of one witness over that of the other as to the actual terms of the conversation; nor is it necessary to do so. Further, even if Waddell had said concealment offences can be difficult to prove, this can be regarded as simply reflecting a realistic view of the position. It does not, without more, demonstrate a desire to avoid properly investigating a matter if investigation was objectively warranted or, for example, when directed by the region commander to do so.

Ms McCarthy alerts police to AJ’s existence

- 8.37 Although McCarthy is not a ‘church official’,⁴⁷ it should be noted that she provided important assistance to police in respect of the investigation that became Strike Force Lantle. Thus, she provided the church concealment allegation documents to McLeod in April 2010, which became the catalyst for the Strike Force Lantle investigation.
- 8.38 In addition, during her 4 May 2010 telephone conversation with Waddell, McCarthy told him that on the previous day she had received a call from another victim of McAlinden (subsequently allocated the pseudonym AJ by the Commission), who did not want McCarthy to pass on her details to police but whose details she thought would be in McAlinden’s file at the Diocese.⁴⁸

May 2010: Ms McCarthy speaks with Inspector Townsend

- 8.39 On or about 4 May 2010 McCarthy spoke by telephone with Inspector Anthony Townsend, the operations manager of Northern Region.⁴⁹ In a further article, published in the *Newcastle Herald* that day and entitled ‘Police delve into church’⁵⁰ McCarthy quoted Townsend as saying police were reviewing the church concealment allegation documents and that they could pool resources if an investigation beyond a single command was needed. Subsequently, McCarthy continued to provide to police information about McAlinden that became available to her, including material relating to AK (a McAlinden victim).⁵¹

May 2010: a prescient comment

- 8.40 As noted, in 2010 McLeod was attached to Lake Macquarie LAC; Faber was his immediate supervisor, and Waddell was his crime manager. During the course of the Inquiry the Commission closely considered McLeod’s role in relevant events.

⁴⁴ TOR 1, T539.22–30 (Waddell).

⁴⁵ TOR 1, T1160.38–40 (McCarthy).

⁴⁶ Statement of Rae, dated 2 May 2013, ex 185, para 16.

⁴⁷ See the Commission’s terms of reference.

⁴⁸ Diary entry of Waddell, dated 4 May 2010, ex 7.

⁴⁹ Diary entry of Townsend, dated 4 May 2010, ex 216, tab 169, p 812.

⁵⁰ Article entitled ‘Police delve into Church’ by McCarthy 8 May 2010, the *Newcastle Herald*, ex 28.

⁵¹ Email chain, ending with email from Jacob to Tayler re ‘FW: from McCarthy,’ dated 2 June 2010 and beginning with email from McCarthy to Tayler re ‘from McCarthy, Newcastle Herald,’ dated 1 June 2010, attaching Tribunal of the Catholic Church statement of AK, dated 13 October 1995, annexure C to ex 17.

- 8.41 McLeod had an interest in investigating child sexual abuse in the Catholic Church and had worked for a time on Strike Force Georgiana. It is also apparent that senior police at Lake Macquarie were concerned about the welfare of McLeod, who took sick leave on 26 July 2010; he was discharged from the NSW Police Force on medical grounds on 1 September 2011.⁵²
- 8.42 Documents produced to the Commission show that by April 2010 McLeod had spoken with Fox in relation to Fox's investigation of Fletcher (conducted from 2002 to 2004), and Fox had given McLeod authority to obtain a copy of the brief of evidence relating to the Fletcher matter.⁵³ On 9 April 2010 McLeod sent an email to Senior Constable Norman Redgrove, the brief-handling manager at Maitland police station, asking for a copy of the Fletcher brief of evidence. On 14 April Redgrove suggested by return email that McLeod attend Maitland police station to review the materials and copy what he required.⁵⁴
- 8.43 On 13 May 2010 McLeod sent a further email to Redgrove:

I have now [been] directed to stand down & NOT to review this information by our Crime Manager [Det Insp Waddell]. The [basis] for this is that a review would be irrelevant. I respectfully differ with this view but acknowledge the clear direction from my Boss. Regarding the information contained in the Fr Fletcher investigation by D/C/Insp Fox, this would reveal [hindrance]/aid & abet offences committed by the present Bishop Malone & other priests.⁵⁵

McLeod asked that Redgrove place a copy of his email with the Fletcher brief and noted, somewhat presciently, 'I dare suspect that in the future, the Fletcher records may be reviewed by an independent inquiry'.⁵⁶

Concerns about Detective Senior Constable McLeod's welfare

- 8.44 Faber gave evidence about McLeod. She said mental health concerns in relation to him arose in about 2008 and early 2009, during phase one of the Strike Force Georgiana investigation, but were 'definitely more apparent' by May 2010.⁵⁷
- 8.45 Both Faber and Waddell gave evidence to the effect that welfare concerns in relation to investigating officers were something that particularly arose in the context of protracted child sexual assault investigations.⁵⁸ They can become manifest, as was in part the case with McLeod, after prolonged exposure to extreme images of child pornography as a part of a protracted investigation.⁵⁹ Supervising police must then take steps to ensure the welfare of the officer concerned.⁶⁰
- 8.46 Waddell's diary entries in April 2010 reveal welfare concerns relating to McLeod.⁶¹ On 15 April 2010 Waddell spoke with Faber and another officer about these concerns and recommended that steps be taken to make McLeod aware of the support services that were available.⁶²

⁵² Letter from Mr Greene, Henry Davis York to the NSW Crown Solicitor re Detective McLeod, dated 12 December 2013, ex 260.

⁵³ Email chain, ending with email from McLeod to Norman Redgrove re 'Fletcher BOE', dated 13 May 2010 and beginning with email from McLeod to Norman Redgrove, dated 9 April 2010, ex 216, tab 36.

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ TOR 1, T1636.43–46 (Faber).

⁵⁸ TOR 1, T523.6–20 (Waddell); T1637.4–16 (Faber).

⁵⁹ TOR 1, T1637.29–40 (Faber).

⁶⁰ TOR 1, T1638.9–16 (Faber).

⁶¹ Diary entries of Waddell, dated 9 April 2010 to 31 August 2010, ex 7.

⁶² TOR 1, T526.11–29 (Waddell).

Waddell also gave oral evidence about instances of disconcerting behaviour by McLeod that lent weight to those welfare concerns.⁶³

- 8.47 Waddell spoke with McLeod, as well as two other detectives, about not continuing to work on child sexual assault investigations. Waddell said he wanted McLeod and the other two detectives to work on different types of investigations in the interests of their welfare and health.⁶⁴
- 8.48 In mid-2010 McLeod was removed from child sexual assault investigations. The decision to remove him was made by his senior officer, Faber, and supported by Waddell as crime manager.

Mr McLeod not available to give evidence

- 8.49 The Commission gave particular attention to whether McLeod should be summonsed to give evidence at the public hearings. It received expert medical evidence, on McLeod's behalf, showing that for medical and welfare reasons he was unfit to give evidence and that requiring him to give evidence could have serious adverse effects on his wellbeing.⁶⁵ The medical evidence was compelling. Ultimately, the Commission took the view that it would not be appropriate to summons McLeod to give evidence.

Conclusions

- 8.50 The Commission finds that the decision to remove McLeod from child sexual assault investigations at Lake Macquarie LAC was motivated by genuinely held concerns about his welfare and that there was a proper basis for such concerns. Having regard to the evidence of Waddell and Faber,⁶⁶ the Commission accepts that the decision was not taken with a view to shutting down any investigation of alleged concealment of offences by church officials.
- 8.51 Such a suggestion would also be inconsistent with the work being done by Lake Macquarie LAC, through Strike Force Georgiana and Strike Force Lozano, in investigating and prosecuting child sexual offences committed by officials of the Catholic Church.

May 2010: Newcastle City Local Area Command resists taking on the church concealment investigation

- 8.52 Former Detective Chief Inspector Brad Tayler held the position of crime manager at Newcastle City LAC from about 2008 to December 2010. He had joined the NSW Police Force in 1984 and began training as a detective in 1989. In 2003 he was promoted to the position of detective chief inspector. Before transferring to Newcastle City LAC in 2008 he was the crime manager at Lake Macquarie LAC.⁶⁷ By 2010 he had over 20 years' experience in investigative policing.⁶⁸ He had also been awarded the Australian Police Medal following his involvement in the investigation and prosecution of Milton Orkopoulos,⁶⁹ a former member of the New South Wales Legislative Assembly who was convicted of child sexual offences. As discussed shortly, Tayler went on extended sick leave in December 2010 and later was medically discharged from the NSW Police Force.⁷⁰
- 8.53 In May 2010 Tayler received the church concealment file from Lake Macquarie LAC. On 20 May 2010 he issued a report recommending that the file be forwarded to the Sex Crimes Squad, State

⁶³ TOR 1, T521.1–45 (Waddell).

⁶⁴ TOR 1, T522.38–43 (Waddell). See also T528.36–529.32 (Waddell).

⁶⁵ Psychiatric report of Robinson re McLeod, dated 30 April 2013, conf ex ZZZ.

⁶⁶ See TOR 1, T1637.22–29 (Faber).

⁶⁷ TOR 1, T624–625 (Tayler); statement of Tayler, dated 6 May 2013, ex 9.

⁶⁸ TOR 1, T38–47 (Tayler).

⁶⁹ TOR 1, T755.10–24 (Tayler); TOR 1 T498.16–31 (Fox).

⁷⁰ TOR 1, T 625.6–17; statement of Tayler, dated 6 May 2013, ex 9.

Crime Command, for investigation.⁷¹ In his report Tayler said the file related to various allegations of sexual assault and the subsequent covering up of them by members of the Diocese. He added:

Newcastle City LAC does not have the expertise to investigate this matter. This already has significant media exposure within the Newcastle area and [a] recent broadcast on ABC national television. The investigation will involve dealings with the hierarchy of the Catholic church and covers offences dating back to 1995.

Recommendation

It is my submission this file should be forwarded to Sex Crimes, State Crime Command, for investigation.

- 8.54 Tayler forwarded the report to his then commander at Newcastle City LAC, Assistant Commissioner Max Mitchell (then Superintendent Max Mitchell), who agreed with the recommendation and endorsed the report with the comment ‘Content and recommendation agreed to. State Crime charter & risk to organisation if not investigated appropriately’.⁷²
- 8.55 Tayler told the Commission that Newcastle City LAC considered the Sex Crimes Squad could better deal with the church concealment matter because the members of that squad were the experts in the field. He also had regard to the fact that the investigation would involve a high-ranking official in the Catholic Church, something that also called for the expertise of the Sex Crimes Squad.⁷³
- 8.56 In his evidence before the Commission, Mitchell said he had supported Tayler’s recommendation. He said he could see that the church concealment matter needed to be thoroughly investigated. Mitchell’s evidence was that Newcastle City LAC is an exceptionally busy command dealing with a large amount of serious crime, and Mitchell understood his crime manager’s concern that, at that time, Newcastle City LAC did not have the expertise to investigate the matter.⁷⁴ Mitchell said his reference to ‘risk to organisation if not investigated appropriately’ in his endorsement of Tayler’s 20 May 2010 report was a reference to the risk to the reputation of the NSW Police Force if the matter was not properly investigated, as well as in terms of victims and witnesses involved with the matter.⁷⁵
- 8.57 Mitchell also told the Commission he thought the investigation of the church concealment allegations would probably be protracted and involve senior members of the Catholic Church. In his view these factors favoured the matter being dealt with by the Sex Crimes Squad.⁷⁶
- 8.58 After submitting his report of 20 May 2010 Tayler initially proceeded on the basis of his assumption that the church concealment file had in fact been referred to the Sex Crimes Squad. This was his evidence before the Commission,⁷⁷ and it is also apparent in an email he sent to Jacob of the Sex Crimes Squad, which forwarded further information received by email from McCarthy.⁷⁸ McCarthy had sent her email after she had telephoned Tayler on 31 May 2010, advising him, among other things, that she would provide details about another McAlinden

⁷¹ NSW Police Force report of Tayler re ‘Allegations of conceal serious offence by clergy formerly attached to the Maitland-Newcastle Diocese of the Catholic Church’, dated 20 May 2010, ex 216, tab 38A.

⁷² *ibid.*

⁷³ TOR 1, T634.36–635.15; T752.46–753.5 (Tayler).

⁷⁴ TOR 1, T996.26–36 (Mitchell).

⁷⁵ TOR 1, T995.44–996.9 (Mitchell).

⁷⁶ TOR 1, T995.31–42 (Mitchell).

⁷⁷ TOR 1, T749.24–27 (Tayler).

⁷⁸ Tayler report re concealing offences by Maitland clergy, dated 20 May 2010, ex 216, tab 38A.

victim (AK).⁷⁹ Tayler forwarded this further information to Jacob at the Sex Crimes Squad because, as Tayler told the Commission, 'I thought he had the file'.⁸⁰

- 8.59 When Jacob responded by email on 2 June 2010, saying he did not have the church concealment file,⁸¹ Tayler arranged to check where the file was. He then sent an email on the same day to Jacob, advising, 'File is with Region who are forwarding to CET re a decision on whether we investigate these issues 15 years of age'.⁸² When Tayler became aware that the file was with Northern Region, he emailed to Townsend some additional information he had received by email from McCarthy on 1 June 2010.⁸³

May to June 2010: Detective Inspector Jacob's remarks and the 'Penske file'

- 8.60 Detective Inspector Paul Jacob is a highly experienced police officer. Since 2005 he has been manager of the Sex Crimes Team within the Sex Crimes Squad, State Crime Command.⁸⁴ He was previously a homicide detective and has been involved in major criminal investigations in New South Wales.⁸⁵ Detective Superintendent John Kerlatec, commander of the Sex Crimes Squad, described Jacob as 'one of the most experienced investigators in New South Wales and one of the most experienced investigators in the country'.⁸⁶
- 8.61 Counsel assisting questioned Jacob about particular remarks he made in two email communications with Tayler and in a handwritten file note dated 4 June 2010. Attention was also given to Jacob's reference in the file note to a 'Penske file'. The Commission considered whether the remarks evidenced reluctance by police, expressed through Jacob, to investigate concealment allegations when they involved the Catholic Church.

The two emails

- 8.62 In an email of 20 May 2010 Jacob said of the McAlinden matter, 'From what I understand from Dave Waddell, although this inquiry/assessment may have to be handled with diplomacy there is no prospect of any criminal investigation outcomes as key persons (ie the offender and decision maker within the church) are both deceased'.⁸⁷ When questioned about these remarks, Jacob told the Commission the words were his words (that is, not an opinion proffered by Waddell) and reflected his then assessment and synopsis. He acknowledged, however, that his assessment was based on 'no information at all' other than what he had been told in brief telephone calls.⁸⁸ As set out in paragraphs 8.224 and following, the Sex Crimes Squad was not assigned any formal role in the investigation until December 2010.
- 8.63 In responding to Tayler's email advice that the McAlinden file was with Northern Region awaiting a decision on whether police were to investigate, Jacob said in an email response dated 2 June 2010, 'Thanks mate that's a very sensible approach. May solve all of the problems'.⁸⁹ When asked about this comment, Jacob told the Commission it was a reference to the 'inherent

⁷⁹ TOR 1, T749.43–750.13; diary entry of Tayler, dated 31 May 2010, ex 13.

⁸⁰ TOR 1, T751.14 (Tayler).

⁸¹ File note from Jacob to 'Rach' re potential RA from Newcastle, dated 4 June 2010 and email chain, ending with email from Jacob to Tayler, dated 2 June 2010, ex 216, tab 41.

⁸² TOR 1, T751.20–47 (Tayler); file note re potential RA from Newcastle, dated 2 June 2010, ex 216, tab 41. The reference to 'CET' was to the Commissioner's executive team based in Sydney: TOR 1, T752.2–10 (Tayler), T879.35–37 (Jacob).

⁸³ File note re potential RA from Newcastle, dated 2 June 2010, ex 216, tab 41.

⁸⁴ Statement of Jacob, dated 9 April 2013, ex 17, paras 2, 4–5.

⁸⁵ TOR 1, T905.33–42; T906.5–9 (Jacob).

⁸⁶ TOR 1, T408.4–18 (Kerlatec).

⁸⁷ Email from Jacob to Tayler re 'Please contact [redacted] message from Jacob (Sex Crimes)', dated 20 May 2010, annexure A to ex 17.

⁸⁸ TOR 1, T876.6–18; T877.1–7 (Jacob).

⁸⁹ File note re potential RA from Newcastle, dated 2 June 2010, tab 41, ex 216, tab 41.

difficulties forecast in the investigation' because the principal offenders had died and one of the people responsible for reporting abuse outside the Church had died.⁹⁰

The file note of 4 June 2010

8.64 Jacob had prepared a handwritten file note dated 4 June 2010⁹¹ and attached to it printouts of email communications with Tayler in May and early June 2010, aspects of which are referred to in the foregoing paragraphs. The handwritten note was addressed as being from 'Jaco' (Detective Inspector Jacob) to 'Rach'. Jacob told the Commission that 'Rach' was a reference to Detective Sergeant Rachel McKey, who in June 2010 was the investigations coordinator at the Sex Crimes Squad and a person he described as 'my right-hand man/woman'.⁹² In the handwritten note Jacob wrote:

'Potential' RA from Newcastle

Please retain this in 'Penske' RA Coming -> long story have dealt with it a few times
-> currently RA at Region seeking direction from CET Not to investigate

Jaco⁹³

8.65 Jacob said it was his usual practice to make file notes of contact relating to potential requests for assistance, or 'RAs'. He told the Commission:

We have a system where, if there is no formal notification yet of a particular issue that I don't want to lose track of in the event that it escalates in some way, I put a copy of whatever it is that I've got, in this case an email, and I put a file note on top of it, I give it to my Detective Sergeant McKey. I've indicated on this form that it is a potential RA, which is request for assistance from Newcastle, and I request her to please retain this in Penske.⁹⁴

8.66 Jacob explained that the term 'Penske' was a reference to the 'Penske file', the subject of an episode of the *Seinfeld* television program. He said:

That is a little bit of an in-joke we have at the Sex Crimes Squad. Just to explain because it looks bizarre, it is a play on the *Seinfeld* episodes about the Penske file. It's just one of those things we termed that I put these matters I don't want to lose track of and they should be retained and secured so they can be accessed at some later point.⁹⁵

8.67 In the *Seinfeld* episode in question the 'Penske file' involved the character (George Costanza) being given a task, not knowing what to do about it, but going along with it as if he did.⁹⁶ In that context, the term 'Penske file' could convey the notion of a person doing nothing, while at the same time looking as though he or she is working hard. Jacob was questioned before the Commission as to whether this suggested meaning should be attributed to his use of the term 'Penske file' (as effectively involving not investigating a matter or treating it seriously). Jacob 'absolutely' disagreed with this suggestion:

The Penske file cupboard, a secure cupboard, is almost like an in-house joke at our office. It's a place where very important documents are kept that may be required to be actioned in a different way at a later time, and it's so I don't lose track of any material. There is an abundance of material coming in to the manager's office at the Sex Crimes on a daily basis. This is one of dozens of matters that are dealt with on a daily basis.

⁹⁰ TOR 1, T880.45–881.6 (Jacob).

⁹¹ File note re potential RA from Newcastle, dated 2 June 2010, tab 41, ex 216, tab 41.

⁹² TOR 1, T881.34–36 (Jacob).

⁹³ File note re potential RA from Newcastle, dated 2 June 2010, tab 41, ex 216, tab 41.

⁹⁴ TOR 1, T881.41–882.2 (Jacob).

⁹⁵ TOR 1, T882.2–8 (Jacob).

⁹⁶ The episode entitled 'The Barber', broadcast 1993 (season 5, episode 8). See also Wikipedia entry re 'The Barber', ex 235; Urban dictionary entry re 'Penske file', ex 236.

There was nothing out of the ordinary on this at that time from the perspective of the Sex Crimes Squad, and I didn't want to lose track of any history I had with the matter. That's why that was printed up, a memo applied to it and secured in a cupboard which we colloquially and jokingly termed the Penske file cupboard.⁹⁷

8.68 Another cause for potential concern is Jacob's comment in the file note that 'currently RA at Region seeking direction from CET Not to investigate'. Jacob was asked why he had referred to 'seeking direction from CET Not to investigate'. In particular, he was asked whether his reference should be seen as a formal affirmation that the matter should not be investigated. Jacob told the Commission his file note should not be interpreted as a position taken by the NSW Police Force. He acknowledged that he had not at the time seen the Townsend report (see paras 8.80 to 8.84) that had been generated by Northern Region and said:

... but, as I understood it, it [the Townsend report] was a comprehensive report that was seeking a direction on the value or not of investigating this matter further, and it is my interpretation of that – a handwritten note interpretation of that. I should say that subsequent to seeing the report a number of options were displayed in that, including whether or not to proceed, and it's quite a sensible approach to consider all options – options that may be considered by various issues such as liaison with victims, for example.

If I can take it away from this issue, one of the considerations for the New South Wales police is the management of their resources. If a particular investigation presents difficulties and you have a liaison with the various victims, or those parties affected by the decision-making process, they may enjoin with you in a position that you don't proceed to a full investigation, thereby lessening the impact on those involved, particularly the victims and, by extension, benefiting the New South Wales police by not putting scarce resources into an investigation that has inherent difficulties. So it is quite a sensible approach.⁹⁸

Conclusions

- 8.69 Two related aspects of Jacob's email communications in May–June 2010 and his file note raise questions about the willingness of the police to investigate the matters raised. The first is the reference to the 'Penske file' in view of the possible connotations of the term. Jacob's explanation was that the term, as used by him, denoted a file or cupboard in which miscellaneous matters were filed awaiting further action.
- 8.70 The second aspect of Jacob's email communications is the remark in his email of 20 May 2010 that there was 'no prospect of any criminal investigation outcomes' because key people (the offender and the church decision maker) had both died. Similarly, the reference in his email of 2 June 2010 to a decision by Northern Region (as to whether or not to investigate) 'may solve all of the problems' and his file note of the same day, 'currently RA at Region seeking direction from CET Not to investigate', required examination, particularly since he said that at the time he had only limited information about the investigation.
- 8.71 Jacob's remarks, contained in his file note and emails, are unfortunate in that, taken together, they could be construed as reluctance on the part of Jacob, as a senior officer at the Sex Crimes Squad, to be involved in or to encourage the investigation of the church concealment allegations, at least at that time. This possible reluctance coincided with Jacob having taken a guarded view of the likely merits of carrying out a full investigation of the church concealment allegations on the basis of the information then available to him.
- 8.72 The Commission finds, however, that Jacob's attitude was based on what he believed to be a realistic appreciation of the potential complexities of such an investigation, coupled with the

⁹⁷ TOR 1, T904.41–905.16 (Jacob).

⁹⁸ TOR 1, T882.32–883.16 (Jacob).

continuing need for police to allocate scarce resources rationally and not on the basis of a desire to protect the Catholic Church or any church official.

- 8.73 The decision about whether or not the matter should be investigated was to be made by the Northern Region Commander, and Jacob (attached to State Crime Command) was not involved in that decision-making process.
- 8.74 Further, the Commission recognises that after the Northern Region Commander made a decision in September 2010 to allocate an investigation to Newcastle City LAC, Jacob and the Sex Crimes Squad provided ongoing consultancy to the Lantle investigation, which was regarded as being of considerable assistance to the investigation. This is discussed in paragraphs 8.224 and following.

May to July 2010: Inspector Townsend reviews the McAlinden file

- 8.75 In mid-2010 Inspector Anthony Townsend was the operations manager for Northern Region. He has a law degree and had previously worked as a police prosecutor. A police officer since 1983, he was appointed sergeant in 1996, and in 2009 he was promoted to the rank of inspector.⁹⁹
- 8.76 In his position as operations manager, Townsend reported directly to Assistant Commissioner Carlene York, the Northern Region Commander.
- 8.77 The Northern Region consists of 12 local area commands, stretching from Brisbane Water–Gosford in the south to the Queensland border in the north.¹⁰⁰ Newcastle City LAC is the largest LAC in the region (and, indeed, in New South Wales) in terms of both staff and criminal investigations.¹⁰¹ As a practical matter, any decision coming out of ‘Region’ was taken as coming with the imprimatur of the Northern Region Commander.¹⁰²
- 8.78 Part of Townsend’s role as operations manager was to provide advice to the Northern Region Commander and to assist LACs with the allocation of resources to particular strike forces and operations.¹⁰³ His duties also extended to organising operational intelligence and planning processes across the Northern Region, as well as providing support and advice to LACs on operational matters.¹⁰⁴ It was part of his role to be broadly aware of staffing at different LACs and the existing operations and strike forces to which they had commitments in terms of their ability to carry out new investigations.¹⁰⁵ On occasions, Townsend would also form an opinion and make recommendations about whether particular subject matter should be investigated.¹⁰⁶
- 8.79 In late May 2010 Townsend received the report by Tayler of Newcastle City LAC attaching the church concealment file and recommending that the matter be referred to the Sex Crimes Squad for investigation. The file also included Waddell’s report dated 3 May 2010 (see para 8.24).¹⁰⁷
- 8.80 On reading Tayler’s 20 May report, Townsend decided to review the church concealment file so as to be able to make an informed recommendation on the preferred course of action.¹⁰⁸ He

⁹⁹ TOR 1, T929.6–927.40 (Townsend); statement of Townsend, dated 15 February 2013, ex 19.

¹⁰⁰ TOR 1, T928.20–26 (Townsend).

¹⁰¹ Statement of Townsend, dated 15 February 2013, ex 19, para 8.

¹⁰² *ibid*, para 9.

¹⁰³ TOR 1, T928.44–929.4 (Townsend).

¹⁰⁴ Statement of Townsend, dated 15 February 2013, ex 19, para 9.

¹⁰⁵ TOR 1, T930.6–14 (Townsend).

¹⁰⁶ TOR 1, T931.40–44 (Townsend).

¹⁰⁷ TOR 1, T930.25–38 (Townsend); statement of Townsend, dated 15 February 2013, ex 19, para 13.

¹⁰⁸ TOR 1, T931.9–17 (Townsend).

reviewed the file and prepared a detailed report dated 12 July 2010 for the attention of the Northern Region Commander.¹⁰⁹

8.81 In his report Townsend set out the background to the matter, including identifying some of the senior clergy who were potentially implicated in the concealment allegations. He noted, too, that three people identifying themselves as victims of McAlinden or Fletcher were urging police to conduct an investigation into concealment allegations. Only one of the individuals implicated, Bishop Clarke, was dead. Townsend recorded that most of the documents in the file had been received from McCarthy. He then detailed the main allegations (as known at that stage) relating to McAlinden and Fletcher and, on a preliminary basis, discussed aspects of the evidence that might be available in potential criminal proceedings. He expressed the view that considerable further investigation would be needed in order to provide support for the allegations made.

8.82 Townsend also canvassed some of the potential legal issues arising in connection with a concealment charge under s. 316 of the *Crimes Act 1900* (NSW). He noted that public interest considerations could affect whether there should be an investigation and also, assuming sufficient evidence was identified and approval granted, whether criminal proceedings were instituted. Recording various discretionary factors that favoured proceeding or not proceeding with an investigation and potential prosecution, he also acknowledged there would be ‘enormous media and public interest in any investigation and/or prosecution’.¹¹⁰ He commented:

A decision needs to be made at an Executive Level about how the New South Wales Police Force respond to these allegations as any decision undertaken will undergo close public scrutiny. This decision would need to be made at an early stage as it is likely that any investigation and subsequent prosecution would [be] costly and protracted.¹¹¹

8.83 In his report Townsend advised that there were three options available for the Northern Region Commander to consider:

1. Refer the file to an appropriate unit of the NSW Police Force for a full investigation and then seek legal advice in relation to whether there is sufficient evidence to institute criminal proceedings and if so place the matter before the Attorney General for authorisation.
2. Undertake preliminary enquiries with AL and AK to clarify the matters above and then make a decision about whether the matters should be investigated.
3. Decline to investigate the allegations contained in this file.¹¹²

8.84 Having detailed the three options, Townsend did not go on to make a specific recommendation. He told the Commission he thought it was more appropriate that the Northern Region Commander make a decision based on her particular view rather than any recommendation from him.¹¹³ In a written statement prepared for the Commission he similarly said, ‘As to which option was to be accepted, this was a matter for the judgment of Assistant Commissioner York’.¹¹⁴

¹⁰⁹ NSW Police Force report of Townsend re ‘Allegations of concealing serious offences by clergy attached to Maitland-Newcastle Diocese, 12 July 2010, ex 216, tab 57.

¹¹⁰ *ibid.*

¹¹¹ *ibid.*, p 11.

¹¹² *ibid.*, p 11.

¹¹³ TOR 1, T932.10–20; T933.13–19 (Townsend).

¹¹⁴ Statement of Townsend, dated 15 February 2013, ex 19, para 15.

Inspector Townsend regards Newcastle City Local Area Command as having the requisite expertise

- 8.85 Although he did not mention it in his written report, Townsend regarded Newcastle City LAC as having the expertise necessary to conduct the church concealment investigation if required. In his written statement for the Commission he said, 'After having reviewed the material contained within the file, I formed the opinion that it was not beyond the expertise of police officers within the Newcastle City Local Area Command to undertake the investigation'.¹¹⁵
- 8.86 In his oral evidence before the Commission Townsend said Newcastle City LAC 'had a number of senior officers that were more than capable of conducting an investigation of this kind'.¹¹⁶ In addition, although he recognised that the church concealment allegations would require significant investigation, he did not see the allegations as involving a high degree of complexity.¹¹⁷
- 8.87 The question of whether Lantle is properly regarded as a complex investigation is considered in paragraphs 8.243 to 8.246.

August 2010: Assistant Commissioner York determines that there should be an investigation – and conducted by Lake Macquarie Local Area Command

- 8.88 Assistant Commissioner Carlene York was Northern Region Commander from February 2010 until about April 2013.¹¹⁸ A police officer since 1980, she was appointed to the rank of assistant commissioner in November 2005, and from 2005 to 2010 she was commander of the Forensic Services Group of the NSW Police Force.¹¹⁹
- 8.89 York told the Commission that before receiving the Townsend report she had not been involved in events (from April 2010) associated with the proposed investigation of the church concealment allegations.¹²⁰ She said that on receipt of the report she consulted her then staff officer, Acting Inspector Stephen Rae, and considered the three options Townsend had put forward.¹²¹ Rae had originally been in the Police Prosecutions Branch but had been in the Northern Region for a long time and knew the workings of the Region well. He told York about Lake Macquarie LAC's role in Strike Force Georgiana.¹²²
- 8.90 In August 2010 York decided there should be a police investigation of the church concealment allegations. In addition, she determined that the investigation should be allocated to Lake Macquarie LAC.¹²³ In making her decision to allocate it to Lake Macquarie LAC she had regard to that command's experience with Georgiana. She told the Commission, 'Northern Region is very lucky with its experienced detectives all across the local commands, but ... [I] thought that they [Strike Force Georgiana] had obviously made investigations, had made some arrests and therefore had issues that may be of relevance and experience in the area'.¹²⁴
- 8.91 As described shortly, however, York later reversed her decision to allocate the investigation to Lake Macquarie LAC.

¹¹⁵ *ibid*, para 15.

¹¹⁶ TOR 1, T933.39–45 (Townsend).

¹¹⁷ TOR 1, T933.21–37 (Townsend).

¹¹⁸ TOR 1, T638.4–16 (York): York is currently the commander of the Human Resources Command based in Sydney.

¹¹⁹ Statement of York, dated 15 February 2013, ex 10, para 3.

¹²⁰ TOR 1, T689.19–23 (York).

¹²¹ Statement of York, dated 15 February 2013, ex 10, para 8.

¹²² TOR 1, T644.24–46 (York).

¹²³ Statement of York, dated 15 February 2013, ex 10, para 8.

¹²⁴ TOR 1, T645.6–14 (York).

August 2010: Lake Macquarie Local Area Command again resists taking on the investigation

8.92 By 18 August 2010 it was apparent that Northern Region was intending to allocate the proposed church concealment investigation to Lake Macquarie LAC. This was so despite the concern expressed by Waddell, crime manager at Lake Macquarie LAC, in his report of 3 May 2010 (see para 8.24), to the effect that Lake Macquarie LAC should not take on the proposed investigation.

8.93 Inspector Townsend told the Commission he understood there had been discussions with Inspector Fay Dunn, the acting staff officer of the Northern Region Commander, about which local area command should have responsibility for the proposed investigation or certain follow-up inquiries. He further said he understood that agreement had been reached between the Northern Region Commander and Acting Inspector Stephen Rae that the investigation would go to Lake Macquarie LAC in view of its expertise in dealing with matters relating to the Catholic Church, mainly through Strike Force Georgiana.¹²⁵ York confirmed this in her evidence to the Commission.¹²⁶

8.94 On 18 August 2010 Waddell became aware of the intention to allocate the investigation to Lake Macquarie LAC. He then promptly took action to try to persuade Northern Region that a different approach should be taken. He sent an email dated 18 August 2010 to Superintendent Craig Rae, copied to Townsend,¹²⁷ that began as follows:

As you are both aware I am very disappointed with the decision to allocate the recent sexual assault investigation relating to the Catholic Church to Lake Macquarie for further investigation. I am aware that Inspector Townsend is going to forward me the hard copy of the file and discuss further, but I feel compelled to voice my dissatisfaction with this decision.¹²⁸

8.95 In strong terms, Waddell voiced his concern about Lake Macquarie LAC's capacity to take on the investigation; he also attached a spreadsheet setting out staffing and welfare concerns and said Lake Macquarie LAC could not conduct an adequate investigation of the church concealment allegations:

As indicated there are very few Detectives that are in a position to conduct an investigation of this nature and in reality it would be allocated to a Detective Senior Constable working on the floor to manage amongst their other cases and workload coming into the office. With the media attention and interest that this matter would generate I do not see this as an ideal situation and it would only exacerbate the staffing and workload issues that already exist within our Detectives office.

My view is that this investigation relates to Newcastle City and Hunter Valley and has nothing to do with Lake Macquarie and based on our resources [we] are not in a position to provide an adequate investigation of this matter.¹²⁹

8.96 Similarly, in his oral evidence Waddell told the Commission, 'I didn't think we had the resources to dedicate a number of officers to this investigation at that time'.¹³⁰ He also confirmed that after he had sent his email Lake Macquarie LAC did not in fact at any stage again receive the church concealment file from Northern Region.¹³¹

¹²⁵ TOR 1, T935.9–26 (Townsend).

¹²⁶ TOR 1, T644.24–46 (York); statement of York, dated 15 February 2013, ex 10, para 8.

¹²⁷ Email from Townsend to Dunn re 'FW: Catholic Church', dated 18 August 2010, ex 216, tab 62A, p 246(a).

¹²⁸ *ibid*, p 247(b).

¹²⁹ *ibid*.

¹³⁰ TOR 1, T547.23–25 (Waddell).

¹³¹ TOR 1, T546.45–47 (Waddell).

August 2010: Inspector Townsend considers Detective Inspector Waddell's representations

- 8.97 Townsend considered the representations Waddell had made in his email of 18 August 2010. Sympathising with Waddell's concerns, he discussed the matter with Dunn and forwarded an email to her on 25 August 2010.¹³²
- 8.98 In his 25 August email Townsend said that, although there was a sound rationale for the decision to allocate the matter to Lake Macquarie LAC (because of its experience in dealing with matters relating to the Catholic Church), the position deserved reconsideration. He wrote, 'In my view there is some merit to [Lake Macquarie LAC's] request to review the allocation [of the investigation]'. He also noted that additional staffing demands had recently been placed on Lake Macquarie LAC and concluded by saying, 'If you could advise Ma'am's thoughts in this regard it would be greatly appreciated'.¹³³

September 2010: Assistant Commissioner York re-allocates the investigation to Newcastle City Local Area Command

- 8.99 In early September 2010 York reversed her decision, opting to allocate the church concealment investigation to Newcastle City LAC. By means of a handwritten endorsement dated 1 September 2010 on the Townsend report, she recorded her decision as follows:
- Initial statements to be taken to ascertain the extent of the brief to then assess the appropriateness of potential involvement of SCC [State Crime Command]. Commander to identify an appropriately skilled investigator to undertake initial tasks. The file & report provides some comprehensive background. Consideration might be taken in utilising SCC in an advisory capacity to assist if matter is transferred at appropriate time.¹³⁴
- 8.100 York then wrote, 'Commander, Newcastle LAC' in a space immediately following her endorsement on the Townsend report. This signified that the report and her endorsement (including her instructions to investigate) would be forwarded down the chain of command to the commander of Newcastle City LAC, at that stage Superintendent Max Mitchell. It would then be up to Mitchell to identify which officer or officers should perform the 'initial tasks'.¹³⁵
- 8.101 In arriving at her decision to allocate the investigation to Newcastle City LAC, York took into account Waddell's representations in his email report of 18 August 2010 in which he asked that the decision to allocate the investigation to Lake Macquarie LAC be reconsidered.¹³⁶ In her written statement prepared for the Commission, York said, 'Having regard to the further information received, I formed the view that the Newcastle City Local Area Command would be in a better position to be able to carry out the necessary investigation into the allegations because of better resourcing and the offences were alleged to have occurred in that area'.¹³⁷
- 8.102 Similarly, in her oral evidence she said, '... I made a choice that it happened – the alleged offences occurred in the Newcastle area, they were better resourced – and I made the decision to send it back to Newcastle based on the information given to me by Inspector Townsend, Detective Chief Inspector Tayler and Detective Waddell'.¹³⁸

¹³² Email from Townsend to Dunn re 'FW: Catholic Church', dated 18 August 2010, ex 216, tab 62A, p 247(a).

¹³³ *ibid.*

¹³⁴ Townsend report re concealing offences by Maitland clergy, dated 12 July 2010, ex 216, tab 57, p 230.

¹³⁵ TOR 1, T642.39–47 (York).

¹³⁶ Statement of York, dated 15 February 2013, ex 10, paras 9–10.

¹³⁷ *ibid.*, para 10.

¹³⁸ TOR 1, T706.29–36 (York). It may also be noted that York, as Northern Region commander (based in Newcastle), did not have the power to allocate the investigation to Sex Crimes Squad, which was based in Sydney and operated under the umbrella of the State Crime Command, and subject to its own Assistant Commissioner.

- 8.103 Townsend told the Commission he supported the decision to allocate the investigation to Newcastle City LAC.¹³⁹

Port Stephens Local Area Command not a viable option

- 8.104 Detective Chief Inspector Fox was attached to Port Stephens LAC, within the Northern Region. York did not consider Port Stephens LAC an option for conducting the church concealment investigation. She told the Commission, 'I had no information that Port Stephens had any relevance to the investigation'.¹⁴⁰ She also said Port Stephens LAC did not have the resources to be able to carry out a complex and lengthy investigation of the type proposed and:

... my choices were really only between Lake Macquarie and Newcastle. They are probably the two largest local area commands in the region with the best capacity, even though all local area commands had some staffing issues at that stage, and it was really a choice between these two ... Even today I wouldn't have given it to Port Stephens if I had to look at it.¹⁴¹

- 8.105 Further, York had no available resources that could readily have been transferred to Port Stephens LAC to equip it for such an investigation: 'I had no resources anywhere else that I could have given Port Stephens, because they were all short ...'¹⁴²
- 8.106 When allocating the investigation to Newcastle City LAC, York did not know that Fox had any current involvement in investigating church concealment allegations. This was something she became aware of only later in 2010.¹⁴³
- 8.107 When preparing his report for York dated 12 July 2010, Townsend did not regard Port Stephens LAC (where Fox was stationed) as having the capacity to conduct the proposed investigation. He told the Commission that Port Stephens LAC had a smaller detectives office than did Newcastle City LAC and was having its own resourcing problems.¹⁴⁴ Similarly, Inspector David Matthews, acting commander of Port Stephens LAC in November 2010,¹⁴⁵ told the Commission Port Stephens LAC had neither the investigators nor the assets available to conduct the proposed investigation at that time.¹⁴⁶ The capacity of Port Stephens LAC to conduct the proposed investigation in 2010 is considered further in Chapter 10.

The ambit of the investigation authorised by Assistant Commissioner York

- 8.108 During the Commission's public hearings counsel assisting asked York about the intended ambit, as at early September 2010, of the investigation she had authorised – including whether her use of the expression 'initial statements' in her endorsement on the Townsend report meant that only a review was to be carried out, as opposed to a fully fledged investigation.¹⁴⁷ York said she had decided there was to be an investigation and her comments in the endorsement should be read as a whole:

It was to be investigated, but certainly my comments were relaying to Mr Mitchell that there were certain points he should review and keep continuing the investigation and see whether

¹³⁹ Statement of Townsend, dated 15 February 2013, ex 19, para 19.

¹⁴⁰ TOR 1, T679.23–31 (York).

¹⁴¹ TOR 1, T679.33–46 (York).

¹⁴² TOR 1, T706.29–31 (York).

¹⁴³ TOR 1, T707.3–9 (York).

¹⁴⁴ TOR 1, T937.32–938.8; T937.32–938.8 (Townsend).

¹⁴⁵ TOR 1, T607.4–6 (Matthews); NSW Police Force report of Fox re 'Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese of the Catholic Church', dated 25 November 2010, ex 69.

¹⁴⁶ TOR 1, T608.46–609.12 (Matthews). See also statement of Matthews, dated 1 May 2013, ex 8, para 11.

¹⁴⁷ TOR 1, T642–644 (York).

or not State Crime Command would get the brief at a later time, or the investigation, but they should at least be involved from very early on.¹⁴⁸

- 8.109 York told the Commission the reference to ‘initial statements’ in the endorsement did not signify that a review, rather than an investigation, was to be carried out. She said:

Often if a commander says to do an investigation, they may not review it at certain times, so I wanted to make it clear they were to have a look at the extent of the information that had been provided, continue on with any investigation, and make certain decisions along the way that were outlined in that comment.¹⁴⁹

- 8.110 Similarly, York pointed out that by 2 September 2010 she had decided to have the matter investigated, and by then ‘It was about who should investigate it. That was my issue’.¹⁵⁰ She also said, ‘... I sought some more information in regards to the resourcing because I had decided that there was to be an investigation. It was a question of where it was to go’.¹⁵¹

Conclusion

- 8.111 The Commission accepts that when York made the endorsement on the Townsend report on 2 September 2010 she had already determined that there would be an investigation of the church concealment allegations and that the outstanding matter to be determined was which local area command should be responsible for the investigation. This is consistent with other documentary material before the Commission, including Waddell’s 18 August 2010 email and Townsend’s 25 August email to Inspector Dunn, both of which proceeded on the basis that a decision to conduct an investigation had been made.

Establishment of a strike force

- 8.112 As described, on 2 September 2010 York allocated the church concealment investigation to Newcastle City LAC. At that stage the investigation was not being treated as a ‘strike force’.¹⁵²

- 8.113 At some stage shortly thereafter, however, York determined that the investigation should proceed by way of a strike force. The decision was not documented,¹⁵³ and in her evidence before the Commission York could not recall exactly when she had made the decision but said, ‘It wasn’t long after I made the decision to send it [the investigation] to Newcastle though’.¹⁵⁴

- 8.114 When asked what prompted her to set up a strike force, York said:

The submissions by both Detective Chief Inspector Tayler and ... Detective Inspector Waddell in relation to staffing. When it went back to Newcastle, Newcastle at that stage was a very large command but it was also very busy and, from previous experience, sometimes officers get pulled away from primary tasks. This was an important investigation and I thought it should have some committed resources for the investigation.¹⁵⁵

- 8.115 York said the specific terms of reference for the strike force were a matter to be determined by the management team at Newcastle City LAC, rather than by her.¹⁵⁶ As it transpired, Tayler (as

¹⁴⁸ TOR 1, T643.30–37 (York).

¹⁴⁹ TOR 1, T643.46–644.8 (York).

¹⁵⁰ TOR 1, T704.5–12 (York).

¹⁵¹ TOR 1, T709.18–23 (York).

¹⁵² TOR 1, T643.39–41 (York).

¹⁵³ TOR 1, T647.36 (York).

¹⁵⁴ TOR 1, T647.2–5 (York).

¹⁵⁵ TOR 1, T647.7–16 (York).

¹⁵⁶ TOR 1, T716.11–28 (York).

crime manager at Newcastle City LAC) signed off and was responsible for the terms of reference for Strike Force Lantle.¹⁵⁷

- 8.116 Tayler gave evidence to the effect that, despite his recommendation that the investigation be dealt with by State Crime Command, he readily accepted the decision of the Northern Region Commander and set about the task of initiating and moving ahead with the investigation. He told the Commission:

It was not a problem. That happens in the police. My opinion was [for the investigation] to go to a certain location. My opinion was that it should go to Sex Crimes [Squad]. That was disagreed by the Region Commander. She's the region commander. She sent it back to Newcastle. That's what happens in a paramilitary organisation, so we got on with it.¹⁵⁸

- 8.117 In his capacity as crime manager, Tayler then set about determining which officers in Newcastle City LAC should be brought in to do the investigating.

September 2010: officers initially engaged

- 8.118 Tayler decided that Detective Sergeant Kirren Steel would be the principal investigating officer for the church concealment investigation. In reaching that decision, Tayler consulted with his commanding officer, Superintendent Mitchell, and probably also Detective Senior Sergeant Justin Quinn, at that time the investigations manager at Newcastle LAC.¹⁵⁹ Steel could not, however, begin work on the investigation straight away. She had been an acting inspector and had two weeks' leave planned before she was due to report to the Newcastle Detectives Office. She was permitted to take this leave before starting the investigation.¹⁶⁰
- 8.119 As described shortly, Quinn (who held the ranks of acting inspector and senior sergeant at various relevant times) and Detective Senior Constable Jason Freney were also involved in the investigation in the period following September 2010.
- 8.120 An undated document containing the Strike Force Lantle terms of reference, issued in about September 2010, notes that Steel and Freney had been assigned to the investigation and that Steel was to report to Tayler.¹⁶¹
- 8.121 In evidence before the Commission, a question arose (raised by Fox) as to the competency of Detectives Steel, Quinn, Tayler and Freney, in terms of their respective roles in relation to Lantle. This was a central element of an assertion by Fox that Strike Force Lantle was a 'sham' and was 'set up to fail'. This aspect is considered in paragraphs 8.266 to 8.309.

September to November 2010: further developments

- 8.122 In September 2010 McCarthy forwarded further information about McAlinden to Townsend, which he in turn forwarded to Tayler at Newcastle City LAC.¹⁶²

12 October 2010: the issuing of a sitrep

- 8.123 On 12 October 2010 Acting Commander Wayne Humphrey of Newcastle City LAC and Quinn (then an acting inspector) issued a situation report, or 'sitrep'.¹⁶³ The sitrep was prepared in

¹⁵⁷ TOR 1, T998.36–41 (Mitchell).

¹⁵⁸ TOR 1, T817.24–30 (Tayler).

¹⁵⁹ TOR 1, T754.23–42 (Tayler); T962.6–18 (Quinn).

¹⁶⁰ TOR 1, T8.44–47 (Steel in camera); T867.16–868.11 (Tayler).

¹⁶¹ Terms of Reference of Strike Force Lantle assigning Steel and Freney, undated, ex 18.

¹⁶² Email from Townsend to Tayler, dated 20 September 2010 forwarding email from McCarthy, to Townsend, dated 17 September 2010, ex 216, tab 66.

¹⁶³ Email from Humphrey to Dunn, Mitchell and Quinn attaching situation report of Quinn, dated 12 October 2010, ex 216, tab 67.

response to a request by Northern Region (Inspector Dunn) for information about the church concealment investigation. It contains the first documentary reference to the name 'Lantle' for the strike force investigation. Quinn prepared the sitrep and, in doing so, used information from Townsend's report of 12 July 2010.¹⁶⁴

- 8.124 The 12 October sitrep does not record any investigative steps as having yet been taken. Although it stated, 'SF Lantle has been commenced', it appears the investigation was awaiting the return of Steel from leave on 13 October. After referring to Steel's leave arrangements, the sitrep noted that a meeting between Steel and the acting crime manager (Quinn) was scheduled for 13 October 2010 'to determine investigative strategies'.¹⁶⁵ In his evidence to the Commission, Quinn confirmed that the proposed meeting with Steel did in fact go ahead.¹⁶⁶
- 8.125 The sitrep also made reference to 'other relevant documentation ... being collected from other commands in respect of the matter'. Quinn said this was a reference to material in Fox's possession and possibly documents that could be obtained from Superintendent Charles Haggett at Port Stephens LAC.¹⁶⁷
- 8.126 Newcastle City LAC's issuing of the sitrep occurred shortly after McCarthy had sent an email to Townsend at Northern Region, seeking comments on a proposed article.¹⁶⁸ The article, to be published in the *Newcastle Herald* the following day, would raise concerns, voiced by the Australian Lawyers Alliance, that police were not investigating the McAlinden matter or were not treating it seriously.¹⁶⁹ After that email had been received Dunn of Northern Region contacted Newcastle City LAC, seeking information about the status of the investigation.¹⁷⁰ It appears that McCarthy's inquiry focused attention on the church concealment investigation and was instrumental in the issuing of the sitrep.¹⁷¹

13 October 2010: a search of Detective Chief Inspector Fox's office

- 8.127 For the purposes of the Lantle investigation, in October 2010 steps were taken to try to obtain relevant documents from Fox. The documents sought included a file referred to as the 'ministerial request' that had been issued to Fox. The circumstances relating to the issuing of the ministerial request are set out in Chapter 10.
- 8.128 To attempt to obtain such documents, Acting Commander Wayne Humphrey and Superintendent Charles Haggett searched Fox's office at Port Stephens LAC on 13 October 2010, while Fox was on four weeks' leave.¹⁷²
- 8.129 Before the Commission, questions arose in relation to four matters:
- the manner in which the search was conducted – in particular whether, as claimed by Fox, the office had been 'turned upside down'
 - the appropriateness of the search
 - who authorised or directed that the search take place

¹⁶⁴ TOR 1, T959.1–44 (Quinn).

¹⁶⁵ Humphrey email attaching situation report, dated 23 October 2010, ex 216, tab 67.

¹⁶⁶ TOR 1, T960.13–35 (Quinn).

¹⁶⁷ TOR 1, T960.39–41; T961.1–10 (Quinn).

¹⁶⁸ TOR 1, T1565.43–1566.40 (Dunn).

¹⁶⁹ Email chain, ending with email from Townsend to Dunn dated 13 October 2010 forwarding emails between Townsend and McCarthy, dated 12 October 2010, ex 216, tab 70.

¹⁷⁰ TOR 1, T934.24–936.43 (Townsend); T958.28–959.10 (Quinn); duty book entry of Quinn, dated 12 October 2010, ex 216, tab 68, p 259.

¹⁷¹ TOR 1, T1566.35–40 (Dunn).

¹⁷² Email from Humphrey to Haggett re 'Strike Force Lantle', dated 13 October 2010, ex 216, tab 69.

- an apparent change in position regarding Humphrey’s evidence before the Commission concerning the circumstances leading up to the search.

The manner in which the search took place

8.130 The Commission received evidence about the manner in which the search took place from Fox, Humphrey and Ms Miriam White, then an administrative officer at Port Stephens LAC.

8.131 In evidence before the Commission Fox initially described his office as having been ‘turned upside down’ as a result of the search. He said:

You know, in all my years of policing, I’ve never heard of police getting into another senior officer’s office and turning it upside down trying to find a very sensitive brief like this. It’s totally unprofessional. I was only five days away from returning from annual leave – why it couldn’t have waited for five days. And the fact that Superintendent Haggett and Chief Inspector Wayne Humphrey to this day have never ever told me that that happened – the only reason I have knowledge of it is that Miriam White had told me.¹⁷³

8.132 Later in his evidence Fox retreated from this description and said he could notice that certain items in his office had been moved around but not to the extent of tipping desks or drawers upside down.¹⁷⁴

8.133 In a statutory declaration provided to the Commission White said that one morning in late October 2010 she saw Humphrey and Haggett searching the office. According to White, Haggett had a master key to all offices in the building.¹⁷⁵ White asked the officers if she could help and was told they were looking for files in relation to the Catholic Church investigation. White told them the documents were locked in Fox’s safe (as he had previously informed her) and that he had the only key to the safe. As a result, no documents were obtained and both officers left. White said:

The search was conducted in an orderly manner. All files were placed back where they had been originally either on the desk and in the filing cabinet. The office was left in a neat and tidy manner when the door was locked as we left.¹⁷⁶

8.134 Humphrey gave evidence before the Commission. It was not suggested to him by counsel for Fox that the search of the office had been carried out in a disorderly fashion or had involved the office having been ‘turned upside down’.

Superintendent Haggett

8.135 Haggett has been on sick leave since May 2012 (that is, since before the establishment of this Special Commission of Inquiry). The Commission issued a summons for Haggett, who had been involved in the search of Fox’s office (among other things), to attend and give evidence. Medical material was proffered on his behalf, along with a request that he be excused from attending to give evidence.

8.136 The Commission took the view that, before a final decision could be made on this aspect, Haggett should undergo an independent medical assessment. It engaged Dr Bruce Westmore, a forensic psychiatrist, to examine Haggett and provide an expert opinion on his fitness to give evidence at the Commission’s public hearings. Westmore examined Haggett and provided a report in which he opined that Haggett was not fit to give evidence.¹⁷⁷ On the basis of that

¹⁷³ TOR 1, T82.32–41 (Fox).

¹⁷⁴ TOR 1, T243.9–29 (Fox).

¹⁷⁵ Statutory declaration of White, dated 26 June 2013, ex 46, paras 9, 11.

¹⁷⁶ *ibid*, para 21.

¹⁷⁷ Report of Westmore regarding Haggett, dated 4 May 2013, conf ex A.

report the Commission excused Haggett from attending to give evidence pursuant to the summons.¹⁷⁸

The appropriateness of the search

- 8.137 In his evidence Fox voiced objection to the search having been carried out. He said he had never heard of police entering another senior officer's office to search for documents. He added that he was only five days away from returning from annual leave and the matter should have waited.¹⁷⁹
- 8.138 Assistant Commissioner York gave evidence that it was appropriate, and not unusual, for senior officers to look for police documents in an officer's office when he or she is absent. York said the documents were the property of the NSW Police Force and, in this case, were needed in the context of an unanswered ministerial request.¹⁸⁰

Who authorised or directed the search

- 8.139 York told the Commission she did not authorise or direct that the search of Fox's office be carried out but did later become aware that it had occurred.¹⁸¹
- 8.140 Humphrey told the Commission that Inspector Dunn had telephoned him on 12 October 2010 and asked him to retrieve a file from Fox's office. He said Dunn had called him after having received a phone call from McCarthy and that 'there was ... a little bit of panic perhaps from Inspector Dunn that Ms McCarthy had asked some hard questions that couldn't be answered, and it didn't seem as though Fay was across the issues'.¹⁸²
- 8.141 Humphrey also pointed to a handwritten note said to support his account of events.¹⁸³ That note was dated '12/10/10' and included a handwritten time of 14.45. In his oral evidence before the Commission, Humphrey said the handwriting in his note should be read as:
- Phone call from Fay Dunn
 - Re investigation into Church
 - Inquiry from Joanne McCarthy
 - Dunn briefed that DCI Fox and McCarthy had links.
 - File to be retrieved from Fox's office on am of 13/10/10.
 - Links between Fox and Rae.
 - Caution re leaks.
 - NCC brief – we will run accordingly.¹⁸⁴
- 8.142 For her part, Dunn told the Commission that, as staff officer to the Northern Region Commander, she had no authority to authorise a search of the office of a police officer.¹⁸⁵ Nor did she recall any occasion on which she had relayed a request to any officer at Newcastle City LAC that a search of Fox's office be conducted. Dunn agreed that any such request would be 'striking' and 'extremely unusual'. As an indication of how unusual it would be, she could not recall any instance of ever having relayed a request, with authority from the Region commander,

¹⁷⁸ TOR 1, T401.10–19 (Fox).

¹⁷⁹ TOR 1, T82.32–41 (Fox).

¹⁸⁰ TOR 1, T678.9–32 (York).

¹⁸¹ TOR 1, T658.2 (Fox).

¹⁸² TOR 1, T1327.40–1328.25 (Humphrey).

¹⁸³ Handwritten notes of Humphrey, dated 12 October 2010, ex 35.

¹⁸⁴ TOR 1, T1327.33–1328.7 (Humphrey).

¹⁸⁵ TOR 1, T1567.30–35 (Dunn).

that the office of a particular police officer be searched.¹⁸⁶ She did, however, accept that it was conceivable that she had had a discussion with Humphrey in relation to obtaining a file or documents from Fox.¹⁸⁷

A change in Detective Chief Inspector Humphrey's evidence

8.143 Humphrey provided to the Commission a signed statement dated 14 February 2013.¹⁸⁸ When giving evidence at a private hearing before the Commission on 13 March 2013, he adopted the statement as being true and correct.¹⁸⁹ Paragraph 29 of the statement dealt with the circumstances surrounding Humphrey's search of Fox's office on 12 October 2010, as follows:

... at the request of Inspector Dunn on behalf of the Region, I undertook the task of attempting to retrieve from Detective Chief Inspector Fox's office any relevant files that may relate to the Strike Force Lantle investigation. **I was aware numerous requests had been made previously of Detective Chief Inspector Fox to provide material relative to this investigation** so as it could be reviewed, assessed and investigative lines of inquiry set.¹⁹⁰ [emphasis added]

It is apparent that the second sentence just quoted provides the narrative justification for the search that Humphrey conducted alongside, on his evidence, having been asked to do so by Dunn.

8.144 Humphrey also gave evidence that his statement was taken over a number of hours and that he had the assistance of a solicitor and barrister when the statement was being prepared.¹⁹¹ At the time of preparing the statement he also had access to a chronological bundle of documents to which he was able to refer, some of which became annexures to his statement.¹⁹²

8.145 When giving evidence at the public hearings on 25 June 2013, however, Humphrey resiled from his earlier evidence and said the inclusion of the second sentence (as quoted) was 'an error on my part and I apologise for that'.¹⁹³

8.146 Humphrey said he had noticed the error some time after the private hearing but before the hearings for the first term of reference began in May 2013. He said he had drawn the matter to the attention of his legal team and to the attention of one solicitor in particular.¹⁹⁴

8.147 Counsel assisting questioned Humphrey as to whether he had changed his evidence only once it became apparent, from evidence before the Commission, that before the search of Fox's office took place there were in fact no prior unanswered requests to Fox to produce documents.¹⁹⁵ Humphrey said, 'It was a very rushed time making those statements, a short time frame, which is no excuse. It's my responsibility to make sure that it's accurate'.¹⁹⁶

8.148 Counsel for Fox questioned Humphrey along similar lines, and asked: 'Weren't you just changing the facts to suit the position at the time?'¹⁹⁷ Humphrey reiterated that he was simply correcting an error he had made.¹⁹⁸

¹⁸⁶ TOR 1, T1568.7–34 (Dunn).

¹⁸⁷ TOR 1, T1569.6–10 (Dunn).

¹⁸⁸ Statement of Humphrey, dated 14 February 2013, ex 33.

¹⁸⁹ TOR 1, T1367.42–46 (Humphrey).

¹⁹⁰ Statement of Humphrey, dated 14 February 2013, ex 33, para 29.

¹⁹¹ TOR 1, T1369.29–37, T1370.20–26 (Humphrey).

¹⁹² TOR 1, T1370.28–36 (Humphrey).

¹⁹³ TOR 1, T1308.21 (Humphrey).

¹⁹⁴ TOR 1, T1370.41–1371.2 (Humphrey).

¹⁹⁵ TOR 1, T1369.9–27 (Humphrey).

¹⁹⁶ TOR 1, T1369.25–27 (Humphrey).

¹⁹⁷ TOR 1, T1377.5–6 (Humphrey).

¹⁹⁸ TOR 1, T1376.46–1377.7 (Humphrey).

8.149 After Humphrey gave evidence the Commission received from the solicitor who had assisted Humphrey in the preparation of his statement a statutory declaration that relevantly stated:

I do not recall discussing the need for amendments to the statement with Detective Chief Inspector Humphrey at an earlier time [than 21 June 2013 when attending a witness conference with Humphrey]. Although it is something that I expect I would recall, I could not categorically say that it was not raised with me at an earlier time.¹⁹⁹

Conclusions

The appropriateness of the search

8.150 The evidence of White confirms that the search of Fox's office was conducted in an orderly manner and the office was left in a neat and tidy state at the conclusion of the search. The evidence by Fox about his office having been 'turned upside down'²⁰⁰ as a result of the search is rejected. That evidence involved an exaggeration on Fox's part. Fox retreated from the description of 'turned upside down' in later evidence.²⁰¹

8.151 As to the appropriateness of the search, it is clear, including from the evidence of White, that Haggett had a master key to Fox's office. As Fox's commanding officer, Haggett was within his rights to enter Fox's office (when Fox was absent on four weeks' leave) and look for particular police documents.²⁰² All such documents are the property of the NSW Police Force, rather than that of a particular officer. Further, in circumstances where Fox had gone on leave with an unanswered 'ministerial request' or 'ministerial file' (being a request for specific information arising from an inquiry on behalf of the Minister for Police),²⁰³ the commanding officer was entitled to look for such documents in Fox's office if that was considered necessary.²⁰⁴

Authorisation of the search

8.152 As to the question of who had authorised or directed that the search take place, York told the Commission she did not ask for the search to be carried out.²⁰⁵ No search request from Northern Region was, in fact, required in order for Haggett to have searched Fox's office for police papers. As Fox's commanding officer, Haggett could have conducted such a search at any time. Nonetheless, there is a conflict between the evidence of Dunn and that of Humphrey. Dunn was a careful witness who gave evidence in a considered manner. She gave firm evidence to the effect that she did not relay such a request, that such a request would be striking and extremely unusual, and that she could not recall having ever made such a request in connection with any officer. The Commission accepts her evidence on this. In view of the extremely unusual nature of the matter, it is inherently unlikely that she would not recall having relayed a request to retrieve documents from Fox's office.

8.153 The Commission does not accept Humphrey's account that he received such a request from Dunn. In attributing the request to Dunn, Humphrey was seeking to distance himself from the appearance of having been instrumental in the decision made to search Fox's office. Further, the Commission does not regard Humphrey's file note of 12 October 2010 as mandating a different result, and the reference to 'File to be retrieved from Fox's office [on] a.m. 13/10/10'²⁰⁶ is explicable as a reference to Humphrey's recorded intention, rather than, of necessity, an instruction relayed by Dunn.

¹⁹⁹ Statutory declaration of Cooley, dated 26 June 2013, ex 259.

²⁰⁰ TOR 1, T82.34 (Fox).

²⁰¹ TOR 1, T243.24–29 (Fox).

²⁰² See also T678.27–32 (York).

²⁰³ The circumstances relating to the ministerial request are dealt with in Chapter 10.

²⁰⁴ TOR 1, T678.9–26 (York).

²⁰⁵ TOR 1, T657.40–658.2, T678.6–9 (York).

²⁰⁶ Handwritten notes of Humphrey, dated 12 October 2010, ex 35.

The change in Detective Chief Inspector Humphrey's evidence

- 8.154 The change in Humphrey's evidence in connection with paragraph 29 of his statement raises a question about the broader reliability of his evidence. The second sentence in paragraph 29 (as quoted) provided an apparent justification for the search of Fox's office along with, on Humphrey's account, having been requested to do so by Dunn. The original statement was taken with the assistance of lawyers. It can be assumed that appropriate care was given to the preparation of the statement in the light of its intended use before the Commission.
- 8.155 One possible interpretation of Humphrey's change of position is that he altered his evidence only after it became clear that the earlier assertion from paragraph 29 could not be sustained in the light of other documents and evidence available to the Commission. The Commission concludes, however, that no adverse finding should be made against Humphrey in this regard in view of his evidence that he advised his solicitor of the required amendment some time before the beginning of the public hearings in May 2013, and having regard to the solicitor's statutory declaration that he could not rule out having been told this by Humphrey at some time earlier than 21 June 2013.
- 8.156 It is nonetheless unsatisfactory that this matter was not brought to the Commission's attention at an earlier time given the significant reversal in Humphrey's position concerning the lead-up to the search on 13 October 2010, as stated in sworn evidence during a private hearing on 13 March 2013.

Obtaining a statement from AL

- 8.157 As part of the Lantle investigation, in October 2010 Steel took steps to try to obtain a statement from AL, a victim of McAlinden. This became a difficult and prolonged process, but senior police held the view that such a statement was important if the church concealment allegations were to be properly investigated.
- 8.158 In this respect, Tayler explained in evidence that in order to be able to try to prove concealment, police needed evidence that a serious offence against AL had occurred and had subsequently been concealed from police.²⁰⁷ He also noted that as part of the investigatory process a statement from AL would be needed before police could apply for the issue of a search warrant to obtain documents held by church officials.²⁰⁸
- 8.159 As events transpired, taking a statement from AL proved difficult. Steel first saw AL at Waratah police station on 25 October 2010 with a view to taking a statement from her.²⁰⁹ Steel's investigator's note of 25 October records, 'Her statement was only partially taken due to the emotional stress the recollection of events caused AL'.²¹⁰ A further interview was scheduled for 3 November 2010.²¹¹ For her part, AL perceived that in her dealings with Steel she (AL) was not being treated appropriately.²¹²
- 8.160 On 18 November 2010, in an effort to resolve the apparent impasse between AL and Steel, Acting Inspector Quinn spoke with AL. He recorded difficulties that AL reported about her dealings with Steel – including her concern about Steel seeking particulars of the sexual assaults committed on her. AL reportedly felt these were personal details, and she was affronted by the

²⁰⁷ TOR 1, T847.32–44 (Tayler).

²⁰⁸ TOR 1, T855.18–23 (Tayler).

²⁰⁹ Report of Tayler re complaint by AL, dated 10 December 2010, ex 14.

²¹⁰ Investigator's note by Steel re statement obtained from AL, dated 25 October 2010, ex 216, tab 74.

²¹¹ *ibid.*

²¹² Investigator's note by Quinn re contact with AL, dated 19 November 2010, ex 20. Note that AL did not give evidence at the public hearings. On the Commission's general approach of not requiring victims to give evidence unwillingly, see Chapter 3.

prospect of elaborating. Quinn tried to explain to AL why it was important to obtain a statement that contained such details. AL told Quinn she would not deal any further with Steel.²¹³

- 8.161 Assistant Commissioner Mitchell told the Commission that in about mid-November 2010 he was contacted by McCarthy, who expressed concern about the police handling of a victim (AL). Mitchell said that as a result of the conversation he spoke to Tayler and asked him to intervene and have someone other than Steel take up the matter with AL to see if a statement could be obtained.²¹⁴
- 8.162 Mitchell also told the Commission that McCarthy asked him what experience Steel had in investigating child sexual abuse in the Catholic Church. He recalled being 'upset' that McCarthy had asked such a question. In response, he said, he told McCarthy (because he did not want to mislead her) that Steel had no experience in investigating child sexual abuse *in the Catholic Church*. Mitchell understood that this was subsequently reported in a conversation between McCarthy and Steel but, to his knowledge, it was not reported in the media.²¹⁵ This aspect is considered further below.
- 8.163 On 30 November 2010 Quinn again contacted AL. His investigator's note dated that day records that his discussion with AL was very cordial and she expressed her willingness to continue giving her statement if it was to somebody other than Steel.²¹⁶ Quinn's note further records that Mitchell had already decided it would not be Steel who took the statement. AL said, however, that she had family about to visit her from Queensland for two weeks, and she did not want to continue with her statement until they had left.
- 8.164 Quinn also explored with AL how the interview process might be made easier for her, among other things discussing the possibility of support people being present. He further asked whether she would be comfortable with him taking the statement, considering that the two had developed a rapport. AL said she was open to this and would give it consideration. Quinn told her he would be starting leave at the end of the week but would be back on 20 December 2010. AL asked if Quinn could phone her on his return from leave, by which time she would have had the opportunity to properly consider the situation. Quinn said if she decided she wanted an officer other than him to take the statement there might be availability problems because of officers taking Christmas leave, which could result in further delays. AL told Quinn she understood this.²¹⁷
- 8.165 McCarthy contacted Quinn on 1 December 2010 and told him AL was not happy with the arrangements that had been made on 30 November 2010.²¹⁸
- 8.166 As described shortly, Quinn did not return from leave on 20 December 2010: instead he took extended sick leave. Subsequently, however, Lantle investigators were able to take evidence from AL in 2011.

AL's complaint about Detective Sergeant Steel

- 8.167 On 9 November 2010 (before Quinn's telephone call with her on 30 November 2010, as discussed) AL lodged a formal complaint about Steel.²¹⁹ The complaint was in the form of a two-

²¹³ *ibid.*

²¹⁴ TOR 1, T1042.23–42 (Mitchell).

²¹⁵ TOR 1, T1042.44–1043.16 (Mitchell).

²¹⁶ Investigator's note by Quinn re contact with AL regarding the continuation of her statement, dated 30 November 2010, ex 21.

²¹⁷ *ibid.*

²¹⁸ *ibid.*

²¹⁹ Letter from AL to York, dated 9 November 2010, ex 15.

page letter addressed to York, and it was copied to Humphrey, Townsend, Mitchell and McCarthy. Tayler told Steel of the complaint, but she did not see the complaint document.²²⁰

- 8.168 In her letter AL raised two separate grievances. First, she complained about the way she had been treated in her dealings with Steel, including the rescheduling of appointments at short notice and requiring her to provide details of McAlinden's abuse of her. Second, she questioned why her original complaint to the police – that is, raising an allegation of concealment by church officials – was not being properly investigated.²²¹
- 8.169 Steel told the Commission she did not agree with AL's statement in the complaint letter that she had told AL she was not 'up to speed' on the matter; nor did she agree that she was 'offended' by AL being upset and angry at having to reveal details of her abuse.²²²
- 8.170 In accordance with what the Commission was told were standard police procedures, AL's complaint was logged into the complaint management system. Documents the Commission obtained show that the complaint was recorded as having been received at Northern Region on 17 November 2010.²²³ It was then recorded that the complaint had been reviewed by the professional standards manager (officer Cullen) on that day and that the file had been referred to Newcastle City LAC for action.²²⁴
- 8.171 A second document the Commission obtained – a complaint triage form prepared by professional standards duty officer Inspector Brad Slarks and dated 2 December 2010 – recorded that under the triage process the complaint had been referred for resolution.²²⁵ The form noted that a suitable person was to be chosen as resolution manager. A third document produced to the Commission, a 'c@ts.i' record dated 2 December 2010, records Tayler as the resolution manager for the complaint. The completed 'incident description' section of the form states, '[AL] alleges that the subject officer who is investigating the matter provided inadequate customer service in regards to attending to her needs and explaining the processes involved'. The form makes no express reference to AL's complaint about inadequate investigation.
- 8.172 In their evidence before the Commission neither Tayler nor Mitchell perceived any difficulties, in terms of a conflict of interest, in Tayler being chosen as resolution manager for AL's complaint about Steel,²²⁶ despite the fact that Tayler was crime manager at Newcastle City LAC, which entailed supervising Steel.
- 8.173 In his evidence, Mitchell made it apparent that, because it was a customer service complaint, police regarded AL's complaint as a 'minor' matter within the NSW Police Force complaint management holdings.²²⁷
- 8.174 Tayler prepared a report, dated 10 December 2010, in relation to AL's complaint.²²⁸ He told the Commission he had only one contact with AL – that being by telephone on 9 December 2010 – and he had found AL difficult to deal with.²²⁹ In his report he set out the chronology of interaction with AL in connection with the statement taking process, including Quinn's contact with AL on 30 November 2010. Tayler concluded that AL's complaint of 'inadequate customer service' in relation to Steel was not sustained.

²²⁰ TOR 1, T37.43–47 (Steel in camera).

²²¹ Internal documents from NSW Police Force Systems in relation to a complaint by AL, ex 16.

²²² TOR 1, T38.18–36 (Steel in camera).

²²³ NSW police documents re complaint by AL, ex 16.

²²⁴ *ibid.*

²²⁵ *ibid.*

²²⁶ TOR 1, T841.37–46 (Tayler); T1046.31–44; T1047.16–19 (Mitchell).

²²⁷ TOR 1, T1046.31–44 (Mitchell).

²²⁸ Report of Tayler re complaint by AL, dated 10 December 2010, ex 14.

²²⁹ *ibid.*

8.175 Tayler also concluded that AL's complaint of inadequate investigation was not sustained. In this regard, he reported that until AL's statement had been taken the investigation could not proceed. He noted that difficulties had arisen when attempts to take the statement were made. Subsequently, on 23 December 2010, Mitchell endorsed Tayler's findings by countersigning the report.²³⁰

The evidence of Detective Sergeant Steel and Assistant Commissioner Mitchell

8.176 The evidence of Steel and Mitchell diverged in relation to one aspect of the events associated with the efforts to take a statement from AL.

8.177 As noted, on 9 November 2010 AL lodged a formal complaint against Steel.²³¹ Steel told the Commission that after she became aware that AL had made the complaint she spoke to Mitchell a couple of times about the matter. She said she suggested to Mitchell that, if her involvement was causing AL distress, she (Steel) should not be involved in anything that had the potential to involve contact with AL but would otherwise remain on the investigation. Steel could not remember whether she had mentioned this to Tayler but thought she probably would have. She said Mitchell (and possibly Tayler) said 'no' to her suggestion of non-involvement with AL.²³²

8.178 A diary entry by Steel dated 2 December 2010 records, '[r]aise issue with Sup Mitchell, DI Tayler re continuing investigation after victim filed formal complaint. Both insisted continuing with investigation ...'²³³ Quinn's investigator's note of 30 November 2010 also records that Mitchell had by that date already decided Steel would not be the person who continued to take a statement from AL,²³⁴ although the note does not record that this was at the request of Steel.

8.179 For his part, Mitchell told the Commission he could not recall Steel having asked to be taken off the investigation in relation to the statement taking process with AL because of the difficulties she was encountering with AL. Nor did Tayler convey to Mitchell details of any discussions with Steel about the situation. Mitchell said that, had Steel raised that problem (that is, difficulties furthering the investigation because of doubts about her working relationship with a key witness) on multiple occasions, he would have raised it with Tayler since, as the investigating lead, it was up to Tayler to manage Steel. Mitchell said he then would have taken Tayler's advice as to the proper course to be followed, including possibly allocating a different investigator if Tayler considered that was necessary.²³⁵

Conclusions

Delays in taking AL's statement

8.180 The difficulties and delays encountered in late 2010 in taking a completed statement from AL were unfortunate. They arose from a combination of circumstances, as discussed. The Commission does not, however, regard such difficulties or delays as involving fault on the part of Steel or senior police or, indeed, AL or McCarthy. Nor did they reflect in any way an unwillingness to move ahead or a lack of commitment to the Strike Force Lantle investigation.

8.181 Mitchell's statement to McCarthy about Steel's experience noted a limitation only in relation to the Catholic Church element. The Commission does not regard such limitation as a significant matter. As described, Steel was experienced in dealing with victims of historical child sexual assault, including taking statements from such victims. In the Commission's view, by reason of

²³⁰ TOR 1, T1041.37-47; T1042.2-3 (Mitchell). See also Report of Tayler re complaint by AL, dated 10 December 2010, ex 14.

²³¹ Letter from AL to York, dated 9 November 2010, ex 15.

²³² TOR 1, T28.33-29.1 (Steel in camera).

²³³ Diary entry of Steel, dated 24 December 2010, ex 294.

²³⁴ Investigator's note 2 re contact with AL, dated 30 November 2010, ex 21.

²³⁵ TOR 1, T1044.3-31 (Mitchell).

her background and experience Steel was properly equipped to take a statement from a sexual assault victim. For whatever reason, however, the working relationship between Steel and AL had broken down. Both Mitchell and Quinn took steps to see if another officer could attend on AL. In the circumstances, this was an appropriate course of action.

Divergences in evidence of Detective Sergeant Steel and Assistant Commissioner Mitchell

- 8.182 As to the divergence in the evidence of Steel and Mitchell, to a significant extent Mitchell appeared intent on resisting any notion that Steel wanted to be taken off the Lantle investigation. Steel's evidence, however, was not that she had asked to be taken off the investigation but simply that she ought to avoid contact with AL because of AL's distressed state. Notwithstanding this, there remains an apparent divergence between the evidence of Steel and that of Mitchell in relation to what, if anything, Steel said about her suggested cessation of contact with AL.
- 8.183 In this respect, it is by no means improbable that Steel would have raised her concerns with Mitchell in the manner she recounted in evidence and, further, that her diary entry for 2 December 2010 (at least if read as limited to her continuing involvement with AL) appears to provide some contemporaneous support for her stated position. Ultimately, however, the Commission is not in a position to prefer the evidence of one witness over that of the other in relation to the terms of the conversation between Steel and Mitchell. Nor is it strictly necessary to make a finding on this matter: it is sufficient to note the divergence as one aspect of the narrative relating to the progress of the Lantle investigation in the last quarter of 2010.

Handling of AL's complaint

- 8.184 The complaint that AL made about Steel formed part of the narrative relating to the progress of the Lantle investigation. The Commission finds that there was material available that would support Taylor's findings in his report dated 10 December 2010 – that is, that AL's complaints of 'inadequate customer service' in relation to Steel and of inadequate investigation were not sustained.

September to October 2010: concerns about the leaks to the media

- 8.185 By at least about September or October 2010 – and certainly before the meeting on 2 December 2010 (see paras 8.202 and 8.203) – senior police with oversight of the Strike Force Lantle investigation were concerned about the leaking of police information to the media. Further, Fox was seen as having too close a relationship with the media and as being a probable source of leaks. These aspects are discussed further in Chapter 10. They are relevant as part of the circumstances leading up to and surrounding the instruction or direction Mitchell gave to Fox in December 2010.
- 8.186 In his statement to the Commission Humphrey recorded the concerns he had at the time the Strike Force Lantle team was assembled about Fox's potential role in leaking information to the media. Humphrey saw this as one reason why Fox should not have any direct role in the Strike Force Lantle investigation.²³⁶
- 8.187 Humphrey told the Commission that, at the time Lantle was being established (September 2010), he was concerned that Fox was passing on information about police investigations to McCarthy.²³⁷ In September 2010 Humphrey responded to Steel by email dated 16 September 2010 as follows:

²³⁶ Statement of Humphrey, dated 14 February 2013, ex 33, para 22.

²³⁷ *ibid*, para 26.

Kirren (Brad)

As if I knew this wouldn't happen!

No contact with him until after we (Brad and I) discuss the matter on Monday with you. Tony, I will also need to speak with you re this.

If this matter is Newcastle City's, and I believe it is, then we will run it. 'Getting our heads' together with Peter Fox will not necessarily be the most advantageous strategy despite his best intentions.

Lastly, Fox will address communications through the Crime Manager in future. I will address that.²³⁸

- 8.188 Humphrey said he did not file any complaint against Fox at that stage because 'the suspicion didn't amount to enough to complain about ...'²³⁹ In an email to Haggett on 13 October 2010 Humphrey expressed concern about leaks to the media:

... I probably don't need to remind all recipients of this email that this enquiry has been subject of much media interest (Commander Haggett you might also make the following very clear to DCI Fox please). It is my view that whilst this investigation rests with Newcastle City LAC then this command will be responsible for the overall management of the investigation, the investigative strategies and directions and any relevant media strategy) ...²⁴⁰

- 8.189 In his evidence Humphrey told the Commission the number of newspaper articles appearing in the *Newcastle Herald* between April and September 2010 had a bearing on his suspicion about what was going on between Fox and a member of the media.²⁴¹ One of the reasons for his concern about the subject matter of an investigation appearing in a newspaper was that 'it could destroy investigative momentum. It could warn possible offenders of our strategies'.²⁴²
- 8.190 Mitchell shared Humphrey's concern. In a statement prepared for the Commission he said, 'It was obvious to me prior to 2 December 2010, based on the information that was being received, that there was leakage of information contained in police holdings to Ms McCarthy'.²⁴³ Mitchell said the basis for his view about the leaks to the media was, first, his discussions with Tayler but, more importantly, his own telephone discussion with McCarthy.²⁴⁴ He told the Commission he found the conversation with McCarthy unusual because of her advocacy on Fox's behalf in terms of his background and experience.²⁴⁵ He also considered it 'unusual' because McCarthy knew information about Fox and was communicating that to him. Mitchell had had discussions with Tayler and had certainly formed a suspicion in relation to Fox; the question of dealings with the media was then discussed at the meeting on 2 December 2010.²⁴⁶
- 8.191 Assistant Commissioner York said that at some stage she was told there was a suspicion that Fox was leaking information to the media.²⁴⁷ She could not, however, say precisely when the matter had been brought to her attention:²⁴⁸

²³⁸ Humphrey, dated 14 February 2013, ex 33; email from Humphrey to Steel, dated 18 September 2010, tab 216, tab 64.

²³⁹ TOR 1, T1474.9–10 (Humphrey). In April 2011, however, Humphrey lodged a complaint against Fox in relation to alleged improper leaking of information to the media.

²⁴⁰ Email from Humphrey to Haggett re 'Strike Force Lantle', dated 13 October 2010, ex 216, tab 69.

²⁴¹ TOR 1, T1489.16–33 (Humphrey).

²⁴² TOR 1, T1489.40–43 (Humphrey).

²⁴³ Statement of Mitchell, dated 15 February 2013, ex 20, para 20.

²⁴⁴ TOR 1, T1025.11–23 (Mitchell).

²⁴⁵ TOR 1, T1025.30–42; T1025.46–1026.1 (Mitchell).

²⁴⁶ TOR 1, T1026.3–9 (Mitchell).

²⁴⁷ TOR 1, T736.40–41 (York).

²⁴⁸ TOR 1, T743.37–43; T744.7–11 (York).

It may have been before, because there were many articles, even from earlier, in 2010, prior to setting up Strike Force Lantle, and so after that date in September, when I organised for an investigation to commence, it could have been not long after that. I can't recall.²⁴⁹

- 8.192 York said it was Humphrey who had drawn her attention to the suspicion about Fox leaking information.²⁵⁰
- 8.193 Tayler told the Commission that in 2008 he had been informed that Fox might have been engaged in unauthorised contact with McCarthy.²⁵¹ In 2010 Tayler had been concerned that Fox might reveal highly protected information if he became involved in the Lantle investigation.²⁵²
- 8.194 It is against this backdrop that the meeting of 2 December 2010 should ultimately be viewed (as discussed in Chapter 10). Before that, however, two other matters warrant consideration.

Detective Chief Inspector Fox's 25 November 2010 report

- 8.195 On 25 November 2010 Fox submitted, via the chain of command, a lengthy report calling for a 'full and comprehensive investigation into the conduct of the Maitland-Newcastle Diocese of the Catholic Church'.²⁵³ In the report he asserted that he was 'objective but passionate' about assisting with an inquiry and recommended that consideration be given to the establishment of a task force. The recommendation was supported by then Acting Superintendent Matthews, Fox's acting commander at Port Stephens LAC.²⁵⁴
- 8.196 The evidence before the Commission reveals that, as detailed in chapter 18, Fox's report contained a number of false statements or exaggerations.
- 8.197 After considering Fox's report of 25 November 2010 the Northern Region Commander, York, decided that Strike Force Lantle should continue its work, with Newcastle City LAC being responsible for the investigation. York did not consider it necessary for a further strike force to be established and thought Lantle 'was being adequately resourced at the time and was being conducted in an appropriate manner'.²⁵⁵ She endorsed her decision on Fox's report:

Investigation should continue by Newcastle LAC to ascertain the extent of the allegations. Consideration will be given to additional resources at the appropriate time. To ensure all matters are considered it should be noted the Newcastle investigators are the lead role and are to continue.²⁵⁶

The commander at Port Stephens LAC subsequently endorsed the report as follows: 'Noted. I have informed C/Insp Fox of this outcome'.²⁵⁷

Meeting on 26 November 2010

- 8.198 On 26 November 2010 a meeting took place between Mitchell (as commander of Newcastle City LAC), Tayler and Steel on one hand and McCarthy and Mr Andrew Morrison SC on the other

²⁴⁹ TOR 1, T743.45–744.5 (York).

²⁵⁰ TOR 1, T744.13–16 (York).

²⁵¹ TOR 1, T863.19–25 (Tayler).

²⁵² TOR 1, T863.46–864.3 (Tayler).

²⁵³ For a list of selected key documents from Term of Reference 1, see Appendix R.

²⁵⁴ Fox report re Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese, dated 25 November 2010, ex 69.

²⁵⁵ Statement of York, dated 15 February 2013, ex 10.

²⁵⁶ Fox report re Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese, dated 25 November 2010, ex 69.

²⁵⁷ *ibid.*

hand.²⁵⁸ Mitchell had organised the meeting after his conversation with McCarthy in around mid-November 2010.²⁵⁹

- 8.199 There were divergent views about the apparent purpose of the meeting. Tayler recalled that from his perspective the purpose of the meeting was for McCarthy to provide to police further information about victims' or witnesses' names. He told the Commission he did not know who Morrison was until he (Morrison) arrived at the meeting. Mitchell told the Commission he thought the purpose of the meeting was to obtain information from McCarthy, rather than to afford an opportunity for an exchange of views.²⁶⁰
- 8.200 McCarthy told the Commission she had suggested the meeting in order to try to overcome the problem of AL not wanting to provide a statement to a particular police officer (Steel).²⁶¹ McCarthy recalled that there was 'a robust exchange of views' at the meeting.²⁶²
- 8.201 Tayler recalled McCarthy having offered to attend a police interview with AL to help obtain her evidence; he told McCarthy such an approach would not be appropriate in view of McCarthy's potential involvement in the investigation.²⁶³ McCarthy said Morrison also expressed concern about her attending a police interview with AL.²⁶⁴ Tayler also recalled emphasising to McCarthy and Morrison the need for police to obtain a statement from AL since 'without that, there was nothing – we couldn't do anything'.²⁶⁵

A meeting on 2 December 2010

- 8.202 On 2 December 2010 at Waratah police station there was a meeting²⁶⁶ convened by Mitchell.²⁶⁷ It was attended by Mitchell (as commander of Newcastle City LAC), Haggett (as Fox's commander at Port Stephens LAC), Fox, Tayler, Quinn, Steel and Freney. Detective Inspector Graeme Parker (then from Northern Region) attended the latter part of the meeting.
- 8.203 At the meeting an instruction or direction was issued to Fox to provide any relevant church-related documents to Strike Force Lantle. Mitchell also issued an instruction or direction that police were not to speak with the media about the investigation. Whether or not Fox was directed or instructed not to investigate church paedophilia and other matters relating to the meeting are detailed in Chapter 10.

'Strike farce'

- 8.204 By late December 2010 Detectives Steel, Quinn and Tayler had all taken sick leave. This prompted a front-page headline in the *Newcastle Herald* of 'Newcastle's police "strikefarce"'.²⁶⁸ Strike Force Lantle was at that time described as a strike force with a name but no detectives.²⁶⁹
- 8.205 The Commission examined the circumstances relating to Detectives Steel, Quinn and Tayler taking sick leave. This included examining whether relevant senior police knew at the time of Steel's appointment to Lantle that she would later take sick leave, which, had it been the case, might provide some support for the suggestion advanced by Fox that Lantle was 'set up to fail'.

²⁵⁸ Investigator's note by Steel re meeting with McCarthy & Morrison, dated 26 November 2010, ex 216, tab 80, p 330.

²⁵⁹ TOR 1, T1047.37–1048.1 (Mitchell).

²⁶⁰ TOR 1, T1048.35–42 (Mitchell).

²⁶¹ TOR 1, T1254.7–34 (McCarthy).

²⁶² TOR 1, T1269.27 (McCarthy).

²⁶³ TOR 1, T849.40–850.17 (Tayler).

²⁶⁴ TOR 1, T1283.29–47 (McCarthy).

²⁶⁵ TOR 1, T852.46–853.3 (Tayler). See also T851.34–38 (Tayler).

²⁶⁶ Investigator's note by Quinn re case conference on 2 December 2010, dated 3 December 2010, ex 216, tab 85.

²⁶⁷ TOR 1, T1026.27–29 (Mitchell).

²⁶⁸ Article entitled 'Newcastle's Police "Strikefarce"' by McCarthy 23 December 2010, the *Newcastle Herald*, ex 290.

²⁶⁹ *ibid.*

8.206 This consideration does not arise in connection with Tayler and Quinn, who were not strictly part of the investigative team attached to Strike Force Lantle. Rather, each held senior supervisory roles in Newcastle City LAC, with oversight responsibility for a large number of investigations, including Lantle. Tayler had his supervisory role in respect of Lantle because he held the position of crime manager at Newcastle City LAC. Similarly, Quinn had a supervisory role over Lantle because he held the position of investigations manager. Quinn said that less than 5 per cent of his managerial case load related to Lantle.²⁷⁰ In any event, there was no expectation that Tayler and Quinn would go on sick leave when they did.

Ms Steel

8.207 Steel told the Commission she was excited when notified that she would be returning to the Detectives Office at Newcastle City LAC to work on the church concealment investigation. She said 'I was extremely keen to get under way with the investigation'²⁷¹ and '... it was a good brief to get my teeth into. It wasn't just a run-of-the-mill job; it was something that was big and having a lot of substance to it, that required a lot of investigation, and I was looking forward to getting into it'.²⁷²

8.208 Steel said that when she was appointed to Strike Force Lantle she had no plans to take sick leave or extended leave of any kind.²⁷³ Rather, it was only on about 13 December 2010 that she realised that she would not be able to return to her next rostered day of work. This was not something she had discussed beforehand with any other police officer.²⁷⁴ She described her reason for not being able to continue working as 'an accumulation of a lot of things over the course of 21 years'.²⁷⁵ She subsequently left the NSW Police Force on medical grounds. Steel said it was only after receiving a text message from Mitchell alerting her to the 'strike farce' article in the *Newcastle Herald* that she became aware that Tayler and Quinn had also taken sick leave.²⁷⁶

8.209 Tayler told the Commission that when Steel was appointed to Strike Force Lantle he had no idea she was likely to take extended sick leave.²⁷⁷ Nor, he said, did Steel mention to him that the investigation was presenting challenges for her because of her medical condition.²⁷⁸ Tayler said that when he went on sick leave in December 2010 he did not know that a short time later Steel would also take sick leave.²⁷⁹ Mitchell told the Commission that Steel taking sick leave was a shock.²⁸⁰

Mr Quinn

8.210 Quinn gave evidence that he had taken rostered annual leave in December 2010 with the intention of returning to work after two weeks' break. He said it was only while he was on rostered leave that it became apparent he could not return to work because of medical reasons. In about February or March 2011 he did in fact return to work for a period, albeit on restricted duties.²⁸¹

²⁷⁰ TOR 1, T956.5 (Quinn).

²⁷¹ TOR 1, T11.47–12.4 (Steel in camera).

²⁷² TOR 1, T12.8–13 (Steel in camera).

²⁷³ TOR 1, T13.24–27 (Steel in camera).

²⁷⁴ TOR 1, T15.16–20 (Steel in camera).

²⁷⁵ TOR 1, T15.12–14 (Steel in camera).

²⁷⁶ TOR 1, T15.45–16.15 (Steel in camera).

²⁷⁷ TOR 1, T769.38–47 (Tayler).

²⁷⁸ TOR 1, T770.24–28 (Tayler).

²⁷⁹ TOR 1, T770.16–21 (Tayler).

²⁸⁰ TOR 1, T1078.32–33 (Mitchell).

²⁸¹ TOR 1, T952.42–953.19 (Quinn).

- 8.211 Tayler told the Commission he was aware that ‘Justin had some issues’ but that he (Tayler) did not know Quinn was going to take sick leave.²⁸² Tayler said that when he (Tayler) went on sick leave, on or about 20 December 2010, Quinn was on rostered annual leave.²⁸³
- 8.212 Mitchell gave evidence that, although he was aware that Quinn was ‘struggling’ in relation to certain welfare difficulties,²⁸⁴ Quinn’s taking sick leave was ‘unexpected’.²⁸⁵

Mr Tayler

- 8.213 Tayler told the Commission that at the time of obtaining overall supervision of Strike Force Lantle in September 2010 it was a consideration that he might in future take extended sick leave. He said, however, it did not become immediately apparent to him that he was in fact going to apply for extended sick leave until shortly before he took that leave, on or about 20 December 2010.²⁸⁶ Tayler said that having Lantle ‘on his books’ was not a motivating factor in his taking leave.²⁸⁷
- 8.214 Mitchell gave evidence that he knew from private conversations with Tayler that he was struggling, but Mitchell had no expectation that Tayler would take sick leave in December 2010.²⁸⁸

Conclusions

- 8.215 The fact of three detectives taking sick leave within a relatively short time of each other raised a matter deserving of close scrutiny. Following its investigations, the Commission is, however, satisfied that the situation arose as a consequence of genuine and unrelated medical considerations. Further, it was something senior police could not reasonably have anticipated.
- 8.216 Senior police did not appoint Steel to Strike Force Lantle knowing or believing that she would later take sick leave.
- 8.217 Further, both Mitchell and Tayler were conscious that the investigation would be high profile in nature and subject to significant public scrutiny. Losing one or more detectives associated with the investigation at an early stage would serve no good purpose and might, as indeed eventuated, attract negative media coverage. This also tends strongly against any suggestion that senior police appointed Steel to the strike force knowing that she would go on sick leave.

Ms Steel

- 8.218 The Commission is satisfied that from the time of being appointed to the strike force Steel showed a proper degree of commitment to the investigation. Neither she nor her superior officers (Mitchell and Tayler) knew at the time of her appointment as officer in charge of the investigation that she would take sick leave in December 2010. Similarly, neither Mitchell nor Tayler believed, in October 2010, that Steel was not competent to fulfil her role as officer in charge of Lantle.
- 8.219 Further, Steel’s taking sick leave did not mean the church concealment investigation would cease. It was inevitable that another officer in charge would be appointed, and that is what happened: Detective Sergeant Jeffrey Little was appointed officer in charge on 30 December 2010 and remains so.

²⁸² TOR 1, T769.20–27 (Tayler).

²⁸³ TOR 1, T7569.32–36 (Tayler).

²⁸⁴ TOR 1, T1031.45–1032.4 (Mitchell).

²⁸⁵ TOR 1, T1078.16–33 (Mitchell).

²⁸⁶ TOR 1, T768.15–769.13; T769.34–35 (Tayler).

²⁸⁷ TOR 1, T769.15–18 (Tayler).

²⁸⁸ TOR 1, T1032.6–10 (Mitchell).

Mr Quinn

- 8.220 Tayler and Quinn were not part of the investigative team attached to Strike Force Lantle. Instead, they each held senior supervisory roles in Newcastle City LAC, with oversight responsibility for a large number of investigations, not just Lantle.
- 8.221 Before taking rostered leave in December 2010, Quinn did not know he would not be returning to work because of medical reasons. He did in fact return for a time in 2011, albeit on restricted duties and not connected with Lantle. At the time Quinn (as investigations manager at Newcastle City LAC) assumed supervisory responsibility for Lantle in October 2010, senior police (Mitchell and Tayler) did not know or believe he would take sick leave or regard him as otherwise not competent to perform his role.

Mr Tayler

- 8.222 The Commission accepts Tayler's evidence that having Lantle on his books was not a motivating factor in his taking sick leave. Further, although it was a possibility, it was not apparent to him that he would take sick leave in December 2010 until shortly before he took the leave. Similarly, Mitchell (as Tayler's supervisor) did not know Tayler would go on sick leave, notwithstanding welfare difficulties having previously been identified.
- 8.223 Although Mitchell, as commanding officer, held concerns about the welfare of Tayler and Quinn, there was no belief or expectation on his part that either officer would take sick leave or was otherwise not competent to perform his supervisory role in the Lantle investigation.

Assistance provided by the Sex Crimes Squad

- 8.224 On 9 December 2010 Detective Inspector Jacob of the Sex Crimes Squad attended Newcastle City LAC Detectives Office. He met with Detective Acting Superintendent Graeme Parker (Region operations manager at the time), Townsend, Tayler and Steel²⁸⁹ and received a briefing in relation to the Strike Force Lantle investigation. After the briefing, he had a further meeting with Steel in order to develop an interview plan in connection with Ms Helen Keevers, a former employee of the Diocese who was yet to be interviewed by Lantle.²⁹⁰ On 10 December 2010 Jacob again attended Newcastle City LAC, in order to be present and available when Lantle investigators interviewed Keevers.²⁹¹
- 8.225 On the same day, before having taken sick leave, Steel had submitted a formal request for assistance from the Sex Crimes Squad because of its particular expertise. In an internal memorandum within State Crime Command, Jacob recommended that the request for assistance be accepted and that he be allocated the role of specialist consultant to Strike Force Lantle. On 13 December 2010 Detective Acting Chief Superintendent Malcolm Lanyon approved the request for assistance and allocated Jacob as specialist consultant to the strike force.²⁹²
- 8.226 Despite initially having expressed a guarded view about 'criminal investigation outcomes, since the offender and decision maker were both deceased (see paras 8.62 and 8.70), Jacob told the Commission that once the strike force was established:

NSWPF had very little alternative but to ensure that such allegations were thoroughly investigated, and that the allegations being made (both through the media and otherwise)

²⁸⁹ Statement of Jacob, dated 9 April 2013, ex 17, para 18.

²⁹⁰ *ibid*, para 19.

²⁹¹ *ibid*, para 21.

²⁹² NSW Police Force Request for State Crime Command Assistance form, dated 10 December 2010, annexure P of ex 17; email from East to Steel, dated 13 December 2010, attaching request by Jacob for Sex Crimes Squad Specialist Consultancy by Newcastle LAC – Strike Force Lantle, dated 10 December 2010, ex 216, tab 88, pp 374–376.

were properly, fully and independently assessed and the outcome of such investigations made public.²⁹³

- 8.227 Thereafter, Jacob continued to provide assistance as required to Detective Sergeant Little following his appointment as officer in charge of Lantle, as well as to Detective Chief Inspector Graeme Parker.
- 8.228 Mr Ian Lloyd QC, an expert engaged by the Commission (see paras 8.310 and following), gave evidence to the effect that keeping the investigation at Newcastle City LAC while using Jacob as a consultant was ‘a perfect marriage’: ‘you really got the best of both worlds’.²⁹⁴

Conclusion

- 8.229 The Commission finds that from December 2010, when formally assigned to consult on the investigation, the Sex Crimes Squad – in particular, Detective Inspector Paul Jacob – provided continuing assistance to Strike Force Lantle that was of considerable benefit to the investigation.

Detective Sergeant Little as lead investigator

- 8.230 On 30 December 2010 Detective Chief Inspector Humphrey appointed Little as lead investigator (officer in charge) of Strike Force Lantle.²⁹⁵
- 8.231 Little is an experienced investigator who joined the NSW Police Force in 1990, initially spending time in both general duties and specialist operations. In 1999 he took up a two-year secondment with the Australian Federal Police, based in Melbourne. In 2001 he returned to NSW Police, where he had the role of senior investigator with the Special Crime and Internal Affairs Branch.
- 8.232 In late 2002 Little resigned from NSW Police to take up further duties with the Australian Federal Police, where he became a team leader. He remained with the AFP for about five years, during which time he had a number of overseas postings, among them to Jordan, Cyprus, Sudan and Solomon Islands. In October 2007 he returned to NSW Police. He was appointed senior constable and carried out general duties before being appointed detective sergeant in late 2010 at Newcastle City LAC.²⁹⁶
- 8.233 The (undated) terms of reference appointing Little to Strike Force Lantle stated that he was to report to Detective Inspector Parker. The terms of reference specified his task as being to:
- Investigate allegations of concealing offences by clergy formerly and currently attached to the Maitland-Newcastle Diocese of the Catholic Church during the period 1985-1999, stemming from complaints made by [AL], [AK], Peter Gogarty and [AJ].²⁹⁷
- 8.234 Jacob told the Commission it became apparent to him as matters progressed that Little ‘was a highly competent investigator who had the ability to deal with the subject matter of the investigation’.²⁹⁸ After having reviewed the Strike Force Lantle brief of evidence (considered below), Mr Ian Lloyd QC told the Commission that Little had developed ‘a very fine rapport’ with the complainant witnesses he interviewed during the investigation.²⁹⁹

²⁹³ Statement of Jacob, dated 9 April 2013, ex 17, para 28; see also E@gle. I HELP status report, Case reassigned’, dated 30 December 2010, ex 216, tab 94A.

²⁹⁴ TOR 1, T1012.2–14 (Mr Lloyd QC).

²⁹⁵ Statement of Little, dated 7 March 2013, ex 25, para 12.

²⁹⁶ *ibid*, paras 3–11.

²⁹⁷ Terms of Reference of Strike Force Lantle assigning Little, undated, ex 11.

²⁹⁸ Statement of Jacob, dated 9 April 2013, ex 17, para 29.

²⁹⁹ TOR 1, T1014.9–35 (Mr Lloyd QC).

8.235 Having been appointed, Little prepared a comprehensive investigation plan. Jacob reviewed the plan, finding it flexible and suitable for the workings of the strike force.³⁰⁰ Jacob also provided advice to Little on various things, such as interviewing witnesses and the potential for ‘mission creep’, which Jacob saw as an important concept that could help an investigator maintain a suitable investigative focus.³⁰¹ Jacob told the Commission that ‘mission creep’:

... means becoming unfocussed, redefining your investigation, going off on different tracks, following tangents that you don’t apply to the original investigation that you were directed to undertake.³⁰²

Any additional victims who came forward would have their allegations managed, at least initially, under existing police channels of investigation.³⁰³

8.236 Little began reviewing the Strike Force Lantle holdings.³⁰⁴ Detective Chief Inspector Humphrey told the Commission the holdings had been ‘abysmally managed’ before Little’s appointment;³⁰⁵ he had also made this comment in a report to Assistant Commissioner York dated 19 April 2011.³⁰⁶

8.237 As lead investigator for Strike Force Lantle, Little was able to call on assistance from Detective Senior Constable Freney and Plainclothes Senior Constable Troy Domish in relation to certain aspects of the investigation.³⁰⁷

8.238 For the most part, and based on a reading of the investigator’s note of the 2 December 2010 meeting, Little proceeded on the assumption that Fox had provided the relevant information he had to Strike Force Lantle before Little’s appointment as lead investigator.³⁰⁸ In April 2012, however, so as to be certain there was nothing outstanding, Little took steps to try to ensure that Fox had no further information that might be pertinent to the investigation. On 4 April 2012 he and Parker spoke with Fox by speakerphone while travelling in a car and pressed him for further information relevant to the Lantle investigation.³⁰⁹ Little subsequently sent Fox a number of emails, seeking particulars of matters to which Fox had alluded.³¹⁰ When questioned by counsel assisting about these communications from Little, Fox accepted that they constituted a form of consultation with him.³¹¹ These communications with Fox are considered further in Chapter 10.

8.239 On 27 March 2011 Detective Inspector Parker formally took up his position at Newcastle City LAC. As part of his duties as the crime manager responsible for investigations, he had managerial oversight of all investigations in the command, including Lantle. A police officer since 1987, Parker was highly experienced in criminal investigations, including child sexual assault matters.³¹² He provided support for Little as lead investigator of Lantle.³¹³

³⁰⁰ Statement of Jacob, dated 9 April 2013, ex 17, para 36.

³⁰¹ *ibid*, para 37.

³⁰² TOR 1, T886.41–44 (Jacob).

³⁰³ Expert opinion report of Mr Lloyd QC, dated 7 May 2013, ex 23, para 10.

³⁰⁴ Statement of Little, dated 7 March 2013, ex 25.

³⁰⁵ TOR 1, T1333.43 (Humphrey); NSW Police Force ‘Highly protected’ memorandum from Humphrey to York, dated 21 April 2011, ex 216, tab 101.

³⁰⁶ Police memo title ‘Highly Protected’, dated 21 April 2011, ex 216, tab 101.

³⁰⁷ TOR 1, T1097.36–1098.1 (Little).

³⁰⁸ TOR 1, T1100.35–41 (Little).

³⁰⁹ TOR 1, T1102.25–31 (Little); statement of Little, dated 7 March 2013, ex 25, para 24.

³¹⁰ Statement of Little, dated 7 March 2013, ex 25, paras 26–29; email chain, ending with email from Little to Fox re ‘Church Inquiry’, dated 2 April 2012 and beginning with email from Fox to Parker, dated 4 April 2012, annexure D to ex 25; response from Fox to questions by Little re email from Fox to Parker, dated 5 April 2012, annexure E to ex 25; email from Little to Fox re ‘Church Inquiry’, dated 3 May 2012, annexure F to ex 25.

³¹¹ TOR 1, T262.21–33 (Fox).

³¹² Statement of Parker dated 7 March 2013, ex 40, paras 3–11.

³¹³ See statement of Jacob dated 9 April 2013, ex 17, para 47.

The Strike Force Lantle investigation and brief of evidence

- 8.240 Little conducted the Lantle investigation mainly in 2011 and 2012. The investigative work done during this period was substantial. At least 75 electronically recorded interviews were conducted with witnesses and individuals of interest, and at least 25 signed witness statements were obtained.³¹⁴
- 8.241 On 22 August 2012 Little lodged a brief of evidence with the NSW Police Force Legal Services Unit. The brief consisted of just under 3000 pages and included a 255-page covering report that Little had prepared.³¹⁵
- 8.242 On 8 October 2012 NSW Police forwarded the Lantle brief of evidence to the Office of the Director of Public Prosecutions for the purpose of obtaining advice about the sufficiency of the evidence to prosecute particular members of the Catholic Church for offences related to the concealment of child sexual assault offences. To date, the Office of the DPP has not provided any advice as to whether charges should be preferred against any person, having said consideration of the matter has been deferred pending the conclusion of this Special Commission of Inquiry. Further, as noted, Lantle remains an ongoing police investigation.

The complexity of the investigation

- 8.243 Different views were expressed to the Commission about the complexity of the Lantle investigation. Detective Superintendent John Kerlatec, commander of the Sex Crimes Squad, told the Commission that in his view the investigation was not complex and could readily have been performed by a local area command.³¹⁶ Similarly, Inspector Townsend regarded the proposed investigation as not involving allegations of complexity and thus as being within the competence of Newcastle City LAC.³¹⁷
- 8.244 In contrast, in her evidence before the Commission Assistant Commissioner York, the Northern Region Commander in 2010, referred to the investigation as being ‘complex’.³¹⁸ Similarly, in his evidence Jacob of the Sex Crimes Squad described Strike Force Lantle as a ‘protracted, complex investigation’,³¹⁹ while Superintendent John Gralton (commander, Newcastle City LAC as at May 2013) agreed that Strike Force Lantle was a complex and sensitive investigation.³²⁰
- 8.245 Mr Ian Lloyd QC gave expert evidence in relation to the quality of the Strike Force Lantle brief and investigation. Having regard to the history and content of the investigation (until a brief was provided to the Office of the Director of Public Prosecutions), Mr Lloyd QC considered Lantle ‘a complex investigation’.³²¹

Conclusion

- 8.246 The totality of the evidence before the Commission demonstrated that, as events unfolded, the increasing complexity of the Strike Force Lantle investigation became apparent. It is properly regarded as a complex investigation involving, as it did, concealment allegations against senior church officials with respect to historical child sexual offences. The historical nature of the

³¹⁴ Expert opinion report of Mr Lloyd QC, dated 7 May 2013 and letter to Mr Lloyd QC from the NSW Crown Solicitor, dated 1 May 2013, ex 23.

³¹⁵ Statement of Little, dated 7 March 2013, ex 25, paras 26–29; email chain of Little, April–May 2012, annexures D–F, ex 25.

³¹⁶ TOR 1, T417.43–418 37 (Kerlatec); statement of Kerlatec, dated 8 April 2013, ex 4, para 9.

³¹⁷ TOR 1, T933.21–45 (Townsend).

³¹⁸ TOR 1, T706.47 (York). See also TOR 1, T1488.7–8. (Humphrey).

³¹⁹ TOR 1, T918.13 (Jacob).

³²⁰ TOR 1, T1605.44–47; T1606.11–13 (Gralton).

³²¹ TOR 1, T1019.29–35 (Mr Lloyd QC).

allegations, the number of witnesses and persons of interest involved, and the high-profile nature of the investigation all contributed to its complexity.

Timing

- 8.247 As noted, Strike Force Lantle is an ongoing investigation. This is so notwithstanding that a voluminous brief of evidence relating to aspects of the investigation, has been forwarded to the Office of the Director of Public Prosecutions. When considering the question of timing, therefore, there is no end date that can at present be considered.
- 8.248 Rather, the Commission's focus in relation to timing was on the time taken by police for the Lantle investigation proper to begin, including whether any unduly long period might be indicative of a reluctance to investigate alleged criminal conduct relating to the Catholic Church.
- 8.249 Five aspects of timing can be focused on:
- About 10 weeks elapsed between the submission of Waddell's report (3 May 2010) and Townsend's report for York (12 July 2010).
 - A further seven weeks elapsed between Townsend's report (12 July 2010) and York's decision to allocate the investigation to Newcastle City LAC (1 September 2010).
 - Over four months elapsed between the time McCarthy provided the church concealment documents to Lake Macquarie LAC (23 April 2010) and the decision to allocate the investigation to Newcastle City LAC (1 September 2010).
 - About five-and-a-half months elapsed between the provision of the McCarthy documents (23 April 2010) and the start of the investigation proper on Steel assuming the role of office in charge (13 October 2010).
 - More than a year-and-a-half elapsed between Detective Sergeant Little commencing as officer in charge of Lantle and the brief of evidence being sent to the Director of Public Prosecutions (December 2010 to August 2012).

Receipt of Assistant Commissioner York's report

- 8.250 York told the Commission she would have liked to have received the Townsend report within a month but that the timing was not unreasonable in view of Townsend's workload.³²²
- 8.251 Townsend told the Commission he believed his report was prepared sufficiently promptly in the circumstances. In explaining the perceived delay, he referred to the resourcing and operational pressures faced by Northern Region:

I think you have to understand the nature of Northern Region and the types of incidents that occur within Northern Region. In the period that I had to prepare my report which crossed May, June and July, in May there were 233 major incidents that had to be reported up to the operations managers. In June, there were 194 and in July there were 194 ... there was a double homicide, late June in Newcastle, that involved an intensive investigation and, on 2 July, there was a shotgun murder in Raymond Terrace, which was Port Stephens Local Area Command. Across that period there were four other homicides among other serious incidents that came into the region. They were urgent matters that required immediate attention.

In relation to the issues that related to Strike Force Lantle, they were serious matters. However, they were historical in nature and there was no immediate urgency to deal with

³²² TOR 1, T701.14–39 (York).

those matters. Certainly, there are limited resources across the region; I deal with that every day. However, within those resources we have to give priority to the matters that need priority and, in my view, the appropriate priority was given to Strike Force Lantle.³²³

The decision to allocate the investigation to Newcastle City Local Area Command

8.252 In relation to the seven weeks that elapsed between Townsend's report (12 July 2010) and York's decision to allocate the investigation to Newcastle City LAC (1 September 2010), York accepted that this was a 'lengthy period' but told the Commission that 'that happens'. She said the time frame for making decisions of this complexity can 'vary' and 'it can take some time to make those decisions'.³²⁴

Provision of church concealment documents by McCarthy and allocation of the investigation to Newcastle City LAC

8.253 As to the four months (after receipt of the church concealment documents from McCarthy in April 2010) it took to allocate the investigation to Newcastle City LAC, York accepted that the period involved was 'not particularly expeditious'.³²⁵ She explained that the main reason for this lay in trying to find the command that had the resources to do the investigation.³²⁶

Provision of church concealment documents by Ms McCarthy and commencement of the investigation proper

8.254 As noted, for practical purposes the Lantle investigation began on 13 October 2010, when Detective Sergeant Kirren Steel assumed the role of officer in charge of Lantle on her return to the Detectives Office at Newcastle City LAC following a period of leave. From about that time Steel undertook investigative steps as part of Lantle.

8.255 In its initial stages (October to December 2010) the investigation experienced certain complications. Steel encountered unexpected difficulties in the statement taking process with AL (as discussed). In addition, three officers associated with Lantle – Steel, Tayler and Quinn – went on sick leave in about December 2010 to January 2011 (as described). Following Steel's departure, Little was appointed officer in charge of Lantle on 30 December 2010. From April 2011 Little was taken off other duties so as to be able to focus solely on the Lantle investigation.

Preparation of the brief of evidence

8.256 The Commission's independent expert, Mr Lloyd QC, considered the timing of the investigation, at least from the start of Little's involvement in December 2010. He found that the time taken to investigate the matter and prepare a brief of evidence was reasonable in the circumstances. In his expert report, he said:

I note that the investigation conducted by SFL [Strike Force Lantle] spanned some 22 months from late 2010 to late 2012. Given the undoubted sensitivity of the matters being investigated and the historical nature of the allegations being investigated, and taking into account the relatively small size of SFL, in my opinion the length of time taken to investigate, prepare the BOE [brief of evidence] and comprehensive Covering Report was not unreasonable.³²⁷

³²³ TOR 1, T946.38–947.13 (Townsend).

³²⁴ TOR 1, T645.22–29 (York).

³²⁵ TOR 1, T701.46–702.12 (York).

³²⁶ TOR 1, T702.20–29 (York).

³²⁷ Expert opinion report of Mr Lloyd QC, dated 7 May 2013, ex 23, para 18.

Further evidence relating to timing

- 8.257 The Commission heard evidence about aspects of timing. In addition to the matters already noted, Assistant Commissioner York referred to the significant staffing and resource shortages affecting Northern Region in 2010. She said, 'The whole region was beset with staffing problems – had significant resourcing issues. I could say that all commands [within the Region] had a resourcing problem'.³²⁸
- 8.258 The Commission also received evidence to the effect that, while the church concealment allegations were important, they did not raise matters of urgency in the manner in which other alleged crime might do. Thus, Detective Inspector Waddell told the Commission:
- With any command at any time, there are numerous serious matters being investigated, some which are of an urgent nature. I wouldn't classify this as having any urgency attached to it. Something of an urgent matter would be a sexual assault that was occurring now, a homicide that was occurring now, a robbery that was occurring now, or very soon prior, maybe overnight. They are urgent matters that require urgent attention and we have many of those on a daily basis; but, no, I wouldn't say this matter was of an urgent type. It was of an important serious complaint but there was no urgency attached to it, that's correct.³²⁹
- 8.259 Mr Lloyd QC provided expert evidence that the initial period of about five months, from April 2010 (when documents were provided to police) until September–October that year (when the investigation began) was not unreasonable in the circumstances in view of the historical nature of the complaints and the complexity of the matter.³³⁰

Conclusions

- 8.260 Given the gravity of the allegations involving concealment on the part of high-ranking church officials, in ideal conditions the preliminary steps towards an investigation (that is, the Townsend report and the decision by York) would have been attended to more promptly and the investigation would have started earlier than it did.
- 8.261 The Commission finds, however, that the timing, while not ideal, was not unreasonable in the circumstances. In this respect, the expert evidence of Mr Lloyd QC was that the period of about five months until the investigation properly began was not unreasonable in view of the historical nature of the complaints and the complexity of the matter. Mr Lloyd QC also said that the time taken for the preparation of a brief of evidence (December 2010 to August 2012) was not unreasonable. This evidence was not subject to challenge, and the Commission accepts it.
- 8.262 Further, the church concealment file raised matters of some complexity and sensitivity. It obviously warranted careful review – of the type in fact conducted by Townsend. It would have helped no one had the matter been dealt with at that stage in a cursory or incautious manner.
- 8.263 In addition, the Commission accepts the evidence that Northern Region was subject to serious resourcing and staffing constraints in 2010. Senior officers, among them Townsend and York, at all times faced competing demands on their time and availability, including in relation to ongoing operational matters.
- 8.264 The church concealment allegations raised very serious concerns that needed to be investigated. Nevertheless, at least in relative terms, they did not raise matters of the utmost urgency. The allegations involved matters that were largely of a historical nature, and the main perpetrators were dead. In terms of 'triaging' matters for police attention, they could not readily be equated with, for example, the investigation of a homicide or a sexual assault committed the previous

³²⁸ TOR 1, T702.37–40 (York).

³²⁹ TOR 1, T587.6–17 (Waddell).

³³⁰ TOR 1, T1011.15–36 (Mr Lloyd QC).

day. This is not to say, however, that the church concealment allegations should not have been investigated as promptly as possible in the circumstances.

- 8.265 The Commission finds that the timing of events did not reflect any unwillingness on the part of police thoroughly to investigate the church concealment allegations. This view is consistent with the fact that since 2007 the same regional command, Northern Region, had been conducting, through Lake Macquarie LAC, a major investigation into child sexual abuse by officials associated with the Catholic Church. This extensive investigation, Strike Force Georgiana, was ongoing and had been, and would continue to be, successful in terms of outcomes. The same considerations applied in 2010 in connection with Strike Force Lozano. Properly viewed, the work of Northern Region in relation to Strike Force Georgiana and Strike Force Lozano dispels any suggestion that senior police in Northern Region were in any way unwilling properly and thoroughly to investigate allegations of concealment of child sexual offences that involved the Catholic Church.

Was Lantle a ‘sham’ and ‘set up to fail’?

- 8.266 Both before and during the Commission’s public hearings Detective Chief Inspector Fox maintained that Strike Force Lantle was a ‘sham’ and was ‘set up to fail’. A central element of his assertion was that officers selected for the Strike Force did not have the competence and experience for the role.

- 8.267 Thus, in an email of 10 December 2010 to Ms McCarthy Fox wrote disparagingly about the experience and competence of Detectives Steel and Quinn. The clear implication of the email was that Strike Force Lantle had been set up to fail and that, to this end, Detectives Steel and Quinn had been chosen because of their lack of skill. In his email Fox stated:

By the way I’ve been doing some research, Steel was a Det at Newcastle from about 2000 to 2003 (very short CI [criminal investigation] career). Since then she has been in GDs [ie general duties] and was transferred to CI duties in September this year. Around the time this was allocated to her Justin QUINN has been made Investigations Manager. He has never been a detective or investigator. This is the only person I am aware of in that position in NSW that has never been a detective.

I was watching ‘A Few Good Men’ the other night. Remember Tom Cruise? All I could remember was Demi Moore. Anyway when the military wanted a short investigation to keep everything covered up & piss it off they gave it to Tom who had no court experience. The plan was he would plea bargain it – his speciality – without a proper investigation or trial it would then go away. Thank god for the influence of Demi Moore who changed all that.

You get my point. Steel & Quinn probably don’t even know why they have been picked.³³¹

- 8.268 One aspect of Fox’s ‘set up to fail’ thesis, as evidenced by his email of 10 December 2010, was that inexperienced and incompetent officers were appointed to the strike force. He confirmed this in oral evidence. The following exchange took place with the legal representative of former officers Tayler and Quinn:

Q. Before I ask you specific questions about that, your position is, is it not, that this investigation Strike Force Lantle was a sham and was set up to fail. Correct?

A. Yes, it is.

Q. You posit a number of reasons for that. One of those reasons, you suggest, is that the officers appointed to it were inappropriate, due to their background and experience. Correct?

A. Yes.³³²

³³¹ McCarthy email 14, email from Fox to McCarthy, dated 10 December 2010, ex 216, tab 87, p 369.

8.269 In his oral evidence before the Commission Fox maintained his position that Strike Force Lantle was a 'sham' and that it had been 'set up to fail'. The following exchange occurred with counsel assisting:

Q. Was or is it your position that Strike Force Lantle was a sham?

A. Absolutely.

Q. You still maintain that position?

A. I believe that it was being set up to fail.³³³

The competence and experience of officers assigned to Strike Force Lantle

8.270 In view of Fox's assertions, the Commission examined the competency and experience of the four main police officers involved with the investigation – Detectives Steel, Quinn, Tayler and Freney. The Commission also received evidence as to the competence and experience of two other officers, Detective Sergeant Little and Detective Inspector Parker, who took up roles with Lantle in December 2010 and March 2011 respectively.

Ms Steel

8.271 Detective Sergeant Kirren Steel had been a police officer since 1989. She became a senior constable on 21 October 2002 and a detective sergeant on 28 December 2004, holding that rank until she left the NSW Police Force. For long periods she served as an acting inspector, the first of these beginning on 20 May 2007, initially attached to Waratah police station and then to Newcastle City LAC, before returning to the Detectives Office at Newcastle City LAC in October 2010. On 13 December 2010 Steel went on sick leave and did not thereafter return to duty.

8.272 During her time as a detective Steel dealt with victims of historical child sexual assault; this included taking statements from the victims.³³⁴ Her first period as a detective lasted from at least October 2002 until May 2007.³³⁵

8.273 Assistant Commissioner Mitchell (then Superintendent Mitchell) considered Steel had the necessary skills as an investigator and the capacity to generate rapport with victims.³³⁶ Over a lengthy period he had seen her, in her role as a duty officer, deal well with many difficult situations.³³⁷ He also regarded her integrity as beyond reproach.³³⁸

8.274 Detective Chief Inspector Brad Tayler had for a period been located in an office next door to Steel at Waratah police station. During that time Steel had relieved for him as crime manager at Waratah. Tayler told the Commission, 'Kirren had a lengthy time in criminal investigations and she was quite capable of performing my role'.³³⁹ He said that in all his dealings with Steel he had 'found her to be an utter professional' and that he had 'no reservations whatsoever in relation to her ability'.³⁴⁰

8.275 An important additional factor to which Mitchell and Tayler had regard when appointing Steel lead investigator was that she came with what was effectively a 'clean slate' in terms of

³³² TOR 1, T488.31–35 (Fox).

³³³ TOR 1, T185.33–38 (Fox).

³³⁴ TOR 1, T5.12–19 (Steel in camera).

³³⁵ TOR 1, T4.42–6.2 (Steel in camera).

³³⁶ TOR 1, T1045.1–6 (Mitchell).

³³⁷ TOR 1, T1000.4–14 (Mitchell).

³³⁸ TOR 1, T1000.17–28 (Mitchell).

³³⁹ TOR 1, T756.40–42 (Tayler).

³⁴⁰ TOR 1, T962.39–43 (Quinn).

workload.³⁴¹ On her return to the Detectives Office she would be able to embark on the investigation straight away, without being weighed down by other cases.³⁴²

- 8.276 Tayler confirmed that while he was involved with Strike Force Lantle he continued to oversee Steel's work, and there was nothing she did that led him to change his opinion about her expertise and competence.³⁴³

Mr Quinn

- 8.277 Detective Senior Sergeant Justin Quinn had been a police officer since 1989 and so had over 21 years' experience at the time in question. In 1991 he began doing 'A-list work', working in criminal investigations under the supervision of experienced detectives. In 1992 he obtained a qualification that authorised him to interview child victims of sexual assault. In 1993 he was seconded for a time to the child mistreatment unit at Lismore (subsequently known as the Joint Investigative Response Team, or JIRT), working mainly on historical child sexual assault cases. In 1993 to 1994 he attended the New South Wales Police Academy and completed a course in the management of sexual assault investigations.³⁴⁴
- 8.278 In 1995 Quinn was designated a detective and based at Murwillumbah; he was transferred to Tweed Heads the following year. He continued working as a detective until about 1998.³⁴⁵ In 1998 he was transferred to Newcastle and started work as a police prosecutor, a position he held for nine years. During that time, in 2003, he was appointed prosecutions coordinator for the Hunter region; this position had the rank of senior sergeant.³⁴⁶
- 8.279 In July 2008 Quinn returned to a detective's role at Newcastle City LAC, taking up the position of investigations manager, a position he held until December 2010. In December 2010 he took planned annual leave, but he did not return to work until February or March 2011 for medical reasons. He left the NSW Police Force in August 2011 on medical grounds. In February 2013 he was admitted as a solicitor.³⁴⁷
- 8.280 Quinn had only limited involvement with the Lantle investigation. He was not a dedicated investigator attached to the strike force. Rather, at various times from September to December 2010 he held the supervisory positions of investigations manager and acting crime manager,³⁴⁸ being responsible for supervising a number of different investigations. In mid- to late 2010 the Newcastle command had about 600 cases in total, and at any particular time there were between five and 10 major investigations under way.³⁴⁹ Lantle absorbed less than 5 per cent of Quinn's time.³⁵⁰

Mr Tayler

- 8.281 Tayler's background and experience are discussed in paragraphs 8.52 to 8.53. By 2010 he had more than 20 years' experience as a detective and was decorated for his work in the investigation and prosecution of Milton Orkopoulos (which related to allegations of child sexual abuse).

³⁴¹ TOR 1, T1000.30–45 (Mitchell).

³⁴² TOR 1, T757.7; T758.1–12 (Tayler).

³⁴³ TOR 1, T858.45–859.7 (Tayler).

³⁴⁴ TOR 1, T948.44–950.46 (Quinn).

³⁴⁵ TOR 1, T951.1–19 (Quinn).

³⁴⁶ TOR 1, T951.21–952.2 (Quinn).

³⁴⁷ TOR 1, T952.16–954.38 (Quinn).

³⁴⁸ TOR 1, T956.40–957.22 (Quinn): Quinn was acting crime manager from 23 September 2010 to 25 October 2010.

³⁴⁹ TOR 1, T955.1–29 (Quinn).

³⁵⁰ TOR 1, T956.14–20 (Quinn).

8.282 Like Quinn, Tayler had only a supervisory role in relation to Lantle by virtue of his position as crime manager.³⁵¹

8.283 When asked about Fox's suggestion that, in terms of the people appointed to it, Strike Force Lantle had been set up to fail, Tayler said he was 'disgusted, and I am still disgusted that that comment was ever made by, in my opinion, someone who had nothing to do and a limited knowledge of what we were actually trying to achieve'.³⁵²

Detective Senior Constable Freney

8.284 Detective Senior Constable Jason Freney, a police officer since 1997, had been attached to the Newcastle City LAC since June 2010, and he remains there as a detective. He became a trainee detective in 2003. He had previous attachments at Tuggerah Lakes LAC, during which time he worked with then Superintendent Mitchell, and Lake Macquarie LAC, where he worked under Tayler for three years.³⁵³ Tayler later 'poached' Freney from Lake Macquarie LAC to come to work again at Newcastle LAC.³⁵⁴

8.285 Freney first became involved with Lantle in about November or December 2010 and worked on the investigation until at least October 2011. During that time he worked with two detective sergeants who were in charge of the investigation (lead investigators) – Steel until she went on sick leave in December 2010 and then Little.³⁵⁵

8.286 Freney's role in Strike Force Lantle was that of an investigator. This involved performing investigative tasks as directed by the officer in charge, including assisting with the interviewing of witnesses. His work on Lantle accounted for, on average, at least 50 per cent of his case load.³⁵⁶ It was thus a major task for him, involving a large amount of documentation.³⁵⁷

8.287 Tayler told the Commission he appointed Freney to work alongside Steel because he thought he was a 'brilliant investigator' and 'would be a great support for Kirren to get back into the detectives'.³⁵⁸ Quinn said he regarded Freney as 'an excellent investigator [who] had proven himself on other very serious investigations that the command had undertaken'.³⁵⁹

Detective Sergeant Little and Detective Inspector Parker

8.288 Evidence of the competence and experience of both Little and Parker is summarised in paragraphs 8.231 to 8.233 and 8.239 respectively.

The 'research' undertaken by Detective Chief Inspector Fox

8.289 As noted, Fox introduced his email to McCarthy by saying, 'By the way I've been doing some research ...'³⁶⁰ In his oral evidence Fox said his 'research' involved a discussion with Inspector David Matthews of Port Stephens LAC and two other detectives about Quinn's background.³⁶¹ Fox could not name the other two detectives. He gave the following evidence:

Q. ... What was the research that you undertook that enabled you to make that statement?

³⁵¹ TOR 1, T768.15–46 (Tayler); see also para 8.213.

³⁵² TOR 1, T859.28–31 (Tayler).

³⁵³ TOR 1, T1409–1412 (Freney).

³⁵⁴ TOR 1, T1412.22–32 (Freney).

³⁵⁵ TOR 1, T1412.34–36; T1413.10–24; T1413.26–41; T1413.43–44 (Freney).

³⁵⁶ TOR 1, T1419.13–29 (Freney).

³⁵⁷ TOR 1, T1420.3–5 (Freney).

³⁵⁸ TOR 1, T757.18–25 (Tayler).

³⁵⁹ TOR 1, T962.27–30 (Quinn).

³⁶⁰ McCarthy email 14, dated 10 December 2010, ex 216, tab 87, p 369.

³⁶¹ TOR 1, T490.36–491.11 (Fox); T612.26–613.18 (Matthews).

A. I asked another officer at Raymond Terrace that had been at Newcastle for a period of time, what he knew about the background of those individuals, and that's --

Q. That's what he told you?

A. I didn't know too much about them, as I explained earlier, but that's what was conveyed.

Q. Your research was asking an officer at Raymond Terrace; correct?

A. Yes.

Q. That was the sole basis of your research; is that correct?

A. Yes, yes.

Q. Who was the officer?

A. One of them was Inspector Dave Matthews, and I spoke to a couple of the detectives, but specifically --

Q. Who?

A. Specifically I don't recall now who they were.³⁶²

8.290 Fox's 'research', at least in part, was based on what he described as 'the general rumour mill in the police force'. He gave the following evidence:

Q. Where did you get the information that Detective Quinn was the only person in New South Wales that had been appointed to an investigation management position who had never been a detective?

A. That was the comment that was passed back to some of my detectives from the detectives at Newcastle, that felt that it wasn't appropriate for him to move from the prosecuting branch into that role.

Q. So that information --

A. The police grapevine, yes, absolutely.

Q. That information was information received by you from one of your detectives who had received it from detectives at Newcastle?

A. Yes, it was general rumour mill in the police force, yes.

Q. That's part of your research; is that correct?

A. Yes.³⁶³

8.291 In his email to McCarthy, Fox stated that Quinn had 'never been a detective or investigator'. In evidence, however, Fox conceded that at the time of his email to McCarthy he did not in fact know whether Quinn had ever been a detective or investigator:

Q. Turning in relation to Justin Quinn, do you now know whether or not, as at 10 December 2010, he had ever been an investigator or detective?

A. I'm gathering from that you're going to tell me that he was and --

Q. Don't gather anything, Mr Fox. The question I asked --

A. I don't know.³⁶⁴

³⁶² TOR 1, T490.26-491.2 (Fox).

³⁶³ TOR 1, T494.1-20 (Fox).

The evidence of Inspector Matthews

- 8.292 Inspector David Matthews told the Commission that he had had a discussion with Fox in February 2012 – not 2010 – about Quinn and Steel, but it was limited to answering a question from Fox about their roles at Newcastle.³⁶⁵ This was well after the date of Fox’s email to McCarthy.
- 8.293 Matthews said that he did not tell Fox that Quinn had never been a detective or an investigator³⁶⁶ and that any such statement would be inconsistent with what he (Matthews) knew about Quinn in 2010.³⁶⁷
- 8.294 Matthews was able to pinpoint the date of his discussion with Fox as 22 February 2012 because of certain matters that had been raised with him (Matthews) that day by a junior officer relating to a concern about a book that Fox was thought to be writing.³⁶⁸

The evidence of Inspector Meares

- 8.295 Inspector Matthew Meares is the professional standards duty officer at Port Stephens LAC. He provided a statutory declaration for the Commission that supported the timing of the discussion between Matthews and Fox as having been on 22 February 2012: Meares recalled Matthews having spoken to him that day (which was otherwise memorable for Meares) after having spoken with Fox.³⁶⁹

The ‘sham’ and ‘set up to fail’ assertions maintained

- 8.296 Before the Commission Fox maintained that Lantle was a ‘sham’ and was ‘set up to fail’ despite the fact that he had not seen the Lantle brief of evidence. He also appeared, however, to move to a position not that there had been no genuine investigation at all but that there should have been a more extensive investigation:

- Q. In relation to your position that Lantle is a sham, by that do you mean that there has been no investigation undertaken?
- A. No.
- Q. By that do you mean there’s been no genuine investigation undertaken?
- A. No.
- Q. By that do you mean that you would like a more extensive investigation to have been undertaken?
- A. Partly, yes.
- ...
- Q. You don’t know what, in effect, Lantle investigated because you have not seen the brief?
- A. No, I’ve got a pretty good idea of what they’ve investigated without seeing the brief. I have been told that --
- Q. Don’t worry about what you have been told, not the content of what you’ve been told.

³⁶⁴ TOR 1, T491.13–27 (Fox).

³⁶⁵ TOR 1, T613.42–47 (Matthews).

³⁶⁶ TOR 1, T612.3–14 (Matthews).

³⁶⁷ TOR 1, T612.4–25 (Matthews).

³⁶⁸ TOR 1, T612.27–613.3 (Matthews).

³⁶⁹ Statutory declaration of Meares, dated September 2013, ex 230, paras 8–10.

- A. All right, without anything I've been told, I know nothing. I only know what I've been told.
- Q. And you know nothing because you haven't seen the Lantle brief in a final form?
- A. No, of course not.³⁷⁰

Conclusions

The competence of Detectives Steel and Quinn

- 8.297 The assertions Fox made in his email to McCarthy of 10 December 2010, and affirmed in his oral evidence, about the competence and experience of Steel and Quinn were wholly unwarranted. The same can be said of Fox's assertion that, by reason of such matters, Strike Force Lantle was a 'sham' and was 'set up to fail'.
- 8.298 Contrary to the assertions in Fox's email, both Steel and Quinn were experienced and competent officers, and their involvement with the strike force was appropriate. There was no proper basis for the remarks Fox made in his email to McCarthy about their competence. Further, it was inappropriate for Fox, while a serving police officer, to make such unfounded assertions in an email to a journalist.
- 8.299 Steel's first period of working as a detective spanned more than six-and-a-half years. This is in contrast to Fox's assertion in his email that Steel had worked as a detective from only 2000 to 2003 and had a very short 'CI' (criminal investigation) career. Further, Fox's assertion that Quinn had never been a detective or investigator was false. By mid-2010 Quinn had a number of years' experience as a detective and criminal investigator, and he had particular experience in dealing with child sexual assault matters. Both Steel and Quinn were competent and experienced.

Research done by Detective Chief Inspector Fox

- 8.300 Fox did not conduct any adequate research to ensure the accuracy of his remarks and, on his own account, relied in part on what he described as 'the general rumour mill in the police force'.³⁷¹ In evidence he relied on a conversation with Matthews as to the source of his information about Quinn. Matthews' evidence was that no such conversation occurred in 2010 (before Fox wrote his email). Rather, a conversation took place in February 2012. Matthews gave evidence in a careful and considered manner, and the Commission accepts his evidence. Obviously, that conversation in 2012 could not have been a source for the information Fox included in his email in 2010.
- 8.301 Nor did Matthews, in any event, tell Fox that Quinn had never been a detective or investigator, that being information conveyed by Fox in his email to McCarthy in 2010. The Commission accepts that such a statement by Matthews would have been contrary to the information he knew about Quinn – namely, that he (Quinn) had in fact been a detective and investigator.
- 8.302 To the extent that Fox purported to rely on discussions with two other officers as the source of his information about Quinn's and Steel's backgrounds, Fox was unable to identify such officers. The Commission rejects Fox's claim that the assertions in his email, as maintained before the Commission, were based on any 'research' with other police officers.
- 8.303 In his email Fox said Quinn 'had never been a detective or investigator'. This statement was false. Further, under cross-examination Fox conceded that at the time of writing his email he did not know whether Quinn had ever been a detective or investigator.

³⁷⁰ TOR 1, T189.20–46 (Fox).

³⁷¹ TOR 1, T494.16–17 (Fox).

The competence of Detectives Tayler and Freney

- 8.304 In addition to Steel and Quinn, Detectives Tayler and Freney were experienced and competent officers whose involvement with Strike Force Lantle was appropriate. The same can be said for Detective Sergeant Little and Detective Chief Inspector Parker in relation to their involvement with Lantle from December 2010 and March 2011 respectively.
- 8.305 The Commission rejects as being wholly without foundation Fox's assertion that Strike Force Lantle was a 'sham' and was 'set up to fail'.
- 8.306 Further, the fact that Fox sent his email to a journalist, rather than voicing his concerns through appropriate channels (for example, to the Police Integrity Commission), underscores the objectionable nature of the remarks and Fox's conduct.

The roles of Detectives Quinn, Tayler and Parker

- 8.307 In considering Fox's 'sham' and 'set up to fail' thesis, it should also be borne in mind that, as noted, Quinn, Tayler and Parker were not dedicated investigators on the Lantle investigation, but rather held supervisory roles at various times by reason of their positions as investigations manager or crime manager.
- 8.308 The Commission notes, too, that Fox's assertion that Lantle was a 'sham' and 'set up to fail' runs counter to common sense. The NSW Police Force was aware that the investigation would be high profile and subject to much media scrutiny: this was apparent from the coverage by McCarthy that had already been published in the *Newcastle Herald*. Although the investigation would probably be difficult and protracted, the reality was that it had to be done. For reasons of self-interest alone, NSW Police had an interest in ensuring that the investigation was conducted in a thorough and professional manner given that it was likely to be subject to so much scrutiny. Significantly, the objective review of the investigation brief of evidence undertaken by Mr Lloyd QC (described below) records that the investigation conducted was thorough and appropriate.
- 8.309 Further, Northern Region's willingness to pursue vigorously matters involving the Catholic Church is clear from the number of prosecutions that arose from Strike Force Georgiana.

Expert assessment of the investigation and brief of evidence

- 8.310 As noted, the Commission engaged Mr Ian Lloyd QC, an eminent criminal lawyer, to provide an expert opinion on the quality of the Strike Force Lantle brief and investigation. Mr Lloyd QC prepared a report (dated 7 May 2013) for the Commission and gave oral evidence at the Commission's public hearings in Newcastle (see Appendix E).
- 8.311 Mr Lloyd QC has extensive experience in criminal law, including holding at various times positions as a crown prosecutor in New South Wales and Hong Kong. In New South Wales he was promoted to the position of Senior Crown Prosecutor, in which role he had responsibility for allocating and supervising the work of some 65 crown prosecutors and personally had the carriage of major criminal trials. Daily he had cause to review the thoroughness of police investigations and briefs of evidence relating to allegations of major criminality. Mr Lloyd QC has also practised at the private bar and was previously General Counsel of the NSW Independent Commission against Corruption. Additionally, he has held various academic positions and is a former Justice of the Fiji Court of Appeal.³⁷²

³⁷² Expert opinion report of Mr Lloyd QC, dated 7 May 2013, dated 1 May 2013, ex 23, para 6.

8.312 After describing the methodology of the Strike Force Lantle investigation, Mr Lloyd QC assessed the thoroughness of the investigation. He said:

I have reviewed the full BOE [brief of evidence] and accompanying 255 page Covering Report prepared by Det Sgt Little in late 2012 for submission to the DPP for advice as to the sufficiency of evidence for the laying of criminal charges against identified persons. In my opinion, the BOE prepared by Det Sgt Little is of an excellent standard. The investigation conducted by SFL was both thorough and rigorous.³⁷³

8.313 Mr Lloyd QC further opined, 'The comprehensive 255 page Covering Report to the BOE prepared by Detective Sergeant Little shows him to be a highly competent investigator'.³⁷⁴ Mr Lloyd QC expanded on this in his oral evidence: 'In all my years of prosecuting crime, which is approaching 35, 37 years now, the covering report was as thorough as I have ever seen'.³⁷⁵ And, in relation to the brief of evidence, he said, 'The brief of evidence ... is as good as I've ever seen in many countries'.³⁷⁶

8.314 Mr Lloyd QC also gave evidence relating to the reasonableness (or otherwise) of the timing of the start of the investigation and the preparation of the brief of evidence. These aspects are considered at paragraphs 8.256 to 8.259 above.

Conclusion

8.315 Mr Lloyd QC's evidence was that the Strike Force Lantle investigation conducted by the NSW Police Force, with Little as office in charge from December 2010, and the associated brief of evidence were of a very high standard. The Commission accepts this evidence.

³⁷³ *ibid*, para 14.

³⁷⁴ *ibid*, para 17.

³⁷⁵ TOR 1, T1016.5-7 (Mr Lloyd QC).

³⁷⁶ TOR 1, T1018.36-37 (Mr Lloyd QC).

9 A ‘Catholic mafia’?

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Overview

- 9.1 Detective Chief Inspector Peter Fox maintained, including before the Commission, that the Strike Force Lantle police investigation was a ‘sham’ and ‘set up to fail’. As described in Chapter 8, the Commission finds no evidence to support such an assertion. Related to Fox’s assertion was his claim about the existence of a group of senior police – in effect a ‘Catholic mafia’ – in Northern Region of the New South Wales Police Force and, in particular, Newcastle City Local Area Command, who were prepared to take steps to try to ensure that there was no proper investigation of allegations of concealment of child sexual offences perpetrated by senior officials in the Catholic Church.

Mr Troy Grant and the Ryan investigation

- 9.2 In evidence before the Commission Fox claimed that Mr Troy Grant MP, a former police officer, used the expression ‘Catholic mafia’ in a conversation with him in 2002 or 2003¹ to refer to senior police that he (Grant) perceived to be aligned to the Catholic Church and who were trying to discourage investigations into child sexual abuse by clergy. Grant denied that such a conversation occurred or that he had encountered any such interference.
- 9.3 Grant is a National Party member of the New South Wales Legislative Assembly, representing the electoral district of Dubbo. From 1988 to 2008 he was an officer in the NSW Police Force, rising to the rank of Inspector of Police in 2008. In March 2011 he resigned from NSW Police to take up his position in parliament.²
- 9.4 In 1995, while on secondment to the Northern Region Major Crime Squad’s child protection investigation team at Kurri Kurri, Grant (then a senior constable) began investigating Father Vincent Ryan, a priest incardinated into the Catholic Diocese of Maitland–Newcastle.³ The Ryan investigation was a major investigation in the Hunter region that extended over a number of years.⁴ It led to the first prosecution, in 1995 and 1996, of a member of the Diocese for child sexual assault offences.⁵ Ryan was ultimately charged with offences against 31 victims.⁶ He was convicted and sentenced to lengthy prison terms for multiple offences of child sexual assault.⁷

2002 to 2003: a conversation between Detective Chief Inspector Fox and Mr Grant

- 9.5 Fox told the Commission that while he was investigating Father James Fletcher he became aware that Ryan had already been convicted of sexually abusing altar boys in a parish adjoining that of Fletcher. Fox said he contacted Grant and spoke with him,⁸ the conversation taking place in the latter half of 2002 or the early part of 2003.⁹
- 9.6 Fox and Grant gave starkly contrasting accounts of the conversation in so far as it related to any mention by Grant of police hindrance or obstruction associated with the Ryan investigation and any use by him of the term ‘Catholic mafia’. Neither had made any contemporaneous note of the conversation.¹⁰

Detective Chief Inspector Fox’s evidence

- 9.7 Fox told the Commission that during the conversation Grant referred to problems encountered with the conduct of church officials connected with the Ryan investigation and his belief that some officials had concealed Ryan’s crimes. Fox further claimed, however, that Grant ‘was highly critical of some senior police at Newcastle, in what he perceived to be attempts to hinder his investigation, and being anything but assisting’.¹¹
- 9.8 Fox further claimed that Grant said the hindrance by police occurred in the lead-up to charging Ryan, while Grant was trying to obtain statements and interview victims.¹² He said the hindrance, as allegedly recounted by Grant, involved senior police asking him (Grant) to go on

¹ TOR 1, T34.33–37; T36.7–9; T63.1–3 (Fox).

² TOR 1, T196.38–197.13 (Grant).

³ TOR 1, T198.28–32 (Grant).

⁴ TOR 1, T219.12–15; T219.28–39 (Grant).

⁵ TOR 1, T219.12–19 (Grant). See also *R v Ryan (No.2)* [2003] NSWCCA 35.

⁶ TOR 1, T219.25–26 (Grant).

⁷ *R v Ryan (No 2)* [2003] NSWCCA 35.

⁸ TOR 1, T34.16–31 (Fox).

⁹ TOR 1, T34.33–37 (Fox).

¹⁰ TOR 1, T63.24–31 (Fox); T210.10–15 (Grant).

¹¹ TOR 1, T35.27–29 (Fox).

¹² TOR 1, T35.31–38 (Fox).

trips that precluded him from fully investigating the Ryan matter and that Grant felt much of this was deliberate.¹³ Fox told the Commission that Grant had named two senior officers in Northern Region's Major Crime Squad as having interfered, as Grant saw it, with the progress of the Ryan investigation. Fox said, however, he was no longer certain of the names of the two officers.¹⁴

- 9.9 Fox said it was during this conversation that Grant used the term 'Catholic mafia' to refer to police who were aligned to the Catholic Church and who attempted to discourage his investigations into clergy.¹⁵
- 9.10 At one point later in his evidence Fox said Grant might have used the expression 'Catholic mafia' to embrace certain senior police *and* certain church officials:¹⁶ 'What I'm saying is when he used that term it may have extended to be inclusive of clergy and police'.¹⁷ Fox claimed that he recalled the conversation quite clearly and had no doubt about it.¹⁸
- 9.11 Counsel for NSW Police put to Fox that he was lying when he said Grant told him police had hindered his (Grant's) investigation of Ryan and, further, that he (Fox) had made up the reference to 'Catholic mafia' in order to generate publicity for himself.¹⁹ Fox denied this.²⁰

Mr Grant's evidence

- 9.12 Grant told the Commission that before receiving a letter from the New South Wales Crown Solicitor in March 2013²¹ asking him to provide a statement dealing with particular matters, he had never heard, seen or used the term 'Catholic mafia'.²²

Mr Grant's investigation

- 9.13 Grant told the Commission that in his investigation of Ryan he encountered no hindrance or obstruction from senior police, saying the suggestion that he had was 'grossly incorrect'.²³ He said the lack of interference or adverse pressure was borne out by the success of the Ryan investigation:

There was no interference in my investigation, there was no adverse pressure from anyone within the NSW Police Force, borne out by the fact that it was probably the most successful paedophile investigation of priests, and if there was going to be any interference that I didn't know about or happened or allegedly happened, well, it didn't work.²⁴

- 9.14 Grant said he had received the full support of his commander, Detective Chief Superintendent John Ure (the then Commander of the Northern Region Major Crime Squad), and of his immediate supervisors, Detective Senior Sergeant John Mooney and Detective Sergeant Rhonda Mulligan.²⁵ In oral evidence he described the support that Mulligan provided as 'excellent',

¹³ TOR 1, T35.40–46 (Fox).

¹⁴ TOR 1, T36.31–35 (Fox).

¹⁵ TOR 1, T36.6–16 (Fox).

¹⁶ TOR 1, T63.5–13 (Fox).

¹⁷ TOR 1, T63.18–19 (Fox).

¹⁸ TOR 1, T63.40–42 (Fox).

¹⁹ TOR 1, T485.15–30; T486.3–15 (Fox).

²⁰ *ibid.*

²¹ Statement of Grant, dated 29 April 2013 and letter from the NSW Crown Solicitor to Grant, 28 March 2013, ex 3.

²² TOR 1, T197.20–46 (Grant). See also statement of Grant, dated 29 April 2013 and letter from the NSW Crown Solicitor to Grant, 28 March 2013, ex 3, para 7.

²³ TOR 1, T211.45–212.8 (Grant).

²⁴ TOR 1, T209.91–5 (Grant). See also T208.12–13 (Grant).

²⁵ Statement of Grant, dated 29 April 2013 and letter from the NSW Crown Solicitor to Grant, 28 March 2013, ex 3, para 8.

saying she 'provided me every assistance and guidance that I required'.²⁶ He said he held each of the three officers 'in the highest regard'.²⁷

- 9.15 Grant had been trained in conducting internal police investigations through the internal complaint management process of NSW Police and through the Ombudsman.²⁸ He gave evidence that, had he encountered any police obstruction or interference associated with an investigation he was involved in, he would have taken the matter up through the internal complaints system within the police force.²⁹
- 9.16 Grant rejected any suggestion that senior police deliberately allocated to him other tasks and activities in order to take him away from the Ryan investigation. Rather, Grant said that, just like any other police officer, he was involved in a number of investigations at any particular time. This was the position both before and after he received the Ryan matter.³⁰

Telephone conversations with Detective Chief Inspector Fox

- 9.17 Grant recalled having had two discussions by phone with Fox, probably in about 2002 or 2003,³¹ relating to his (Grant's) investigation of Ryan. He said that he discussed with Fox the role particular church officials played in his (Grant's) investigation.³² Grant said his discussion with Fox was, relevantly, limited to interference by individuals in the Diocese during the course of his investigation into Ryan initially and then in relation to alleged concealment by Monsignor Patrick Cotter.³³ Grant told the Commission:

The conversations I had with him was to offer my assistance in regards to lessons learnt out of my investigation with Father Ryan and dealing with individuals within the Catholic Church who played certain roles in relation to making that job difficult and who were the key players still within the Maitland-Newcastle diocese. So I made him fully aware of my viewpoint and opinion on those and warned him in relation to potential dealings he had.³⁴

- 9.18 Grant could not, however, recall any reference to a term such as 'Catholic mafia' having been made in his discussions with Fox or at all. Grant said, 'It is not a phrase that I recall having ever heard or used'.³⁵ In evidence he said, 'Catholic mafia' was an attention-grabbing phrase, one that he would recall having used or heard:

It's [a phrase] that obviously grabs attention. It's something I'm sure I would have remembered ever saying. It's something that nobody that knows me would expect me to say. It's a great phrase. In my current role as a politician, it's a cracker that I could use at any time, had I the need to use it.³⁶

- 9.19 Similarly, Grant rejected the suggestion by counsel for Fox that he was shying away from his previous use of the phrase because of the embarrassment it might cause him now as a member of parliament:

No. No, quite the opposite. I think that with the ability to utilise parliamentary privilege, it would only be in my political interest to use it if it was true. Unfortunately it's not.³⁷

²⁶ TOR 1, T199.15–16 (Grant).

²⁷ TOR 1, T200.26–34 (Grant).

²⁸ TOR 1, T222.43–223.2 (Grant).

²⁹ TOR 1, T202.20–36 (Grant).

³⁰ TOR 1, T212.19–213.16 (Grant).

³¹ TOR 1, T200.43–201.1 (Grant).

³² Statement of Grant, dated 29 April 2013 and letter from the NSW Crown Solicitor to Grant, 28 March 2013, ex 3, para 7.

³³ TOR 1, T212.3–8 (Grant).

³⁴ TOR 1, T201.8–15 (Grant).

³⁵ Statement of Grant, dated 29 April 2013 and letter from the NSW Crown Solicitor to Grant, 28 March 2013, ex 3, para 7.

³⁶ TOR 1, T202.13–18 (Grant).

³⁷ TOR 1, T202.10–18; 202.45–216.1 (Grant).

- 9.20 Grant further said that, having experienced no hindrance or obstruction from police in relation to his investigation, he did not complain about any such thing to Fox.³⁸
- 9.21 Nor could Grant recall Fox ever having discussed with him any hindrance or obstruction from police in connection with his own (Fox's) investigation.³⁹ Grant said the first time he heard the suggestion that Fox might have encountered such hindrance or obstruction was when Fox appeared on ABC Television's *Lateline* program,⁴⁰ this being an apparent reference to the program broadcast on 8 November 2012.

Conclusions

- 9.22 The Commission accepts that Fox and Grant had one or two discussions in about 2002 or 2003 relating to Grant's investigation of Ryan. Further, the discussions touched on whether particular church officials had assisted or hindered Grant's investigation. This much was effectively common ground. The matter at issue is whether Grant also said he had encountered interference by senior police with his investigation into Ryan.
- 9.23 Grant was an impressive and credible witness. The Commission accepts his evidence that he did not encounter interference by police in the Ryan investigation and, further, that he did not use the term 'Catholic mafia' when speaking to Fox in about 2002 to 2003. Grant's evidence in relation to the Ryan investigation was persuasive. The investigation extended over a number of years and was successful in its outcome; indeed, it was pioneering in nature, being the first prosecution of a priest in the Diocese for child sexual assault offences. Grant gave firm evidence about the continued support he received from the three senior police officers involved in supervising the investigation. The Commission has no reason to doubt that evidence, and it is supported by the outcome the investigation achieved – the conviction of Ryan on multiple charges relating to numerous victims.
- 9.24 As noted, Grant left the NSW Police Force and is now a member of parliament. He has made statements critical of Cardinal George Pell.⁴¹ He gave evidence in a frank and forthright manner. The Commission has no doubt that, had he encountered any interference in his investigation, he would have voiced his objection and raised the matter by means of (at least) the police complaints management system or a suitable external body such as (at that time) the Independent Commission against Corruption or, from 1996, the Police Integrity Commission.
- 9.25 The Commission finds that Grant did not use the term 'Catholic mafia' in his conversation with Fox in 2002 or 2003. He would have had no occasion to use the term in the manner Fox suggested. The Commission rejects Fox's evidence to the contrary.

Detective Chief Inspector Fox's use of the term 'Catholic mafia'

- 9.26 During the public hearings the Commission heard evidence relating to instances of use of the term 'Catholic mafia', in each case attributed to Fox.

June to July 2010

- 9.27 In June to July 2010 Fox took a police statement from AJ, a victim of McAlinden, during a number of sittings at a police station.⁴² In an email to journalist Ms Joanne McCarthy of the *Newcastle Herald* on 22 July 2010 Fox said the process of completing AJ's statement had taken 29 hours in

³⁸ TOR 1, T201.26–30 (Grant).

³⁹ Statement of Grant, dated 29 April 2013 and letter from the NSW Crown Solicitor to Grant, 28 March 2013, ex 3, para 9.

⁴⁰ TOR 1, T203.4–7 (Grant).

⁴¹ Article entitled 'Pell urged to quit over abuse cover-up claims', by Tovey, 9 November 2012, *The Border Mail*, ex 234.

⁴² TOR 1, T65.31–33; T66.15–17; T69.31–34 (Fox).

total.⁴³ As described in Chapter 10, Fox told the Commission that the taking of that statement was instrumental in his decision to investigate allegations that church officials had concealed sexual abuse of children by clergy.⁴⁴

- 9.28 AJ gave evidence at an in camera hearing before the Commission in relation to term of reference 1. She was examined by counsel for Fox about the provision of her statement to Fox. She said Fox had made mention of a ‘Catholic police mafia’ on a number of occasions:

So, in my case, I thought, ‘Okay, I’m playing a minor role in a process.’ As Peter said to me on a couple of occasions, there were going to be three avenues where we would take my evidence and that of all the other victims, and that was, first, that it would go to the strike force, to the DPP. He mentioned, on a number of occasions, that there was a **Catholic police mafia** and we had to bypass them to get to other police ... I don’t know anything about the police force, but all I knew was that was his path.⁴⁵ [emphasis added]

Conclusion

- 9.29 AJ was an impressive witness. Further, no representative for any authorised party, including Fox, suggested that AJ was in any way mistaken in her recollection. The Commission accepts her evidence, which was not relevantly subject to any challenge, and concludes that Fox did use the term ‘Catholic police mafia’ on a number of occasions in conversations with AJ. In context, the use of that term by Fox was clearly intended to signify a group of police officers who improperly favoured the interests of the Catholic Church and who had to be ‘bypassed’ if action were successfully to be taken against the Church or church officials.

April 2012

- 9.30 The Commission examined the suggested use of the term ‘Catholic mafia’ by Detective Chief Inspector Fox in a telephone conversation with Detective Sergeant Kristi Faber in April 2012.

Detective Sergeant Kristi Faber’s evidence

- 9.31 Faber gave evidence that while she was involved in the prosecution of a Catholic priest (NP4) as part of Strike Force Georgiana she had at least two telephone conversations with Fox, in March and April 2012.⁴⁶
- 9.32 The first conversation occurred on 26 March 2012. On that occasion Faber had phoned Fox to ask for particular information and two photographs relating to her investigation.⁴⁷ She said the conversation was cordial and Fox provided the assistance she sought.⁴⁸
- 9.33 The second, more controversial, telephone conversation took place on 10 April 2012. At that time Faber was still at the trial of NP4. According to her evidence, Fox contacted her and they spoke at length, but with Fox doing most of the talking. She said that some of Fox’s conversation could be described as ‘rambling’ and that he appeared to be obsessed with Maitland–Newcastle Diocese.⁴⁹
- 9.34 In this context, Faber said Fox told her that her life was in danger because of her continuing investigations with Strike Force Georgiana.⁵⁰ At no stage did he equate the ‘Catholic mafia’ to

⁴³ Email from Fox to McCarthy dated 22 July 2010 (at 8:02am), ex 216, tab 59, p 237. In her oral evidence, AJ stated that the process took twenty-eight hours and involved eight interviews: TOR 1, T15.23–30 (AJ in camera, 13 May 2013).

⁴⁴ TOR 1, T47.46–48 (Fox).

⁴⁵ TOR 1, T15.37–16.1 (AJ in camera, 13 May 2013).

⁴⁶ TOR 1, T1654.20 (Faber).

⁴⁷ TOR 1, T1654.21–32; T1662.20–21 (Faber); redacted extract of handwritten notes of Faber, undated, ex 289.

⁴⁸ TOR 1, T1654.22–33 (Faber).

⁴⁹ Statement of Faber, dated 6 May 2013, ex 45, paras 57–58.

⁵⁰ *ibid.*

senior police officers or suggest that police had covered up abuse. Rather, Faber understood Fox to be referring only to elements within the Catholic Church.⁵¹ In response to Fox's comment, Faber made a joke about not being scared of priests, but Fox told her she should take his comments seriously. Faber gave the following evidence:

- Q. Detective Sergeant Faber, I would be interested to know what it was that Detective Chief Inspector Fox said to you in relation to 'Catholic mafia' when you had this conversation with him?
- A. It was a conversation and he told me that my life could be in danger from the Catholic mafia. I made a joke about it, and he just intimated that I had investigated them so thoroughly and that they wouldn't like me and that my life could be in danger. I did make a joke about it, but he asserted that that was the case and at no time – when he was talking about 'Catholic mafia', he was actually talking about the Catholic Church and community.
- Q. How were you able to know who he meant by 'Catholic mafia'?
- A. Because we were actually just talking about the Catholic Church. We weren't talking – he was talking about cover-ups within the Catholic Church. He was giving me some information. Then he said that my life would be in danger and I made a joke about not being scared about the priests. Then he said, again, that I had done so much in the Catholic Church that I should take what he said seriously.⁵²

9.35 During the conversation it became apparent to Faber that Fox was aggrieved with senior police because he perceived that he was not being allowed to investigate certain matters.⁵³ Faber also regarded Fox as being unusually 'obsessed' about the Catholic Church.⁵⁴ Faber added, 'I believe this obsession can lead to the inability to objectively investigate'.⁵⁵

9.36 Faber said she made a contemporaneous note of aspects of the conversation with Fox. The note was in evidence before the Commission.⁵⁶ After recording certain aspects of the conversation relating to relevant persons of interest, the note contains the word 'Mafia' followed by four exclamation marks:

– Mafia !!!!⁵⁷

9.37 Faber said she included the four exclamation marks in her note because Fox's comment was so odd. Although Fox used the term 'Catholic mafia', Faber had recorded only 'Mafia' in her note. She told the Commission she and Fox had been talking in the context of Catholics (the Diocese) and that he had used the term 'Catholic mafia'. She said '... it was a bizarre conversation. It was a weird thing to say. We were talking about the Catholics and it was the term "Catholic mafia"'.⁵⁸

9.38 Faber's note contains no reference to Fox having told her that her life was in danger. She agreed that the note did not contain such a reference and told the Commission:

It was a bizarre conversation and I only noted it because it was a bizarre conversation and, as I said, I made a joke of it, about, you know, old men, bald men, sort of, you know, I wasn't scared of that, and I apologise to all the bald men. I did make a joke of it and he asserted that I should just, you know, take it seriously and I'd done so much work in the Catholic

⁵¹ TOR 1, T1655.3–25 (Faber); statement of Faber, dated 6 May 2013, ex 45, para 58.

⁵² TOR 1, T1655.3–25 (Faber).

⁵³ Statement of Faber, dated 6 May 2013, ex 45, para 57.

⁵⁴ *ibid*, para 62.

⁵⁵ *ibid*, para 62.

⁵⁶ Redacted extract of handwritten notes of Faber, undated, ex 289.

⁵⁷ TOR 1, T1663.23–38 (Faber); redacted extract of handwritten notes of Faber, undated, ex 289.

⁵⁸ TOR 1, T1663.46–1664.1 (Faber).

Church, but he didn't give me any actual reason, like, any person who was going to assault me ...⁵⁹

- 9.39 After the telephone call Faber discussed the conversation with Detective Senior Constable Todd Clayton, telling him of her concerns and the odd nature of Fox's assertions.⁶⁰

Detective Senior Constable Todd Clayton's evidence

- 9.40 Detective Senior Constable Clayton provided a statutory declaration for the Commission in which he described a conversation with Faber on 10 April 2012, when they were both at the District Court in Sydney for the trial of NP4.⁶¹ He said he became aware that Faber had been engaged in a telephone conversation with Fox. After that conversation concluded, Faber discussed with him the conversation that had taken place. In his declaration, Clayton said:

During the course of my discussion with Detective Sergeant Faber she informed me that Detective Chief Inspector Fox had used the term "Catholic Mafia" during the course of their conversation. I can remember this clearly. One of the reasons why I have such a clear recollection of being told this by Detective Sergeant Faber was because we both had a joke about Detective Chief Inspector Fox's reference to a "Catholic Mafia". I do not have a clear recollection of what Detective Sergeant Faber told me of any other matters in relation to the conversation she had with Detective Chief Inspector Fox.⁶²

Clayton made no written note of the conversation.⁶³

Detective Chief Inspector Fox's evidence

- 9.41 In his evidence before the Commission Fox accepted that he had had telephone conversations with Faber in about April 2012, but he denied having told her during one such call that her life was in danger from the Catholic mafia because of her continued investigations with Strike Force Georgiana.⁶⁴ He described such a suggestion as 'bizarre'.⁶⁵

Conclusions

- 9.42 Faber gave evidence in a careful and considered manner. The Commission prefers the evidence of Faber to that of Fox in relation to the telephone conversation of 10 April 2012. The Commission finds that Fox used the term 'Catholic mafia' in that conversation – but not in a way that referred to involvement by senior police. Rather, the reference was in the context of problematic conduct by church officials. Faber's account of the telephone conversation was supported, at least to an extent, by her contemporaneous note and its reference to 'Mafia' followed by four exclamation marks indicative of the surprise caused to her by Fox's use of the term. The evidence of Clayton also supports her account.
- 9.43 The Commission accepts Faber's evidence that Fox appeared 'obsessed' with Maitland–Newcastle Diocese. This aspect is further discussed below.

⁵⁹ TOR 1, T1665.37–47 (Faber).

⁶⁰ Statement of Faber, dated 6 May 2013, ex 45, para 58.

⁶¹ Statutory declaration of Clayton, dated 16 December 2013, ex 261, paras 7–8.

⁶² *ibid*, para 8.

⁶³ *ibid*, para 9.

⁶⁴ TOR 1, T263.24–40 (Fox).

⁶⁵ TOR 1, T263.40 (Fox).

Other considerations

The evidence of other witnesses

9.44 In view of the seriousness of Fox's allegations about Strike Force Lantle having been 'set up to fail' and there being, in effect, a Catholic mafia in the senior ranks of Northern Region, the Commission received evidence relating to police attitudes towards investigating alleged child sexual abuse in the Catholic Church.

Assistant Commissioner York

9.45 Assistant Commissioner Carlene York became Northern Region Commander in February 2010 but has since moved to another command. In evidence she told the Commission that during her time as Northern Region Commander she did not encounter any 'Catholic mafia' and had not heard the phrase used in connection with her duties. She could not recall any police officer suggesting there should not be an investigation of alleged offences because they involved the Catholic Church.⁶⁶

9.46 York strongly rejected any suggestion, as raised by Fox, that Strike Force Lantle had been 'set up to fail'.⁶⁷ She said:

Well, it was my intention from the very start that the matter should be investigated when I had to turn my mind to the information that had come across my desk. In all my briefings there was never any indication that there was any reticence by anyone to investigate, and in fact the briefings that continued on with Detective Sergeant Little showed that every avenue of that investigation, as far as I could see, was being followed up, resulting in what I saw was an excellent quality of a brief that was submitted to the DPP [Director of Public Prosecutions]. So I have no hesitation in saying that the investigators, and the team members, fully investigated the matter resulting in the brief going to the DPP.⁶⁸

Assistant Commissioner Mitchell

9.47 Assistant Commissioner Max Mitchell, then Superintendent Mitchell, was the commander of Newcastle City Local Area Command at the relevant times. He was responsible for issuing directions or instructions at the 2 December 2010 meeting attended by Fox and other officers associated with the Strike Force Lantle investigation. He said he had not heard of the term 'Catholic mafia' before December 2010⁶⁹ and firmly rejected any suggestion that police in Northern Region were reluctant to investigate Catholic Church-related offences:

I'd like it stated very clearly: I am not Catholic to start with and I find it offensive that there's this statement of a Catholic mafia operating within senior police in the Hunter area.

...

I've never come across any issue, I've never heard the term [that is, 'Catholic mafia'] ... ever discussed in any forum that I've been a part of, and I think it needs to be quite clearly stated that the police, under my command, and in general the police in the Hunter region, have always, to the best of my knowledge, worked extensively and professionally to investigate child abuse or sexual assault matters throughout this area. I've never known anything other than that to occur.⁷⁰

⁶⁶ TOR 1, T741.2–21; T742.8–17 (York).

⁶⁷ TOR 1, T741.23–46 (York).

⁶⁸ TOR 1, T741.28–46 (York).

⁶⁹ TOR 1, T1082.36–39 (Mitchell).

⁷⁰ TOR 1, T1082.36–1083.1, 1083.8–16 (Mitchell).

Detective Chief Inspector Humphrey

- 9.48 Since 2009 Detective Chief Inspector Wayne Humphrey has been attached to Newcastle City Local Area Command. From 30 August to 13 October 2010 and from 1 to 10 November 2010 he held the position of acting superintendent and commander of the LAC in Mitchell's absence.⁷¹ Since 20 December 2010 he has been a crime manager at Newcastle City LAC.⁷² From 20 December 2010 until March 2011 he had supervisory oversight of the Strike Force Lantle investigation.⁷³
- 9.49 Humphrey gave evidence suggesting he had an unfavourable attitude to his education by nuns and said he was no longer a practising Catholic.⁷⁴ He told the Commission, 'I don't like going to church. I'm not a great fan of any religion'.⁷⁵
- 9.50 During the public hearings Humphrey was also asked about an assertion Fox made, in a 2010 email to Ms McCarthy⁷⁶ of the *Newcastle Herald*, that he (Humphrey) and Superintendent Charles Haggett were 'practising Catholics'. Humphrey said the assertion that he was a practising Catholic was false and that, although he knew Haggett socially, he did not talk to him about religion.⁷⁷
- 9.51 It is also of note that on 16 September 2005, as crime manager of the Lower Hunter Command, Humphrey had supported the application for extradition of Father Denis McAlinden that Detective Sergeant Mark Watters had prepared. He had endorsed the extradition application thus:

Supported. The public interest in matters of this kind is significant. The brief is consistent with many briefs of this type and it would ultimately be a matter for the jury in a subsequent trial. The advanced age of the POI should not be a consideration.⁷⁸

As noted in Chapter 16, McAlinden, suffering from advanced cancer, was ultimately considered too ill to travel to New South Wales.⁷⁹

Detective Inspector Jacob

- 9.52 Detective Inspector Paul Jacob of the Sex Crimes Squad, State Crime Command of the NSW Police Force, provided expert consultancy services to the Strike Force Lantle investigation. He said he had never heard of the term 'Catholic mafia' before the Commission's public hearings.⁸⁰ He told the Commission:

The speculation ... that there is a group of police adversely affecting the way in which the NSW Police Force attacks this problem is obscene, and if anyone has any information, please provide it to me. I'm sure I will action it. But as far as I am concerned the New South Wales police attacked this like they attack all jobs, with as much vigour as they possibly can.⁸¹

⁷¹ TOR 1, T1458.25–37; T1459.31–33 (Humphrey).

⁷² TOR 1, T1311.22–40; T1459.45–1460.2 (Humphrey); statement of Humphrey, dated 14 February 2013, ex 33, para 5.

⁷³ TOR 1, T1311.28–40 (Humphrey).

⁷⁴ TOR 1, T1344.37–1345.20 (Humphrey).

⁷⁵ TOR 1, T1345.27–28 (Humphrey).

⁷⁶ McCarthy email 87, attaching report (not produced), dated 18 October 2010, ex 216, tab 71, p 270.

⁷⁷ TOR 1, T1345.47–1346.45 (Humphrey). He further said that Fox's assertion that he had a close rapport with Father Bill Burston was also false, and that he (Humphrey) did not know Burston: T1346.24–33 (Humphrey).

⁷⁸ The acronym 'POI' refers to 'person of interest'. Application for the extradition of McAlinden prepared by Watters, dated 20 September 2005, ex 216, tab 21, p 66.

⁷⁹ See also TOR 1, T1315.47–1316.8 (Humphrey).

⁸⁰ TOR 1, T908.11–34 (Jacob).

⁸¹ TOR 1, T908.28–34 (Jacob).

Detective Sergeant Little

- 9.53 From 30 December 2010 onwards Detective Sergeant Jeffrey Little was the lead investigator on Strike Force Lantle. He told the Commission that as lead investigator he had been fully supported by his superiors, including receiving assistance in the form of additional resources when requested.⁸²
- 9.54 Little said that before the Commission he had never heard the term ‘Catholic mafia’.⁸³ He also entirely rejected Fox’s suggestion that Lantle had been ‘set up to fail’ and told the Commission he was ‘absolutely mortified by those comments’.⁸⁴ Little further said:

As for the [Lantle investigation] being set up to be a sham, nothing could be further from the truth. In fact, my superiors have been completely supportive throughout this. I cannot speak highly enough of them. If it had been set up as a sham, it would have been a case of ‘Detective Sergeant Little, you have three months to complete this. That’s it. See how you go’. At no stage was any pressure put on me to terminate this investigation. In fact, to the contrary, I was encouraged, and when I needed to step outside the bounds of the terms of reference – for example, where I needed to make further investigations and conduct those inquiries – I was encouraged to do so. I was never knocked back and they were very flexible about it.⁸⁵

Detective Senior Constable Freney

- 9.55 Detective Senior Constable Jason Freney assisted Little on Strike Force Lantle. He told the Commission Strike Force Lantle was supported or resourced in the same way as any other strike force⁸⁶ and that at no stage did anyone tell him to ‘go easy’ in respect of the investigation.⁸⁷ Indeed, he said that in his entire police career he had never been pressured not to investigate, or properly investigate, any matter.⁸⁸ He, too, had never previously heard the term ‘Catholic mafia’.⁸⁹

Superintendent Gralton

- 9.56 Since May 2011 Superintendent John Gralton has held the position of commander of Newcastle City LAC.⁹⁰ Previously he held positions as commander of Central Hunter LAC (2008 to 2011), commander of the Hunter Valley Command (2007 to 2008) and operations manager for Northern Region (2002 to 2007).⁹¹
- 9.57 Gralton said that before the Commission was established he had never heard the term ‘Catholic mafia’.⁹² He was also not aware of any group of people in the NSW Police Force who could be considered to constitute a Catholic mafia.⁹³
- 9.58 Further, Gralton told the Commission he himself had passed to Strike Force Georgiana information relating to a physical assault perpetrated on him by a priest when he (Gralton) was a child at a Catholic school. He also provided to investigators the details of friends who had been indecently assaulted.⁹⁴

⁸² TOR 1, T1134.4–18 (Little).

⁸³ TOR 1, T1133.45–1134.2 (Little).

⁸⁴ TOR 1, T1134.20–37 (Little).

⁸⁵ TOR 1, T1137.1–13 (Little).

⁸⁶ TOR 1, T1444.19–23 (Freney).

⁸⁷ TOR 1, T1444.44–47 (Freney).

⁸⁸ TOR 1, T1444.25–39 (Freney).

⁸⁹ TOR 1, T1444.41–42 (Freney).

⁹⁰ Statement of Gralton, dated 15 February 2013, ex 42, para 10.

⁹¹ TOR 1, T1575.44–1576.9 (Gralton).

⁹² TOR 1, T1620.2–8 (Gralton).

⁹³ TOR 1, T1620.10–15 (Gralton).

⁹⁴ TOR 1, T1622.15–36 (Gralton).

9.59 As to the suggestion that he would be party to a cover-up in connection with the reporting of matters, Galton said, 'It couldn't be further from the truth. It is fanciful and offensive at its highest'.⁹⁵ He also rejected any notion that he would be involved in allowing a 'less than adequate' investigation to be carried out.⁹⁶ Galton stated:

... every time I see a paedophile hit the dock ... charged with serious matters in relation to child paedophilia, I celebrate that, and I find any suggestion that any senior police officer in this region would do anything to stop an investigation – I find that abhorrent, both the offence and the suggestion that anything was concealed.⁹⁷

Detective Sergeant Faber

9.60 Since December 2007 Detective Sergeant Kristi Faber has been the officer in charge of Strike Force Georgiana, which is being conducted from Lake Macquarie LAC.⁹⁸ Detective Chief Inspector Brad Tayler and Detective Inspector David Waddell were her supervisors on that investigation at different times. Faber told the Commission that at no time did she encounter any reluctance on their part to properly resource and pursue investigations of suspected sexual abusers in the Catholic Church.⁹⁹

9.61 Faber gave evidence that since 2007 Strike Force Georgiana has conducted a major investigation into child sexual assault offences allegedly committed by individuals associated with Maitland–Newcastle Diocese. Over time, the investigation was extended from an initial focus on one priest to a large number of other individuals of interest.¹⁰⁰ At all relevant times senior police supported expansion of the investigation.¹⁰¹ The investigation has been both high profile and successful, and a number of church officials have been charged with sexual offences and convicted. The work of Strike Force Georgiana is ongoing.

9.62 Faber emphatically rejected the notion that there was any police resistance to investigating crimes of concealment of child sexual offences. She said that such a notion was:

... offensive because police see child sexual assault or the covering up of child sexual assault as an offence akin to murder. It is an offence that we investigate to the fullest, and I think we show that here.¹⁰²

Detective Senior Constable Clayton

9.63 Detective Senior Constable Todd Clayton has been a police officer since 1990 and a detective since 2000. His experience includes sexual assault investigations and an attachment to Strike Force Georgiana.¹⁰³ He provided a statutory declaration to the Commission relating to the term 'Catholic mafia'. He said he had never heard the term, apart from a conversation with Faber on 10 April 2012 (in which she recounted a comment made by Fox, as described) and use of the term in the context of the Special Commission of Inquiry.¹⁰⁴

⁹⁵ TOR 1, T1622.42–43 (Galton).

⁹⁶ TOR 1, T1622.45–1623.1 (Galton).

⁹⁷ TOR 1, T1623.4–10 (Galton).

⁹⁸ Statement of Faber, dated 6 May 2013, ex 45, para 13.

⁹⁹ TOR 1, T1626.32–1627.6 (Faber).

¹⁰⁰ TOR 1, T1628.6–17 (Faber).

¹⁰¹ TOR 1, T1628.19–22 (Faber).

¹⁰² TOR 1, T1632.32–41 (Faber).

¹⁰³ Statutory declaration of Clayton, dated 16 December 2013, ex 261, paras 3–4.

¹⁰⁴ *ibid*, paras 7–10.

Detective Senior Constable Flipo

- 9.64 Detective Senior Constable Jacqueline Flipo was involved in investigating McAlinden from 2001 to 2003 while attached to Lake Macquarie LAC (see Chapter 17). She had no investigative involvement in the Strike Force Lantle investigation.
- 9.65 Flipo gave evidence to the Commission that she had never experienced any attempt at interference of any kind from police in relation to the conduct of her investigations.¹⁰⁵ She said she had previously heard the term ‘Catholic mafia’, probably one to two years earlier¹⁰⁶ – although it is unclear in what context she heard it, including whether the term had been used in relation to police or to the Church. There was, however, no information, direct or indirect, that came to her knowledge at any time during the course of 2001 to 2004 to suggest a ‘Catholic mafia’ existed in the NSW Police Force.¹⁰⁷

Detective Chief Inspector Fox: lack of objectivity

- 9.66 As noted, Detective Sergeant Faber gave evidence as to her view that Fox appeared to be ‘unusually obsessed’ about the Catholic Church and that such an obsession can lead to an inability to investigate objectively.¹⁰⁸
- 9.67 Humphrey gave similar evidence, to the effect that, in his view, Fox was a zealot (and thus lacked objectivity) in relation to matters concerning the Catholic Church.¹⁰⁹
- 9.68 For his part, Fox described himself as ‘passionate’ about investigating matters relating to the Catholic Church. Thus, in a report to senior police dated 25 November 2010, he called for the establishment of a task force to carry out a full investigation ‘into the conduct of the Maitland Newcastle Diocese of the Catholic Church’.¹¹⁰ Fox stated, ‘I remain objective but passionate to assist with any inquiry or investigation’.¹¹¹

Conclusions

- 9.69 As noted, the Commission finds that Fox used the term ‘Catholic police mafia’ on multiple occasions in discussions with AJ in 2010, in a manner clearly intended to signify a group of police officers who improperly favoured the interests of the Catholic Church.
- 9.70 The Commission finds no credible evidence to support the notion that there are senior police in Northern Region of the NSW Police Force (a so-called Catholic mafia) who are prepared to take steps to try to ensure that alleged child abuse offences involving Catholic officials are not investigated or not properly investigated. Rather, the objective evidence – including the existence of Strike Force Georgiana and, indeed, Strike Force Lantle – is strongly to the contrary.
- 9.71 The Commission regards the notion of there being a ‘Catholic mafia’ in the NSW Police Force along the lines suggested by Fox as a fiction that, when examined in the context of this Special Commission of Inquiry, lacks any support in the evidence.
- 9.72 As noted, the Commission accepts the evidence of Faber in respect of her telephone conversation with Fox in April 2012.

¹⁰⁵ Excerpts from TOR 2 public hearing transcript evidence of Flipo, dated 10 July 2013, ex 291, T763.35–41.

¹⁰⁶ *ibid*, T763.44–46; T764.14–16.

¹⁰⁷ *ibid*, T764.18–23.

¹⁰⁸ Statement of Faber, dated 6 May 2013, ex 45, para 62.

¹⁰⁹ TOR 1, T1363.24–34 (Humphrey).

¹¹⁰ Fox report re Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese, dated 25 November 2010, ex 69, p 328–329.

¹¹¹ *ibid*, p 328.

- 9.73 On the basis of its own observations and having regard to the documentary and oral evidence as a whole, the Commission formed the view that Fox did have what effectively amounts to an ‘obsession’ about matters relating to the Catholic Church. That ‘obsession’ or ‘passion’ on the part of Fox was no doubt originally well intentioned. It might well have been a factor in the success of the Fletcher prosecution. Further, as other chapters in this report show, Fox’s concerns have been vindicated in relation to at least some aspects of the conduct of Maitland–Newcastle Diocese, even if he did not know many of the details of various matters the Commission subsequently uncovered.
- 9.74 The Commission considers, however, that Fox has lost much of his capacity for objectivity about matters pertaining to the Diocese. In his report dated 25 November 2010, which he prepared for senior police, he described himself as ‘objective but passionate’.¹¹² Although he undoubtedly remains passionate about child sexual abuse and the Catholic Church, he has lost much of his capacity to approach such matters with the detachment required of an investigating officer. The Commission’s report describes numerous instances reflecting this lack of objectivity – for example, his assertion of collusion in the police statements of certain church officials taken in 2003 (dealt with in Chapter 18). As noted in Chapter 20, this lack of objectivity in connection with matters involving the Diocese and related police investigations is such that, on matters of controversy, Fox’s evidence must be approached with caution.

¹¹² *ibid*, p 328.

10 Detective Chief Inspector Peter Fox and the instructions issued to him on 2 December 2010

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Overview

- 10.1 This chapter focuses squarely on two questions raised by the Commission's first term of reference: the circumstances in which Detective Chief Inspector Peter Fox was asked to cease investigating relevant matters and whether it was appropriate to do so'.¹ The Letters Patent define 'relevant matters' as:
- ... any matter relating directly or indirectly to alleged child sexual abuse involving Father Denis McAlinden or Father James Fletcher, including the responses to such allegations by officials of the Catholic Church (and whether or not the matter involved, or is alleged to have involved, criminal conduct).
- 10.2 Fox spoke at the 'Shine the Light' forum in Newcastle on 16 September 2012.² This was a public meeting sponsored by the *Newcastle Herald* to promote discussion of child sexual abuse in the Catholic Church. On about 7 November 2012 Fox wrote a letter to the Premier of New South Wales, calling for a royal commission into child sexual abuse in the Catholic Church.³ A form of the open letter was published in the *Newcastle Herald* on 8 November 2012.⁴ On the same day Fox appeared on ABC Television's *Lateline* program in an interview with presenter Tony Jones and repeated his call for a royal commission.
- 10.3 In the *Lateline* interview Fox also made a number of statements to the effect that a senior officer ordered him to 'stand down' from an investigation he was carrying out (relating to child sexual abuse in the Catholic Church) and that he (Fox) had been 'taken off the case' and directed to hand over 'all the documentation' – including an 'explosive' witness statement – to senior police.⁵
- 10.4 During the Commission's investigations it became apparent that Fox's reference to having been stood down related to instructions or directions said to have been issued to him by Superintendent Max Mitchell (then Commander of Newcastle City Local Area Command) at a meeting held on 2 December 2010 at Waratah police station. Fox told the Commission that before that meeting no senior officer had asked him to cease investigating church paedophilia.⁶ The terms 'instruction' and 'direction' are typically used interchangeably. For the purpose of the

¹ The question of appropriateness obviously relates to the (assumed) request or instruction that Fox cease investigating, as opposed to the appropriateness of police in fact investigating 'relevant matters'.

² TOR 1, T377.46–47 (Fox); T1220.31–45 (McCarthy); email correspondence, ending with email from York to PMU, dated 16 September 2012, ex 216, tab 131, p 686.

³ Open letter from Fox to the Premier (O'Farrell), undated, ex 231.

⁴ Open letter from Fox to the Premier (O'Farrell), published in the *Newcastle Herald*, dated 8 November 2012, ex 232.

⁵ ABC *Lateline* transcript, 'Studio interview with Senior NSW Detective Peter Fox', dated 8 November 2012, ex 12.

⁶ TOR 1, T133.47–134.16 (Fox).

Commission's report, there is no relevant difference between the two terms – each amounts to a lawful command from a senior officer that it is expected will be complied with. In most instances, the term 'instruction' is used in this chapter.

- 10.5 The meeting on 2 December 2010 was the subject of a substantial amount of evidence at the Commission's public hearings. In addition to Fox and Mitchell, five other police officers had attended the meeting – Superintendent Charles Haggett (Commander, Port Stephens Local Area Command), Detective Chief Inspector Brad Tayler (Crime Manager, Newcastle City LAC), Detective Senior Sergeant Justin Quinn (Investigations Manager, Newcastle City LAC), Detective Sergeant Kirren Steel (lead investigator, Strike Force Lantle) and Detective Senior Constable Jason Freney (investigator, Strike Force Lantle).
- 10.6 Additionally, Detective Inspector Graeme Parker (relieving as Operations Manager, Northern Region) arrived part-way through the meeting. Inspector Anthony Townsend (of Northern Region) arrived towards the end of the meeting. The circumstances leading to the meeting and what in fact occurred during it are discussed in the sections that follow.
- 10.7 As described in Chapter 8, Tayler, Steel and Quinn have since left the New South Wales Police Force on medical grounds. Fox remains a serving police officer but has been on leave since about July 2012.⁷

Detective Chief Inspector Fox: background

- 10.8 Detective Chief Inspector Peter Fox has been involved in criminal investigations for 28 years. He joined the New South Wales Police Force in 1978 and was appointed a probationary constable in June of that year. In 1984 he was designated as a detective. In May 2007 Fox was promoted to the designation of detective chief inspector and was appointed crime manager of Lower Hunter Local Area Command.⁸

Church-related investigations involving Detective Chief Inspector Fox before 2010

- 10.9 Detective Chief Inspector Fox had previously been involved, to varying degrees, in a number of police investigations relating to child sexual offences within the Catholic Church. These investigations and Fox's role in them are detailed in Chapters 16 and 18. The main features of the investigations are summarised here.

1999: the McAlinden investigation in relation to AE – supervision of Detective Senior Constable Mark Watters

- 10.10 In 1999 Fox, then a detective sergeant stationed at Maitland police station, was one of the officers supervising Detective Senior Constable Mark Watters, who was involved in investigating a complaint AE had made to police in 1999 about sexual abuse of her by Father Denis McAlinden when she was a child.⁹ In his role as a supervisor, Fox occasionally spoke with Watters about the investigation, as he did about Watters' case load generally. At the time Fox had no direct investigative role in relation to the AE–McAlinden matter¹⁰ and so took no witness statements and did not interview AE.¹¹ Further, Fox had no contact with any church official in relation to the

⁷ TOR 1, T313.26–31 (Fox).

⁸ TOR 1, T17.28–18.2 (Fox).

⁹ NSW Police Force COPS Report E 8026529 re Victim AE, dated 8 October 1999, ex 216, tab 2; letter from Watters to Bishops Chancery, dated 8 October 1999, ex 216, tab 3; duty book entries of Watters, dated 8 October 1999 – 5 April 2000, ex 216, tab 4.

¹⁰ Excerpts from TOR 2 public hearing transcript of evidence of Watters, dated 1 July 2013, ex 292 (T68.25–33; T71.28–33).

¹¹ TOR 1, T19.41–20.1 (Fox).

matter until he spoke with retired bishop Leo Clarke in 2003.¹² (Fox's involvement in the investigation of McAlinden in connection with AE's complaint is described in Chapter 16.)

2003 to 2005: further investigation in relation to AE

- 10.11 Fox told the Commission that from about early 2003 to 2005 he had responsibility for part of the investigation of McAlinden in connection with AE's complaint after Watters' transfer to a different command.¹³ In about late 2002 or early 2003 Fox spoke with AE, who said she had heard a rumour that the Church was aware of two other McAlinden victims and that retired bishop Leo Clarke might know about this.¹⁴ Thereafter, probably in the first half of 2003, Fox visited and spoke with Clarke about this and two other unrelated matters.¹⁵ Apart from reporting back to AE that Clarke had provided no information that might support the rumour, Fox took no other investigative steps in relation to the investigation until October 2005.¹⁶
- 10.12 In late October 2005 Fox received from Ms Helen Keevers, then a church employee, information suggesting that McAlinden was residing at an address in Perth.¹⁷ By this time, and unknown to Fox, Watters had already made inquiries about whether McAlinden could be extradited to New South Wales and prepared an extradition application that was supported by his supervisor at the time, Detective Inspector Wayne Humphrey.¹⁸ Fox contacted Western Australia Police in late October 2005; on the next day he contacted Watters, who told him of his own inquiries. Fox told the Commission he also had discussions with a member of McAlinden's nursing staff.¹⁹ Other than his discussion with Keevers, in 2005 Fox had no contact with any church official in connection with the McAlinden investigation.²⁰ Ultimately, it was determined that McAlinden, suffering from advanced cancer, was too unwell to be extradited to New South Wales.²¹
- 10.13 From 2007 to 2010 Fox maintained an interest in the McAlinden matter, notwithstanding McAlinden's death, and on a number of occasions accessed the COPS (electronic police database) case report relating to AE.²² The case report records Fox having responded to queries from Ms Joanne McCarthy, a journalist at the *Newcastle Herald*, and having spoken with Watters and AE's husband, BD, in 2007. From 2005 to 2010, however, Fox did not take any further investigative steps in relation to the McAlinden matter.²³

2002 to 2004: the Fletcher investigation

- 10.14 Fox is recognised as having played a pivotal role in the prosecution and conviction of Father James Fletcher.
- 10.15 From 2002 to 2004 he led the police investigation of Fletcher after AH had complained to police on 3 June 2002 that Fletcher had sexually abused him on numerous occasions when he (AH) was an altar boy.²⁴ Fox obtained important witness statements, including a statement from the complainant, taken over an extended period.²⁵ Two other victims of Fletcher who came forward

¹² Excerpts from TOR 2 public hearing transcript of evidence of Fox, dated 2 July 2013, ex 293 (T116.21–40).

¹³ TOR 1, T27.2–29 (Fox).

¹⁴ TOR 1, T27.15–24 (Fox).

¹⁵ TOR 1, T27.26–28.2 (Fox); excerpts from Fox transcript, ex 293 (T121.4–121.17).

¹⁶ Excerpts from Fox transcript, ex 293 (T121.27–122.12).

¹⁷ NSW Police Force COPS Report E 8026529 re Victim AE, dated 8 October 1999, ex 216, tab 2, pp 4–5.

¹⁸ TOR 1, T1313.17–1315.40 (Humphrey); application for the extradition of McAlinden by Watters, dated 20 September 2005, ex 34; excerpts from Fox transcript, ex 293 (T496.8–14).

¹⁹ TOR 1, T26.18–33 (Fox).

²⁰ Excerpts from Fox transcript, ex 293 (T127.7–15).

²¹ TOR 1, T26.13–24 (Fox); excerpts from Fox transcript, ex 293 (T121.4–17; T124.37–125.3).

²² NSW Police Force COPS Report C 7532960 re AE sexual offence, dated 28 November 2010, ex 200.

²³ TOR 1, T28.34–43 (Fox).

²⁴ NSW Police Force COPS report E 14348559, dated 3 June 2002, ex 216, tab 7.

²⁵ TOR 1, T29.14–47 (Fox).

(one of them Mr Peter Gogarty) significantly assisted the police investigation.²⁶ Fox also took statements from a number of officials of the Catholic Diocese of Maitland–Newcastle.²⁷

- 10.16 On 14 May 2003 Fletcher was charged with child sexual assault offences committed on AH.²⁸ On 6 December 2004 a jury found him guilty. On 11 April 2005 Judge Armitage sentenced Fletcher to an effective total term of 10 years' imprisonment, with a seven-and-a-half-year non-parole period.²⁹ The New South Wales Court of Criminal Appeal subsequently dismissed an appeal against the conviction.³⁰ On 10 March 2006 the High Court dismissed an application, brought by Fletcher's executor, for special leave to appeal.³¹
- 10.17 Fox gave evidence to the Commission to the effect that in 2002 and 2003, during the course of the Fletcher investigation in 2003, he became concerned about the conduct of certain officials of Maitland–Newcastle Diocese; one of his concerns was that Bishop Michael Malone had 'tipped off' Fletcher about the police investigation and the name of the complainant.³² Fox sent reports to the New South Wales Ombudsman on 29 May 2003 and 11 May 2004 about his concern.³³ (This is discussed in Chapter 18.)

2004 and 2006: Detective Chief Inspector Fox's two intelligence reports

- 10.18 On 30 August 2004 Fox prepared an information, or 'intel', report (reference number I 21949203) for entry in the COPS database.³⁴ Entitled 'Possible paedophile network within Catholic clergy', the report referred to three priests – Fletcher, Ryan and UR78. Ryan, like Fletcher, had by then been convicted and was serving a gaol sentence. In his report Fox referred to certain aspects of the history relating to the three priests. He then concluded:

In view of all the circumstances surrounding these persons & their offences, the similarity of victim's ages, location of crimes & time frames there is concern that there may be a paedophile network within the Catholic Church & other clergy members are assisting to conceal this. Police have notified the Ombudsman's office of concerns.³⁵

- 10.19 In printed form, Fox's report runs to about two pages. The COPS electronic record shows that in September 2004 the report was referred for the attention of the intelligence officer at the Sex Crimes Squad,³⁶ which is part of the State Crime Command within the NSW Police Force.
- 10.20 Between 3 and 6 March 2006³⁷ Fox prepared a further information report (reference number I 107133494) for entry in the COPS database.³⁸ It was entitled 'Possible paedaphelia [sic] connection re priests'.

2005 and 2006: two further reports Detective Chief Inspector Fox said he submitted

- 10.21 Fox told the Commission that in about late 2005 or early 2006, while he was a detective sergeant stationed at Maitland police station, he prepared and submitted two further reports relating to

²⁶ TOR 1, T30.6–10 (Fox).

²⁷ TOR 1, T30.12–15 (Fox).

²⁸ NSW Police Force COPS report E 14348559, dated 3 June 2002, ex 216, tab 7, p 23.

²⁹ Remarks on sentencing of Judge Armitage in the matter of *Regina v James Patrick Fletcher*, dated 11 April 2005, ex 302.

³⁰ *R v Fletcher* [2004] NSWCCA 338.

³¹ *Fletcher v The Queen* [2006] HCA Trans 127 (10 March 2006).

³² TOR 1, T30.17–31.7 (Fox); NSW Police report of Fox re Ombudsman notification involving Fletcher, dated 21 May 2003, ex 216, tab 12C, pp 35(d)–35(e).

³³ NSW Police report of Fox re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 216, tab 13, pp 36–39; NSW Police report of Fox re Ombudsman notification involving Fletcher and AH, dated 11 May 2004, ex 216, tab 15B.

³⁴ NSW Police Force COPS information report I 21949203, dated 30 August 2004, ex 216, tab 16.

³⁵ *ibid*, p 51.

³⁶ *ibid*.

³⁷ TOR 1/2, T1697.17–35 (Fox).

³⁸ NSW Police Force COPS information report I 107133494, dated 6 March 2006, ex 216, tab 14.

child sexual abuse in the Catholic Church.³⁹ He said the first report basically contained the information in the two existing intelligence reports and asked that the material be directed to the Sex Crimes Squad for a full investigation of a potential cover-up of a paedophile network operating in Maitland–Newcastle Diocese.⁴⁰ The second report, he said, was directed to the Sex Crimes Squad and recommended that a task force to be set up to investigate alleged crimes by priests in the Diocese.⁴¹ Fox said he received no response to his recommendation and he did not follow the matter up.⁴² He said that these two reports detailed suspicions on his part and suggested links, rather than providing evidence.⁴³

- 10.22 In his evidence Fox said he had searched for a copy of one of the reports in mid-2010 but was unable to locate it.⁴⁴
- 10.23 The Commission used its powers to compel the production of relevant documents. Apart from the two information reports already discussed (numbered I 21949203 and I 107133494), however, no internal police report submitted by Fox before 2010 and raising matters to do with possible paedophilia in the Catholic Church in the Hunter region was produced by either the NSW Police Force or Fox.

Inquiries and an investigation by Detective Chief Inspector Fox in 2010

- 10.24 From the time of Fletcher’s conviction in 2004 until 2010 Fox did not take any steps to investigate allegations or suspicions of concealment of the part of officials of Maitland–Newcastle Diocese.⁴⁵
- 10.25 As described below, from about June 2010 Fox made inquiries into, and at some stage by at least about mid- to late July 2010 had begun an investigation of, allegations of concealment by church officials in connection with McAlinden and Fletcher. Fox did not initially tell his superiors about the investigation he was carrying out, and it was for a considerable period effectively clandestine in nature.⁴⁶ Fox’s investigation continued until about 2 December 2010, when, at a meeting at Waratah police station, Mitchell issued specific instructions that curtailed Fox’s future activities in relation to investigation of the concealment allegations. (The circumstances surrounding the meeting of 2 December 2010 are detailed in paras 10.154 and following.)
- 10.26 Between June and December 2010 there was no contact between Fox and any church official in relation to Fox’s investigation or the inquiries he was making.
- 10.27 A catalyst for Fox’s inquiries in 2010 was a phone call he received in early June of that year from Ms Joanne McCarthy of the *Newcastle Herald*.⁴⁷ In that call McCarthy provided some information she had recently obtained about AJ, a McAlinden victim.⁴⁸ (How McCarthy obtained the information about AJ and her (McCarthy’s) related email communications with Fox are described in paras 10.31 to 10.38.)

³⁹ TOR 1, T37.36–40; T38.34–41; T41.26–28 (Fox).

⁴⁰ TOR 1, T37.40–38.14 (Fox).

⁴¹ TOR 1, T38.25–41 (Fox).

⁴² TOR 1, T39.17–26 (Fox).

⁴³ TOR 1, T42.37–40 (Fox).

⁴⁴ TOR 1, T38.43–39.11 (Fox).

⁴⁵ TOR 1, T33.5–16 (Fox).

⁴⁶ TOR 1, T46.1–6; T53.5–10; T59.23–27; T67.39–43; T68.12–19 (Fox).

⁴⁷ TOR 1, T46.1–6 (Fox).

⁴⁸ TOR 1, T46.8–21 (Fox).

April 2010: discussions with former Detective Senior Constable McLeod

- 10.28 In about April 2010 Fox had discussions with Detective Senior Constable Sean McLeod, who was based at Lake Macquarie Local Area Command and attached to Strike Force Georgiana. McLeod had come to Charlestown to lay additional charges against a particular priest.⁴⁹ The discussions took place ‘only a couple of months before’ McLeod ceased working as a police officer.⁵⁰ Fox told the Commission that McLeod told him he (McLeod) had received a substantial quantity of documents from McCarthy and was ‘quite excited’ about what the documents revealed, although he did not show them to Fox.⁵¹ Fox was, however, aware at about that time of the subject matter, having read local media reports referring to such material⁵² (this obviously being a reference to reports such as the articles of 28 April and 30 April 2010 by Ms McCarthy).⁵³
- 10.29 Fox did not discuss with McLeod any plans for future investigations.⁵⁴ Rather, he said McLeod asked him for information about McAlinden and Fletcher. Fox referred McLeod to his (Fox’s) two information reports, and McLeod asked if he would have any objection if he (McLeod) had access to the documents from the Fletcher and McAlinden investigations, then housed at Maitland police station.⁵⁵ At the time these were both closed investigations.⁵⁶ An email dated 9 April 2010 from McLeod to the brief-handling manager at Maitland police station, Senior Constable Norman Redgrove, records that Fox had given his authority for the release to McLeod of a copy of the Fletcher brief of evidence.⁵⁷
- 10.30 Before the Commission Fox acknowledged that at the time of his discussions with McLeod he (Fox) was not carrying out any investigation into allegations or suspicions of the covering up of child sexual abuse in the Diocese.⁵⁸

April 2010: AJ’s contact with Ms McCarthy

- 10.31 Ms Joanne McCarthy told the Commission she telephoned Fox in April 2010 to obtain information for newspaper articles she was preparing. She said she spoke with him generally about child sexual abuse in the Catholic Church, and he told her he had spoken with retired bishop Leo Clarke in 2002 or 2003 and that Clarke had denied any knowledge of McAlinden as an offender.⁵⁹
- 10.32 McCarthy added that on 3 May 2010, after publication of one of her articles in the *Newcastle Herald* in late April 2010, AJ contacted her but did not at first reveal her identity. AJ told McCarthy she was a victim of McAlinden, described her relationship with people in the Diocese, and referred to conversations with people whose names were familiar to McCarthy.⁶⁰ McCarthy believed the information AJ could provide would assist the police.⁶¹

⁴⁹ TOR 1, T43.41–44.7 (Fox).

⁵⁰ TOR 1, T45.7–12 (Fox).

⁵¹ TOR 1, T44.9–21 (Fox).

⁵² TOR 1, T44.23–30 (Fox).

⁵³ Article entitled ‘Pedophile priest victim calls for church inquiry’ by McCarthy, 28 April 2010, the *Newcastle Herald*, ex 216, tab 28A; article entitled ‘Pedophile priest victim feels pain of justice denied’ by McCarthy, 30 April 2010, the *Newcastle Herald*, ex 216, tab 28B.

⁵⁴ TOR 1, T44.32–34 (Fox).

⁵⁵ TOR 1, T44.39–45.5 (Fox).

⁵⁶ TOR 1, T45.2–5 (Fox).

⁵⁷ Email from McLeod to Norman Redgrove, dated 9 April 2010, ex 216, tab 36, p 122.

⁵⁸ TOR 1, T45.43–46 (Fox).

⁵⁹ TOR 1, T1156.41–1157.15; T1158.18–42 (McCarthy).

⁶⁰ TOR 1, T1158.44–1159.17 (McCarthy).

⁶¹ TOR 1, T1159.19–27 (McCarthy).

- 10.33 On 8 May 2010, by email to McLeod, McCarthy advised police of the existence of AJ without identifying her by name.⁶² Subsequently, in AJ's second or third conversation with McCarthy AJ identified herself by name.⁶³

June 2010: Detective Chief Inspector Fox's communications with Ms McCarthy and Ms Suzanne Smith

- 10.34 Fox told the Commission that McCarthy phoned him in early June 2010 because she had been dealing with a McAlinden victim, AJ, who had a large amount of information about the Church's handling of child sexual abuse complaints. Fox understood that AJ had come forward to McCarthy.⁶⁴ He said McCarthy explained to him that she had been trying to get AJ to speak to the police, but AJ was reluctant and said the only police officer she would speak to was Peter Fox, whom she had heard of from other victims' families.⁶⁵
- 10.35 Fox gave evidence to the effect that his 2010 investigation of allegations of church concealment of child sexual abuse did not in any way begin until sometime after he received the telephone call about AJ from McCarthy.⁶⁶
- 10.36 McCarthy told the Commission that on Fox's request she sent him an email on 7 June 2010, attaching her 8 May 2010 *Newcastle Herald* article about McAlinden.⁶⁷ At some time in June 2010 she was made aware, by either Detective Inspector David Waddell or Detective Senior Constable McLeod, that McLeod would not be looking further at the church concealment allegations. In this context McCarthy recalled welfare concerns having been raised in relation to McLeod.⁶⁸
- 10.37 On 8 June 2010 McCarthy sent a series of emails to Fox, attaching copies of church documents relating to potential concealment allegations or otherwise providing associated information.⁶⁹ Fox told the Commission that by this time McCarthy had phoned him, asking him to help AJ, and that he understood the material being emailed to him on 8 June 2010 might be of use to him if he was prepared to take a statement from AJ.⁷⁰
- 10.38 About this time Fox had also been in email communication (on 7 and 8 June 2010) with Ms Suzanne Smith, a journalist with ABC Television's *Lateline* program, in connection with matters relating to Fletcher.⁷¹ Fox told the Commission he understood Smith had contacted him because he had investigated Fletcher.⁷² Fox further emailed Smith on 22 June 2010 about both Fletcher and McAlinden and provided information about his own inquiries, including in relation to McAlinden having previously been charged by police in Western Australia.⁷³ On the same day, 22 June 2010, Fox emailed McCarthy, asking if she had contact details for AC, a McAlinden victim

⁶² TOR 1, T1163.22–1164.5 (McCarthy); email from McCarthy to McLeod, dated 8 May 2010, ex 216, tab 33, p 110.

⁶³ TOR 1, T1159.32–37 (McCarthy).

⁶⁴ TOR 1, T46.19–21 (Fox).

⁶⁵ TOR 1, T46.37–47.7 (Fox).

⁶⁶ TOR 1, T46.1–6 (Fox).

⁶⁷ TOR 1, T1165.46–1166.27 (McCarthy); article entitled 'Police delve into church' by McCarthy, 8 May 2010, the *Newcastle Herald*, ex 28.

⁶⁸ TOR 1, T1167.9–28 (McCarthy).

⁶⁹ McCarthy email 116, email from McCarthy to Fox (16:14), dated 8 June 2010, ex 216, tab 43; McCarthy email 114, email from McCarthy to Fox (16:15), dated 8 June 2010, ex 216, tab 44; McCarthy email 100, email from McCarthy to Fox (16:27), dated 8 June 2010, ex 216, tab 45.

⁷⁰ TOR 1, T47.9–15 (Fox).

⁷¹ TOR 1, T54.35–45.3 (Fox).

⁷² TOR 1, T55.19–20 (Fox).

⁷³ TOR 1, T57.23–59.3 (Fox).

who was referred to in church documents McCarthy had provided to him on 8 June 2010.⁷⁴ Fox also told McCarthy he was ‘gradually working through’ all the material she had sent him and ‘I am progressing with AJ and this may be very promising’.⁷⁵

Late June 2010: the beginnings of an investigation by Detective Chief Inspector Fox and the taking of statements from AK and AJ

- 10.39 Fox said that as at about 8 June 2010 he had not yet decided to carry out his own investigation into the matters raised in the church documents. Instead, he had decided to take a statement from AJ, and he would make a decision once he had done that.⁷⁶ By about 22 June 2010, however, when he was in further, separate email contact with McCarthy and Smith, he was ‘becoming excited’ about the information he was encountering, even though it was coming to him from unusual quarters – namely, two different journalists from different media outlets.⁷⁷
- 10.40 Fox said it was not until after he had finished taking a statement from AJ, in about late June or July 2010, that he decided he would investigate the church concealment allegations.⁷⁸ He had taken AJ’s statement during a number of sittings at a police station.⁷⁹
- 10.41 In an email to McCarthy on 22 July 2010 Fox reported that he had completed AJ’s statement and it had taken 29 hours in total.⁸⁰ In the ABC Television *Lateline* interview on 8 November 2010 he said that he had ‘spent a couple of months getting that statement ... spending an enormous amount of time with that particular witness ...’⁸¹
- 10.42 In his oral evidence Fox was philosophical about when inquiries being made might be considered to amount to an investigation:
- The investigation – well, when does it become an investigation? I suppose, at the end of the day, someone could suggest that perhaps from the moment [AJ] came in and sat down with me, or perhaps at the time Joanne McCarthy first telephoned me, it becomes an investigation, but at what point of time and how do you define that, I suppose. I’m not trying to be evasive there, but I’m still in an information gathering stage, if I can put it that way. I’m wanting to confirm from [AJ] much of what was being told to me by Joanne McCarthy, and I need to get that independently from [AJ] herself.⁸²
- 10.43 Fox also told the Commission that at some stage after 8 June 2010 he formed the view that police were not going to investigate the church concealment allegations.⁸³ He said his conclusion was based on two things⁸⁴ – first, his having been told by Detective Senior Constable McLeod that he (McLeod) had been ordered by Detective Inspector Waddell (of Lake Macquarie LAC) not to investigate the matter; second, McCarthy having told him that both Waddell and Detective Chief Inspector Brad Tayler (of Newcastle City LAC) did not want to investigate the matter.⁸⁵ It

⁷⁴ McCarthy email 1, email from Fox to McCarthy (15:05) re ‘response from Bishop Malone’, dated 22 June 2010, ex 216, tab 50, p 195; McCarthy responded by email the same day stating that she would contact AC first before giving AC’s contact details to Fox; McCarthy email 96, email from McCarthy to Fox (16:46) re ‘response from Bishop Malone’, dated 22 June 2010, ex 216, tab 51, p 200.

⁷⁵ McCarthy email 1, ex 216, tab 50, p 195.

⁷⁶ TOR 1, T47.28–44 (Fox).

⁷⁷ TOR 1, T59.8–11 (Fox).

⁷⁸ TOR 1, T47.46–48.7 (Fox).

⁷⁹ TOR 1, T65.31–33; T66.15–17; T69.31–34 (Fox).

⁸⁰ Email from Fox to McCarthy re ‘LUCAS,’ dated 22 July 2010, ex 216, tab 59, p 236.

⁸¹ ABC *Lateline* transcript, ‘Studio interview with Senior NSW Detective Peter Fox’, dated 8 November 2012, ex 12.

⁸² TOR 1, T65.42–66.5 (Fox); see also T67.15–26 (Fox).

⁸³ TOR 1, T50.24–30; T51.22–26 (Fox).

⁸⁴ TOR 1, T50.29–30 (Fox).

⁸⁵ TOR 1, T48.44–47; T49.10–20; T50.29–45 (Fox).

was not until September 2010, however, that Fox tried to contact Newcastle City LAC about the matter.⁸⁶ This is discussed further below.

- 10.44 On 23 June 2010 McCarthy gave Fox contact details for AC and for Mr Michael Stanwell, a former school principal, both of whom were connected with the McAlinden matter.⁸⁷
- 10.45 On 29 June 2010 Fox took a statement from AK, a McAlinden victim who knew AL and had had particular dealings with church personnel in relation to a complaint about McAlinden.⁸⁸ According to Fox, AK's was the first statement he took, predating the statement from AJ.⁸⁹ Fox told the Commission he took AK's statement in a single sitting on 29 June 2010.⁹⁰

The nature of Detective Chief Inspector Fox's investigation

- 10.46 On 15 and 19 July 2010 Fox communicated by email with AF, another McAlinden victim. In the emails Fox revealed the nature of the investigation he was by then carrying out. In his email of 15 July 2010, for example, he said:

I don't want to dredge up the details of the abuse you suffered. What I am now looking at is the role of other priests and the Catholic Church in handling complaints about this man (I am now aware of over a dozen victims). A number of these women have provided statements to me concerning undertakings they were given that McAlinden would be dealt with. The fact is he was never 'dealt with' and went on to abuse others. I am keen to know if you ever made a complaint to anyone in the church or spoke to them in respect to your allegation.⁹¹

- 10.47 On 17 July 2010 Fox received an email reply from AF, stating that she did not complain to the Church about McAlinden but a number of years ago had made a statement to police. By email dated 19 July 2010 Fox thanked AF for her reply and said:

In view of McAlinden's death my investigation is confined to the failure of the church to act when told of these. As you didn't have any dealings in that regard I won't bother you further.⁹²

- 10.48 Fox agreed with counsel assisting that by this time (19 July 2010) he was investigating the church concealment allegations. He said he had obtained from AK and AJ statements that were corroborative of each other and 'I probably had formed the view, yes, this needs to be investigated, there are concerns here'.⁹³

A clandestine investigation

- 10.49 From June 2010 and at least until 16 September 2010, when he sent an email to Detective Sergeant Kirren Steel of Newcastle City LAC (see paras 10.72 to 10.79) Fox did not tell his superiors or any other police officer he was investigating the church concealment allegations.⁹⁴ In short, his suggested reason for remaining silent related to his distrust of senior police and his concern about the existence of, in effect, a 'Catholic mafia' in Northern Region of the NSW Police Force.⁹⁵ Fox said the information relayed to him by McLeod – that he (McLeod) had been

⁸⁶ TOR 1, T53.5–26 (Fox).

⁸⁷ Email from McCarthy to Fox, dated 23 June 2010, ex 216, tab 54, p 211; see also McCarthy email 1, ex 216 tab 50; McCarthy email 96, ex 216, tab 51; McCarthy email 2, email from Fox to McCarthy re 'AC and other stuff' (07:51), dated 23 June 2010, ex 216, tab 5.

⁸⁸ NSW Police statement of AK, dated 29 June 2010, ex 216, tab 56A.

⁸⁹ TOR 1, T71.4–8 (Fox).

⁹⁰ TOR 1, T69.15–40 (Fox).

⁹¹ Email from Fox to McCarthy, dated 15 July 2010, ex 216, tab 58, p 23. Fox also made suggestions to AF about potential options open to her including counselling and claims for compensation; see email from Fox to McCarthy, dated 19 July 2010, ex 216, tab 58, p 234.

⁹² Email from Fox to McCarthy, dated 19 July 2010, ex 216, tab 58, p 234.

⁹³ TOR 1, T70.33–37 (Fox).

⁹⁴ TOR 1, T46.1–6; T53.5–10; T59.23–27; T67.39–43; T68.12–19 (Fox).

⁹⁵ See Chapter 9.

ordered not to investigate such allegations – confirmed these concerns.⁹⁶ Similarly, even though he was Crime Manager at Port Stephens LAC, Fox did not enlist the assistance of any other officer in the matter that he was pursuing because, he said, ‘I didn’t trust the police environment at that stage’.⁹⁷

- 10.50 For the same reasons Fox did not, as would usually be done in any police investigation, create a COPS event entry on the police database in relation to what AJ had raised or otherwise create a COPS case entry, which is regularly updated as an investigation progresses.⁹⁸
- 10.51 When counsel assisting asked Fox whether, before 16 September 2010, Humphrey had asked him to hand over documents relating to the church concealment allegations, Fox said, ‘No one knew I had it [the documentation], so that’s an impossibility; it could never have happened’.⁹⁹ Similarly, Fox said that before 16 September 2010 neither his commander, Haggett, nor any other police officer asked him about any investigation he was doing into the Catholic Church.¹⁰⁰
- 10.52 Fox gave evidence to the effect that he conducted his investigation in a clandestine fashion for the reasons just described – namely, his suspicion about interference by one or more senior officers if his investigation had come to light at that time. As noted in Chapter 9, the Commission finds that there is no credible evidence to support the existence of a ‘Catholic mafia’ or any related attitude on the part of senior police in Northern Region of the NSW Police Force. Indeed, the evidence is firmly to the contrary. Fox’s conducting of what was effectively a clandestine investigation was highly unusual and contrary to standard police procedures.

Further steps in Detective Chief Inspector Fox’s investigation

- 10.53 In addition to the statements he took from AK and AJ, Fox took a statement, dated 23 July 2010, from Mr Michael Stanwell.¹⁰¹
- 10.54 Thus, by 16 September 2010 Fox had taken statements from AK, AJ, Stanwell and AL.¹⁰²

16 September 2010: a ‘ministerial request’

- 10.55 Fox gave evidence that from 16 September 2010 he decided not to continue keeping his investigation a secret from other police officers.¹⁰³ He said there were a number of catalysts for this change in approach, one of which was the receipt of what is referred to as a ‘ministerial file’¹⁰⁴ or ‘ministerial request’.
- 10.56 Fox received the ministerial request on 16 September 2010. This was his last working day before taking four weeks’ leave. As described below, after he received the request, on the same day he sent to Detective Sergeant Kirren Steel, copying in relevant senior police officers, an email that revealed he had been investigating the church concealment allegations.

The background to the ministerial request

- 10.57 On 7 June 2010 BG, a relative of AB (a Fletcher victim who gave evidence against Fletcher in his criminal trial), wrote a letter to the Attorney General about the possible covering up of the

⁹⁶ TOR 1, T50.24–45 (Fox).

⁹⁷ TOR 1, T68.12–19 (Fox); see also TOR 1, T122.43–123.5; T267.7–17: ‘I didn’t want anyone else to know that I had taken those statements at that point of time’.

⁹⁸ TOR 1, T68.21–44 (Fox).

⁹⁹ TOR 1, T72.41–44 (Fox).

¹⁰⁰ TOR 1, T72.36–39, T72.46–73.2 (Fox).

¹⁰¹ TOR 1, T71.20–23 (Fox).

¹⁰² TOR 1, T77.20–79.40 (Fox).

¹⁰³ TOR 1, T73.9–11 (Fox).

¹⁰⁴ TOR 1, T73.13–28 (Fox).

crimes of paedophile priests in the Catholic Church, with particular reference to Fletcher.¹⁰⁵ The Attorney General forwarded BG's letter to the Minister for Police.¹⁰⁶ Thereafter, Ms Angela D'Amore MP, Parliamentary Secretary for Police, forwarded BG's letter to the Commissioner of Police for consideration.¹⁰⁷

10.58 On or about 20 August 2010 the Commissioner's office referred BG's letter to the Sex Crimes Squad of the State Crime Command.¹⁰⁸

10.59 On 5 September 2010 Detective Sergeant Rachel McKey, Investigations Coordinator in the Sex Crimes Squad, prepared a report about BG's letter.¹⁰⁹ The report had a subject heading of 'Correspondence received from the Commissioner's Office on the 20th August 2010 – regarding correspondence from [BG] – d/d 07/06/2010 – (possible conspiracy to conceal crime by senior clergy of the Catholic Church)'.

10.60 In her report, McKey recorded that BG's letter related particularly to Fletcher and allegations of potential concealment of his crimes. She also noted that Fox was the informant for the charges laid against Fletcher and attached a copy of Fox's information report (reference number I 21949203) dated 30 August 2004 (as discussed), in which Fox expressed a concern about a potential paedophile network that was operating within the Catholic Church and that other clergy members were helping to conceal. McKey made the following comment and recommendation in her report:

COMMENT:

The original investigation into the criminal offences of Father James Patrick Fletcher was conducted by Central Hunter Local Area Command – Detective Inspector Peter Fox was the informant. I recommend that this file be forwarded to Detective Inspector Fox for comment due to his intimate knowledge of the investigation, the hurdles encountered from the clergy possibly consistent with the issues highlighted by [BG].

RECOMMENDATION:

The attached correspondence be forwarded to Central Hunter LAC – Detective Inspector Fox for his attention and response.¹¹⁰

10.61 McKey's report was subsequently endorsed by a number of senior officers in accordance with the chain of command. On 6 September 2010 Detective Acting Superintendent Michael Haddow, Commander of the Sex Crimes Squad, endorsed the report thus: 'Noted. Forwarded to D/Inspector Peter Fox (Central Hunter LAC) for comment'. On 7 September Detective Superintendent John Kerlatec, Acting Director of the Serious Crime Directorate, also endorsed the report, with the notation 'Forwarded for consideration and attention of Det Inspector Fox who had involvement in the 2004 investigation into Father Fletcher'.¹¹¹

¹⁰⁵ Letter from BG to Hatzistergos, dated 7 June 2010, ex 216, tab 62, pp 245–246.

¹⁰⁶ Memorandum from Batterham to Johnson, dated 12 August 2010, attaching letter from BG to Hatzistergos, dated 7 June 2010 and undated letter from D'Amore to BG, undated, ex 216, tab 62.

¹⁰⁷ Letter from D'Amore MP to BG, undated, ex 216, tab 62, p 247.

¹⁰⁸ NSW Police report of Fox re correspondence received from BG re possible Catholic Church conspiracy, dated 18 October 2010 and attached file by McKey, dated 5 September 2010 ex 216, tab 72, p 274.

¹⁰⁹ *ibid*, pp 274–275.

¹¹⁰ *ibid*, pp 274–275.

¹¹¹ *ibid*, pp 274–275.

10.62 Superintendent John Gralton, Commander of Central Hunter LAC at the time, received the report after that. On 9 September 2010 he endorsed it with the following notation:

Given this file relates to matters specifically referred to Det Ins Fox as the OIC [officer in charge], I am forwarding the file to Pt Stephens LAC where he is currently attached for attention as requested.¹¹²

Receipt of the ministerial request

10.63 As noted, Fox received the ministerial request on 16 September 2010, his last working day before he was scheduled to take four weeks' leave (returning to the office on 18 October 2010).¹¹³ The documents he received consisted of BG's letter and the related parliamentary correspondence and the report of McKey, attached to which was a copy of his own information report dated 30 August 2004 (reference number I 21949203).

The nature of the ministerial request

10.64 The Northern Region Commander, Assistant Commissioner Carlene York, gave evidence about the nature of a ministerial request. She said such documents were usually requests for information, so that a response could be provided to a person who had written to the Minister's office:

They usually result from someone writing into the minister's office or something being raised with the minister's office through various sources. They want information so that they can answer the source of that information, and they often send it out – well, they do send it out for us to provide that response, the NSW Police Force. It can be for investigation. It's more about [wanting] information back so that a course can be decided upon.¹¹⁴

10.65 York also gave evidence to the effect that if an investigation was to arise as a result of a ministerial request that would be the consequence of a determination by either the region commander or the commander of the relevant local area command (that is, that there be an investigation and who should carry it out). It would not be something determined by a crime manager without the involvement of the local area commander.¹¹⁵

10.66 Detective Superintendent Kerlatec, who, as noted, had endorsed Detective Sergeant McKey's report with a notation that the matter should be forwarded to Fox for his attention, also gave evidence about the nature of a ministerial request. He said the Sex Crimes Squad was regularly involved in responding to ministerial requests for information.¹¹⁶ He noted that usually with matters of this type a seven-day turnaround would be expected in terms of responding to the request and that such matters are followed up by the Commissioner's office.¹¹⁷ The response would usually go back to the Commissioner's office via the chain of command.¹¹⁸

10.67 When taken to the ministerial file in evidence, Kerlatec said he regarded it as a request for information about the status of a particular investigation.¹¹⁹ He understood McKey's recommendation in the second sentence under the heading 'Comment' (as just quoted), which he had endorsed, to be '[t]hat Detective Chief Inspector Fox provide a comment in regards to the status of that situation, in regards to the ministerial request'.¹²⁰ Kerlatec did not read the

¹¹² Fox report re BG correspondence, ex 216, tab 72.

¹¹³ Email from Fox to Steel re 'Church File', dated 16 September 2010, ex 216, tab 63, p 248; Fox report re BG correspondence, ex 216, tab 72, p 272.

¹¹⁴ TOR 1, T656.6–13 (York).

¹¹⁵ TOR 1, T656.15–657.12 (York).

¹¹⁶ TOR 1, T408.44–409.3 (Kerlatec).

¹¹⁷ TOR 1, T411.18–42 (Kerlatec).

¹¹⁸ TOR 1, T411.35–42 (Kerlatec).

¹¹⁹ TOR 1, T409.16–22 (Kerlatec).

¹²⁰ TOR 1, T409.28–45 (Kerlatec).

comment and the recommendation in McKey's report (endorsed by him) as being a request to Fox to carry out an investigation into the matters BG had raised in the letter.¹²¹ York gave evidence to similar effect.¹²²

Conclusions

- 10.68 Fox seemed to regard the ministerial request as authorising him 'to conduct inquiries in relation to an alleged cover-up of paedophilia within the Catholic Church'.¹²³
- 10.69 The Commission regards Kerlatec's analysis of the ministerial request, including the McKey report, as accurate. In other words, it is properly viewed as a request for information from Fox, being passed on via the chain of command, and was not an instruction to begin an investigation. This conclusion is also supported by the language of the McKey report, which formed part of the request and recommended that the file (effectively consisting of BG's letter) be forwarded to Fox 'for comment' and for his 'response'.

August and September 2010: Detective Chief Inspector Fox's awareness that Newcastle City LAC is to investigate the church concealment allegations

- 10.70 By 16 September 2010 Fox knew that Newcastle City LAC, and in particular Detective Sergeant Steel, had been allocated an investigation into matters involving church concealment allegations.¹²⁴
- 10.71 In this respect Fox told the Commission that in about August to September 2010 he spoke by telephone with Detective Inspector Waddell (Crime Manager at Lake Macquarie LAC), who told him the matter had been allocated to Newcastle City LAC and gave him the name of Steel as a contact. Fox said that, before sending an email, he tried to telephone Detective Chief Inspector Brad Tayler (Crime Manager at Newcastle City LAC) and Steel but without success.¹²⁵

16 September 2010: Detective Chief Inspector Fox's revelation to senior police

- 10.72 After receiving the ministerial request on 16 September 2010, Fox sent an email on the same day to Detective Sergeant Steel at Newcastle City LAC,¹²⁶ copying in Sergeant Stephen Rae, Inspector Anthony Townsend (Operations Manager, Northern Region) and Superintendent Charles Haggett (Fox's commander at Port Stephens LAC).
- 10.73 Fox told the Commission he copied the email to Rae because he (Rae) had been performing a relieving role at the Northern Region office and he perceived him to have some knowledge of Steel's investigation.¹²⁷ He added that he copied the email to Townsend because, as Operations Manager for the Northern Region, 'he should be made aware of what was going on'.¹²⁸
- 10.74 Fox gave evidence to the effect that because he had received the ministerial request, which had been directed to him by senior police, he felt safe in revealing the investigation he had been secretly carrying out:

¹²¹ TOR 1, T409.47–410.3 (Kerlatec).

¹²² TOR 1, T656.27–32 (York).

¹²³ TOR 1, T73.22–28 (Fox).

¹²⁴ TOR 1, T74.37–40 (Fox).

¹²⁵ TOR 1, T52.47–53.36 (Fox).

¹²⁶ Email from Fox to Steel re 'Church File', dated 16 September 2010, ex 216, tab 63, p 248.

¹²⁷ TOR 1, T75.9–23 (Fox).

¹²⁸ TOR 1, T75.29–36; T76.2–11 (Fox).

I mistakenly felt that no-one would then remove me from the investigation and that I would have an active role with it and I felt much more confident in then letting Superintendent Haggett know.¹²⁹

10.75 In his 16 September 2010 email to Steel, Fox said he had recently spoken with Detective Inspector Waddell and Sergeant Rae and understood that Steel had been (or was about to be) allocated a file on alleged paedophilia and 'cover-up' within the Catholic Church. In short, in his email Fox did the following:

- referred to his own investigations relating to McAlinden and Fletcher
- revealed some details of his current investigation
- referred to the ministerial request he had received that same day
- suggested that he and Steel meet on his return from leave to 'put our material and heads together on this'.¹³⁰

10.76 In view of the importance of the email as a turning point in the events under discussion, it is apposite to set Fox's email out in full:

Kirren

I have recently spoken to Dave Waddell & Steve Rae and understand you have, or are about to be allocated a file concerning alleged paedophilia and cover-up within the Catholic Church.

I was involved in a number of investigations in the late 90's & 2000's concerning a number of paedophile priests. During that time I interviewed Vince Ryan, James Fletcher, Leo Clark, Michael Malone and other clergy regarding abuse. Mark Watters and I took out the warrant for Denis McAlinden in 1999 and I spoke to Leo Clark. If material I have read in the Herald is correct Leo Clark told Ann Joy and I deliberate lies to conceal crimes committed by Mcalinden. It may be that I will have to do a statement regarding what he told me.

Further to this I have a number of statements concerning McAlinden. The primary witness approached me some time ago after speaking to a number of victims I have dealt with over the years. At this time she has asked I not disclose her identity but has very strong evidence of first hand dealings with Clark, [redacted] and Lucas and her own abuse by McAlinden. This resulted in me speaking to Mike Stanwell, [AL] and [AK]. I don't believe the main witness would not be known to the church, police or media.

It appears a lot of the material I have compiled may cross over with what you have been allocated.

Today I was handed a TRIM file D/2010/133845 that has been through the AGs and Police Minister's office alleging 'possible cover-up of the crimes of paedophile [sic] priests by senior people within the Catholic Church'. It refers to some matters I investigated in addition to others that were looked [into] at Lake Macquarie. A copy of an Intell Report I 21949203 is cited where I raised connections with a number of clergy paedophile matters and possible paedaphile [sic] network and concealment back in 2004.

Unfortunately today is my last day until 18/10/10. No doubt this matter will take some time but can you contact me when I return as we probably need to put our material and heads together on this.

Peter Fox
Detective Chief Inspector
Crime Manager¹³¹

¹²⁹ TOR 1, T76.41-46 (Fox).

¹³⁰ Email from Fox to Steel re 'Church File', dated 16 September 2010, ex 216, tab 63, p 248.

- 10.77 In the email Fox acknowledged that much of the material he had compiled might ‘cross over’ with the investigation Steel was to conduct. In his oral evidence he confirmed that AJ was ‘the main witness’ referred to in the third paragraph of his email.¹³² He said he did not mention AJ by name, even though he had named three other witnesses (Stanwell, AL and AK) because AJ was concerned about the police and people in the Church finding out she had been to the police.¹³³
- 10.78 Counsel assisting asked Fox whether, by sending his 16 September 2010 email, he wanted the recipients to know that he wished to take part in the investigation Steel had been allocated. Fox replied:
- I don’t know whether the email says that. I certainly had that – entertained that thought. I don’t know if that is the purpose, though, of the email.¹³⁴
- 10.79 After sending the email to Steel and others Fox went on his four weeks’ leave. During that time he was overseas and did not discuss the church concealment allegations with any police officer. He returned to work on 18 October 2010.¹³⁵

The Strike Force Lantle investigation

- 10.80 From late April to early September 2001, while Fox was conducting his own clandestine investigation, senior police in Northern Region were deliberating on whether and, if so, how the church concealment allegations should be investigated. (This is detailed in Chapter 8.) For current purposes a few of the central developments warrant mention.
- 10.81 Just as Fox’s clandestine investigation relied substantially on information provided by McCarthy of the *Newcastle Herald*, so too the origins of the Strike Force Lantle police investigation can be traced to McCarthy’s provision to Lake Macquarie LAC of church and associated documents relating to McAlinden and Fletcher – suggesting that church officials had knowledge of the two priests’ respective crimes but did not report matters to the police.
- 10.82 During the period from late April to early September 2010, senior police in the Northern Region were weighing up several factors in their efforts to determine whether the church concealment allegations should be investigated and, if so, by whom. Both Lake Macquarie LAC and Newcastle City LAC resisted taking on such an investigation because of resourcing considerations. (See Chapter 8.)
- 10.83 Between late May and July 2010 Townsend reviewed the documentation in the church concealment file (consisting of the documents McCarthy had provided) and prepared a detailed report dated 12 July 2010 for the Northern Region Commander, discussing the material and the investigative options available.¹³⁶
- 10.84 In August 2010 Assistant Commissioner York, the Northern Region Commander, determined that there should be a police investigation of the church concealment allegations and, further, that the investigation should be allocated to Lake Macquarie LAC. In making the latter determination, York had particular regard to Lake Macquarie LAC’s experience with Strike Force Georgiana.¹³⁷

¹³¹ *ibid.*

¹³² TOR 1, T79.25–35 (Fox).

¹³³ TOR 1, T79.42–80.4 (Fox).

¹³⁴ TOR 1, T76.28–34 (Fox).

¹³⁵ TOR 1, T80.31–40 (Fox); Fox report re BG correspondence, ex 216, tab 72, p 272.

¹³⁶ NSW Police Force report of Townsend re ‘Allegations of concealing serious offences by clergy attached to Maitland-Newcastle Diocese, 12 July 2010’, ex 216, tab 57.

¹³⁷ TOR 1, T644.40–645.14 (York).

- 10.85 By 1 September 2010, after representations from Detective Inspector Waddell of Lake Macquarie LAC, York reversed her decision to allocate the investigation to Lake Macquarie LAC. She re-allocated it to Newcastle City LAC. At some stage shortly thereafter she also determined that the investigation should proceed by way of a 'strike force'.¹³⁸
- 10.86 Detective Chief Inspector Tayler, then Crime Manager at Newcastle City LAC, set about deciding which officers from Newcastle City LAC should conduct the investigation. In consultation with his commander, Mitchell, he decided that Detective Sergeant Kirren Steel would be the principal investigating officer. She was to report to him. Steel would be returning to the Detectives Office after a short period of leave, with what was effectively 'a clean slate' in terms of her case load. Detective Senior Constable Jason Freny was assigned to assist with the investigation. (This is dealt with in detail in Chapter 8.)
- 10.87 All these developments associated with the allocation and establishment of the Strike Force Lantle investigation occurred without senior police being aware that Fox had been conducting his own clandestine investigation since about June or July 2010.¹³⁹ The Commission accepts Fox's evidence that it was not until 16 September 2010 that he disclosed to senior police – including Acting Inspector Stephen Rae and Townsend at Northern Region and Fox's own commander, Haggett – that he had been conducting his own investigation 'off the grid', so to speak, into the church concealment allegations. By that stage, however, the investigation, to be called Strike Force Lantle, had been allocated to Newcastle City LAC and was formally established.
- 10.88 On 18 September 2010 Steel forwarded to then Acting Commander Wayne Humphrey, Mitchell and Tayler the email she had received from Fox on 16 September 2010.¹⁴⁰ In her email Steel stated:
- From memory one of you told me to let you know if Peter Fox contacted me in relation to this sexual assault file that I'll be doing when I get back to the D's. Anyway, he has and below is his email. Can you tell [me] what I need to do with regard to him and whether I am enteraining [sic] any of his inquiries regarding this?¹⁴¹
- 10.89 Humphrey told the Commission he could not recall whether he told Steel to contact him if Fox contacted her: he suspected that it was probably Tayler who had done so.¹⁴² For his part, Tayler said he could not remember telling Steel she was to contact him if Fox contacted her: he thought either Mitchell or Humphrey might have done so.¹⁴³
- 10.90 On 18 September 2010 Acting Commander Humphrey sent an email response to Steel and Tayler, saying:
- As if I knew this wouldn't happen!
- No contact with him until after we (Brad and I) discuss the matter on Monday with you. Tony, I will also need to speak with [you] re this.
- If this matter is Newcastle City's, and I believe it is, then we will run it. 'Getting our heads' together with Peter Fox will not necessarily be the most advantageous strategy despite his best intentions.
- Lastly, Fox will address communications through the Crime Manager in future. I will address that.

¹³⁸ TOR 1, T647.2–5 (York); statement of York, dated 15 February 2013, ex 10.

¹³⁹ See also TOR 1, T997.26–32 (Mitchell).

¹⁴⁰ Email from Humphrey to Steel, dated 18 September 2010, ex 216, tab 64, p 250.

¹⁴¹ *ibid.*

¹⁴² TOR 1, T1320.28–30 (Humphrey).

¹⁴³ TOR 1, T760.5–9 (Tayler).

I note he is now on four weeks leave so Kirren you shouldn't have any issues with contact until after our decision is made.

I look forward to some robust discussion on this matter.¹⁴⁴

- 10.91 Humphrey copied Mitchell and Townsend into his email. Mitchell told the Commission he did not recall having had any discussions with Humphrey in relation to the subject matter before receiving the 18 September 2010 email.¹⁴⁵

The relationship between Detective Chief Inspector Fox and Detective Chief Inspector Humphrey

- 10.92 Early in his evidence before the Commission, Fox suggested that there was some animosity between himself and Detective Chief Inspector Humphrey. When questioned by counsel assisting about the contents of an email he sent to McCarthy that included the words 'The pricks can shove it', (see paras 10.225 to 10.230) Fox said, 'Some fit that description more than others, but certainly Chief Inspector Wayne Humphrey'.¹⁴⁶ When asked whom he perceived to be part of the process of directing him to 'cease investigating' Fox then said, 'Chief Inspector Wayne Humphrey, I think, was a major contributor to it, yes'.¹⁴⁷ For his part, Humphrey gave evidence that he wanted to make it 'very, very clear from the start: despite what some people may think, I have actually no animosity towards Peter Fox, not one single bit'.¹⁴⁸ When questioned by counsel for Fox on the matter, Humphrey said, 'It's nonsense to suggest that this is a personal issue'¹⁴⁹ and, finally, 'I would concede I'm disappointed in how he behaves. That's my opinion of Mr Fox. I'm disappointed in him'.¹⁵⁰
- 10.93 Whatever the state of the relationship between Humphrey and Fox, and mindful that the position may have altered since 2010, the Commission does not regard it as having relevantly coloured the evidence of either, in the sense of being something, of itself, that would cause the Commission not to accept that person's evidence concerning the other. The relationship between the two does, however, provide a context for some of the comments that appear in certain documents and in the oral evidence. The Commission also does not regard the relationship as being something that ultimately bears on the question of the appropriateness of the instructions issued at the meeting on 2 December 2010. As will be seen, it was Humphrey's commander, Mitchell, who issued the relevant instructions at the meeting on 2 December 2010, and Humphrey was not present at the meeting.

September 2010: concern that Detective Chief Inspector Fox would 'try to inject himself' into the Lantle investigation

- 10.94 As discussed, before 16 September 2010 senior police with Northern Region (including Humphrey and Tayler) did not know that Fox was conducting an investigation of the church concealment allegations.
- 10.95 Humphrey gave evidence of having attended a meeting at the Northern Region office on 6 September 2010 with Townsend and Tayler at which he was informed that the church concealment investigation had been allocated to Newcastle City LAC.¹⁵¹ Humphrey said that, in a discussion with Tayler in a car after the meeting, they discussed their belief that 'DCI Fox would

¹⁴⁴ Email from Humphrey to Steel, dated 18 September 2010, ex 216, tab 64, p 250.

¹⁴⁵ TOR 1, T996.38–997.13 (Mitchell).

¹⁴⁶ TOR 1, T183.37–43 (Fox).

¹⁴⁷ TOR 1, T184.11–14 (Fox).

¹⁴⁸ TOR 1, T1312.36–39 (Humphrey).

¹⁴⁹ TOR 1, T1374.22–23 (Humphrey).

¹⁵⁰ TOR 1, T1375.3–5 (Humphrey).

¹⁵¹ TOR 1, T1319.40–47; T1321.4–15 (Humphrey).

attempt to inject himself into that particular investigation'.¹⁵² Humphrey thought this was a strategy Fox would employ.¹⁵³

September to December 2010: concern about Detective Chief Inspector Fox's relationship with the media and the leaking of police information

10.96 The evidence reveals that some senior police in Newcastle City LAC were concerned, in at least the months leading up to the 2 December 2010 meeting, that Fox had an inappropriately close relationship with some media representatives – in particular, McCarthy of the *Newcastle Herald* – and that he presented a risk to the NSW Police Force in terms of the leaking of police information to the media.

10.97 In his evidence before the Commission, Humphrey said:

I think I could say, in fairness, that it was commonly believed that DCI Fox and Joanne McCarthy had a relationship at that time of some description that went outside the bounds of the media policy. That was the suspicion and it was suspected that DCI Fox would inject himself into the investigation early, and that proved to be correct.¹⁵⁴

10.98 In a statement provided for the Commission, Humphrey recorded the concern he had at the time the Strike Force Lantle team was assembled about Fox's potential role in leaking information to the media. Humphrey saw this as one reason why Fox should not have any direct role in the Strike Force Lantle investigation:

To my mind as well, there were some concerns that the integrity of the police investigation, in terms of any leakage of information to the media, may well have been undermined if Detective Chief Inspector Fox played an active role within Strike Force Lantle. In my view, such a risk with such a high-profile and important investigation should not have been allowed to take place.¹⁵⁵

10.99 Humphrey expressed his concern bluntly:

I was concerned about Detective Chief Inspector Fox giving information in relation to police investigations to a member of the press, known as Joanne McCarthy.¹⁵⁶

10.100 Similarly, Detective Chief Inspector Tayler was concerned about Fox and the perceived risk he posed in terms of leakage of sensitive police information to the media. He said for that reason he would not have wanted Fox having an investigative role on the Strike Force Lantle investigation.¹⁵⁷ Part of his concern can be traced to an incident in 2008, when Tayler asserted that Fox had engaged in unauthorised contact with McCarthy.¹⁵⁸ The Commission obtained evidence in order to better understand the circumstances of the alleged 2008 incident but ultimately took the view that it was of insufficient relevance to the matters currently under consideration.

10.101 In the lead-up to the 2 December 2010 meeting Mitchell was concerned about leakage of information contained in police holdings to McCarthy.¹⁵⁹ His concern was based on information received from Tayler and a telephone discussion with McCarthy during which, according to

¹⁵² TOR 1, T1321.18–19 (Humphrey).

¹⁵³ TOR 1, T1320.28–30, 1320.41–1321.19 (Humphrey).

¹⁵⁴ TOR 1, T1321.36–42 (Humphrey).

¹⁵⁵ Statement of Humphrey, dated 14 February 2013, ex 33, para 22.

¹⁵⁶ *ibid*, para 26.

¹⁵⁷ TOR 1, T863.27–864.3 (Tayler).

¹⁵⁸ TOR 1, T863.19–25 (Tayler).

¹⁵⁹ TOR 1, T1025.15–18 (Mitchell); statement of Mitchell, dated 15 February 2013, ex 20, para 20.

Mitchell, she appeared to be something of an advocate for Fox in relation to his background and experience (as discussed in paras 8.161 to 162 and 8.190).¹⁶⁰

- 10.102 The Commission is, however, comfortably able to reach a conclusion on the appropriateness of the instructions issued to Fox on 2 December 2010 without needing to consider the truth or otherwise of concerns held by any senior officers in relation to Fox possibly leaking confidential police information to the media.

October 2010: further developments

- 10.103 On 12 October 2010 Acting Commander Wayne Humphrey and Acting Inspector Justin Quinn of Newcastle City LAC issued a situation report, or 'sitrep',¹⁶¹ relating to the investigation. The sitrep was apparently prepared in response to a request by Inspector Fay Dunn of Northern Region to provide information about the church concealment investigation and included details of investigative steps to be taken, such as obtaining documents relating to the matter from other commands. Quinn told the Commission this included material in Fox's possession and possibly any documents with Haggett, Fox's commander at Port Stephens LAC.¹⁶² The issuing of the sitrep followed shortly after Inspector Townsend, Operations Manager for Northern Region, received an email request from McCarthy seeking comment on an article to be published in the *Newcastle Herald* that would raise concerns about the progress of the investigation.¹⁶³

13 October 2010: a search of Detective Chief Inspector Fox's office

- 10.104 On 13 October 2010, while Fox was overseas on annual leave, Haggett and Humphrey went to Fox's office at Port Stephens LAC to try to find documents relating to the church concealment allegations, including the ministerial request.¹⁶⁴ As commander of Port Stephens LAC, Haggett had a master key to all offices in the building.¹⁶⁵ By that time Haggett was aware, as a result of Fox's 16 September email, that Fox had been engaging in his own, unauthorised investigation of church concealment allegations and had taken at least one witness statement.¹⁶⁶
- 10.105 As described in Chapter 8, Ms Miriam White, then an administrative officer at Port Stephens LAC, saw Haggett and Humphrey searching Fox's office. She asked them if she could help and was told they were looking for files connected with the Catholic Church investigation. White said the documents were locked in Fox's safe (as he had previously told her) and that he had the only key to the safe. As a consequence, no documents were obtained and both officers left the office. According to White, the search was conducted in an orderly manner and the office was left in a neat and tidy state.¹⁶⁷
- 10.106 Consistent with what White told Haggett and Humphrey, Fox told the Commission that before he went on leave he had locked the papers relating to the church concealment allegations in the safe in his room. He said he did this 'because I was concerned about something exactly like this occurring'.¹⁶⁸
- 10.107 In Chapter 8 the Commission concluded that Haggett, accompanied by Humphrey, was within his rights to enter the office of Fox (who was on leave) to look for documents relating to church

¹⁶⁰ TOR 1, T1025.46–1026.1 (Mitchell).

¹⁶¹ Email from Humphrey to Dunn, Mitchell and Quinn attaching situation report of Quinn, dated 12 October 2010, ex 216, tab 67.

¹⁶² TOR 1, T960.39–41; T961.1–10 (Quinn).

¹⁶³ Email chain, ending with email from Townsend to Dunn, dated 13 October 2010, forwarding email from Townsend to McCarthy, dated 12 October 2010, ex 216, tab 70.

¹⁶⁴ TOR 1, T80.39–82.13 (Fox); email from Humphrey to Haggett re 'Strike Force Lantle', dated 13 October 2010, ex 216, tab 69.

¹⁶⁵ Statutory declaration of White, dated 26 June 2013, ex 46, para 11.

¹⁶⁶ Email from Fox to Steel re 'Church File', dated 16 September 2010, ex 216, tab 63.

¹⁶⁷ Statutory declaration of White, dated 26 June 2013, ex 46, paras 9–21.

¹⁶⁸ TOR 1, T81.42–82.3 (Fox).

concealment allegations that might be relevant to the Lantle investigation. Further aspects relating to the search of Fox's office – including a conflict in the evidence of Dunn and Humphrey as to whether Northern Region had directed that the search be carried out – are dealt with in Chapter 8.

13 October 2010: an email from Acting Commander Humphrey to Superintendent Haggett

- 10.108 On the same day, 13 October 2010, Humphrey sent an email to Haggett, asking that Fox be instructed to deliver all documentation relating to the church concealment allegations to Newcastle City LAC as soon as possible. The subject heading of the email was 'Re Strike Force Lantle'. It is worth setting out the entire text of the email:

Dear Commander Haggett,

As per our conversation regarding SF Lantle (the investigation into the alleged coverup by members of the Catholic clergy) I would ask for the following to occur.

Detective Chief Inspector Fox has initiated contact with Detective Sergeant Steel (OIC) of the Strike Force. Det Ch Insp Fox has indicated that he has possession of a file in regards to this matter and other documentary and anecdotal evidence. An examination of trlm indicates a file originated at State Crime Command, was sent to Central Hunter and then ultimately to Det Ch Insp Fox. That file and any associated documentation should be collected and hand delivered to Detective A/Inspector Quinn, Crime Manager Newcastle City LAC as soon as possible.

Det Ch Insp Fox should be advised that he will be contacted by DS Steele in due course regarding information pertaining to this investigation. Det Ch Insp Fox should not initiate contact with DS Steele directly, all contact should be through the Crime Manager at Newcastle City LAC.

I probably don't need to remind all recipients of this email that this enquiry has been subject of much media interest (Commander Haggett you might also make the following very clear to Det Ch Insp Fox please). It is my view that whilst this investigation rests with Newcastle City LAC then this command will be responsible for the overall management of the investigation, the investigative strategies and directions and any relevant media strategy.

I thank you all for your assistance in this matter.

kind regards

Wayne D. Humphrey
A/Commander
Newcastle City LAC¹⁶⁹

18 October 2010: Detective Chief Inspector Fox returns to work and receives a request for documents

- 10.109 On 18 October 2010 Fox returned to work after his four weeks' leave.¹⁷⁰ On the same day Haggett handed him a copy of the 13 October 2010 email from Humphrey (as quoted) and asked him to hand over all documentation he had gathered on any church conspiracy matter.¹⁷¹ According to Fox, Haggett said the decision had been made at Northern Region that the matter would be dealt with by Newcastle City LAC.¹⁷² In an email to Ms McCarthy sent later that day, Fox described Haggett's instruction as follows:

Today is my first day back after 4 weeks leave.

¹⁶⁹ Email from Humphrey to Haggett re 'Strike Force Lantle', dated 13 October 2010, ex 216, p 267, tab 69.

¹⁷⁰ TOR 1, T80.31–40 (Fox); McCarthy email 87, email from Fox to McCarthy attaching report (not produced), dated 18 October 2010, ex 216, tab 71, pp 270–271.

¹⁷¹ TOR 1, T82.43–47; T86.8–12 (Fox); McCarthy email 87, ex 216, tab 71, p 270.

¹⁷² TOR 1, T135.47–136.8 (Fox).

As soon as I arrived Superintendent Haggett asked me to hand over to him all documentation I had gathered on any Church Conspiracy matter.¹⁷³

10.110 Fox was also sent (by Haggett) an electronic copy of the email.¹⁷⁴ Fox read the email on 18 October 2010, as is apparent from the fact that later that day he quoted parts of it in the email he sent to McCarthy (considered below).¹⁷⁵

10.111 Counsel assisting examined Fox about the information imparted to him by the email of 13 October 2010:

Q. What this email shows is that there was an investigation separate to your ministerial file that you had sitting in your office at the time that was being undertaken by Newcastle City Local Area Command. Do you accept that proposition?

A. Yes.¹⁷⁶

10.112 The 13 October 2010 email from Humphrey included a request to Haggett to make it clear to Fox that there was a great deal of media interest in the inquiry into the church concealment allegations. Fox accepted that such a request in the email was suggestive of a suspicion that he (Fox) had been talking to the media.¹⁷⁷ Counsel assisting directed Fox's attention to the 13 October 2010 email and the concerns it expressed in relation to media interest. The following exchange then occurred:

Q. You were in fact talking to the media about your investigations, weren't you?

A. Yes.¹⁷⁸

10.113 As described below, on 18 October 2010 Fox gave Haggett the ministerial request file. Notwithstanding Haggett's request for documents, however, Fox did not provide to Haggett copies of the witness statements he had taken from AJ, AK, AL and Stanwell. Fox told the Commission he did not regard the instruction Haggett gave him on 18 October 2010 (including through the handing to him of the 13 October 2010 email) that he provide documents as extending beyond the ministerial request file. In other words, Fox said he did not regard the request as extending to the statements he had taken or the documents McCarthy had provided.¹⁷⁹

10.114 In an email to McCarthy on 18 October 2010, however, Fox referred to Haggett's request for documentation in very broad terms: '... Haggett asked me to hand over to him all documentation I had gathered on any Church Conspiracy matter'.¹⁸⁰ In the same email, Fox said:

I may have to part with the other statements if they push. I will argue over [AJ] statement due to her insistence on confidentiality and her mental state, but if they 'Departmentally Direct' me I will have no choice.¹⁸¹

10.115 Fox told the Commission that from 18 October 2010 until the meeting of 2 December 2010 he received no further request from Haggett or any other police officer for copies of the witness statements, despite his having expressly revealed the existence of at least one such statement in

¹⁷³ McCarthy email 87, ex 216, tab 71, p 270.

¹⁷⁴ TOR 1, T86.12 (Fox).

¹⁷⁵ McCarthy email 87, ex 216, tab 71.

¹⁷⁶ TOR 1, T100.24–29 (Fox).

¹⁷⁷ TOR 1, T86.24–28 (Fox).

¹⁷⁸ TOR 1, T86.30–32 (Fox).

¹⁷⁹ TOR 1, T88.34–41; T89.35–37; T90.28–91.21 (Fox)

¹⁸⁰ McCarthy email 87, ex 216, tab 71, p 270.

¹⁸¹ *ibid*, p 271.

his email of 16 September 2010 to Detective Sergeant Steel, into which he had copied Haggett and others.¹⁸²

Conclusions

- 10.116 On reading the email of 13 October 2010 (handed to him by Haggett on 18 October 2010), Fox was aware of three matters of significance:
- There was an existing police investigation of alleged covering up by members of the Catholic clergy.
 - That investigation was called Strike Force Lantle, as the subject heading of the email showed.
 - Newcastle City LAC was responsible for overall management of the investigation, the investigative strategies and directions and any relevant media strategy; in other words, Newcastle City LAC was conducting the investigation.¹⁸³
- 10.117 The Commission rejects Fox's evidence that he did not regard the instruction from Haggett on 18 October 2010, including through the 13 October 2010 email that was handed to him, as requiring him to provide documents other than the ministerial request file. In this respect, the email referred to a file (that is, the ministerial request file) 'and any associated documentation'. It also made it clear that Newcastle City LAC was conducting an investigation into alleged cover-ups by members of the Catholic clergy. Further, in his email to McCarthy Fox recorded that Haggett asked him to hand over all documentation he had gathered on any church conspiracy matter. A fair reading of the instruction or request from Haggett was that it required production of all documents relating to church concealment allegations.
- 10.118 Fox did not provide to Haggett, on 18 October 2010, copies of the witness statements he had obtained from AJ, AK, AL and Stanwell. His withholding of this material from his commanding officer was deliberate and constituted inappropriate conduct on Fox's part.

The ministerial request file is handed to Superintendent Haggett

- 10.119 Fox told the Commission that in response to Haggett's 18 October 2010 instruction he provided the ministerial request file to Haggett. Fox said, 'I wasn't happy about it'¹⁸⁴ and that he protested to Haggett.¹⁸⁵ According to Fox, Haggett said the decision had been made at Northern Region at Newcastle¹⁸⁶ and he (Fox) received no explanation for the file being taken from him and redirected.¹⁸⁷

18 October 2010: a covering report is prepared

- 10.120 To accompany the ministerial request file, Fox prepared a short covering report dated 18 October 2010.¹⁸⁸ In the report he said he had received the request file just before taking four weeks' leave and had made no inquiries as yet. He also attached a copy of his information (intel) report of 30 August 2004 (reference number I 21949203,¹⁸⁹ as discussed) and noted his suspicions about a clergy paedophile ring operating in the Newcastle–Hunter region and that other members of the clergy were concealing this. He further alleged that certain members of

¹⁸² TOR 1, T88.43–47; T91.7–21 (Fox).

¹⁸³ See also TOR 1, T99.29–100.29 (Fox).

¹⁸⁴ TOR 1, T82.34–83.3 (Fox).

¹⁸⁵ TOR 1, T88.9–16; T92.35–40 (Fox).

¹⁸⁶ TOR 1, T92.44–46 (Fox).

¹⁸⁷ TOR 1, T95.1–3 (Fox).

¹⁸⁸ Fox report re BG correspondence, ex 216, tab 72, pp 272–273.

¹⁸⁹ COPS report I 21949203, ex 216, tab 16.

the clergy had interfered with his investigation of Fletcher and that he had encountered obstruction in his inquiries about McAlinden. Fox later expanded on these assertions in a report dated 25 November 2010 (see paras 10.127 to 10.139).¹⁹⁰

10.121 Fox concluded his covering report by stating:

Much of this evidence relates to conversations and inquiries conducted in the early part of this decade. I would be happy to provide statements or other evidence from my earlier investigations if deemed helpful.¹⁹¹

He also noted that he was forwarding the ministerial request file 'at the request of Superintendent Haggett and A/Superintendent Humphrey'.¹⁹²

10.122 The endorsements to Fox's covering report record that, following provision to the Port Stephens LAC Commander (Haggett), the report was received by Detective Chief Inspector Tayler at Newcastle City LAC, who on 27 October 2010 endorsed the report by writing 'Forwarded to Det Sgt Steel for reference to S.F. Lantle'.¹⁹³

18 October 2010: Detective Chief Inspector Fox sends an email to Ms McCarthy

10.123 At 3.01 pm on 18 October 2010 Fox sent an email to McCarthy, advising her of the instruction he had received from Haggett to hand over all the documentation he had gathered in relation to any church conspiracy matter. He also referred to and quoted from the 13 October 2010 email from Humphrey that Haggett had handed to him.¹⁹⁴

10.124 Fox's email to McCarthy was, in part, as follows:

Joanne

Today is my first day back after 4 weeks leave.

As soon as I arrived Superintendent Haggett asked me to hand over to him all documentation I had gathered on any Church Conspiracy matter.

I was handed an E mail from Wayne Humphrey (A/Commander – Newcastle) It refers to the file I received before starting leave, stating;
'That file and any associated documentation should be collected and hand delivered to A/Inspector Quinn at Newcastle'.

It goes on:

'I probably don't need to remind all recipients of this email that this inquiry has been the subject of much media inquiry. (Mr Haggett you might make the following clear to DCI Fox)' it then goes on about Newcastle being the sole managers of the investigation and any media strategy.' A clear warning to me.

I have handed over the file together with my attached covering report. (I have made a copy of the file)

I know that you will ensure that any contact between us remains strictly confidential, more so in light of this action.

I have since learnt that Mr Humphrey gained access to my office last week and searched it from top to bottom for any statements or paperwork regarding inquiries I have conducted

¹⁹⁰ NSW Police Force report of Fox re 'Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese of the Catholic Church', dated 25 November 2010, ex 69, pp 324–329.

¹⁹¹ Fox report re BG correspondence, ex 216, tab 72, p 272.

¹⁹² *ibid*, p 273.

¹⁹³ *ibid*, p 273.

¹⁹⁴ McCarthy email 87 ex 216, tab 71, pp 270–271; email from Humphrey to Haggett re 'Strike Force Lantle', dated 13 October 2010, ex 216, tab 69.

on the alleged Church Conspiracy. Fortunately I had locked everything in my safe. (A bit extreme one might think.) ...

I may have to part with the other statements if they push. I will argue over [AJ] statement due to her insistence on confidentiality and her mental state, but if they 'Departmentally Direct' me I will have no choice.

And you thought I was paranoid.

Has there been anything in the media whilst I have been away?

Peter Fox
Detective Chief Inspector
Crime Manager
Port Stephens LAC¹⁹⁵

- 10.125 In the same email Fox told McCarthy 'Both Humphrey & Haggett are practising Catholics from Nelson Bay and have a close rapport with Father Bill Burston.'¹⁹⁶

Provision of the ministerial request file to Superintendent Haggett

- 10.126 As noted, Fox told the Commission that after he provided the ministerial request file to Haggett, in response to Haggett's request of 18 October 2010, no police officer asked him for any church-related documents (including the witness statements he had taken) until 1 December 2010, when Haggett told him to bring all the documents he had to a meeting to be held the next day at Waratah police station.¹⁹⁷

Detective Chief Inspector Fox's report of 25 November 2010

- 10.127 Fox prepared a seven-page report dated 25 November 2010 with the 'Issue' heading of 'Allegations of child sexual abuse and cover-up within the Maitland Newcastle Diocese of the Catholic Church'.¹⁹⁸ In the report he stated his belief that paedophilia by clergy in the Hunter region was widespread and was being concealed by officials in the Diocese.¹⁹⁹ He set out what he saw as his involvement in the investigations relating to McAlinden and Fletcher. He also catalogued what were, in effect, alleged instances of collusion, obstruction and non-cooperation by church officials in respect of his investigations. The assertions Fox made in the report are assessed in Chapter 18.
- 10.128 In his report Fox called for the establishment of a task force to carry out a full investigation 'into the conduct of the Maitland Newcastle Diocese of the Catholic Church'.²⁰⁰ He also referred to the 'excellent knowledge base' he had built up in more than a decade of investigating members of the Maitland–Newcastle clergy and to his 'extensive network of contacts within and outside the church'. He stated, 'I remain objective but passionate to assist with any inquiry or investigation'.²⁰¹
- 10.129 Humphrey took the view that Fox's motivation in preparing the 25 November 2010 report might have been because he (Fox) wanted to play an active role in the Lantle investigation.²⁰²

¹⁹⁵ McCarthy email 87, ex 216, tab 71, pp 270–271.

¹⁹⁶ *ibid*, p 270; as detailed in Chapter 9 Humphrey gave evidence (which the Commission accepts) that he is not a practising Catholic, and he did not know Burston: TOR 1, T1345.47–1346.45 (Humphrey).

¹⁹⁷ TOR 1, T91.12–21; T95.32–37; T103.17–12 (Fox).

¹⁹⁸ Fox report re Allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, pp 1374–1379.

¹⁹⁹ *ibid*, p 329.

²⁰⁰ *ibid*, pp 328–329.

²⁰¹ *ibid*, p 328.

²⁰² Statement of Humphrey, dated 14 February 2013, ex 33, para 33.

Endorsements to Detective Chief Inspector Fox's report

10.130 The endorsements to Fox's report show that, via the chain of command, on 25 November 2010 Acting Commander David Matthews of Port Stephens LAC (Fox's then commander) supported Fox's recommendations and referred the matter to Northern Region, noting that the subject appeared to be beyond the scope of a local area command investigation. The report was referred to Townsend, Operations Manager for Northern Region. On 3 December 2010 – after the meeting of 2 December 2010 discussed below – Townsend endorsed the report by noting that Newcastle City LAC had been nominated to investigate allegations relating to the failure of certain named church officials to disclose the sexual abuse of AL and AK. Townsend further wrote:

All material held by DC/I Fox should be forwarded to Newcastle City LAC Crime Manager for their information. Assessment as to appropriate resources for the investigation is to be made by Newcastle City.²⁰³

10.131 Thereafter, on 3 December 2010²⁰⁴ Assistant Commissioner Carlene York, as Northern Region Commander, endorsed the report by noting:

Investigation should continue by Newcastle LAC to ascertain the extent of the allegations. Consideration will be given to additional resources at the appropriate time. To ensure all matters are considered it should be noted the Newcastle investigators are the lead role & are to continue.²⁰⁵

10.132 On 22 December 2010 Haggett is recorded as having informed Fox 'of this outcome'.²⁰⁶ For his part, Fox told the Commission he had never received such notification from Haggett.²⁰⁷

10.133 On 27 January 2011 Acting Commander Humphrey at Newcastle City LAC endorsed the report by recording, 'For filing & entry into EAGLE.I with appropriate caveats'.²⁰⁸

Draft report provided to Ms McCarthy

10.134 Before sending the 25 November 2010 report to his commanding officer, on 24 November Fox emailed a copy of it, in draft form, to McCarthy of the *Newcastle Herald*. In his email attaching the draft Fox said:

Have a read of the attached report and let me know what you think.

PS

It is getting late and I haven't proof read so please let me know any grammar or amendments you feel might help.

I'll have a final look at this in the morning before I run down to the region office.²⁰⁹

10.135 Fox told the Commission that McCarthy did not propose any amendments to the draft report and instead commented favourably on the document.²¹⁰ For her part, McCarthy gave evidence that she received the draft report by email from Fox and read it.²¹¹ She did not suggest to him

²⁰³ Fox report re Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese, dated 25 November 2010, ex 69, p 1379.

²⁰⁴ TOR 1, T660.36–46 (York).

²⁰⁵ Fox report re Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese, dated 25 November 2010, ex 69, p 1379.

²⁰⁶ *ibid.*

²⁰⁷ TOR 1, T101.41–102.3; T103.4–5 (Fox).

²⁰⁸ Fox report re Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese, dated 25 November 2010, ex 69, p 1379.

²⁰⁹ Email from Fox to McCarthy, dated 23 November 2010, ex 216, tab 77, p 308.

²¹⁰ TOR 1, T344.35–42; T346.3–4 (Fox).

²¹¹ TOR 1, T1190.32–34 (McCarthy).

any amendments²¹² because, she said, it was ‘his report’.²¹³ In addition, she told the Commission that she was not sufficiently computer literate to be able to amend a document.²¹⁴ She said her reading of the document involved ‘a quick skim through’ and she thought it was good in that Fox was coming up with a bigger, more holistic approach to dealing with the problem of alleged child sexual abuse and concealment by members of the clergy.²¹⁵

- 10.136 Fox accepted that, in the normal course, a request for an investigation of the nature proposed in his report would be kept confidential within the police force.²¹⁶ Notwithstanding that, he had sent a copy of the report to McCarthy, a journalist. He did so, he said, because of ‘the very serious reservations [he had] about what was going on, by the actions of certain police’.²¹⁷
- 10.137 By mid- to late 2010 Fox was aware that Strike Force Georgiana was well established in the Northern Region and was investigating and prosecuting sexual offences by clergy, including clergy from Maitland–Newcastle Diocese.²¹⁸

Conclusions

- 10.138 The Commission accepts the evidence of both Fox and McCarthy to the effect that McCarthy did not proffer any amendments to the draft report Fox had forwarded to her. The main reason McCarthy did not do so was that she regarded it as Fox’s report and, that being so, felt it was not her place to suggest amendments.
- 10.139 The Commission regards Fox’s conduct in forwarding the draft report to McCarthy as inappropriate. Objectively considered, Fox’s stated concerns about senior police were unwarranted. Fox was aware by that time that Strike Force Georgiana (based at Lake Macquarie LAC, within Northern Region) had been investigating and prosecuting Catholic clergy for child sexual abuse, including clergy from Maitland–Newcastle Diocese. (These aspects are also considered in Chapters 8 and 9.) Fox was also aware from the email of Humphrey, provided to him on 18 October 2010, that Newcastle City LAC was investigating the church concealment allegations.²¹⁹

1 December 2010: notification of a proposed meeting

- 10.140 On 1 December 2010 Haggett informed Fox that there was to be a meeting at Waratah police station the next day and that he was to bring all his (church-related) documents to the meeting.²²⁰
- 10.141 Fox told the Commission that Haggett said Mitchell would chair the meeting and that he (Fox) and Haggett would be there to represent the Port Stephens command.²²¹ According to Fox, Haggett said Detectives Taylor and Steel would be in attendance, and he might have also mentioned Quinn.²²²

²¹² TOR 1, T1190.36–38 (McCarthy).

²¹³ TOR 1, T1192.7 (McCarthy).

²¹⁴ TOR 1, T1192.16–27 (McCarthy).

²¹⁵ TOR 1, T1192.7–12 (McCarthy).

²¹⁶ TOR 1, T96.45–97.1 (Fox).

²¹⁷ TOR 1, T97.3–6 (Fox).

²¹⁸ TOR 1, T98.27–37 (Fox).

²¹⁹ TOR 1, T100.24–29 (Fox); email from Humphrey to Haggett re ‘Strike Force Lantle’, dated 13 October 2013, ex 216, tab 69, p 267.

²²⁰ TOR 1, T103.15–20 (Fox).

²²¹ TOR 1, T104.32–28 (Fox).

²²² TOR 1, T104.41–44 (Fox).

- 10.142 Fox also told the Commission he believed the meeting would be:
- a sit-down discussion/conference, which is what I was asking for all along, to lay on the table what everyone had, and that was the whole goal of my email to Kirren Steel on 16 [September], to finally sit down with everyone and have a round-table discussion.²²³
- 10.143 Fox said that before the meeting he had expected State Crime Command (the Sex Crimes Squad) to be involved in the meeting.²²⁴
- 10.144 Fox told the Commission that before attending the 2 December 2010 meeting he hoped he would be given an active role in the church concealment investigation (Strike Force Lantle):
- Q. Did you have a perception that you would be placed into some sort of officer-in-charge role or supervisory role or what?
- A. I would have – I’d be lying if I said that I didn’t hope something like that would occur. I certainly expected active involvement, particularly concerning the statements that I had already obtained and the rapport I had built up with probably what would have turned out to be the most crucial witnesses. Whether I actually was given leadership of it, but certainly an active role, yes.²²⁵
- 10.145 In evidence before the Commission Quinn recalled that he had received documents from Fox before the 2 December meeting – which is consistent with Fox’s evidence that he provided the ministerial request file to Haggett for forwarding to Newcastle City LAC (as described) – but not witness statements.²²⁶
- 10.146 A diary entry by Quinn dated 1 December 2010 records that he spoke by telephone that day with Fox to ascertain whether he (Fox) had a mobile number for AK and that Fox told him he had taken a statement from AK.²²⁷ Quinn did not otherwise have a specific recollection of the phone call.²²⁸ He said, however, that before the meeting he understood the purpose of the meeting was to be an exchange of information and the establishment of a framework in which the Strike Force Lantle would operate.²²⁹
- 10.147 For his part, Fox told the Commission he had a discussion with Quinn a day or two before the meeting and that he (Fox) discussed the idea of all sitting down together and said, ‘Mate, I’ve got some fantastic stuff, this should really be going places’.²³⁰

A failure to take documents to the meeting

- 10.148 Fox said that following the request by Superintendent Haggett on 1 December 2010 he put all the church-related documents he had – including the witness statements he had taken and all the material he had received from McCarthy – in a manila envelope that he placed on his desk to take with him to the meeting on 2 December.²³¹ Despite Haggett’s request, however, he (Fox) failed to take the manila envelope with him to the meeting.²³²

²²³ TOR 1, T104.46–105.9 (Fox).

²²⁴ TOR 1, T140.36–141.8, T284.35–38 (Fox).

²²⁵ TOR 1, T106.8–17 (Fox).

²²⁶ TOR 1, T968.2–9 (Quinn).

²²⁷ TOR 1, T967.10–37 (Quinn); diary entry of Quinn, dated 1 December 2010, ex 216, tab 68, p 265.

²²⁸ TOR 1, T967.40–43 (Quinn).

²²⁹ TOR 1, T968.47–969.4 (Quinn).

²³⁰ TOR 1, T105.17.24; T105.45–47 (Fox).

²³¹ TOR 1, T103.22–35 (Fox).

²³² TOR 1, T103.45–47 (Fox).

10.149 Initially, at the public hearings on 6 May 2013 Fox told the Commission, ‘I omitted to take it. It was sitting on my desk and I didn’t grab it, and I organised for it to go down that afternoon’.²³³ Fox said that he had not deliberately failed to take the documents to the meeting:

Q. Did you deliberately fail to take that material to the meeting because you did not want to share that information with those present?

A. No.²³⁴

10.150 The investigator’s note of the meeting, prepared by Quinn on 3 December 2010, similarly records Fox as having said he had ‘mistakenly’ left the documents behind in his office:

Inspector Fox indicated that he had compiled all relevant documents held by him, but had mistakenly left them behind.²³⁵

10.151 When further examined on the subject on 7 May 2013, however, Fox accepted that, in contrast to the evidence he had given on 6 May, he had in fact deliberately left the documents in his office on 2 December 2010:

Q. The evidence you gave yesterday was to the effect that you just forgot to take them?

A. Yes.

Q. And you told those present at the meeting that you had just forgotten to take them?

A. That’s what I told them, yes.

Q. Was that true, that you just forgot them?

A. No, I left them intentionally.

Q. Why did you lie yesterday and say that you had forgotten to take them?

A. Sorry, if I have said that, I may have misheard what was asked, but I never – the instructions to my counsel all the way along – and I’ve been very clear on [this] in my own mind – I may have misheard, and I do apologise if that’s happened, but I certainly didn’t lie. I intentionally left them on my desk. I did say to the police down in Newcastle that I had forgotten them, no argument about that, but I was hoping that I actually wouldn’t have to actually surrender them. I knew full well what was contained in them and I was suspicious of the nature of the meeting.

Q. So you lied to the police at the meeting?

A. Oh, absolutely, yes.²³⁶

Conclusions

10.152 The question asked of Fox on 6 May 2013 was in clear terms – whether he deliberately failed to take the material (the witness statements) to the meeting. He replied, ‘No’. Further, there was no indication from him at the time of the initial questioning that he was confused by the question. The marked discrepancy between his evidence of 6 and 7 May on this topic is not satisfactorily explained.

10.153 Also of concern is the fact that, as Fox conceded, at the meeting on 2 December 2010 he lied to police about having forgotten the documents. Whatever his motivations were at the time, Fox was prepared to lie to other police, including a senior commissioned officer.

²³³ TOR 1, T103.45–104.2 (Fox).

²³⁴ TOR 1, T104.23–26 (Fox).

²³⁵ Investigator’s note by Quinn re case conference on 2 December 2010, dated 3 December 2010, ex 216, tab 85, p 361.

²³⁶ TOR 1, T127.37–128.15 (Fox).

The meeting of 2 December 2010

- 10.154 The meeting of 2 December 2010 is important: Fox identified it as the occasion on which he was (as he contended during the ABC Television *Lateline* interview on 8 November 2012) ordered to stand down from an investigation he was conducting into child sexual abuse in the Catholic Church and was ‘taken off the case’ and directed to hand over ‘all the documentation’ – including an ‘explosive’ witness statement – to senior police.²³⁷ Fox similarly told the Commission that the meeting of 2 December 2010 was the first time he had been ordered or directed to cease investigating church paedophilia in connection with matters being considered by Strike Force Lantle.²³⁸
- 10.155 In the paragraphs that follow, the following approach is adopted in relation to the circumstances of the meeting of 2 December 2010.
- 10.156 First, consideration is given to what in fact took place during the meeting, including what, if any, instructions were issued by any senior officer.
- 10.157 Second, having determined what instructions Superintendent Mitchell did issue during the meeting that had an impact on Fox, the reasons Mitchell relied upon for doing so are examined.
- 10.158 Third, consistent with the requirement under the first term of reference that the Commission examine the ‘appropriateness’ of Fox having been asked to cease investigating relevant matters, consideration is given to the surrounding circumstances and related factors that, based on the evidence before the Commission, affect the appropriateness of the instruction that was in fact issued.

Details of the meeting

- 10.159 The 2 December 2010 meeting took place at Waratah police station, within Newcastle City Local Area Command. Mitchell chaired the meeting.²³⁹ The meeting was in effect made up of two parts. Fox and Haggett were present for the first part but not for the second part, which began after they had left.

The first part of the meeting

- 10.160 The meeting began at about 12.25 pm on 2 December 2010. Seven officers attended the first part of the meeting:
- Assistant Commissioner Max Mitchell (then Superintendent Mitchell) – Commander, Newcastle City LAC
 - Superintendent Charles Haggett – Commander, Port Stephens LAC
 - Detective Chief Inspector Brad Tayler – Crime Manager, Newcastle City LAC, with a supervisory role in Strike Force Lantle
 - Detective Chief Inspector Peter Fox – Crime Manager, Port Stephens LAC
 - Detective Senior Sergeant Justin Quinn – Investigations Manager, Newcastle City LAC, with a supervisory role in Strike Force Lantle
 - Detective Sergeant Kirren Steel – Newcastle City LAC, officer in charge of Strike Force Lantle

²³⁷ ABC *Lateline* transcript, ‘Studio interview with Senior NSW Detective Peter Fox’, dated 8 November 2012, ex 12.

²³⁸ TOR 1, T133.47–134.16 (Fox).

²³⁹ TOR 1, T974.15–18 (Quinn); T41.37–41 (Steel in camera, 16 May 2013).

- Detective Senior Constable Jason Freney – Newcastle City LAC, investigator with Strike Force Lantle.
- 10.161 Two additional officers attended at a later stage of the meeting:
- Inspector Graeme Parker – then Acting Operations Manager, Northern Region
 - Inspector Anthony Townsend – Operations Manager, Northern Region.
- 10.162 Fox recalled that Parker arrived about two-thirds of the way through the meeting.²⁴⁰ The investigator’s note that Quinn prepared (described below) records that Parker arrived part-way through the meeting.²⁴¹
- 10.163 Fox recalled that Townsend arrived ‘right towards the very end’ of the meeting.²⁴² Quinn’s investigator’s note records that Townsend arrived at about the time Fox and Haggett departed.²⁴³
- 10.164 Eight of the nine abovementioned individuals gave evidence about the meeting; Haggett did not.²⁴⁴ Three of those who gave evidence – Tayler and Quinn and Steel – left the New South Wales Police Force at some time after 2 December 2010.²⁴⁵
- 10.165 In addition, by compulsory production the Commission obtained all available contemporaneous documents associated with the meeting – including, in particular, the investigator’s note Quinn prepared²⁴⁶ and an email Fox prepared after the meeting and sent to McCarthy that evening.²⁴⁷ Extracts from each of these documents are set out in the discussion that follows. In addition, each document is reproduced in full in Appendix R.
- 10.166 At the end of the first part of the meeting Fox and Haggett left for Port Stephens LAC.²⁴⁸ Fox told the Commission he thought the meeting went for about 20 minutes to half an hour.²⁴⁹

The second part of the meeting

- 10.167 After Fox and Haggett left, the meeting continued (or a new meeting was constituted), being attended by the other officers previously present (officers Mitchell, Tayler, Parker, Quinn, Steel and Freney) as well as Townsend. This meeting began at about 12.50 pm.²⁵⁰ Among other things, Steel provided a briefing for Townsend, and further remarks were made by Mitchell and Townsend. The meeting concluded at about 1.15 pm.²⁵¹

Mr Quinn’s evidence

- 10.168 As noted in Chapter 8, Mr Justin Quinn left the NSW Police Force on medical grounds in August 2011.²⁵² He was a serving police officer from 1989 to early 2011 and had experience in criminal investigations.²⁵³ From July 2008 to December 2010 he held the position of investigations

²⁴⁰ TOR 1, T106.41–43 (Fox).

²⁴¹ Investigator’s note of Quinn, ex 216, tab 85, p 362.

²⁴² TOR 1, T106.41–43 (Fox).

²⁴³ Investigator’s note of Quinn, ex 216, tab 85, p 363.

²⁴⁴ As described in Chapter 8, following application by NSW Police and having regard to an independent expert medical assessment obtained by the Commission, Haggett was excused from attending to give evidence.

²⁴⁵ TOR 1, T954.23–26 (Quinn); statement of Tayler, dated 6 May 2013, ex 9, para 3; TOR 1, T4.3–5 (Steel in camera, 16 May 2013).

²⁴⁶ Investigator’s note of Quinn, ex 216, tab 85, pp 361–365.

²⁴⁷ McCarthy email 12, email from Fox to McCarthy, dated 2 December 2010, tab 84, ex 216, pp 356–359.

²⁴⁸ TOR 1, T110.30–39; T482.37–42 (Fox).

²⁴⁹ TOR 1, T482.30–35 (Fox).

²⁵⁰ TOR 1, T1417.9–17 (Freney); investigator’s note of Quinn, ex 216, tab 85, p 363.

²⁵¹ Investigator’s note of Quinn, ex 216, tab 85, pp 363–364.

²⁵² TOR 1, T954.23–26 (Quinn).

²⁵³ TOR 1, T949.36–38; T953.12–19; T954.10–26 (Quinn).

manager at Newcastle City LAC and was also acting crime manager for a time.²⁵⁴ As investigations manager, he had had a supervisory role in relation to Strike Force Lantle since its formation in September–October 2010.²⁵⁵ He reported to Detective Chief Inspector Tayler.²⁵⁶

10.169 Having attended the 2 December 2010 meeting, Quinn prepared a four-page investigator’s note dated 3 December 2010, recording the events of the meeting.²⁵⁷ He also prepared a one-page document, again dated 3 December, in which he summarised the ‘outcomes’ of the meeting.²⁵⁸ It is convenient to refer to this latter document as the ‘outcomes summary’.

10.170 Quinn told the Commission that he (and no one else) prepared the investigator’s note on 3 December 2010.²⁵⁹

The outcomes summary

10.171 Quinn said the purpose of the outcomes summary was, in terms of the E@gle.i police online database system, to provide a summary of what was contained in the more detailed investigator’s note.²⁶⁰

10.172 Quinn gave evidence that the outcomes summary accurately reflected his recollection of the outcomes of the meeting.²⁶¹ The document is entitled ‘Case Conference 2 December 2010’, and alongside the subheading ‘Brief Description’ Quinn made the following entry:

On 2 December 2010 a case conference was held regarding this investigation.

The outcomes of the conference were:

1. Det. Insp. Fox to provide all relevant documents pertaining to his investigation held by him;
2. Debrief to be held with Helen Keevers. SCC [State Crime Command] staff to be invited to attend meeting.
3. No officer to speak with media about this investigation without the knowledge of Supt. Mitchell.
4. Summary document to be prepared by Det. Sgt. Steel to facilitate assessment by SCC as [to] whether investigation fits their charter.²⁶²

10.173 In relation to the first summarised outcome, Quinn told the Commission he could not now recall whether the language used was in the form expressly of a direction or instruction but that there was certainly ‘an arrangement whereby Inspector Fox would provide that information’.²⁶³ He clearly remembered, however, that Fox arrived at the meeting without the material (the witness statements) they had spoken about.²⁶⁴ Quinn said, ‘I recall being very surprised that he would leave them behind’.²⁶⁵

²⁵⁴ TOR 1, T952.16–46; T956.22–24 (Quinn).

²⁵⁵ TOR 1, T953.21–25; T955.31–35 (Quinn).

²⁵⁶ TOR 1, T955.37–38 (Quinn).

²⁵⁷ Investigator’s note of Quinn, ex 216, tab 85, pp 361–365.

²⁵⁸ TOR 1, T970.8–27 (Quinn); investigator’s note of Quinn, ex 216, tab 85, p 360.

²⁵⁹ TOR 1, T968.36–45 (Quinn). Quinn said that he prepared the investigator’s note ‘in its entirety’.

²⁶⁰ TOR 1, T970.17–22 (Quinn).

²⁶¹ TOR 1, T970.24–27 (Quinn).

²⁶² Investigator’s note of Quinn, ex 216, tab 85, p 360.

²⁶³ TOR 1, T970.37–46 (Quinn).

²⁶⁴ TOR 1, T970.37–46 (Quinn); see also, investigator’s note of Quinn, ex 216, tab 85, p 361.

²⁶⁵ TOR 1, T971.19–20 (Quinn).

The investigator's note

- 10.174 Quinn told the Commission the investigator's note dated 3 December 2010 that he had prepared accorded with his general recollection of the meeting.²⁶⁶
- 10.175 Quinn said there was an expectation that he would prepare an investigator's note to summarise what emerged from the meeting.²⁶⁷ He also said that, although he does not now have a specific recollection of doing so, he was certain he would have taken notes during the meeting for the purpose of preparing the investigator's note.²⁶⁸
- 10.176 For his part, Mitchell gave evidence to the effect that, in view of what was to be discussed at the meeting, notes should have been taken. He said he asked Quinn to take minutes and prepare a file note covering what transpired. He also directed that the file note be included in the E@gle.i holdings.²⁶⁹
- 10.177 As noted, Quinn said he prepared the investigator's note 'in its entirety'.²⁷⁰ He said that, for the document to be accepted on the E@gle.i system, another (more senior) officer would have had to have reviewed it. The document was not altered as a result of any such review.²⁷¹ Mitchell gave evidence to the effect that, as the senior officer present at the meeting, he would have reviewed and approved the investigator's note before it was entered on E@gle.i.²⁷² Quinn denied any suggestion that the investigator's note left out a great deal of the conversation that occurred at the meeting.²⁷³
- 10.178 Having regard to the importance of events at the meeting it is worth setting out the parts of the investigator's note relating to that part of the meeting Fox attended:

Narrative:

At 12.25pm on Thursday 2 December 2010, a meeting was held at Waratah Police Station in relation to S/F LANTLE. Officers present were:

- Supt. Mitchell
- Supt. Haggett
- DCI Tayler
- D.I. Fox
- Det. Sgt. Steel
- Det. Sen. Con. Freney
- Det. Sen. Sgt. Quinn

Detective Inspector Parker (Northern Region) arrived midway through the meeting.

Superintendent Mitchell outlined that Newcastle City LAC has carriage of investigations relating to [AK], [AL] and [Mr] Gogarty. This was at the direction of the Region Commander. Mr Mitchell identified that the investigations presented a high level of risk to the organization and needed to be managed well. He acknowledged that Detective Inspector Fox had a strong background in relation to the nature of the complaints, and that for the investigation team to perform their function, it was essential that he disclose all relevant information to the team.

²⁶⁶ TOR 1, T969.19–23 (Quinn).

²⁶⁷ TOR 1, T969.38–47 (Quinn).

²⁶⁸ TOR 1, T969.38–47 (Quinn).

²⁶⁹ Statement of Mitchell, dated 15 February 2013, ex 22, para 21.

²⁷⁰ TOR 1, T968.36–45 (Quinn).

²⁷¹ TOR 1, T971.22–45, T973.36–44 (Quinn).

²⁷² TOR 1, T1027.27–44 (Mitchell).

²⁷³ TOR 1, T973.46–974.2 (Quinn).

Inspector FOX indicated that he had compiled all relevant documents held by him, but had mistakenly left them behind. He indicated that he had no problem disclosing information held by him to the investigation team. He indicated that he would make arrangements for the documents to be presented to the investigation team. He indicated that the information available would indicate that the clergy abuse/cover up is widespread and that there is a need for a broad ranging task force to be established to investigate it. He indicated that he had recently documented this in a report to the Region Commander. [emphasis added]

In order to control confidentiality in relation to the investigation, Supt. Mitchell indicated that nobody was to speak to the media (including Joanne MCCARTHY) without his knowledge. Mr Mitchell indicated that in the event police are contacted by McCarthy, he was to be advised.

Inspector Fox indicated that in addition to his knowledge of the [AK] and [AL] cases, he had interviewed another lady named [AJ]. Fox indicated that [AJ] had only wanted to deal with him. She is a victim and a witness and has information dating back to the 1960s about offending behaviour by high ranking members of the Catholic Church including [redacted], Hart, Clarke and Lucas. He indicated that she was from the inner sanctum of the Church and had been privy to a lot of conversations. She is born in 1951 and was ten when offences occurred against her. He indicated that she was very fragile.

Inspector Fox also indicated he had a statement from a Mike Stillwell [sic] who was a teacher at Merriwa.

Inspector Fox indicated that he had begun obtaining a statement from [AK] who resides in Queensland. He indicated that a loose arrangement had been made to complete that statement when [AK] returned to the Newcastle area over the Christmas break.

Inspector Fox indicated that he had interviewed Leo Clarke after his retirement, primarily in relation to his investigations concerning Fletcher and Ryan. He did however speak with Clarke about McAlinden. He believes that Clarke deliberately lied to him when Clarke advised him that he knew of no other incidents involving McAlinden.

Inspector Fox indicated that he had come into the investigations on and off over the years. He indicated that in 2004 he submitted two reports to SCC [State Crime Command] calling for a far reaching investigation of the incident. He had also submitted a number of information reports. He indicated that he had informants in the form of a priest and sister. He indicated that he had no doubts that there was collusion in the Church.

Det Insp. Parker arrived at this stage of the meeting.

Insp. Fox indicated that due to the scale of the investigation it was imperative that a task force was established.

Supt. Mitchell indicated that there was a need for LAC investigators to collate available information at this stage in order to allow further assessments to be made.

Insp. Parker indicated that the Region Commander's firm view [was] that the file was to remain with the LAC. It was a matter for the LAC to collate the information and present that to S.C.C. if that was appropriate. Insp. Parker indicated that if the information gathered went beyond the Terms of Reference, the L.A.C. would need to identify why.

Insp. Fox outlined that the information given by [AJ] discloses other witnesses and potential witnesses. He reiterated his earlier view that a task force needs to be pursued.

The meeting was concluded at this point and Supt. Haggett and Insp. Fox departed.²⁷⁴

10.179 Quinn's investigator's note also recorded the events of the second part of the meeting.²⁷⁵ As noted, officers Mitchell, Tayler, Parker, Townsend, Quinn, Steel and Freney were present for the second part of the meeting. It included a briefing of Townsend by Steel about information

²⁷⁴ Investigator's note of Quinn, ex 216, tab 85, pp 361–363.

²⁷⁵ *ibid*, pp 363–364.

provided earlier that day by Ms Helen Keevers, former head of Zimmerman House, the child protection unit in the Diocese.

10.180 The investigator's note further recorded the following:

Supt. Mitchell indicated that the issue for the L.A.C. is the scope of the investigation. Inspector Townsend agreed that the scope of the investigation had greatly broadened since it was first allocated to the L.A.C. It was agreed that the following would occur:

1. Inspector Parker would contact Insp. Jacobs of S.C.C. to invite an investigator(s) from Sex Crimes to attend a debrief to be held with Keevers.
2. Det. Sgt. Steel to conduct the debrief in the week commencing 6 December 2010.
3. Det. Sgt. Steel to collate all information available to date after the debrief and formulate a summary document to be forwarded to S.C.C. for their consideration as to whether or not the investigation would fit their charter.

Meeting Concluded 1.15pm²⁷⁶

Additional aspects of Mr Quinn's evidence

10.181 Quinn told the Commission that the first part of the meeting, when Fox was present, was 'very cordial',²⁷⁷ with no vehement conversation, no stand-up shouting and no loud exchanges.²⁷⁸

10.182 Quinn carefully considered but disagreed with a series of propositions put to him by counsel for Fox. In this regard, Quinn gave evidence to the following effect:

- Fox had not directed a comment to Mitchell, in the general hearing of the meeting, in relation to the amount of information that McCarthy had and had *not* said it was necessary to 'bring her on board'.²⁷⁹
- Mitchell had not responded in a visibly angrily way to such a suggestion, saying 'She's not running this investigation' and directing that any inquiries made by McCarthy were to go through him.²⁸⁰
- Mitchell had not said to Fox, 'You are directed to bring them [the witness statements] and hand them over to Brad Tayler'.²⁸¹
- Fox had not told Mitchell that AJ had refused to speak to any police other than him and that you could not 'pass these people around like numbers'.²⁸²
- Mitchell did not say 'I am formally directing you to stop all contact with Joanne McCarthy'.²⁸³

10.183 Counsel for Fox also put propositions to the same effect to other police witnesses. Quinn gave evidence in which he disagreed with the proposition that the forum was less a meeting than an inquisition into what Fox knew and what he had been investigating.²⁸⁴ He also said that at no

²⁷⁶ *ibid*, p 364.

²⁷⁷ TOR 1, T969.22–36 (Quinn).

²⁷⁸ TOR 1, T969.25–36 (Quinn).

²⁷⁹ TOR 1, T974.20–38 (Quinn); see also, TOR 1, T826.39–827.7 (Tayler); TOR 1, T1427.23–39 (Freney).

²⁸⁰ TOR 1, T974.40–975.2 (Quinn).

²⁸¹ TOR 1, T976.15–24; T977.16–21 (Quinn).

²⁸² TOR 1, T976.26–43 (Quinn).

²⁸³ TOR 1, T980.46–981.8 (Quinn).

²⁸⁴ TOR 1, T985.9–13 (Quinn).

time during the meeting was Mitchell visibly angry and at no time did he (Mitchell) raise his voice to Fox.²⁸⁵

10.184 Quinn agreed with counsel for Fox that Mitchell told the meeting Northern Region had said Newcastle City LAC would be investigating the matter.²⁸⁶ The first page of Quinn's investigator's note similarly recorded Mitchell stating, 'Newcastle City LAC has carriage of investigations relating to [AK], [AL] and [Mr] Gogarty. This was at the direction of the Region Commander'.²⁸⁷

10.185 Quinn recalled that there had been a discussion about the statements that Fox had been supposed to bring to the meeting but not in the terms that Fox had described.²⁸⁸

10.186 As to whether an instruction was given to Fox to hand over the witness statements, Quinn told the Commission that all he could recall was:

... that the outcome of the meeting was an arrangement where Chief Inspector Fox would arrange to bring the documents and my recollection is that that was agreed upon without any specific request needing to be made – that was an offering by Detective Chief Inspector Fox.²⁸⁹

10.187 Quinn also said, 'There was no challenge by Detective Chief Inspector Fox to anything whatsoever that Superintendent Mitchell said at that meeting'.²⁹⁰

Assistant Commissioner Mitchell's evidence

10.188 In December 2010 Assistant Commissioner Max Mitchell was commander of the Newcastle City LAC.²⁹¹ It was he who convened the 2 December 2010 meeting.²⁹² As a courtesy he spoke with Haggett, his counterpart at Port Stephens LAC, but otherwise he asked Tayler to organise the meeting.²⁹³

The purpose of the meeting

10.189 Mitchell said the purpose of the meeting was twofold – first, to obtain documentation from Fox for the Strike Force Lantle investigators and, second, to ensure that the media interest generally (including that of McCarthy) could be handled without any prejudice to the conduct or integrity of the investigation.²⁹⁴

10.190 It is also apparent that the perceived leakage of police information to McCarthy was a primary motivating factor in Mitchell's decision to call the meeting. In a statement provided to the Commission he said:

It was obvious to me prior to 2 December 2010, based on the information that was being received, that there was leakage of information from information contained in police holdings to Ms McCarthy. My view at the time, and this remains my view today, is that when police conduct an investigative operation, it is essential that there is no media leakage, or other information made known to the media which could impact upon the effectiveness of the investigation, or the possibility that the investigation might be compromised. To my mind it was essential that the handling of the media was crucial to the success of Strike Force Lantle. For this reason, I wanted to make it clear to the personnel involved in the meeting that if any person from the media were to approach them or any person associated

²⁸⁵ TOR 1, T985.15–22 (Quinn).

²⁸⁶ TOR 1, T975.24–33 (Quinn).

²⁸⁷ Investigator's note of Quinn, ex 216, tab 85, p 361.

²⁸⁸ TOR 1, T975.38–976.13 (Quinn).

²⁸⁹ TOR 1, T977.9–14 (Quinn).

²⁹⁰ TOR 1, T978.36–38 (Quinn).

²⁹¹ TOR 1, T991.24–30 (Mitchell).

²⁹² TOR 1, T1026.27–29 (Mitchell); statement of Mitchell, dated 15 February 2013, ex 22, para 19.

²⁹³ TOR 1, T1026.27–36; T1026.43–46 (Mitchell).

²⁹⁴ Statement of Mitchell, dated 15 February 2013, ex 22, para 19.

with Strike Force Lantle, then I was to be informed of such approach. I also made it clear, as the case conference notes indicate, that it was my view that no police officer should be speaking to the media without my knowledge.²⁹⁵

The investigator's note

- 10.191 In view of the importance of the matters to be dealt with during the meeting, Mitchell determined that notes on what was discussed should be made and maintained. For this reason he asked Quinn to take notes of the meeting and that any file note be included in the E@gle.i holdings (as noted).²⁹⁶
- 10.192 Mitchell said that, while he had a 'vague recollection' of the meeting, going over the investigator's note had improved his recollection.²⁹⁷ As noted, as the senior officer present, he approved the entry of the investigator's note on the E@gle.i system.²⁹⁸

Detective Chief Inspector Fox's failure to produce documents

- 10.193 Mitchell said that, as the investigator's note shows, at the meeting Fox was asked to produce documents (witness statements) but he (Fox) said he had mistakenly left the documents behind. For that reason Fox produced no documents. Mitchell said that before the meeting it had been his intention that Fox would produce the documents sought. He (Mitchell) also hoped that whatever information Fox had would be made freely available to the Strike Force Lantle investigators.²⁹⁹
- 10.194 Mitchell said he was disappointed that Fox had not brought the documents with him: this meant they could not be discussed at the meeting. Mitchell said, however, he (Mitchell) was not angry about this fact: had he been angry about it he would have asked Fox to return to Port Stephens to retrieve the documents and then return to the meeting (it being a round trip of only about 40 minutes).³⁰⁰

The tone of the meeting

- 10.195 Mitchell said he thought he had opened the meeting.³⁰¹ He made it clear that Newcastle City LAC would handle the investigation, and he named particular officers in the context of the meeting who had carriage of the investigation.³⁰²
- 10.196 In relation to the tone of the meeting, Mitchell said it was conducted in a cordial fashion. Asked whether there were any heated moments or moments of irritation or annoyance expressed by him, he said there were 'none whatsoever'.³⁰³ As to the other officers present and whether there had been any heated exchanges or similar, he said the meeting was very cordial and there were no aggressive outbursts by anyone.³⁰⁴

²⁹⁵ *ibid* para 20.

²⁹⁶ *ibid* para 21; see also investigator's note of Quinn, ex 216 tab 85.

²⁹⁷ TOR 1, T1027.21–25 (Mitchell).

²⁹⁸ TOR 1, T1027.27–44 (Mitchell).

²⁹⁹ Statement of Mitchell, dated 15 February 2013, ex 22, para 21; see also investigator's note of Quinn, ex 216, tab 85.

³⁰⁰ TOR 1, T1028.26–46 (Mitchell).

³⁰¹ TOR 1, T1029.32 (Mitchell).

³⁰² TOR 1, T1088.2–6 (Mitchell).

³⁰³ TOR 1, T1028.3–15 (Mitchell).

³⁰⁴ TOR 1, T1028.7–15 (Mitchell).

Instructions given

10.197 Mitchell said he had an independent recollection of what he asked Fox to do (or not do) at that meeting.³⁰⁵ In relation to directions or instructions he expressed to Fox, Mitchell said:

Can I say this? I never use the word 'direction', I never use the phraseology, 'I am directing'. My discussions initially were around DCI's Fox's background and bringing documents to the meeting. I can't give you any better description of how I verbalised outside —³⁰⁶

Mitchell said he was confident he did not use the word 'direction' to Fox in relation to any activities.³⁰⁷

10.198 Mitchell agreed there was, at least, an instruction given to those present about not speaking to the media. He told the Commission:

My conversation with everyone present, all were informed by myself that they were not to speak with the press, to speak with Joanne McCarthy, without first raising the issue with myself and seeking permission. Now, that was clearly articulated to all present at that meeting and it was not directed to one individual who was in that room.³⁰⁸

10.199 He reiterated that this instruction was directed not to one individual but to everyone present.³⁰⁹ He recalled that there was general agreement, and no dissent, from those present in relation to this instruction.³¹⁰

10.200 Mitchell said he regarded the instructions he issued at the meeting as instructions rather than formal directions. In this respect, his statement for the Commission stated:

In relation to the instructions given by myself to those present at the meeting on 2 December 2010, it is my view that the instructions given to the police officers present, as to what they should or should not do, were more in terms of instructions given by myself rather than any formal direction to a police officer. To my mind, a direction in the meaning of the operation of the NSWPF connotes something stronger than mere discussion and agreement about instructions being given. In my experience and in my belief, a direction is something stated by a senior officer to a more junior officer, in which the senior officer expects compliance in relation to what is requested, and in default of any compliance, disciplinary action may be taken.³¹¹

10.201 When questioned by counsel assisting, Mitchell confirmed his view that he did not give a direction to any officer present, including Fox.³¹² He agreed, however, that at the meeting he gave one or more lawful orders to those present, including Fox.³¹³ As to the content of those lawful orders, he said:

Well, the most important was the fact that DCI Fox was to supply statements or documents that he had, as initially requested. Second to that, all police were instructed not to speak with the media or Joanne McCarthy without my knowledge or permission, and I think the other thing I made clear was the fact that Newcastle LAC was to investigate this matter as required by the region commander.³¹⁴

10.202 In relation to his understanding in giving those lawful orders of any potential adverse consequences for an officer who did not comply, Mitchell said at the time the instructions were

³⁰⁵ TOR 1, T1029.11–16 (Mitchell).

³⁰⁶ TOR 1, T1029.36–40 (Mitchell).

³⁰⁷ TOR 1, T1029.42–44 (Mitchell).

³⁰⁸ TOR 1, T1030.27–32 (Mitchell).

³⁰⁹ TOR 1, T1030.34–36 (Mitchell).

³¹⁰ Statement of Mitchell, dated 15 February 2013, ex 22, para 25.

³¹¹ *ibid* para 24.

³¹² TOR 1, T1088.31–36 (Mitchell).

³¹³ TOR 1, T1088.38–41 (Mitchell).

³¹⁴ TOR 1, T1088.45–1089.4 (Mitchell).

given it was very clear what his expectations were. He did not form an opinion about what was going to arise at a later stage.³¹⁵ No one expressed dissent or raised any queries, and it was his understanding that Fox was in agreement about bringing the documents with him or supplying them to Newcastle City LAC.³¹⁶

- 10.203 Of particular importance in connection with the Commission's first term of reference, Mitchell denied having given any instruction or direction for Fox to cease investigating offences:

In relation to the subject matters relevant to Strike Force Lantle. **I can indicate that at no time did I give any instruction or direction to Detective Chief Inspector Fox that he was to cease investigating any matters in which he was engaged in at the time.** As far as I was concerned, in my role at the time and in whatever management responsibility I had with Strike Force Lantle, the extent of Detective Chief Inspector Fox's involvement was to be that of providing documentation to Strike Force Lantle that may have been relevant to the investigation, as well as providing information which may have been of assistance to the Investigators.³¹⁷ [emphasis added]

- 10.204 In the following exchange with counsel assisting, Mitchell similarly emphasised that Fox remained free to investigate other matters relating to paedophilia in the Catholic Church but not those that were the subject of Strike Force Lantle:

Q. ... did you at any time in the meeting on 2 December direct, instruct or request Detective Chief Inspector Fox to cease investigating matters relating to allegations of church paedophilia or concealment of any such matters?

A. I can say that I never said any words to that effect.

Q. Given that, by the meeting of 2 December 2010, you had been made aware that Detective Chief Inspector Fox had been carrying out some investigations into those types of matters, were you content for him to continue doing so?

A. Yes. In my view, having listened to DCI Fox at that meeting, I had – I made no real decision in terms of what he was doing. I was only concerned about the investigation and Strike Force Lantle proceeding within Newcastle for conceal serious offence.³¹⁸

Detective Chief Inspector Fox's role in Strike Force Lantle

- 10.205 Mitchell said at no time did Fox mention to him that he wanted to play a more active role in Strike Force Lantle.³¹⁹ He also said, however, that it would not have been appropriate for Fox to have been appointed to Strike Force Lantle:

The responsibility for the investigation was that of the Newcastle City Local Area Command; upon the instructions given and the terms of reference, it was to be managed by that command, with personnel from that Local Area Command to be appointed to it. It was not to be a regional investigation and, for that reason alone, it would not have been appropriate for Detective Chief Inspector Fox to have been appointed to an active role in the investigations. At this time, Detective Chief Inspector Fox was the Crime Manager in a different Local Area Command at Port Stephens.³²⁰

- 10.206 Mitchell said that from all indications and from what was said he believed Fox was content to pass on the documentation and information to Lantle.³²¹ Having listened to Fox at the meeting,

³¹⁵ TOR 1, T1089.6–12 (Mitchell).

³¹⁶ TOR 1, T1089.14–20 (Mitchell); see also statement of Mitchell, dated 15 February 2013, ex 22, para 25.

³¹⁷ Statement of Mitchell, dated 15 February 2013, ex 22, para 26.

³¹⁸ TOR 1, T1037.42–1038.10 (Mitchell).

³¹⁹ TOR 1, T1030.46–1031.3 (Mitchell); statement of Mitchell, dated 15 February 2013, ex 22, para 27.

³²⁰ Statement of Mitchell, dated 15 February 2013, ex 22, para 28.

³²¹ TOR 1, T1031.5–8 (Mitchell).

Mitchell said he in fact thought Fox appeared to be quite satisfied with supplying documents to investigators.³²²

May 2011: an internal police complaint

10.207 As further described below, in May 2011 Fox was subject to an internal police disciplinary process on the basis that he had breached a direction issued on 2 December 2010 not to communicate with the media. At the Commission's hearings Mitchell was questioned about the apparent inconsistency between his evidence to the Commission that he believed he did not issue a direction (as opposed to an instruction) to Fox and his (Mitchell's) apparent acceptance in May 2011 of a description of a complaint against Fox for breaching a direction.³²³

10.208 Mitchell gave the following further evidence:

Q. Finally, when you were spoken to by the investigator in April 2011 about the complaint that had been laid against DCI Fox for non-compliance with a direction given by you, did you take no objection to the description of the non-compliance with a direction because you equated this non-compliance with non-compliance with a lawful order and that you had in fact given DCI Fox a lawful order, in effect?

A. That's correct, ma'am, yes.³²⁴

Detective Chief Inspector Fox's evidence

10.209 Fox told the Commission that when he arrived at the 2 December 2010 meeting the first thing that surprised him was that there no was no one present from the State Crime Command.³²⁵

10.210 He recalled that Mitchell had explained that Newcastle City LAC was in charge of the investigation. It was at about that stage, he said, that it became clear to him that Strike Force Lantle would be investigating the material McCarthy had provided and matters raised by the witnesses whose statements he had obtained.³²⁶

10.211 Fox said Mitchell asked him if he had brought the witness statements with him and he (Fox) said he had left them on his desk (at Port Stephens LAC). Mitchell told him to arrange for them to be brought to Newcastle that day.³²⁷

10.212 Fox said that at the meeting he was given the opportunity to outline what investigations he had been carrying out.³²⁸ He said he also outlined the contents of his report of 25 November 2010³²⁹ and described AJ's statement as 'explosive'.³³⁰ He said a task force should be set up.³³¹ Fox told the Commission he regarded a task force as something more substantive and wide-ranging than a strike force.³³² He said that during the meeting no one talked over him when he was talking and people appeared to be listening.³³³

³²² TOR 1, T1031.10–14 (Mitchell).

³²³ TOR1, T1032.32–1039.26 (Mitchell); see also complaint investigation chronology P1100773, dated 16 March 2011 to 19 May 2011, ex 216, tab 96, p 415.

³²⁴ TOR 1, T1089.22–30 (Mitchell).

³²⁵ TOR 1, T106.28–30 (Fox).

³²⁶ TOR 1, T107.36–44 (Fox).

³²⁷ TOR 1, T108.13–19 (Fox).

³²⁸ TOR 1, T108.7–10 (Fox).

³²⁹ TOR 1, T108.21–30 (Fox).

³³⁰ TOR 1, T108.25–30 (Fox).

³³¹ TOR 1, T109.35–47 (Fox).

³³² TOR 1, T109.9–12; T109.35–41 (Fox).

³³³ TOR 1, T110.6–10 (Fox).

10.213 Fox said everyone at the meeting was directed not to contact the media:

I was directed – everyone there was told by Superintendent Mitchell that there was to be no contact with the media ...³³⁴

10.214 Fox said he then raised the subject of McCarthy and that Mitchell ‘became quite hostile’ and said, ‘I am directing you not to contact Joanne McCarthy again. All contact with her will be through me’.³³⁵ Fox said he then referred to McCarthy as being a valuable resource – ‘Joanne McCarthy knows more about this than this entire room put together’ – and suggested that it would be ‘stupid to cut her out of the loop’.³³⁶

10.215 Fox said Mitchell also told him he was not to have any further contact with the witnesses. He said he protested about this and tried to explain that he had built up a degree of trust and rapport with the witnesses and that the primary witness, AJ, had specifically sought him out.³³⁷ Fox said that, after pleading unsuccessfully to be able to remain in contact with the witnesses, he said to Mitchell he should at least be able to contact the witnesses to let them know he had been ordered off the case (which he said Mitchell ultimately agreed to).³³⁸

10.216 Fox told the Commission he understood what Mitchell said to him at the 2 December 2010 meeting to be a direction to cease investigating matters to do with church paedophilia and that this was the first time any senior officer had issued to him such a direction or order.³³⁹ He said he understood that Mitchell had given him four directions:

1. to hand over every statement and related document he had on the church concealment allegations³⁴⁰
2. to stop investigating the church concealment allegations³⁴¹
3. not to talk to the media³⁴² and not to speak with Ms McCarthy³⁴³
4. not to have any further contact with the witnesses.³⁴⁴

10.217 In respect of the second suggested direction, Fox said Mitchell had said, ‘This is Newcastle’s investigation’ and made it very clear that he (Fox) was to have no investigative role. Fox said Mitchell had not used the word ‘direction’ and had not expressly told him to ‘stop investigating’ or ‘cease investigating’.³⁴⁵

10.218 Fox similarly accepted that Mitchell did not say to him that he (Fox) was not to investigate anything to do with church paedophilia or that he was not to talk with any other police officers about church paedophilia.³⁴⁶ Fox gave the following further evidence:

Q. Superintendent Mitchell was directing you in relation to persons you had already interviewed not to speak to them?

³³⁴ TOR 1, T110.45–47; T111.36–112.2 (Fox).

³³⁵ TOR 1, T110.47–111.5 (Fox).

³³⁶ TOR 1, T111.7–15 (Fox).

³³⁷ TOR 1, T111.19–28 (Fox).

³³⁸ TOR 1, T111.30–35 (Fox).

³³⁹ TOR 1, T133.47–134.16 (Fox).

³⁴⁰ TOR 1, T144.15–26 (Fox).

³⁴¹ TOR 1, T144.28–44 (Fox).

³⁴² TOR 1, T148.44–46 (Fox).

³⁴³ TOR 1, T145.36–42 (Fox).

³⁴⁴ TOR 1, T146.47–T147.22 (Fox).

³⁴⁵ TOR 1, T144.31–39 (Fox).

³⁴⁶ TOR 1, T144.46–145.5 (Fox).

- A. They would have – I would imagine obviously they are included in that comment by him, yes.
- Q. Did Superintendent Mitchell say to you, “You are not to speak to any victim of church paedophilia”?
- A. Outside of that inquiry, I didn’t interpret it that way, no.
- Q. It was clear to you, was it, that the directions were focused on the investigation of the matters that had already been forwarded to Newcastle Local Area Command?
- A. Yes.³⁴⁷

10.219 And further:

- Q. What did you understand to be the directions that were given to you by Superintendent Mitchell on 2 December at the meeting?
- A. In short, that I was to hand over every statement and related document that I had, that I had been working on, that I was to cease --
- Q. I’m going to break that down. That’s direction 1?
- A. Yes.
- Q. To hand over everything you’ve been working on?
- A. Yes.
- Q. And to stop investigating?
- A. Yes.
- Q. Did he use those terms, “stop investigating”, “cease investigating”?
- A. He used the term, “This is Newcastle’s investigation.” And there were things said before at the meeting as well that added to my view of what was being said. But he made it very clear. I left in doubt that what he was saying to me was, “You will have no role, no function, whether it be a leader or in any way, shape or form in this investigation from here.”
- Q. So it was to cease having an active role in the investigation that was to become or had become Strike Force Lantle?
- A. Yes.
- Q. **Did Superintendent Mitchell say to you that you were to not investigate anything to do with church paedophilia?**
- A. **No.**
- Q. **He didn’t say, “You are not to talk to any other officers in the police force about church paedophilia”?**
- A. **No.**
- ...
- Q. The officers who were going to be working on Strike Force Lantle were identified to you in that meeting?
- A. Yes.
- Q. Were you told that you weren’t to speak to them?

³⁴⁷ TOR 1, T147.26–40 (Fox).

A. No.³⁴⁸ [emphasis added]

10.220 In relation to the third suggested direction, Fox said that initially Mitchell had directed everyone present not to talk to the media.³⁴⁹ He said this arose from an exchange he had with Mitchell in which he (Mitchell) had said:

I am directing you to have no further contact with Joanne McCarthy. The only person that will be talking to her will be me. She is to be cut out of this. Any contact you have with her is to be documented and forwarded to me in an investigator's note.³⁵⁰

10.221 Fox agreed that it was the usual procedure in sensitive or confidential investigations for some control to be exercised over which police officers were permitted to speak with the media.³⁵¹ He also accepted the general proposition that leaking bits of information about an investigation could sabotage investigative steps being taken.³⁵²

10.222 In relation to the fourth suggested direction about contact with witnesses, Fox regarded it as a direction not to speak to any person associated with the investigation as a witness, including individuals he had already interviewed.³⁵³ He said the direction specifically followed an exchange he had had with Mitchell in which he (Fox) said:

These people have been through hell. They've trusted me and I've promised them that I would follow this through ... I've sat with them, one woman for 28 hours getting her statement. You can't just treat her like garbage or a number, she is a victim.³⁵⁴

According to Fox, Mitchell said, 'You're not to contact those [the witnesses]'³⁵⁵ and 'You are not to talk ... with any witnesses'.³⁵⁶

10.223 Fox was, however, permitted to inform witnesses that he would no longer be involved in the investigation. He told the Commission:

... I said, 'Well, I've at least got to let them know that I'm being ordered off the case' and he gave me that concession that I could contact them to let them know.³⁵⁷

10.224 Under questioning by counsel assisting, Fox agreed that Mitchell had not directed him in relation to not speaking with victims of church paedophilia generally:

Q. Did Superintendent Mitchell say to you, 'You are not to speak to any victim of church paedophilia'?

A. Outside of that inquiry, I didn't interpret it that way, no.

Q. It was clear to you, was it, that the directions were focused on the investigation of the matters that had already been forwarded to Newcastle Local Area Command?

A. Yes.³⁵⁸

An email to Ms McCarthy

10.225 On the evening of 2 December 2010 Fox sent an email to Ms Joanne McCarthy of the *Newcastle Herald*, providing his summary of the events of 1 and 2 December in connection with his

³⁴⁸ TOR 1, T144.15–145.17 (Fox).

³⁴⁹ TOR 1, T148.44–45; T110.45–47; T111.37–112.2 (Fox).

³⁵⁰ TOR 1, T145.38–42 (Fox).

³⁵¹ TOR 1, T149.33–37 (Fox).

³⁵² TOR 1, T150.1–4 (Fox).

³⁵³ TOR 1, T147.13–18, 26–30 (Fox).

³⁵⁴ TOR 1, T147.3–7 (Fox).

³⁵⁵ TOR 1, T147.8 (Fox).

³⁵⁶ TOR 1, T147.22 (Fox).

³⁵⁷ TOR 1, T147.8–11; T111.30–35 (Fox).

³⁵⁸ TOR 1, T147.32–40 (Fox).

interaction with police and Strike Force Lantle.³⁵⁹ In the email he also advised McCarthy that police might be monitoring his phone and email communications and that he would ‘take the punt’ on using his home email and his wife’s mobile. He said that his wife, Penny, was ‘fine with this’. He apologised for all the ‘007 stuff’ and also said that if his calls to her over the past six weeks were picked up (by senior police) he would have to explain that McCarthy was chasing him up about a different subject (the Abernethy fires).³⁶⁰

10.226 In his email, Fox wrote that Mitchell did virtually all the talking at the meeting:

Meeting consisted of Haggett who remained mute throughout. Kirrin [sic] Steel who also remained mute. Justin Quinn & Brad Tayler, both [of] whom had minimal to say, A young male (Not introduced & not known to me) took minutes of the meeting. Graham [sic] Parker arrived during meeting and Tony Townsend towards the end. Virtually all speaking was done by Max Mitchell. Nothing regarding the investigation was discussed. No person from State Crime present. I was asked if I had any documents relating to investigations into the Catholic Church. I acknowledged that I did have (which I have spelt out in two previous reports to region). I was ‘told’ that I was to hand over to Justin Quinn any statement and other documentation I held on these matters. I indicated I had already arranged to do that with Justin Quinn the preceding day. (Quinn nodded in agreement).³⁶¹

10.227 Fox continued:

Mitchell then explained that Newcastle City Command were to conduct the sole investigation and that had been agreed by the region commander. He did not wish for any other inquiry or persons to speak to witnesses and they were to retain sole autonomy. I was required to acknowledge that I understood this was the region commander’s decision.

At this point it was evident that nothing relating to an investigation was going to be discussed and that the sole purpose for my attendance was to tell me to butt out. I felt that Mitchell had been told by Quinn of our discussion of the previous day and he probably did not want me feeling that I could retain any role, hence the meeting to occur on ‘his patch’ as opposed to Raymond Terrace.³⁶²

10.228 Fox further wrote that he had been asked about what statements he had taken and that he provided information and described AJ’s statement as ‘explosive’. The email then continued:

I was then told by Mitchell that **the matter would be investigated by Newcastle ‘ONLY’** and that **I was not to speak to any media on the matter**. He singled out Joanne McCarthy who he stated his staff had met with. She had been stirring the matter up in a series of articles and it had been decided to remove her from the investigation as she was endeavouring to impose herself as a mediator with witnesses and this would not be allowed if the matter was to go ahead.³⁶³ [emphasis added]

...

I was then told in no uncertain terms that I was not to have contact with Joanne McCarthy and any attempt at contact was to be immediately reported by me in the form of an investigator’s note or report. This had been decided upon between himself (Mitchell) and the region commander. ‘The region commander has made that very clear’. He looked to Parker for acknowledgement. Townsend then [said], ‘She has’. No doubt my name is mud with her and I can only imagine what has occurred between her and Mitchell. No doubt this will come back to me in some form at some time.³⁶⁴ [emphasis added]

³⁵⁹ McCarthy email 12, ex 216, tab 84.

³⁶⁰ *ibid*, p 359.

³⁶¹ *ibid*, p 357.

³⁶² *ibid*.

³⁶³ *ibid*, pp 357–358.

³⁶⁴ *ibid*, p 358.

10.229 Fox further wrote:

He then asked if I had any questions about that. I asked, 'What exactly are you investigating?' He appeared annoyed at having given me this question and said the matters involving [AK], [AL] and Peter Gogerty [sic] (I didn't mention my knowledge of Gogerty – nor do I know if he already knew).

I explained I had investigated these matters for over a decade and had numerous contacts throughout the church in the region that were prepared to assist. At some point I stated that most of that was in my report of last week and I said, 'Which I assumed resulted in this meeting.' Mitchell stated he did not know of the report. I looked to Parker who went to pull a copy out and Mitchell motioned that he did not require it. Bullshit he had not seen it and I felt he wanted none of the others in the room to be aware of its contents.³⁶⁵

10.230 Fox concluded his email by saying:

The pricks can shove it. The whole thing stinks and they can bit [sic] me.³⁶⁶

Conclusion

10.231 It is remarkable that Fox would send such an email to McCarthy on the very day on which Mitchell had emphasised the importance of the confidentiality of the investigation and had instructed the police officers at the meeting (including Fox) not to communicate with the media about the investigation. Such conduct on Fox's part constituted the deliberate flouting of an instruction given by a senior officer.

10.232 The sending of this email to McCarthy in such circumstances amounts to an additional reason why it would have been inappropriate for Fox to have had any investigative role in Lantle and the church concealment investigation.

Mr Tayler's evidence

10.233 At the time of the meeting on 2 December 2010 Detective Chief Inspector Brad Tayler was the Crime Manager at Newcastle City LAC. He was a highly experienced detective and had previously been Crime Manager at Lake Macquarie LAC.³⁶⁷ His background and experience are detailed in Chapter 8.

10.234 Tayler told the Commission the purpose of the 2 December 2010 meeting was as follows:

... to sit down with Mr Fox and his [Tayler's] commander, Superintendent Mitchell, and those on the investigation, to, I suppose, clearly outline that Newcastle had been given the investigation by Superintendent Carlene York and to obtain any information from Inspector Fox that he had in relation to the matter so the investigation could proceed.³⁶⁸

10.235 Tayler agreed that the investigator's note of the meeting, prepared by Quinn and dated 3 December 2010, was accurate and consistent with his recollection and that he would have seen the note very soon after the meeting and checked that it accorded with his memory.³⁶⁹

10.236 Tayler gave evidence that during the meeting Mitchell asked Fox for his witness statements but that it was not (in Tayler's view) a direction.³⁷⁰

10.237 Tayler did not agree with the suggestion by counsel for Fox that he (Fox) had said, referring to the contacts and information provided by McCarthy, that she was 'all over this better than

³⁶⁵ *ibid.*

³⁶⁶ *ibid.*, p 359.

³⁶⁷ TOR 1, T623.15–624.44 (Tayler).

³⁶⁸ TOR 1, T774.18–24 (Tayler).

³⁶⁹ TOR 1, T775.2–44 (Tayler).

³⁷⁰ TOR 1, T831.10–27 (Tayler).

anyone'; nor did he agree that Fox had said McCarthy had to be 'in the loop'. He did, however, agree that Mitchell had referred to the matter being investigated by Newcastle City LAC but said he had not expressed it in the way Fox claimed.³⁷¹

- 10.238 In response to a question by counsel for Fox about the way Mitchell communicated to Fox that he was to provide the documents he had and was not to speak to McCarthy or the witnesses, Tayler said:

The meeting was not as you are portraying it. It was a meeting where we sat down and Mr Haggett and Mr Fox were told that Newcastle City were investigating it and had been directed to investigate it by the regional commander and requested to pass over any information or relevant information he had. He also provided us a verbal, I suppose, briefing as to what his knowledge was, and then a general direction was given to everybody there that there's to be no contact with the media, including Joanne McCarthy, only through Commander Mitchell. And then, after that, Mr Fox and Mr Haggett left.³⁷²

Ms Steel's evidence

- 10.239 At the time of the meeting on 2 December 2010 Detective Sergeant Kirren Steel was the officer in charge of Strike Force Lantle. She was an experienced police officer and had previously acted as crime manager in Detective Chief Inspector Tayler's absence.³⁷³ She subsequently left the NSW Police Force on medical grounds. Further details about Steel's background and experience are set out in Chapter 8.

- 10.240 Steel's duty book entry for 2 December 2010 records that she attended an initial meeting at 11.30 am with Mitchell, Quinn and Freney to discuss the investigation. Her duty book entry states:

... Out to Waratah [police station] with Det Freney. Meet with D/S/S Quinn re Keevers information. Then met with DCI Tayler, Sup Mitchell re same. Attend meeting with Sup Mitchell, Insp Townsend, Parker, Fox, Sup Haggett, DCI Tayler re S/F Lantle.³⁷⁴

- 10.241 Steel's diary also contains notes relating to the meeting of 2 December 2010. There is the following entry for 12.20 pm:

Fox, Haggett, Tayler, Quinn, Freney, Steel, Mitchell

Max asked Fox to produce documents.

" " no one to discuss with Joanne McCarthy.³⁷⁵

- 10.242 The diary entry also refers to AJ and her being a 'witness/victim' and to Mr Mike Stanwell, a schoolteacher at Merriwa. The diary entry then states, 'Interviewed Leo Clarke in 2003 – nursing home – put allegations of cover-up, victims, he said no, ask Malone'.³⁷⁶ Steel accepted that this part of the entry could be recording matters stated by Fox at the meeting.³⁷⁷

³⁷¹ TOR 1, T827.2–36 (Tayler).

³⁷² TOR 1, T834.23–33 (Tayler).

³⁷³ TOR 1, T6.4–15 (Steel in camera, 16 May 2013).

³⁷⁴ Diary entry of Steel, dated 2 December 2010, ex 294.

³⁷⁵ *ibid*; see also TOR 1, T30.38–31.7 (Steel in camera, 16 May 2013).

³⁷⁶ Diary entry of Steel, dated 2 December 2010, ex 294.

³⁷⁷ TOR 1, T47.25–48.36 (Steel in camera, 16 May 2013).

10.243 The diary entry further notes:

Ma'am York thinks we are reviewing what we have for it to be sent to the SCC [State Crime Command]. If it goes beyond Term of Reference. Prepare report. Send to SCC. [AJ] mentions other victims in her statement.³⁷⁸

10.244 Steel could not recall Fox saying very much at all, if anything, at the meeting and specifically did not recall him saying that the only reason they were having the meeting was because of the information provided by McCarthy or that it was essential to 'have her in the loop'.³⁷⁹

10.245 Steel gave evidence that Mitchell maintained a calm and measured tone during the meeting. She could not recall him raising his voice and said that at no time did he appear to be visibly angered by anything that transpired.³⁸⁰ She said, 'He's not that – he doesn't operate like that. He's not that sort of person'.³⁸¹ She said Mitchell generally speaks in a measured tone and that 'he wouldn't belittle anybody in front of an audience of people. He wouldn't speak down to them or ... he's very direct with what he wants to get across, but he is not – he's not angry'.³⁸² Steel agreed that at all times during the meeting Mitchell remained respectful towards Fox.³⁸³

10.246 Steel agreed with counsel for Fox that Mitchell might have said something to the effect that any inquiries from McCarthy were to go through him³⁸⁴ and that Northern Region had decided the matter would be investigated by Newcastle.³⁸⁵ She did not recall Mitchell directing Fox to bring the statements he had to Newcastle City LAC and to hand them over to Tayler, but she understood that that was the purpose of the meeting.³⁸⁶ Steel believed that Mitchell did give Fox a direction to hand over the documents he had and not to speak to the media – in particular, McCarthy – and that the second part of that direction, about not speaking to the media, was made first to Fox and then to everyone else.³⁸⁷ Steel also recalled Mitchell agreeing that Fox could phone the witnesses to let them know that Tayler's team would be dealing with them from now on.³⁸⁸

Detective Inspector Parker's evidence

10.247 At the time of the meeting on 2 December 2010 Detective Inspector Graeme Parker was attached to the Brisbane Waters LAC but was relieving Townsend as Operations Manager at Northern Region. He attended the meeting in the latter capacity.³⁸⁹

10.248 Parker told the Commission that until the 2 December 2010 meeting he had little knowledge of Strike Force Lantle. Before the meeting he received a briefing from York and Townsend about the strike force. He was made aware that Northern Region's position was that Newcastle City LAC had carriage of the investigation³⁹⁰ and that Northern Region was concerned about someone leaking information to the *Newcastle Herald* about the church concealment investigation. Parker's role at the meeting was to ensure that Northern Region's position was made clear to all present.³⁹¹

³⁷⁸ Diary entry of Steel, dated 2 December 2010, ex 294.

³⁷⁹ TOR 1, T43.26–45.6 (Steel in camera, 16 May 2013).

³⁸⁰ TOR 1, T56.8–33 (Steel in camera, 16 May 2013).

³⁸¹ TOR 1, T56.30–33 (Steel in camera, 16 May 2013).

³⁸² TOR 1, T56.42–57.6 (Steel in camera, 16 May 2013).

³⁸³ TOR 1, T57.9–12 (Steel in camera, 16 May 2013).

³⁸⁴ TOR 1, T44.12–24 (Steel in camera, 16 May 2013).

³⁸⁵ TOR 1, T45.12–19 (Steel in camera, 16 May 2013).

³⁸⁶ TOR 1, T46.8–24 (Steel in camera, 16 May 2013).

³⁸⁷ TOR 1, T67.22–38 (Steel in camera, 16 May 2013).

³⁸⁸ TOR 1, T50.13–22 (Steel in camera, 16 May 2013).

³⁸⁹ Statement of Parker, dated 7 March 2013, ex 40, para 12.

³⁹⁰ *ibid*, para 14.

³⁹¹ *ibid*, para 15.

- 10.249 Parker said Townsend gave him a number of documents to read before the meeting, including Fox's report dated 25 November 2010, in which he had called for a task force to be set up to begin a major investigation into the Catholic Church.³⁹²
- 10.250 Parker said the investigator's note of the meeting, prepared by Quinn, accorded with his recollection of what had occurred. As the investigator's note records, Parker had arrived part way through the meeting.³⁹³
- 10.251 Parker told the Commission that during the meeting he did not notice any animosity or raised voice on the part of Mitchell.³⁹⁴
- 10.252 After the meeting was concluded, Parker prepared a diary note about the meeting. The diary entry records the following:
- Meeting with Mitchell, Tayler, Quinn, Steel, Haggett and Fox re Catholic Church investigation. Mitchell issues direction that **all officers involved in the investigation and management issue are not to speak with press on issues without authorisation of himself.** Further enforced when I explained Region's position on this issue. It was clear that NMH [the *Newcastle Herald*] has pipe line to investigation which needs to be stopped as it is effectively hampering the progress of same. Everyone states they understand. Discussion is Newcastle will have carriage of matter. Fox to pass on all knowledge and statements etc to Steel in handover.³⁹⁵ [emphasis added]
- 10.253 Parker told the Commission he made the diary entry on the day of the meeting and only recorded things he observed, not things he was told had occurred before his arrival.³⁹⁶ He believed he was present at the meeting when Mitchell said there were to be no unauthorised media statements and agreed that he had written the word 'direction' in his diary note and that, in accordance with that diary note, 'it was either a direction or a command. It wasn't a request'.³⁹⁷

Detective Senior Constable Freney's evidence

- 10.254 Detective Senior Constable Jason Freney has been a police officer since 1997. In 2010 he was transferred from Lake Macquarie LAC to Newcastle City LAC. Towards the latter part of 2010 he began assisting Steel with investigative tasks relating to Strike Force Lantle.³⁹⁸
- 10.255 Freney said that before the 2 December 2010 meeting he had been advised that a meeting was to be held and that Fox was to attend for the purpose of handing over whatever material he had that could be of assistance to Strike Force Lantle investigators and to provide an overview of what he had done thus far.³⁹⁹ It was also Freney's understanding that Newcastle City LAC was to conduct the Strike Force Lantle investigation with Steel and himself as the investigators.⁴⁰⁰
- 10.256 Freney told the Commission the investigator's note prepared by Detective Senior Sergeant Quinn was accurate.⁴⁰¹
- 10.257 Freney prepared some handwritten notes during the meeting,⁴⁰² although they were not intended to be a comprehensive record of all that took place.⁴⁰³ He said that when making the

³⁹² TOR 1, T1502.42–1503.46 (Parker).

³⁹³ Statement of Parker, dated 7 March 2013, ex 40, para 16.

³⁹⁴ TOR 1, T1505.33–36 (Parker).

³⁹⁵ Statement of Parker, dated 7 March 2013, ex 40, para 19; diary entry of Parker, dated 2 December 2010, annexure B to ex 40; see also TOR 1, T1506.15–1507.22 (Parker).

³⁹⁶ TOR 1, T1507.24–30 (Parker).

³⁹⁷ TOR 1, T1508.25–1509.10 (Parker).

³⁹⁸ Statement of Freney, dated 8 May 2013, ex 39, paras 4, 6.

³⁹⁹ TOR 1, T1414.25–32 (Freney); statement of Freney, dated 8 May 2013, ex 39, para 9.

⁴⁰⁰ Statement of Freney, dated 8 May 2013, ex 39, para 9.

⁴⁰¹ TOR 1, T1414.41–1415.11 (Freney); see also investigator's note of Quinn, ex 216, tab 85, p 361.

notes his focus was on investigative matters that were discussed and were of interest to him as an investigator attached to the strike force. He said that other matters discussed, such as not making contact with members of the media, were not of major concern to him since he had very little, if any, contact with the media.⁴⁰⁴ His notes contain no reference to the directions or instructions issued by Mitchell.

10.258 Freney told the Commission he had a general recollection of the circumstances of the meeting.⁴⁰⁵ He said Mitchell and Fox did most of the talking; he (Freney) did not talk at all.⁴⁰⁶

10.259 Freney's evidence was that the tone of the meeting was 'fine' and there was no unduly heated tone. It was a cordial meeting and there were 'no issues'.⁴⁰⁷ In response to questions from counsel for Fox, he said Mitchell did not become angry during the meeting and that, although he (Freney) could not recall specific conversations, he could 'rule out the fact that there was any anger in the meeting'.⁴⁰⁸ He added, 'It certainly wasn't a confrontational meeting'.⁴⁰⁹ Like Steel, he also said he had never seen Mitchell angry.⁴¹⁰

10.260 Freney recalled Mitchell requiring Fox to provide the witness statements to Newcastle City LAC, although he could not remember the precise words used. As to whether or not the words included a direction, he said:

Superintendent Mitchell said it. Whether he said it as a comment or a direction – certainly, if he said it to me I would do it.⁴¹¹

10.261 Although not able to remember the precise words used, Freney recalled that those present were told there was to be no contact with the media – Ms McCarthy or otherwise.⁴¹² He also recalled Fox being able to contact the victims to tell them he no longer had any involvement in the investigation.⁴¹³

Inspector Townsend's evidence

10.262 Inspector Anthony Townsend is the Operations Manager for Northern Region.⁴¹⁴ At the time of the 2 December 2010 meeting, however, Detective Inspector Parker was relieving in that role because Townsend had been taken offline to concentrate on another major operation.⁴¹⁵

10.263 Townsend told the Commission he was aware that the meeting on 2 December 2010 had been scheduled but had not been told beforehand about any directions, requests or comments that were to be made to Fox at the meeting.⁴¹⁶ He said he arrived late, after the formal part of the meeting involving Fox had been completed and Haggett and Fox had departed.⁴¹⁷

⁴⁰² Statement of Freney, dated 8 May 2013, ex 39, para 10; handwritten notes by Freney, dated 2 December 2010, annexure B to ex 39.

⁴⁰³ TOR 1, T1418.1–3 (Freney).

⁴⁰⁴ Statement of Freney, dated 8 May 2013, ex 39, para 10; handwritten notes by Freney, dated 2 December 2010, annexure B to ex 39.

⁴⁰⁵ TOR 1, T 1414.5–7 (Freney).

⁴⁰⁶ TOR 1, T 1418.19–28 (Freney).

⁴⁰⁷ TOR 1, T 1418.5–17 (Freney).

⁴⁰⁸ TOR 1, T1428.14–25 (Freney).

⁴⁰⁹ TOR 1, T1428.41–42 (Freney).

⁴¹⁰ TOR 1, T1444.1–4 (Freney).

⁴¹¹ TOR 1, T1435.27–29 (Freney).

⁴¹² TOR 1, T1439.16–18, 35–36 (Freney).

⁴¹³ TOR 1, T1436.10–13 (Freney).

⁴¹⁴ Statement of Townsend, dated 15 February 2013, ex 19, para 5.

⁴¹⁵ *ibid*, para 23.

⁴¹⁶ TOR 1, T940.24–28 (Townsend); statement of Townsend, dated 15 February 2013, ex 19, para 23.

⁴¹⁷ TOR 1, T940.15–35 (Townsend).

10.264 Townsend said he was given a short briefing about what had occurred at the meeting. He said he was told Fox had been asked to, and had undertaken to, supply documentation to the strike force.⁴¹⁸ He could not recall being told anything specific about directions made to Fox, but he did recall being told a direction had been given not to speak to the media, although he did not know whether that was specifically in relation to Fox or applicable to all who attended the meeting.⁴¹⁹

Conclusions: the 2 December 2010 meeting

10.265 The Commission considered the oral and documentary evidence relating to the 2 December 2010 meeting. It observed the demeanour of the witnesses who attended the meeting (which was all those who were at the meeting apart from Haggett).

10.266 The investigator's note that Quinn prepared provides a reliable account, in summarised form, of the main matters discussed at the meeting without purporting to provide a transcript of the meeting or otherwise to include all that was said.

10.267 To the extent that there are divergences in the evidence, the Commission prefers Quinn's investigator's note and the other contemporaneous records to the account Fox gave in his 2 December 2010 email to McCarthy – which as to matters such as recollection of tone and the approach taken in the meeting was largely unsupported by the evidence of those who attended the meeting.

10.268 The Commission finds that the primary features of the 2 December 2010 meeting are as follows:

- Superintendent Mitchell chaired the meeting.
- The tone of the meeting was generally cordial. At no time did Mitchell speak or gesture in a visibly angry fashion.
- Mitchell made it clear that Newcastle City LAC had carriage of the Strike Force Lantle investigation – including as it related to complaints by AK, AL and Mr Peter Gogarty – and that this had been at the direction of the Northern Region Commander, Assistant Commissioner Carlene York.
- Mitchell emphasised the high level of risk the investigation posed for the organisation (the NSW Police Force) in terms of importance and visibility and the need for the investigation to be managed well.
- Mitchell emphasised the importance to the investigation of Fox providing all relevant information (including witness statements) to the Strike Force Lantle team. This constituted an instruction to Fox.
- Fox agreed to provide all relevant information and documents to the investigation team.
- Fox spoke of his experience in investigations and voiced his opinion that, in view of the magnitude of the problem, a task force should be established.
- Mitchell instructed that, in order to preserve the confidentiality of the investigation, nobody was to speak to the media – including to McCarthy. This was an instruction to all present, not solely to Fox, although Mitchell had Fox firmly in mind when issuing that instruction.
- Mitchell said he was to be advised in the event that McCarthy contacted police.

⁴¹⁸ Statement of Townsend, dated 15 February 2013, ex 19, para 23.

⁴¹⁹ TOR 1, T940.41–941.5 (Townsend).

- Consistent with Newcastle City LAC having carriage of the investigation, it was the task of Newcastle investigators, not others, to collate all the available information. Among other things, this would allow further assessments to be made, including in relation to the extent of the future involvement of the Sex Crimes Squad, State Crime Command. Mitchell told Fox he could ring the witnesses to let them know that Tayler's team (Strike Force Lantle) would be dealing with them from that time on.

10.269 The Commission is satisfied that at the meeting on 2 December 2010 Mitchell instructed Fox as follows:

- to hand over to Newcastle investigators all documents he had (including witness statements) relating to the church concealment allegations
- to have no further contact with witnesses other than to notify them that he was no longer the investigator for the matter
- not to speak with the media – including McCarthy – about the police investigation of the church concealment allegations and to report any contact from McCarthy to him (Mitchell).

10.270 It does not ultimately matter whether the edict given to Fox is, in each instance, characterised as a direction or an instruction. Fox was given a lawful instruction by a superior officer, Mitchell, with which he was expected to comply. Fox understood this.

10.271 The Commission is satisfied that the practical effect of the first and second instructions given by Mitchell was to remove Fox from further investigating the church concealment allegations (as arising from the materials provided by McCarthy and the statements taken from AJ, AK, AL and Gogarty) that were considered to fall within the parameters of the Strike Force Lantle investigation. This equated to an instruction that Fox cease investigating the church concealment allegations being considered by Lantle. This is the inevitable outcome of Fox being told by Mitchell that the matter was to be investigated by Newcastle City LAC, that he was to hand over all documents relating to the matter, and that he was to have no further contact with the witnesses (apart from telling them that he would no longer be involved).

10.272 No direction or instruction was given to Fox that he was to cease investigating church paedophilia generally – that is, outside the investigation being conducted by Newcastle City LAC – or that he was not to talk with people about church paedophilia. This is also consistent with Fox's evidence that no such broad-ranging direction or instruction was issued to him. Fox was thus, in effect, potentially free to pursue investigations of other church paedophilia matters that did not overlap with the parameters of the Strike Force Lantle investigation.

After the meeting: Detective Chief Inspector Fox arranges to send the witness statements to Newcastle City LAC

10.273 As noted, at the 2 December 2010 meeting Fox was instructed to forward the witness statements he had taken – from AJ, AL and Stanwell and a partly completed one from AK – to Newcastle City LAC. He agreed to do this.

10.274 After the meeting he returned to Port Stephens LAC, having travelled separately from Haggett both to and from Waratah police station.⁴²⁰ He had no discussion with Haggett about what had happened at the meeting.⁴²¹ He said that later the same day he put the witness statements and

⁴²⁰ TOR 1, T144.11–13; T482.37–42 (Fox).

⁴²¹ TOR 1, T142.13–19; T144.7–9 (Fox).

all the documents he had obtained from McCarthy in an envelope and gave it to Detective Sergeant Scott Metcalfe to hand to Tayler at Newcastle City LAC.⁴²²

- 10.275 Metcalfe provided to the Commission a statutory declaration in which he stated that on a date he believed to be 6 December 2010 (rather than 2 December 2010) he received an envelope from Fox and delivered it by hand to Newcastle City LAC. Tayler was not there, so Metcalfe left the envelope with Quinn for handing on to Tayler.⁴²³
- 10.276 Nothing of significance turns on whether Fox handed the envelope to Metcalfe on 2 or 6 December 2010. Whatever the precise timing, Fox arranged to provide the documents to Newcastle City LAC shortly after the 2 December 2010 meeting.

The appropriateness of the instructions issued to Fox on 2 December 2010

The instruction not to speak with the media, including Ms McCarthy

- 10.277 In the lead-up to the meeting Mitchell had been concerned that Fox had passed police information to Ms McCarthy of the *Newcastle Herald*.⁴²⁴
- 10.278 All those present at the meeting, including Detective Chief Inspector Fox, were instructed not to talk to the media, including McCarthy, about the investigation. If any contact was made by McCarthy, it was to be documented and Mitchell was to be notified.
- 10.279 In evidence, Fox acknowledged it was standard procedure in sensitive or confidential investigations for control to be exercised over which police officers were permitted to speak to the media.⁴²⁵ He also agreed that the New South Wales Police force now ‘... occasionally use the media to assist them in investigations by careful, tempered interrelationships with chosen media outlets’,⁴²⁶ a matter he knew in December 2010.
- 10.280 Fox also acknowledged that information leaks can undermine investigative steps being taken:
- Q. And you are aware too, aren’t you, that leaking bits of information about an investigation can sabotage investigative steps that are being undertaken?
- A. It can. I think there’s a controversy in Victoria at the moment.⁴²⁷
- 10.281 The Commission’s expert witness, Mr Ian Lloyd QC emphasised the importance of preserving confidentiality in police investigations:
- I think in any police investigation the integrity of the investigation is paramount. Of course, one does not want the product of an investigation leaked in any shape or form, either by the police or through the press or through any backdoor means because, if leaks do occur, the integrity of the investigation is broken down because persons of interest, suspects, will be forewarned as to the fact of an investigation and its product and likely conclusion and it gives rise to the possible destruction of inculpatory documents on the part of persons of interest.⁴²⁸

⁴²² TOR 1, T180.20–36, T307.10–15 (Fox); see also McCarthy email 12, ex 216, tab 84, p 358.

⁴²³ Statutory declaration of Metcalfe, dated 2 July 2013, ex 184, paras 14–15.

⁴²⁴ TOR 1, T1025.44–1026.1 (Mitchell); statement of Mitchell, dated 15 February 2013, ex 22, para 20.

⁴²⁵ TOR 1, T149.33–37 (Fox).

⁴²⁶ TOR 1, T149.33–46 (Fox).

⁴²⁷ TOR 1, T150.1–5 (Fox).

⁴²⁸ TOR 1, T1017.3–12 (Mr Lloyd QC).

Conclusion

- 10.282 It was appropriate for Mitchell to issue an instruction directing all present not to speak with the media (including McCarthy) in such terms. The church concealment investigation was relatively complex and high profile. It involved consideration of the conduct of senior church officials and had been the subject of considerable media interest. It presented risks for the NSW Police Force if not managed and conducted properly.
- 10.283 Further, as Fox acknowledged, it was standard procedure in sensitive investigations for control to be exercised over which police officers were permitted to speak to the media. On this basis alone, the instruction issued by Mitchell (not to speak to the media) was appropriate, quite apart from any potential concerns Mitchell, and other senior police, might have had about the risks Fox presented in terms of his potential for leaking information to the media and his relationship with McCarthy.

The instruction to cease investigating church concealment allegations

- 10.284 As described, at the 2 December 2010 meeting Fox was instructed to hand over to Newcastle investigators all documents relating to the church concealment investigation and to have no further contact with the witnesses. This equated to a direction or instruction to Fox to cease investigating the church concealment allegations.
- 10.285 Evidence and considerations relevant to the appropriateness or otherwise of that instruction are considered in the following sections.

Newcastle City LAC was already investigating

- 10.286 By December 2010 Newcastle City LAC was, through Strike Force Lantle, investigating the church concealment allegations. The Northern Region Commander, Assistant Commissioner York, had decided this by early September 2010. The decision that there would be an investigation and, further, that it would be allocated to Newcastle City LAC had been made after a considered process stretching from about May until September 2010. (This is discussed in Chapter 8.)
- 10.287 Fox's own investigation had been of a clandestine nature (see paras 10.49 to 10.52); thus, at the time the Northern Region Commander determined that the investigation was to be allocated to Newcastle City LAC, senior police were not aware that Fox was carrying out any investigation of church concealment allegations.

It was appropriate that Newcastle City LAC conduct the investigation

- 10.288 The Commission received evidence suggesting that Newcastle City LAC (rather than any other LAC) should have been chosen to conduct the investigation. The alleged concealment had taken place within the geographical boundaries of Newcastle City LAC. This was a factor to which York had regard in allocating the investigation to Newcastle City.⁴²⁹ (This is discussed in Chapter 8.)
- 10.289 Further, York determined that Newcastle City LAC was better resourced than other potential LACs – notably Lake Macquarie LAC – to conduct the investigation.⁴³⁰ York referred to these two considerations in a statement provided to the Commission:

... I formed the view that the Newcastle City Local Area Command would be in a better position to be able to carry out the necessary investigation into the allegations because of better resourcing and the offences were alleged to have occurred in that area.⁴³¹

⁴²⁹ TOR 1, T706.29–36 (York).

⁴³⁰ TOR 1, T706.29–36 (York).

⁴³¹ Statement of York, dated 15 February 2013, ex 10, p 10.

Port Stephens LAC was not a realistic option

10.290 At all material times Fox was attached to Port Stephens LAC. At one point in his evidence he suggested that Port Stephens LAC could have been given the investigation, with him as the lead investigator.⁴³²

Q. Did you consider, as at 2 December, that Port Stephens command should have the investigation, with yourself as commander?

A. I felt that I didn't perceive that there would be any difficulty if that occurred. I would have welcomed that, of course, as having had a great deal of involvement. And that was a – you know, that certainly could have been considered, and I was hoping that it would have been.

Q. Whose decision would that have been?

A. That would have been the region commander's at the end of the day, I believe.

Q. The region commander was Ma'am York?

A. Assistant Commissioner York.⁴³³

10.291 For her part, York gave evidence that, when making the decision to allocate the investigation to Newcastle City LAC, she did not regard Port Stephens LAC as a realistic option for conducting the investigation. She told the Commission, 'I had no information that Port Stephens [LAC] had any relevance to the investigation',⁴³⁴ and that she had been aware that Port Stephens LAC did not have the resources to be able to carry out a complex and lengthy investigation of the type proposed.⁴³⁵ Nor were there resources available that could be diverted from other commands to Port Stephens for that purpose.⁴³⁶ York gave the following further evidence:

I had no resources anywhere else that I could have given Port Stephens, because they were all short, and I made a choice that it happened – the alleged offences occurred in the Newcastle area, they were better resourced, and I made the decision to send it back to Newcastle based on the information given to me by Inspector Townsend, Detective Chief Inspector Tayler and Detective Inspector Waddell.⁴³⁷

10.292 Inspector David Matthews, Acting Commander of Port Stephens LAC in 2010, gave evidence to similar effect.⁴³⁸ He said that in late 2010 he considered Port Stephens LAC did not have the capacity to conduct an investigation into church concealment allegations of the type proposed by Fox in his report of 25 November 2010, and it was for this reason that he had referred the report to Northern Region: 'There was no realistic alternative. We could not conduct that investigation'.⁴³⁹ Matthews also said:

It appeared to be a complex investigation and historical investigation, which, in my opinion, would have taken a bit of work on the part of investigators. We just didn't have the investigators or the assets available to the Port Stephens Local Area Command at that time to do that investigation.⁴⁴⁰

10.293 Inspector Townsend, Operations Manager for Northern Region, gave evidence that in 2010 he did not regard Port Stephens LAC as having the capacity to take on new investigations. In particular, it did not have the capacity to conduct an investigation in the nature of Strike Force

⁴³² TOR 1, T156.31–38 (Fox).

⁴³³ TOR 1, T156.31–45 (Fox).

⁴³⁴ TOR 1, T679.23–31 (York).

⁴³⁵ TOR 1, T679.33–46 (York).

⁴³⁶ TOR 1, T706.29–31 (York).

⁴³⁷ TOR 1, T706.29–36 (York).

⁴³⁸ TOR 1, T608.28–609.11 (Matthews).

⁴³⁹ TOR 1, T610.4–5 (Matthews).

⁴⁴⁰ TOR 1, T608.45–609.3 (Matthews).

Lantle.⁴⁴¹ Townsend said this was the result of a combination of factors. Port Stephens LAC had a smaller detectives office compared with Newcastle City LAC. During 2010 Townsend was also required to become involved in two of Port Stephens LAC's strike forces that related to other investigations. One was Strike Force Varberg, investigating the homicide of a woman in Raymond Terrace in 2002. Townsend had had to provide support to that operation, which began at about the start of 2010, by allocating an experienced investigator from the unsolved homicide team to help Port Stephens manage that particular strike force.⁴⁴² In preparing his 12 July 2010 report for the Northern Region Commander, Townsend did not see Port Stephens LAC as an option in terms of conducting the proposed investigation into the church concealment allegations.⁴⁴³

There was no role for Detective Chief Inspector Fox as lead investigator

10.294 At one point in his evidence Fox suggested that, rather than the matter being allocated to Port Stephens LAC, he was a suitable person to be involved in the investigation, apparently in place of Detective Sergeant Steel. Fox gave the following evidence:

- Q. ... You therefore are saying, are you, that it was unreasonable? It was unreasonable for Newcastle Local Area Command to be allocated and to conduct that investigation?
- A. On that statement itself, I don't think that's unreasonable.
- Q. Was the problem that you had that you felt you should be doing the investigation because of your background knowledge?
- A. I felt someone with experience – because this was a fairly significant and large brief and it was being given to an officer that had only just been pulled back from uniform and handed it, and hadn't been in plainclothes for an extended period of time. And I thought, "Why is it going to somebody with such a" – even though she may have been a detective at one time, she was out of that work area for a lot of years.
- Q. So is the answer to my question that you thought you would be a more appropriate person [than Steel] to conduct that investigation than her?
- A. Amongst others, yes, yes.
- Q. What do you mean by "amongst others"?
- A. I thought it should have gone to an officer with some degree of experience and expertise in that area, not --
- Q. And that was you?
- A. It could have included me, yes.⁴⁴⁴

10.295 The evidence revealed, however, that from October to December 2010 Steel was already installed as the officer in charge of Strike Force Lantle. (Steel's background and qualifications and the evidence relating to her appointment are described in Chapter 8.) Steel was succeeded by Detective Sergeant Jeffrey Little on 30 December 2010; he remains the officer in charge of the investigation. (Little's background and qualifications are set out in Chapter 8.)

⁴⁴¹ TOR 1, T937.32–42 (Townsend).

⁴⁴² TOR 1, T937.44–938.8 (Townsend).

⁴⁴³ TOR 1, T938.10–15 (Townsend).

⁴⁴⁴ TOR 1, T151.23–152.6 (Fox).

Other factors: designation, role, place

Seniority

- 10.296 During the period in question Fox was the Crime Manager at Port Stephens LAC. He was designated detective chief inspector, a designation one step down from superintendent.
- 10.297 As at October to December 2010, Strike Force Lantle already had two experienced senior officers involved in supervising the church concealment investigation – Detective Chief Inspector Tayler, Crime Manager at Newcastle City LAC, and Detective Senior Sergeant Quinn, Investigations Manager at Newcastle City LAC.
- 10.298 Detective Inspector Parker, who attended the 2 December 2010 meeting in his capacity as relieving Operations Manager for Northern Region, expressed the relevant considerations in his statement dated 7 March 2013:

[27] Once carriage of the Strike Force had been allocated to Newcastle LAC, Detective Chief Inspector Fox's role with the Strike Force would necessarily be limited. Based on my experience, it would have been unprecedented for a person in Detective Chief Inspector Fox's rank and position to have been given any active, primary role as an investigator for Strike Force Lantle. Once this was determined, the management of the Strike Force proceeded in accordance with the standard operating procedures of the NSWPF.

[28] If Detective Chief Inspector Fox had been brought in to play a direct role in Strike Force Lantle, it would not have been in the capacity of an investigator, but into a role that more befits his rank and position within the NSWPF. That level would have been Crime Manager and Supervisor of the Strike Force. This role had already been assigned to Detective Chief Inspector Tayler and subsequently to me. As stated earlier, this was determined by the original allocation of the Strike Force to Newcastle LAC by the Region Commander and positions were assigned by standard operating procedures in accordance with NSWPF protocols. Any divergence from this would have been highly irregular.⁴⁴⁵

The role of a crime manager

- 10.299 As noted, Fox was the Crime Manager at Port Stephens LAC. The Commission received evidence about the role of a crime manager.
- 10.300 In a statement that formed part of his evidence at the public hearings, Townsend said:
- Based on my experience I would not expect someone in the position of Detective Chief Inspector Fox to have been actively involved in Strike Force Lantle. Detective Chief Inspector Fox was the Crime Manager of Port Stephens Local Area Command. It would be unusual for a Crime Manager involved in one Local Area Command to be appointed to an investigation, or a Strike Force, which is being conducted by another Command unless he was investigating or reviewing a Critical Incident. I would see no difficulty with Detective Chief Inspector Fox providing assistance and cooperating with officers attached to the Strike Force.⁴⁴⁶
- 10.301 Fox acknowledged that, as opposed to having a supervisory role, '[c]ertainly it wouldn't be mainstream' for a crime manager to be involved in the front line of any investigation of the type contemplated by Strike Force Lantle, but he maintained that it would not be unusual.⁴⁴⁷
- 10.302 The NSW Police Force job description for 'Crime Manager, Local Area Command', applicable in connection with Fox's role, was tendered in evidence.⁴⁴⁸ Under the heading 'Position overview'

⁴⁴⁵ Statement of Parker, dated 7 March 2013, ex 40, paras 27–28.

⁴⁴⁶ Statement of Townsend, dated 15 February 2013, ex 19, para 22.

⁴⁴⁷ TOR 1, T84.15–20 (Fox).

⁴⁴⁸ Job description for crime manager LAC, dated 28 July 2005, ex 216, tab 183.

the job description emphasises the managerial aspects of the role. The first five duties listed under that heading are as follows:

- Manage all criminal investigations within the Local Area Command and across LACs.
- Provide key advice in formulating and implementing the LAC crime strategy, review & evaluate its impact.
- Manage the Crime Management Unit.
- Lead & direct complex sensitive investigations as required.
- Lead a pro-active approach to tackling crime, utilising flexible resource deployment.⁴⁴⁹

10.303 Superintendent John Galton was the Commander of Newcastle City LAC at the time of the public hearings into the Commission's first term of reference. He gave evidence that, as the job description suggests, the position of crime manager is a management role as opposed to a direct investigative role.⁴⁵⁰ Galton described the role of a crime manager thus:

In very broad terms, the role of the crime manager is to oversight major investigations in a command, to look at the crime prevention strategies for volume crime, in some cases to act as a staff officer to the commander with respect to correspondence and other matters in the running of the local area command.⁴⁵¹

10.304 He added:

Could I just say it is an incredibly complex role to be a crime manager. You have to be across many things, not only the major investigations in the command, but you have to be across crime prevention strategy, consultation with the community. There's a whole range of different duties. At Newcastle, we are lucky that we have two people performing the role due to the complex nature of this command.⁴⁵²

10.305 Parker regarded Fox's position as Crime Manager at Port Stephens LAC as one reason why he (Fox) would not have been appropriate for inclusion in Strike Force Lantle. In a statement provided to the Commission he said:

At the commencement of the Strike Force, up until the present time, Detective Chief Inspector Fox was and remains attached to the Port Stephens Local Area Command as a Crime Manager. It would be most unusual for a person in that position, whoever it may have been, to be given a management role, with respect to a Strike Force, in a different local area command.⁴⁵³

10.306 Parker also said that a crime manager does not typically perform investigative work: 'It is unheard of, basically, for a crime manager to actually get down on the tools and work at that level'.⁴⁵⁴

10.307 Detective Inspector Mark Waddell (Crime Manager, Lake Macquarie LAC) said that as a crime manager he was responsible for managing all the major investigations within his command (including sexual assault investigations and homicide investigations), as well as having overall responsibility for all investigations and for case management within the command. In Lake

⁴⁴⁹ *ibid*, p 905.

⁴⁵⁰ TOR 1, T1605.10–36 (Galton); see also, TOR 1, T781.28–44 (Tayler).

⁴⁵¹ TOR 1, T1576.40–45 (Galton).

⁴⁵² TOR 1, T1607.30–37 (Galton).

⁴⁵³ Statement of Parker, 7 March 2013, ex 40, para 26.

⁴⁵⁴ TOR 1, T1510.5–7 (Parker).

Macquarie LAC, this involved a supervisory role in up to about 500 cases and 50 police officers, 20 of whom were detectives.⁴⁵⁵

10.308 As Crime Manager at Lake Macquarie LAC, Waddell agreed that he had overall management responsibility for investigations within the local area command but, with the exception of critical incidents, did not play an active role in investigations.⁴⁵⁶ He said, 'You don't have the time or capability to be conducting investigations other than the occasional complaint or critical incident'.⁴⁵⁷

10.309 Tayler told the Commission that in his former role as crime manager he was in charge of criminal investigations in Newcastle City LAC, which comprised a detectives office, a drug unit office and a proactive unit office. He said a crime manager would not typically be involved in taking day-to-day steps in an investigation. He added:

... what I found is best practice, is if you are running an investigation, a major investigation, it makes more sense and it's easier to run an investigation if you are not directly involved in matters on a day-to-day basis ...⁴⁵⁸

10.310 Tayler also said that a crime manager would not usually be involved in taking statements from potential witnesses or complainants, explaining:⁴⁵⁹

... if you are involved in taking a statement, you may have a preconceived view of where the investigation is going, or you may miss something that's happening in a fluid-type thing. So it's no different to whether you are running a homicide or something like that. As a detective sergeant and it's a live investigation, in my opinion it's important that whoever is in charge of that sits back and takes in everything that's occurring so they can give directions and they are up to date with the event that's occurring, rather than being locked away in a room taking a statement or interviewing somebody ...⁴⁶⁰

A different local area command

10.311 Fox was the crime manager at a local area command (Port Stephens) other than the one where the investigation was being conducted (Newcastle City).

10.312 Waddell had been a police officer since 1990. He told the Commission he had never encountered the circumstance of a crime manager from another local area command moving across to a LAC that was conducting an investigation and taking an investigative role in that investigation.⁴⁶¹

10.313 The role Fox had at Port Stephens LAC is a related consideration. Assistant Commissioner York told the Commission that since the investigation had been allocated to Newcastle LAC there was no opportunity for Fox to be involved in the ongoing investigation.⁴⁶² Asked why it would not have been workable for Fox to have been part of the investigation, York stated:

One is the staffing at the time, Detective Chief Inspector Fox was the crime manager at Port Stephens. It's a small command. It's one of the smallest I have, I think the second smallest. He's an important senior management team member at that command. Newcastle was a much larger command and could resource the strike force adequately and I believed at that stage that he was willing to provide assistance by handing over documentation. He had his

⁴⁵⁵ TOR 1, T503.42–504.1, T504.23–27 (Waddell).

⁴⁵⁶ TOR 1, T505.25–34 (Waddell). A 'critical incident' typically arises when somebody has been killed or seriously injured as a result of a police operation or where there has been a death in custody: TOR 1, T1606.36–42 (Galton).

⁴⁵⁷ TOR 1, T506.7–14 (Waddell).

⁴⁵⁸ TOR 1, T628.15–19 (Tayler).

⁴⁵⁹ TOR 1, TT626.15–36 (Tayler).

⁴⁶⁰ TOR 1, T628.22–32 (Tayler).

⁴⁶¹ TOR 1, T506.43–507.13 (Waddell).

⁴⁶² TOR 1, T664.38–42 (York).

daily role to play and I had given it to Newcastle to set up a strike force. It was not considered by me at any time to put Detective Chief Inspector Fox on to the strike force.⁴⁶³

- 10.314 York also gave evidence that putting Fox on the strike force would have given rise to problems for the operation of Port Stephens LAC:

There were staffing issues there. It's a small detectives' office. I think they have nine ... sergeants and constables. Newcastle had 30. But also as the region commander, I had to look at the operations of those commands. There are only three duty officers at Port Stephens compared to seven at Newcastle. They have a greater capacity, because of the size of the LAC, to be able to take up large investigations, and Mr Fox had a role to manage the crime and be proactive in relation to that responsibility in Port Stephens.⁴⁶⁴

Conclusions

- 10.315 At the 2 December 2010 meeting Fox was instructed to hand over to Newcastle investigators all documents relating to the investigation and to have no further contact with the witnesses. This equates to a direction or instruction to Fox to cease investigating the church concealment allegations – that is, the subject of the Lantle investigation and the matters arising from the statements of AK, AJ, AL and Stanwell.
- 10.316 The Commission is satisfied that it was appropriate for Superintendent Mitchell to issue to Fox such instructions.
- 10.317 By December 2010 Newcastle City LAC was, through Strike Force Lantle, investigating the church concealment allegations. Further, there were cogent considerations that supported the decision that Newcastle City LAC (rather than any other local area command) should conduct the investigation. The alleged concealment had taken place within the geographical boundaries of Newcastle City LAC. In addition, in her role as Region Commander, Assistant Commissioner York had determined that Newcastle City LAC was better resourced than other potential local area commands (such as Lake Macquarie LAC), to conduct the investigation. The Commission accepts York's evidence in this respect. In 2010 Port Stephens LAC was not a realistic option, in terms of its capacity, to carry out the investigation into the church concealment allegations. The Commission accepts the evidence of York, Matthews and Townsend in this regard.
- 10.318 There was a substantial overlap between Fox's inquiries and investigation and the Strike Force Lantle investigation. Both involved the investigation of allegations of concealment by church officials of child sexual assault offences committed by the deceased priests McAlinden and Fletcher. As a matter of common sense, it would obviously have been undesirable for two competing investigations into these allegations to proceed: there was a need for a single, directed investigation. By mid- to late September 2010, after much consideration at Northern Region, such an investigation had been established at Newcastle City LAC.
- 10.319 The real question arising was not whether there should be two investigations but whether Fox should somehow have been seconded and placed on the Strike Force Lantle team. The Commission is satisfied that it was appropriate for Mitchell (and York) not to bring Fox across to work on the Lantle investigation.
- 10.320 Lantle already had a lead investigator – Detective Sergeant Kirren Steel (from October to December 2010) and thereafter Detective Sergeant Jeffrey Little. Steel was appropriately qualified for the role, as was Little (see Chapter 8).

⁴⁶³ TOR 1, T664.44–665.13 (York).

⁴⁶⁴ TOR 1, T665.18–28 (York).

- 10.321 Further, Fox was a crime manager and a detective chief inspector, a designation one step down from superintendent. As a detective chief inspector, he would be expected to be mainly involved in the supervision of more junior investigating officers, rather than taking direct investigative steps. Fox was in too senior a position to take a role such as that of lead investigator in the strike force: this was properly the role of a detective sergeant (such as Steel and later Little) under the supervision of the existing crime manager within Newcastle City LAC.
- 10.322 Fox's role as crime manager at a different local area command created a serious impediment to his participation in Strike Force Lantle, especially in view of the duties typically involved in the role of crime manager. A crime manager needs to be able to take an overall, strategic view of an investigation, rather than being involved in day-to-day investigative steps such as taking witness statements. The Commission accepts the evidence of Detective Inspector Waddell and Detective Chief Inspector Tayler in this regard.
- 10.323 Further, Strike Force Lantle already had two competent and experienced senior officers involved in supervising the church concealment investigation – Tayler, who was Crime Manager at Newcastle City LAC, and Detective Senior Sergeant Quinn, Investigations Manager at Newcastle City LAC. There was no need for a further senior officer in a supervising role.
- 10.324 Geographical considerations also counted against Fox's inclusion in the strike force. He was based not in Newcastle City LAC but at Port Stephens LAC. He had obligations there as crime manager. To bring him across to work on a strike force in another command would have been highly unusual and would have left Port Stephens LAC – itself already facing resourcing and staffing difficulties – with the problem of finding a replacement to act as crime manager during Fox's absence.
- 10.325 Putting the investigation of critical incidents to one side, it would be extremely unusual for a crime manager from a different local area command to be brought across to take on an investigative role in an investigation being conducted by another local area command. This would also be inconsistent with the responsibilities of a crime manager within a particular local area command.
- 10.326 At the same time, however, if Fox was not to be a member of Strike Force Lantle, the Lantle investigators could nonetheless speak with him, so that any further information he had (beyond the statements he provided) could be obtained and used for the benefit of the investigation. As will be seen, this is what in fact occurred, with Little communicating with Fox about such matters. For his part, Fox accepted that such communication constituted a form of consultation with him.⁴⁶⁵
- 10.327 The Commission is able to make its finding in relation to the appropriateness of the instructions issued by Mitchell⁴⁶⁶ without needing to have regard to other factors touching on Fox's suitability for a role in the Strike Force Lantle investigation – for example, his conduct in communicating with McCarthy about aspects of the investigation, including communications in breach of the instruction issued to him on 2 December 2010. For completeness, these matters are considered shortly, under the heading 'Additional considerations' (see paras 10.347 to 10.410).

⁴⁶⁵ TOR 1, T262.21–33 (Fox).

⁴⁶⁶ Including that Fox was to hand over to Newcastle investigators all documents relating to the investigation and to have no further contact with the witnesses.

Mid-December 2010: a phone call to Inspector Townsend

- 10.328 About a week after the meeting on 2 December 2010 Townsend received a phone call from Fox.⁴⁶⁷ Townsend saw the call as an informal approach seeking to have the decisions made on 2 December reviewed because of the knowledge Fox had about the church concealment allegations and his rapport with victims.⁴⁶⁸
- 10.329 From the conversation, Townsend understood that Fox wanted to be permitted to become involved in any investigation relating to the church concealment allegations, although Townsend could not recall Fox saying anything specific about being told he was not allowed to investigate those matters.⁴⁶⁹
- 10.330 Townsend told Fox a review of the decision would not be appropriate since Newcastle City LAC had already made firm decisions in relation to the conduct of the investigation.⁴⁷⁰
- 10.331 Townsend said Fox could have made a formal request for a review in writing and that he (Townsend) would have then commented on it before referring it to the Northern Region Commander.⁴⁷¹ As to whether he had discouraged Fox from pursuing a formal review course, Townsend said he considered he had made it clear to Fox that he (Townsend) did not think it was appropriate at that stage.⁴⁷²
- 10.332 Townsend accepted that in his role as operations manager he could have taken Fox's representations about greater involvement in Strike Force Lantle and its operation to the Northern Region Commander. He told Fox, however, that 'a firm decision had been made' and he was not prepared to take those representations any further.⁴⁷³ This was because the investigation had been allocated to Newcastle City LAC, and the matters Fox had raised in his report of 25 November 2010 were 'right across the same issues that particular strike force was to look at'.⁴⁷⁴
- 10.333 For her part, York, as Northern Region Commander, told the Commission she did not become aware that Fox wanted a review of the decision to allocate the investigation to Newcastle City LAC.⁴⁷⁵

March 2012: communication between Detective Chief Inspector Fox and Superintendent Gralton

- 10.334 On 26 March 2012 Fox sent an email to Superintendent John Gralton (Commander, Newcastle City LAC), copying in York, Inspector Craig Rae and Sergeant Ian Mather⁴⁷⁶ and asking whether the directions issued in 2010 remained in force.
- 10.335 Fox began his email by referring to what he understood to be directions issued to him in 2010:

In 2010 I made submissions to investigate paedophile activity by the Catholic Church following past prosecutions & approaches to me by victims through a newspaper reporter Joanne McCarther [sic]. I obtained statements before being aware of inquiries at Newcastle. I contacted investigators there & was then directed by Superintendent Mitchell to surrender

⁴⁶⁷ TOR 1, T227.26–39 (Fox).

⁴⁶⁸ TOR 1, T941.32–38 (Townsend); statement of Townsend, dated 15 February 2013, ex 19, para 24.

⁴⁶⁹ TOR 1, T941.40–942.9 (Townsend).

⁴⁷⁰ TOR 1, T942.11–18 (Townsend); see also TOR 1, T229.31–34 (Fox).

⁴⁷¹ TOR 1, T942.31–34 (Townsend).

⁴⁷² TOR 1, T942.36–39 (Townsend).

⁴⁷³ TOR 1, T947.40–46 (Townsend).

⁴⁷⁴ TOR 1, T948.1–7 (Townsend).

⁴⁷⁵ TOR 1, T665.30–33 (York).

⁴⁷⁶ Email from Fox to Gralton, dated 26 March 2013, ex 216, tab 119, p 652.

all the documentation I had, including victim statements, cease any involvement in church paedophilia investigations or dealings with victims. I was also directed to not contact Joanne McCarthy & report any contact with her immediately. I was further directed to hand over a separate non-related ministerial file sent to me as a result of my past investigations into paedophilia in the Catholic Church.⁴⁷⁷

10.336 Consistent with his evidence before the Commission (as discussed), Fox's reference to a direction to 'cease any involvement in church paedophilia investigations or dealings with victims' should be read as being a direction in connection with such investigations or dealings relating to matters being dealt with by Newcastle City LAC – that is, as arising from the materials provided by McCarthy and the statements taken from AJ, AK, AL and Stanwell, which are the subject of the Strike Force Lantle investigation.⁴⁷⁸

10.337 In his email to Galton Fox recounted that Detective Sergeant Kristi Faber had contacted him, asking for assistance in connection with the trial of NP, a Catholic priest who had been investigated by Strike Force Georgiana. He wrote that he had contacted certain individuals in confidence in an effort to obtain information that might assist Faber. Fox concluded his email by raising three questions about the directions he said were issued in 2010:

Since Mr Mitchell is no longer in North Region & the 3 police assigned the investigation reported off sick after my direction I have not been told what if anything has occurred with the matter.

1. It is highly unlikely the persons with whom I have sought information will deal with other police (I can elaborate on this if required). The information may assist in the criminal prosecution of sexual assault offences on children by a member of the Catholic Clergy but I am seeking permission before I take this further. Am I allowed to conduct more inquiries [sic] from D/Sgt Faber?
2. Are all the directions given to me by Mr Mitchell still in force & if so for what period?
3. Am I yet able to be told the reason for those directions?⁴⁷⁹

10.338 Fox told the Commission he sent his email to Galton because he did not want to engender any perception on the part of police that, by making inquiries in order to assist Faber, he was breaching the direction not to investigate – by ringing various people who had been connected with the McAlinden and Fletcher investigations.⁴⁸⁰

10.339 Counsel assisting questioned Fox about the third question he raised and the implied assertion that he had not been given reasons for any of the directions. In relation to the direction or instruction about no contact with the media, Fox conceded that he had been told at the meeting on 2 December 2010 that the investigation needed to be kept confidential.⁴⁸¹

10.340 Fox also conceded that he had been told at the 2 December 2010 meeting that Newcastle City LAC would be running the investigation. He said, however, he did not see this as a reason for the directions and was still unable to understand why he had not been brought into the investigation.⁴⁸²

10.341 Galton told the Commission that before responding to Fox's email he made inquiries of particular officers, among them Humphrey and Parker. He was also given, and reviewed, a copy

⁴⁷⁷ Email from Fox to Galton, dated 26 March 2013, ex 216, tab 119, p 652.

⁴⁷⁸ TOR 1, T144.46–145.5 (Fox).

⁴⁷⁹ Email from Fox to Galton, dated 26 March 2013, ex 216, tab 119, p 652.

⁴⁸⁰ TOR 1, T253.28–38 (Fox).

⁴⁸¹ TOR 1, T254.12–30 (Fox).

⁴⁸² TOR 1, T254.32–46 (Fox).

of the investigator's note dated 3 December 2010.⁴⁸³ Additionally, he consulted York to ensure the accuracy and appropriateness of his proposed response.⁴⁸⁴

10.342 On 30 March 2012 Gralton responded by email to Fox, copying in Parker, Superintendent Swilks (Commander, Tuggerah Lakes LAC), Sergeant Mather and Superintendent Craig Rae.⁴⁸⁵ Gralton answered Fox's three queries:

[1] ... Please contact Det Inspector Parker in relation to this issue as he is over-sighting Strike Force Lantle which relates to the investigation. He should be in a position to guide you in relation to who is best to respond.

[2] ... Yes, until lifted the direction remains in place.

[3] ... The investigation is highly protected and will be until finished.

Further, I'm advised you were to provide documents that you had that may relate to investigations that were underway at Newcastle. Could you please discuss that when speaking with Det Inspector Parker.⁴⁸⁶

10.343 York approved Gralton's response to Fox before it was sent.⁴⁸⁷

Conclusion

10.344 As described, the practical effect of the instructions given to Fox at the meeting of 2 December 2010 – including to hand over all documents and have no further contact with witnesses – was that he cease investigating the church concealment allegations that were being, or were to be, investigated by Newcastle City LAC (that is, as arising from the materials provided by McCarthy and the statements taken from AJ, AK, AL and Stanwell). Gralton's email of 30 March 2012 to Fox is consistent with that finding. It amounts to an affirmation of such a direction or instruction: Fox referred to directions he said were made, and Gralton (with the approval of the Northern Region Commander) responded, 'Yes, until lifted the direction remains in place'.⁴⁸⁸

8 November 2012: the *Lateline* program

10.345 The NSW Police Force, through Assistant Commissioner York, provided a response to particular questions raised by the *Lateline* program on 8 November 2012. The response included the following:

...

6. Why was Chief Inspector Peter Fox asked to cease investigating the clergy matter and hand over all his evidence to other police?
 - A. Strike Force Lantle was established to ensure that a thorough and coordinated investigation was undertaken in relation to the allegations raised. At that time Detective Chief Inspector Fox was a Crime Manager at Port Stephens Local Area Command and was informed the Strike Force would be fully investigating the allegations. The Strike Force was undertaken by Detectives from the Local Area Command responsible for the investigation, that being Newcastle City. It would be unusual for a Crime Manager from a neighbouring LAC to work on a Strike Force in another LAC, particularly one like Newcastle City LAC where there were already 2 Detective Inspectors overseeing investigative issues. Detective Chief Inspector Fox was

⁴⁸³ Statement of Gralton, dated 15 February 2013, ex 42, paras 30, 31.

⁴⁸⁴ *ibid*, para 31.

⁴⁸⁵ *ibid*.

⁴⁸⁶ *ibid*.

⁴⁸⁷ TOR 1, T672.14–21 (York); statement of York, dated 15 February 2013, ex 10, p 30; email from York to Gralton, dated 29 March 2012, annexure G to ex 10.

⁴⁸⁸ Email from Gralton to Fox, dated 30 March 2012, ex 216, tab 119A, p 653.

consulted on numerous occasions and asked to provide information to assist the investigation.⁴⁸⁹

10.346 According to the text, the question the *Lateline* program posed proceeded on the assumption that Fox was in fact 'directed to cease investigating the clergy matter'. The written response by NSW Police does not refute the assertion that such a direction was issued. Rather, it provides a justification for the issuing of such a direction. This exchange is also consistent with the Commission's finding that at the 2 December 2010 meeting Fox was, for all practical purposes and in effect, directed or instructed to cease investigating the church concealment allegations that were being, or were to be, investigated by Newcastle City LAC.

Additional considerations

10.347 Persuasive practical reasons support the directions or instructions Mitchell issued at the meeting of 2 December 2010 (as affirmed by Galton on 2 December 2010) – including that Fox hand over all documents and have no further contact with witnesses (being, in effect, an instruction to cease investigating the church concealment allegations that were the subject of Lantle).

10.348 There are, however, additional considerations that support the conclusion that the instructions issued were appropriate. Strictly speaking, it is not necessary to rely on these additional considerations in order to conclude that the instructions issued were appropriate.

10.349 It is, however, useful to identify three main additional considerations:

- Fox's conduct, both before and after the meeting of 2 December 2010, in passing police information to Ms McCarthy
- Fox's conduct in making false statements in May 2011 to the police complaints investigator charged with considering whether Fox had breached the instruction not to speak with the media
- whether Fox acted inappropriately in connection with the consent (or otherwise) of AJ to her police statement being provided to McCarthy.

Passing police information to Ms McCarthy

10.350 At all material times Fox has been a serving police officer. McCarthy is a senior journalist with the *Newcastle Herald*.

10.351 The Commission received evidence about communications between Fox and McCarthy in which Fox passed police information to McCarthy (some of which has already been referred to). The evidence related to the period both before and after the 2 December 2010 meeting.

Before the 2 December 2010 meeting

10.352 Instances of Fox's disclosure of police information to McCarthy before the 2 December 2010 meeting can be seen in his emails of 22 July 2010,⁴⁹⁰ 18 October 2010⁴⁹¹ and 24 November 2010.⁴⁹²

10.353 In his email of 22 July 2010 Fox revealed his views about AJ and matters relating to other investigative steps he was taking. In his email of 18 October 2010 he provided details of the

⁴⁸⁹ ABC *Lateline* transcript, 'Studio interview with Senior NSW Detective Peter Fox', dated 8 November 2012, ex 12; see also, briefing from Chapman to York, dated 8 November 2012, ex 216, tab 146.

⁴⁹⁰ Email from Peter Fox to Joanne McCarthy re 'LUCAS,' dated 22 July 2010, ex 216, tab 59.

⁴⁹¹ *ibid.*

⁴⁹² *ibid.*

dealings he had had that day with Superintendent Haggett in relation to the instruction he had received to hand over documents relating to the church conspiracy matter. In that email he quoted from the 13 October 2010 email from Acting Commander Humphrey that Haggett had handed to him. He also made assertions about Humphrey's alleged Catholicism and alleged relationship with Father William Burston.⁴⁹³

- 10.354 In his email of 24 November 2010 Fox sent McCarthy a copy of his proposed lengthy report on alleged child sexual abuse and concealment on the part of members of the clergy. In the email attaching it, he asked McCarthy to read the proposed report and to let him know what she thought about it. As described, the report was submitted to senior police the following day.

After the 2 December 2010 meeting

- 10.355 At the meeting on 2 December 2010 Mitchell issued an instruction to those present, including Fox, not to communicate with the media on matters relating to the investigation.
- 10.356 Later the same day Fox sent a lengthy email to McCarthy, concluding with the emphatic observation 'The pricks can shove it', which purported to summarise the events of the meeting and his interactions with other police officers the day before.⁴⁹⁴
- 10.357 Other examples of Fox's disclosure of police information to McCarthy after the 2 December 2010 meeting can be found in his emails of 9 December 2010,⁴⁹⁵ 22 December 2010,⁴⁹⁶ 24 December 2010,⁴⁹⁷ 28 March 2012,⁴⁹⁸ 10 April 2012⁴⁹⁹ and 13 August 2012.⁵⁰⁰
- 10.358 On 9 April 2011 Fox provided to McCarthy a copy of the lengthy police statement he had taken from AJ.⁵⁰¹
- 10.359 In evidence before the Commission, Fox accepted that his conduct in contacting McCarthy (and sending her material) constituted a breach of the direction or instruction given on 2 December 2010.⁵⁰² He sought to justify his conduct on the basis of his apparent belief that he could not trust senior police and thought they would not investigate, or properly investigate, the church concealment allegations.⁵⁰³ Fox gave the following evidence:

Q. You have given some evidence before the luncheon adjournment regarding directions given to you by Superintendent Max Mitchell.

A. Yes.

Q. Did you breach those directions?

A. Yes.

Q. Which one? Which one of the four did you breach?

A. Certainly, I – of course, I was in contact with Joanne McCarthy. I remained in contact with her from that time. I'm just working through them all. There are four breaches, so I suppose that breaches number 1 as well, because she's a member of the media; even though it's the same thing, I breached that.

⁴⁹³ The assertions were without foundation: see Chapter 9.

⁴⁹⁴ McCarthy email 12, ex 216, tab 84.

⁴⁹⁵ Email from Fox to McCarthy, dated 9 December 2010, ex 216, tab 86.

⁴⁹⁶ Email from Fox to McCarthy, dated 22 December 2010, ex 216, tab 91.

⁴⁹⁷ Email from Fox to McCarthy, dated 23 December 2010, ex 216, tab 92.

⁴⁹⁸ Email from Fox to McCarthy, dated 28 March 2012, ex 216, tab 121.

⁴⁹⁹ Email from Fox to McCarthy, dated 10 April 2012, ex 216, tab 129, p 681.

⁵⁰⁰ Email from Fox to McCarthy, dated 13 August 2012, ex 216, tab 130, p 683.

⁵⁰¹ TOR 1, T244.35–44; T459.13–43 (Fox); email from Fox to McCarthy, dated 9 April 2011, ex 216, tab 97, p 419.

⁵⁰² See eg TOR 1, T163.30–31 (Fox).

⁵⁰³ See eg TOR 1, T283.5–30 (Fox).

Q. You breached the contacting Joanne McCarthy?

A. Yes.⁵⁰⁴

10.360 An email from Fox to McCarthy dated 22 December 2010 records Ms Keevers having suggested that Fox take any concerns about police to an outside agency such as the Ombudsman or the Police Integrity Commission. Fox dismissed such a notion on the stated basis that 'It just alerts the other side to what is happening and who is doing what'.⁵⁰⁵

Counselling Ms McCarthy to destroy documents

10.361 Fox's concerns in relation to the conduct of senior police apparently first surfaced, at least in the form of email communications with McCarthy, on 22 June 2010. In an email he sent that day Fox reported on his progress with the witness AJ and then said, 'There have been a few things going on behind the (police) scenes that concern me a bit that I'll discuss with you later'.⁵⁰⁶ It is of note that this email was sent at about the time (June to July 2010) that, according to the unchallenged evidence of AJ, Fox mentioned to her on more than one occasion that there was a 'Catholic police mafia' they had to bypass to get to other police.⁵⁰⁷

10.362 In subsequent emails to McCarthy, Fox similarly referred to machinations he perceived were going on within the NSW Police Force. Thus, in his email of 18 October 2010, after noting that his office had been searched while he was on leave, he referred to his desire to retain the witness statements he had obtained and said to McCarthy, 'And you thought I was paranoid'.⁵⁰⁸ In his 24 October 2010 email, attaching a copy of his proposed report (as discussed), he said:

It's bound to sit a few up in their chairs and make me very popular – again. To hell with them anyway. Half the bastards are just as bad as those covering this shit up so they can bit [sic] me. 33 yrs down and only 2 to go. At least I'll go with a decent fight.⁵⁰⁹

10.363 Fox's email of 25 November 2010, attaching a copy of his final report as submitted, contained the observation:

I have no doubt they don't know what the hell to do with me now. They'd like to go me for something but are more frightened by negative repercussions'. Fox ended the email with the exhortation 'Anyway the die is cast – let the games begin'.⁵¹⁰

10.364 In his email of 2 December 2010 Fox advised McCarthy that senior police would be checking his work mobile phone and work email and that as a result he would communicate with her from his home email and his wife's mobile phone. After referring to all the '007 stuff' he wrote that if senior police detected his calls to her in the past six weeks he would 'just have to explain you were chasing up the Abernethy fires'. He also said he had to be 'very careful of any traps'.⁵¹¹

10.365 In an email of 10 December 2010 Fox counselled McCarthy to destroy emails he had sent her. After detailing matters such as his concerns about the experience and competency of officers Quinn and Steel – part of his thesis that Strike Force Lantle was 'set up to fail' – he said:

FYI the COPS can do on-line checks of computers. If you retain an E Mail on your system they can read it, who sent it, where and when and that sender's computer ID. If you print and

⁵⁰⁴ TOR 1, T163.14–31 (Fox).

⁵⁰⁵ Email from Fox to McCarthy, dated 22 December 2010, ex 216, tab 91, p 392.

⁵⁰⁶ McCarthy email 1, ex 216, tab 50, p 195.

⁵⁰⁷ TOR 1, T15.42–44 (AJ in camera, 13 May 2013).

⁵⁰⁸ McCarthy email 87, ex 216, tab 71, p 271.

⁵⁰⁹ Email from Fox to McCarthy, dated 24 November 2010, ex 216, tab 77, p 308.

⁵¹⁰ Email from Fox to McCarthy, dated 25 November 2010, ex 216, tab 78, p 315.

⁵¹¹ McCarthy email 12, ex 216, tab 84, p 359.

delete it is a dead end for them. Another alternative is to save it to a word file and then to a disc or memory stick, again deleting the E Mail. Don't let the bad guys know.⁵¹²

10.366 McCarthy did not, however, delete or destroy any emails Fox sent. Many such emails came to light only when McCarthy produced them to the Commission in response to a summons.

Email communications under the name 'Penny'

10.367 On a number of occasions in 2012 emails were sent to McCarthy from Fox's home email address, with the sender identified as 'Penny' (that, as noted, being the name of Fox's wife). This was the case with emails sent on 10 April 2012 and 13 June 2012.⁵¹³

10.368 The 10 April 2012 email contained references to Fox's dealings with other police, among them Detective Sergeant Faber and Detective Sergeant Little.⁵¹⁴ Fox was examined about these emails. In his evidence he said he had not typed such emails – with the intention of not breaching the direction or instruction not to communicate with the media, it would seem – although he did concede that he had provided the information relayed by his wife. In relation to some such emails, he further conceded that he looked over his wife's shoulder and made suggestions to ensure the accuracy of what was sent. Ultimately, Fox conceded that he was in reality the author of the emails. Thus, there was the following exchange with counsel assisting:

- Q. On occasion as she was typing an email that went to Joanne McCarthy under the name Penny?
- A. Yes. I don't think there was a lot, but I can't --
- Q. On occasions you would look at the email on the screen that was being typed and make corrections?
- A. Yes. As in say to her, 'No, say this' and --
- Q. Yes.
- A. As opposed to me typing it, yes. Yes, that's correct.
- Q. To ensure, as you saw it, the accuracy of particular paragraphs of the email?
- A. Yes.
- Q. And that's something that may well have happened for the email of 10 April 2012?
- A. It may have. I can't say that with absolute certainty.
- Q. You can't recall whether the email of 10 April 2012 was one of the emails where you were standing nearby and checking and correcting paragraphs; is that right?
- A. Yes. I know I did that. Again, if you said to me how many did Penny send to Joanne, I don't think there was a lot. I don't know. I don't think there was more than half a dozen at the most – if that.
- Q. Was it in fact the position that you were the author of these emails by the process that you described of standing near and correcting it?
- A. I think that would be a fair comment, yes.
- Q. And even if you didn't type them yourself, would you embrace the concept that you're the author of those emails?

⁵¹² Email from Fox to McCarthy, dated 10 December 2010, ex 216, tab 87, p 370.

⁵¹³ Email from Fox to McCarthy, dated 10 April 2012, ex 216, tab 129, p 681; email from Fox to McCarthy, 13 June 2012, ex 216, tab 129, p 680. Fox thought that there would not be more than half a dozen instances at most: TOR 1/2, T1771.27–33 (Fox).

⁵¹⁴ McCarthy email 68, email chain ending with email from Penny Fox to McCarthy, dated 13 June 2012, tab 129, p 681.

- A. Absolutely, because the information contained in them wasn't gleaned by Penny in the first instance. She only knew of that because I conveyed that to her and told her, 'Yeah, send this' ...⁵¹⁵

Conclusions

- 10.369 Fox's conduct in providing sensitive police information to McCarthy was objectionable and inappropriate. It provides additional support for the view the Commission otherwise reached – that the directions or instructions issued by Mitchell on 2 December 2010 and affirmed by Galton on 30 March 2012 were appropriate.
- 10.370 The Commission recognises that police officers and journalists routinely communicate with one another from time to time in the proper discharge of their respective duties. There is a clear public interest in maintaining a vigorous and questioning media. There is also a countervailing public interest in preserving the confidentiality of sensitive police investigations, including when the release of information might prejudice investigative strategies.
- 10.371 On multiple occasions Fox inappropriately passed police information to McCarthy. This conduct occurred both before and after the 2 December 2010 meeting, at which an instruction was issued that those present, including Fox, were not to contact the media, including McCarthy, in connection with the Lantle investigation.
- 10.372 Such conduct by Fox provides a further reason for having excluded him from the Strike Force Lantle investigation; it also supports the appropriateness of the instruction issued on 2 December 2010 that Fox cease investigating matters that were to be investigated by the strike force.
- 10.373 Instances of Fox's inappropriate disclosure of police information to McCarthy are identified above. Among them are his emails of 22 July, 18 October and 24 November 2010. This last email forwarded to McCarthy a copy of his proposed report to senior police, which he submitted the following day.
- 10.374 Fox's conduct in disclosing police information to McCarthy continued after the meeting of 2 December 2010 at which Mitchell issued an instruction not to contact the media about matters relating to the Lantle investigation. Fox's email to McCarthy of 2 December 2010 clearly breached that instruction. Even if such an instruction had not been issued, the communication was highly inappropriate, disclosing, as it did, internal police processes relating to a sensitive and confidential investigation.
- 10.375 Among other instances of Fox's inappropriate disclosure of police information to McCarthy after the 2 December 2010 are his emails of 9, 22 and 24 December 2010 and 28 March, 10 April and 13 August 2012. Also included is Fox's conduct on 9 April 2011 in providing McCarthy with a copy of the police statement taken from AJ.
- 10.376 At least in certain instances, Fox accepted that his conduct in sending such material to McCarthy constituted a breach of the instruction given on 2 December 2010. He sought to justify his conduct on the basis that he could not trust senior police and thought they would not investigate, or properly investigate, the church concealment allegations. The Commission accepts that Fox might have held such a view at various times, but it does not regard that view as reasonable in the circumstances. A number of indications pointed strongly to the contrary. These are considered above.

⁵¹⁵ TOR 1/2, T1771.7–45 (Fox).

- 10.377 Moreover, if Fox did have concerns about whether senior police would properly investigate the church concealment allegations, there were available to him other options that would not have involved the passing of sensitive information to a journalist. He could have used the police complaints management system or – if he was concerned about what was effectively alleged police corruption, or a ‘Catholic mafia’ – referred his concerns to a suitable external body such as the Police Integrity Commission (a body specifically commissioned to consider such matters) or the Ombudsman.
- 10.378 Fox’s failure to take such steps – on the stated basis that it just alerts ‘the other side’ to what is happening – reflects a degree of paranoia on his part that also counts against his having the objectivity required for involvement in a complex and sensitive investigation of the type undertaken by Strike Force Lantle.
- 10.379 Fox’s conduct in advising McCarthy to destroy his emails that were sent in breach of the instruction given on 2 December 2010 is also objectionable and similarly shows a degree of paranoia. The evidence before the Commission is that McCarthy did not delete or destroy any emails Fox sent. Indeed, many such emails came to light only when McCarthy produced them to the Commission in response to a summons.
- 10.380 Further, Fox’s conduct in effectively being the author of emails sent to McCarthy under the name of ‘Penny’ shows the lengths he was prepared to go to in order to continue communicating with McCarthy – including passing on police information when he had been instructed not to engage in communication with McCarthy about matters relating to the church concealment investigation.
- 10.381 Different considerations apply in connection with McCarthy. She was then, and remains, a senior investigative journalist. Consistent with her ethical obligations as a journalist and any applicable legal obligations, she was entitled to obtain such information as she could from Fox, and from any other police source, that might assist her in her work as a journalist. The Commission does not regard her conduct in this regard as having been in any way improper.

Consent to provide AJ’s statement to Ms McCarthy

- 10.382 As noted, on 9 April 2011 Fox provided a copy of AJ’s police statement to McCarthy. Such conduct was wholly improper. The document was a police statement taken from a witness and related to an ongoing police investigation of a complex and sensitive nature. It should never have been provided to a journalist, even though McCarthy had been instrumental in putting AJ in contact with Fox in mid-2010.
- 10.383 In addition, McCarthy’s earlier contact with AJ, whether or not she (McCarthy) might thereby become a witness in any criminal proceedings, added to the clear need to keep her removed from any investigative stages involving AJ. Fox’s conduct was also in flagrant breach of the instruction Mitchell issued at the 2 December 2010 meeting not to communicate with the media, including McCarthy.
- 10.384 Fox’s conduct in providing AJ’s police statement to McCarthy was unjustifiable regardless of whether or not he had AJ’s consent to do so. In the hearing before the Commission, however, a question arose as to whether or not Fox had AJ’s consent.

AJ’s evidence

- 10.385 AJ gave evidence before the Commission. She said that in about late 2010 or 2011 Fox phoned and told her that he had been ordered to hand over her statement to Newcastle detectives and

told not to contact her or McCarthy again.⁵¹⁶ At some time after this McCarthy asked AJ for a copy of her police statement. AJ said she declined because 'I wanted my statement kept confidential between the Police and myself because of the many very personal things I had said in it that I didn't want anyone to see'.⁵¹⁷

10.386 On 13 February 2013 AJ read an article in the *Newcastle Herald* by McCarthy that included language that caused her to believe McCarthy had read a copy of her police statement before writing the article.⁵¹⁸ AJ phoned McCarthy and asked her if she had a copy of the police statement. McCarthy said she did have a copy and that she had obtained it from Fox.⁵¹⁹

10.387 On 14 February 2013 AJ sent an email to McCarthy objecting to her (McCarthy) having used parts of the police statement for the purposes of the article in the *Newcastle Herald*.⁵²⁰ In the email AJ wrote:

I am shattered that Peter handed me over on a platter to you ... I do wonder who else he gave the statement to. It was not necessary to hand it to you as he gave me a copy for the reason that if things did not go right with the investigation it could be used later in the press ... if I wanted it that way. If I decided not to pursue it, was it his intention that you would use it instead?⁵²¹

10.388 AJ gave evidence to the Commission that she had never given Fox permission to provide her statement to McCarthy:

I had never been asked for or given by consent for my statement to be provided by Peter Fox to Joanne McCarthy. I was very upset that the statement had been given to Joanne McCarthy without my consent, and had been used in a newspaper article.⁵²²

10.389 AJ firmly rejected the suggestion, advanced by counsel for Fox, that in a telephone conversation with Fox she had consented to the provision of her statement to McCarthy.⁵²³

Ms McCarthy's evidence

10.390 McCarthy told the Commission that in late 2010 she had asked AJ to provide to her a copy of the police statement. She said this was to give her an understanding of the role of Diocesan officials and to assist in the accuracy of her reporting. According to McCarthy, AJ said, 'I am happy for you to have the statement. I would like to meet you in person to give it to you. Can we meet the next time you are up here?' McCarthy did not, however, travel to the Hunter Valley for some time and the opportunity to collect the statement did not arise.⁵²⁴

10.391 McCarthy said she did not have any further conversations with AJ about obtaining a copy of the statement before she (McCarthy) received the statement from Fox on 9 April 2011 (discussed below).⁵²⁵

10.392 Counsel assisting turned McCarthy's attention to an email she had received from Fox, sent from his home email address on 10 December 2010. In the email Fox told McCarthy about particular developments. He also commented:

⁵¹⁶ Affidavit of AJ, sworn 23 April 2013, ex 272, para 32.

⁵¹⁷ *ibid*, paras 34, 35.

⁵¹⁸ *ibid*, para 44.

⁵¹⁹ *ibid*, para 45.

⁵²⁰ Email from AJ to McCarthy, dated 14 February, ex 274, pp 24–25.

⁵²¹ *ibid*, p 25.

⁵²² Affidavit of AJ, sworn 23 April 2013, ex 272, para 46.

⁵²³ TOR 1, T22.11–17 (AJ in camera, 13 May 2013).

⁵²⁴ TOR 1, T5.36–6.23 (McCarthy in camera, 14 June 2013); affidavit of McCarthy, dated 7 June 2013, ex 274, paras 9–11.

⁵²⁵ TOR 1, T5.31–34, T11.12–20 (McCarthy in camera, 14 June 2013).

[AJ]'s statement is good. Very good. (PS Has she agreed to give you a copy) It is really the lynch-pin. Her statement to a large extent can stand alone for a prosecution in my view. (Let me know what your legal friends think?)⁵²⁶

- 10.393 McCarthy said she never responded to Fox's query about whether AJ had agreed to give her a copy of the statement.⁵²⁷
- 10.394 In evidence before the Commission McCarthy confirmed that she received a copy of AJ's police statement attached to an email from Fox on 9 April 2011.⁵²⁸ She said she had phoned Fox asking him to forward her a copy of the statement.⁵²⁹ She told the Commission she wanted the statement because she was intending to write a complaint to the Police Integrity Commission.⁵³⁰
- 10.395 McCarthy agreed with counsel assisting that AJ had not authorised her to obtain the statement directly from Fox⁵³¹ and that she had not discussed the matter with AJ in April 2011.⁵³² Nor did she tell AJ at any time before publication of the article on 13 February 2013 that she had obtained a copy of the police statement from Fox.⁵³³
- 10.396 Further, McCarthy said she did not recall having any discussion with Fox as to whether he had AJ's permission to give her the statement.⁵³⁴ Fox did not at any stage between 10 December 2010 to May 2013 tell her he had obtained AJ's permission to forward the statement to her.⁵³⁵
- 10.397 As noted, on 15 February 2013 AJ sent an email to McCarthy, objecting to her (McCarthy) having used parts of the police statement for the purposes of the article published the day before in the *Newcastle Herald*. In responding to that email on 15 February 2013, McCarthy did not suggest that she had AJ's permission, arising from any discussions in late 2010, to provide the statement to Fox.
- 10.398 In evidence before the Commission McCarthy accepted that at no time had AJ given her a general 'go-ahead' to obtain the statement by any means other than it being directly handed to her by AJ and that she did not have AJ's 'okay' to obtain the statement from Fox.⁵³⁶

Detective Chief Inspector Fox's evidence

- 10.399 Fox gave evidence to the Commission that by April 2011 AJ had consented to him providing a copy of her police statement to McCarthy.⁵³⁷ He said AJ communicated her consent shortly before he provided the statement to McCarthy on 9 April 2011 and that:
- I did so, because Joanne McCarthy, from recollection, she had spoken to [AJ], who – I don't recall it exactly, but they were trying to make some arrangement and then it was easier if I electronically sent a copy because I already had that on a disk.⁵³⁸
- 10.400 Fox conceded that he made no written note recording that AJ had given her consent to provision of the statement to McCarthy.⁵³⁹ Nor is the fact of such consent referred to in his email to McCarthy on 9 April 2011.

⁵²⁶ McCarthy email 14, email from Fox to McCarthy, dated 10 December 2010, ex 216, tab 87, p 369.

⁵²⁷ TOR 1, T6.25–47 (McCarthy in camera, 14 June 2013).

⁵²⁸ TOR 1, T5.36–6.23 (McCarthy in camera, 14 June 2013); affidavit of McCarthy, dated 7 June 2013, ex 274, para 14.

⁵²⁹ TOR 1, T11.29–31 (McCarthy in camera, 14 June 2013).

⁵³⁰ TOR 1, T11.41–43, T12.13–16 (McCarthy in camera, 14 June 2013).

⁵³¹ TOR 1, T7.7–13; T23.40–42 (McCarthy in camera, 14 June 2013).

⁵³² TOR 1, T7.39–42 (McCarthy in camera, 14 June 2013).

⁵³³ TOR 1, T9.29–42 (McCarthy in camera, 14 June 2013).

⁵³⁴ TOR 1, T7.15–17; T8.15–23 (McCarthy in camera, 14 June 2013).

⁵³⁵ TOR 1, T8.25–29 (McCarthy in camera, 14 June 2013).

⁵³⁶ TOR 1, T23.29–42 (McCarthy in camera, 14 June 2013).

⁵³⁷ TOR 1, T245.13–15 (Fox).

⁵³⁸ TOR 1, T245.20–24 (Fox).

10.401 Initially Fox told the Commission he was not sure whether AJ gave her consent in a phone call or an email.⁵⁴⁰ Later in his evidence he said he telephoned AJ and obtained her consent. He said this followed a request to him by McCarthy for a copy of the statement.⁵⁴¹ Fox gave the following additional evidence:

... I asked her – I remember on one occasion in, I believe it may have been December 2010 – I don't want to be mistaken on that date – and I spoke to [AJ] and she was unsure about that. I know – she had told me that she had been in contact with Ms McCarthy, and I assumed that was ongoing. And it was a later time, and I don't recall now off the top of my head how much later, but Ms McCarthy again asked me if she could have a copy of that statement. Again, I expressed to her that I wasn't comfortable doing that until I had confirmation of it from [AJ], and I telephoned [AJ] and there had been some loose arrangement between them, and she said, "I just haven't had the chance to get down there," or something like that, and I asked if she had no issue if I provided a copy of that electronically to her if that saved her travelling, and she told me that would make it much easier. So I got her consent before I forwarded it down there.⁵⁴²

10.402 Fox also gave evidence that he asked AJ whether he could give her statement to McCarthy and that:

She [AJ] indicated that Joanne McCarthy had asked her for it. She was going to try to get a copy down to her at some stage, but for whatever reason – I believe they live some considerable distance apart – that hadn't eventuated. Joanne McCarthy contacted me about April 2011, I confirmed that with [AJ], and I asked her if she was – if that was in fact the situation, if it was easier for her if I sent an electronic copy of an unsigned version to Joanne McCarthy, would she consent to that and was she happy with that, and she said, "Yes, it will save me a lot of trouble organising it." That is the circumstances under which that arose. There is no way I would have provided that without [AJ]'s consent, as I had declined to provide it to Joanne McCarthy, as was indicated in the emails at a much earlier time – simply for that reason: I wanted to be absolutely sure that [AJ] was consenting to what occurred. She absolutely and definitely consented, and that's the circumstances under which I have provided it.⁵⁴³

Conclusions

10.403 AJ was an impressive witness who gave evidence in a considered manner. The question of consent in relation to the provision of her personal police statement to a journalist, McCarthy, was a matter of particular importance to her. She was emphatic in her evidence that Fox had not sought her consent to provide the statement to McCarthy. The Commission accepts that evidence.

10.404 Although Fox's email of 10 December 2010 suggests that at one point Fox might have turned his mind to the question of whether AJ consented to the provision of her statement to McCarthy, it does not follow that he expressly sought that consent from AJ. She rejects that as having occurred. It was improper for Fox to have provided a copy of a police statement to McCarthy, given that it was an internal police document; it was also improper given the absence of consent from AJ to do so, and it had the potential to undermine her willingness to continue her involvement with the criminal justice process.

⁵³⁹ TOR 1, T245.33–35 (Fox).

⁵⁴⁰ TOR 1, T245.37–40 (Fox).

⁵⁴¹ TOR 1, T399.10–21 (Fox).

⁵⁴² TOR 1, T399.5–21 (Fox).

⁵⁴³ TOR 1, T463.1–23 (Fox).

Lying to the internal police complaints investigator

10.405 In February 2011 an internal police complaint was initiated against Fox for breach of the direction issued on 2 December 2010 not to communicate with the media.⁵⁴⁴ In conjunction with the complaint, Humphrey submitted a report dated 21 April 2011 relating to the conduct of Fox and McCarthy.⁵⁴⁵

10.406 As it turned out, the complaint was not sustained.⁵⁴⁶ Relevantly for present purposes, however, during the course of the investigation the complaints investigator, Inspector Craig Reid, interviewed Fox. A transcript of the interview was in evidence before the Commission. The transcript included the following questions and answers relating to the direction not to talk to the media and Fox's dealings with McCarthy:

7: Was the direction given to 'not speak with any person about the matter?'

[A:] No. The direction only related to Joanne McCarthy.

...

9: Have you spoken with Joanne McCarthy after the direction was given?

[A:] She rang me a few weeks later and I told her about the direction I had been given and asked her not to ring me back in view of that. I apologised that I was not able to say more and would not be ringing her.

10: How did the contact occur?

[A:] She rang me here at Raymond Terrace Police Station. I am not sure of the date but it was a little more than a week after I received the direction.

11: What information was given to McCarthy on this occasion?

[A:] As I stated I told her I had been directed by Mr Mitchell not to speak to her any further regarding the investigation of the Catholic Church and said I could not say any more than that.

12: Do you believe you have complied with the direction given to you by Superintendent Mitchell?

[A:] Absolutely.⁵⁴⁷

10.407 In evidence before the Commission Fox admitted that he had lied to the investigator in giving particular answers to questions asked.⁵⁴⁸ Thus, the following exchange took place with counsel assisting:

Q. Yes. I'm only focusing on ones that are not true, Detective Chief Inspector Fox.

A. Question 9.

Q. In what respect is your answer not true?

A. It asks me, have I spoken to Joanne McCarthy after the direction was given? I've stated there that I had only spoken to her the once, and I had spoken to her numerous times – you know, in short.

⁵⁴⁴ Port Stephens LAC CMT meeting minutes, dated 27 June 2011, ex 216, tab 111, p 476; complaint P1100773, titled 'PS LAC – disobey reasonable direction', dated 29 June 2011, ex 216, tab 111, p 472; complaint investigation chronology P1100773, dated 16 March 2011 to 19 May 2011, ex 216, tab 111, pp 476–480.

⁵⁴⁵ Strike Force Lantle file note, dated 14 April 2011, ex 216, tab 111, pp 512–514.

⁵⁴⁶ Complaint investigation chronology P1100773, dated 16 March 2011 to 19 May 2011, ex 216, tab 111, p 480.

⁵⁴⁷ C@TSI P1100773, questions arising from directive memorandum reply of Fox, undated, ex 216, tab 111, pp 504–505.

⁵⁴⁸ TOR 1, T320.44–46 (Fox).

- Q. I understand.
- A. Question 10.
- Q. Why is that untrue?
- A. I contacted Joanne McCarthy that night, not a week later.
- Q. What about question 11?
- A. Question 11 is not true. Question 12 is not true.
- ...
- Q. Let me read on to the record the question, so it makes sense: Do you believe you have complied with the direction given to you by Superintendent Mitchell? You answered 'absolutely'.
- A. I use that word interchangeably with 'yes' a heck of a lot, as people who know me would attest to.
- Q. Were you attempting by giving that answer 'absolutely' to reinforce that you would never breach a direction of this nature?
- A. Possibly, possibly.
- Q. And that wasn't a truthful position to have put forward?
- A. True.⁵⁴⁹

Conclusions

- 10.408 The Commission is comfortably satisfied that Fox lied to the police complaints investigator about not having contacted McCarthy and in stating that he believed he had complied with Mitchell's direction that he not contact the media.
- 10.409 No doubt he was concerned about the consequences if he was found to have breached the direction or instruction. He was, however, involved in a process in which he was expected to tell the truth, and he did not do so.
- 10.410 This conduct occurred after the 2 December 2010 meeting. In considering whether it was 'appropriate' that Fox be instructed to cease investigating relevant matters, however, the Commission can have regard to both subjective and objective considerations. The subjective considerations involve matters taken to be known by senior police, including Superintendent Mitchell, at the time the instruction was given on 2 December 2010 (and when it was reaffirmed by Superintendent Gralton in March 2012). The objective considerations include matters that are apparent to the Commission on the evidence, and in this regard the Commission is not limited to having regard to matters occurring before the meeting of 2 December 2010, particularly if they are matters that might properly be viewed as affecting an officer's integrity and thus his suitability for inclusion in the Lantle investigation. As with Fox's inappropriate disclosure of information to McCarthy, Fox's conduct in lying to the investigator underscores his lack of suitability for inclusion in the church concealment investigation. This is further considered in Chapter 20.

⁵⁴⁹ TOR 1, T250.17–251.11 (Fox).

A conspiracy between Detective Chief Inspector Fox and Ms McCarthy?

- 10.411 The Commission considered a contention raised by the NSW Police Force to the effect that McCarthy had been involved, in league with Fox, in concealing evidence from police and hindering the Strike Force Lantle investigation.
- 10.412 As noted in Chapter 8, McCarthy first brought the church concealment documents to the attention of police by providing them to Detective Senior Constable Shaun McLeod at Lake Macquarie LAC.⁵⁵⁰ She later provided further information to Detective Inspector Waddell⁵⁵¹ and subsequently to Detective Chief Inspector Tayler at Newcastle City LAC,⁵⁵² Inspector Townsend at Northern Region⁵⁵³ and Detective Inspector Parker for Strike Force Lantle.⁵⁵⁴
- 10.413 Thereafter, McCarthy agitated in a number of media articles for a proper investigation of the church concealment allegations. She even took the step in April 2011 of filing a complaint with the Police Integrity Commission because she believed the investigation was not progressing.⁵⁵⁵ She made her complaint as a journalist and a citizen but not on *Newcastle Herald* letterhead and without the knowledge of her editor.⁵⁵⁶ Later, when she was satisfied the matter was being properly investigated, she turned her attention to other things. The fact of McCarthy's filing a complaint with the Police Integrity Commission was never referred to in any article she wrote.

Conclusions

- 10.414 The Commission finds no evidence that McCarthy was involved, in league with Fox, in concealing evidence from police and hindering the Strike Force Lantle investigation. On the contrary, the evidence suggests that McCarthy was generally determined to provide to police as much information as possible so as to assist with the investigation of the church concealment allegations.
- 10.415 The Commission also closely considered the evidence relating to an alleged incident in 2008, when Fox allegedly engaged in unauthorised contact with McCarthy. Ultimately, however, it takes the view that matter was not of sufficient relevance to the matters under consideration: certainly, it did not provide cogent evidence of a conspiracy between McCarthy and Fox of the type suggested or, indeed, at all.

Communications with Strike Force Lantle investigators

- 10.416 After the 2 December 2010 meeting Strike Force Lantle investigators communicated with Fox to ensure that they obtained any information he had (beyond the witness statements he provided after the meeting) that might be of assistance. The substantive contact with Fox occurred in April 2012 and involved Detective Sergeant Jeffrey Little, lead investigator with Strike Force Lantle. Fox accepted that such communication constituted a form of consultation with him.⁵⁵⁷
- 10.417 On 4 February 2012 Little received from Fox an email attaching a copy of his (Fox's) report dated 25 November 2010.⁵⁵⁸ On 15 February 2012 Little spoke by phone with Fox and obtained a phone number for BI (the father of one of Fletcher's victims, AH).⁵⁵⁹

⁵⁵⁰ NSW Police document signed by McCarthy and McLeod acknowledging receipt of documents pertaining to McAlinden and alleged criminal issues of Church officials within the Catholic Church and attached documents, dated 23 April 2010, ex 216, tab 27.

⁵⁵¹ TOR 1, T535.12–16 (Waddell).

⁵⁵² Email from Tayler to Townsend, dated 2 June 2010, ex 216, tab 40, p 143.

⁵⁵³ See, for example, email from Townsend to Tayler, dated 20 September 2010, ex 216, tab 66, pp 254–255.

⁵⁵⁴ TOR 1, T1511.44–1512.2 (Parker).

⁵⁵⁵ Complaint made by McCarthy to the Police Integrity Commission, 11 April 2011, ex 30.

⁵⁵⁶ TOR 1, T1202.36–1203.26 (McCarthy).

⁵⁵⁷ TOR 1, T262.21–33 (Fox).

⁵⁵⁸ Email from Fox to Parker, dated 4 February 2012, ex 216, tab 122, p 658.

- 10.418 On 4 April 2012 Parker and Little spoke by speakerphone with Fox to ascertain whether he had any further information relating to the investigation. Fox said he had nothing further and that he had not in fact interviewed Bishop Leo Clarke (as stated in his report) but instead had an ‘off the record chat’ that was not recorded.⁵⁶⁰
- 10.419 On 5 April 2012 Parker followed up the phone call with an email to Fox asking for any other information about concealment of offences relating to McAlinden or Fletcher, stating, ‘Our investigation is just about to finality and I just want to ensure we haven’t missed anything’.⁵⁶¹
- 10.420 On 5 April 2012 Parker and Little received from Fox an email providing information for Strike Force Lantle.⁵⁶² In the email Fox observed that most of the information is ‘in my head’ rather than being the subject of documentary records.
- 10.421 On 10 April 2012 Little sent Fox a detailed email seeking particulars of the assertions he (Fox) had made and the extent of the evidence available to support the assertions.⁵⁶³ Little referred to Fox’s statement that most of the important bits of information were in his (Fox’s) head and said, ‘I just need to clarify some points raised in your email. To ensure all points are properly and thoroughly clarified, and not lost in translation, I believe email is the best option’.⁵⁶⁴
- 10.422 On 12 April 2012 Little received a telephone call from Fox in which he (Fox) stated, among other things, that he was ‘looking at a much bigger picture’ than Strike Force Lantle and that most of the information he had was ‘in the back of my brain’. He added that he would be sending an email response shortly.⁵⁶⁵
- 10.423 On 12 April 2012, shortly after his telephone call to Little, Fox responded by email to the questions Little had asked in his email of 10 April.⁵⁶⁶ In his email reply Fox made a number of assertions – including that certain church officials (Fathers James Saunders and William Burston) had colluded in the evidence they gave to police and that he (Fox) had prepared a brief against Bishop Michael Malone and spoken to the Office of the Director of Public Prosecutions about charging him in relation to hindrance or concealment allegations.⁵⁶⁷ These assertions are examined in Chapter 18.
- 10.424 After that, on 3 May 2012 Little sent an email asking that Fox provide a copy of the brief of evidence against Bishop Malone.⁵⁶⁸ It appears that by that time Fox was not working and did not receive the email because his email inbox was full.⁵⁶⁹
- 10.425 Ultimately, the Strike Force Lantle investigators decided they had obtained from Fox as much information as he was able to provide⁵⁷⁰ and that much of the information was in any case based on speculation or assumptions.⁵⁷¹

⁵⁵⁹ TOR 1, T1101.30–33 (Fox).

⁵⁶⁰ Diary entry of Little, dated 4 April 2012, ex 216, tab 123, p 662; e@gle.I HELP entry titled ‘Confirmation by D/C/Insp. FOX – Nil further information’, dated 5 April 2012, ex 216, tab 125, p 666; TOR 1, T1517.22–25 (Parker).

⁵⁶¹ Email from Parker to Fox, dated 5 April 2012, ex 216, tab 124, p 664.

⁵⁶² *ibid*, p 663.

⁵⁶³ Email from Little to Fox, dated 10 April 2012, ex 216, tab 125A, pp 667–672.

⁵⁶⁴ *ibid*, p 668.

⁵⁶⁵ e@gle.I HELP entry re phone call from Fox, dated 17 April 2012, ex 216, tab 126, p 677.

⁵⁶⁶ e@gle.I HELP entry re response from Fox, dated 17 April 2012, ex 216, tab 125B.

⁵⁶⁷ *ibid*, pp 676(d), 676(e).

⁵⁶⁸ e@gle.I HELP entry re email to Fox requesting BOE / reference numbers, dated 3 May 2012, ex 216, tab 127A, p 678(b).

⁵⁷⁰ TOR 1, T111.45–112.11 (Little).

⁵⁷⁰ TOR 1, T1110.19–1112.8 (Little).

⁵⁷¹ Briefing from Chapman to Deputy Commissioner re Strike Force Lantle, dated 28 September 2012, ex 216, tab 136, p 703.

Timing in consulting with Detective Chief Inspector Fox

- 10.426 From at least 16 September 2010 (when Fox sent an email to Detective Sergeant Steel) senior police at Newcastle were aware that Fox was investigating church concealment allegations relating to McAlinden.⁵⁷² Fox also prepared a six-page memorandum dated 25 November 2010,⁵⁷³ detailing a range of matters that he claimed were of relevance to allegations of child sexual abuse and cover-up within the Diocese. The report was provided to senior police, including Assistant Commissioner York⁵⁷⁴ and Detective Inspector Parker⁵⁷⁵ (then of Northern Region), and subsequently reviewed by the Strike Force Lantle investigators.⁵⁷⁶ At the meeting at Waratah police station on 2 December 2010 senior police obtained further information from Fox in relation to such matters and, shortly thereafter, obtained from him copies of the statements that he had taken from AK, AJ, Stanwell and AL. At that meeting reference was made to Fox's report of 25 November 2010.⁵⁷⁷
- 10.427 Little gave evidence that it was part of his investigation plan to speak with Fox during the investigation to ensure he 'hadn't missed anything along the way'.⁵⁷⁸ It was not until April 2012 (some 16 months after the meeting at Waratah police station), however, that Strike Force Lantle investigators squarely engaged with Fox to determine what further information he could provide for the investigation. When asked by counsel assisting why he had not contacted Fox earlier than he did, Little said, 'My understanding was, he had disclosed all the information. I had no other reason to believe that he hadn't'.⁵⁷⁹
- 10.428 Parker gave evidence to the Commission to the effect that 'it was always our intention to speak to Mr Fox'.⁵⁸⁰ When counsel assisting asked him why Lantle investigators did not engage with Fox before April 2012, Parker said:
- We were pursuing, you know, other information. I believe – I don't know this for a fact, but I believe Mr Fox may have been off work sick in that period as well. We were just busy with other things.⁵⁸¹
- 10.429 Evidence before the Commission shows that Fox was on sick leave for significant periods in 2011.⁵⁸²

Conclusions

- 10.430 By at least about December 2010, if not earlier, senior police would also have been aware that Fox's investigation had been clandestine in nature and thus not documented in the COPS system and the E@agle.i database. On any view, it was clear that senior investigators from Strike Force Lantle would need to speak with Fox to see if he had further information, relevant to the Lantle investigation.

⁵⁷² Email from Fox to Steel re 'Church File', dated 16 September 2010, ex 216, tab 63, p 248.

⁵⁷³ Fox report re Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese, dated 25 November 2010, ex 69, p 1373.

⁵⁷⁴ TOR 1, T658.41–46 (York); Fox report re Allegations of child sexual abuse and cover-up within the Maitland-Newcastle Diocese, dated 25 November 2010, ex 69, p 1373.

⁵⁷⁵ TOR 1, T1513.22–30 (Parker).

⁵⁷⁶ TOR 1, T1138.32–1139.14 (Little).

⁵⁷⁷ McCarthy email 12, ex 216, tab 84, p 358; investigator's note of Quinn, ex 216, tab 85, p 361.

⁵⁷⁸ TOR 1, T1107.6–9 (Little).

⁵⁷⁹ TOR 1, T1101.42–44 (Little).

⁵⁸⁰ TOR 1, T1510.21–22 (Parker).

⁵⁸¹ TOR 1, T1510.41–44 (Parker).

⁵⁸² Email from Chapman to York, dated 13 November 2012, ex 216, tab 154, p 751.

10.431 Irrespective, Lantle investigators allowed a lengthy period to pass (16 months) before speaking with Fox to ascertain what further information he could provide. The Lantle investigators should have taken steps earlier to speak with Fox, whether by formal interview or otherwise, in order to find out what further information he could offer the investigation. There was at least the possibility that he might have had further information of particular importance to the investigators that could have led to other lines of inquiry. The fact that, after engaging with Fox, Lantle investigators ultimately took the view that Fox was not able to add much further, if anything, to the investigation holdings is not to the point: until Fox could properly be debriefed, the extent of the further information he could in fact provide could not be fully known.

Abbreviations

ABC	Australian Broadcasting Corporation
ACBC	Australian Catholic Bishops Conference
BOE	brief of evidence
case narr	case narrative
CCER	Catholic Commission for Employment Relations
CCI	Catholic Church Insurances Limited
CDF	Congregation for the Doctrine of the Faith
CEO	Catholic Education Office (formerly Catholic Schools Office, or CSO)
CET	Commissioner's Executive Team, New South Wales Police Force
Church	Catholic Church
CNI number	Central Names Index number
COPS	Computerised Operational Policing System
CPEA	New South Wales Police Force Child Protection Enforcement Agency
CSA	child sexual abuse
DCPU	Diocesan Child Protection Unit
Diocese	Catholic Diocese of Maitland-Newcastle
enqs	enquiries
ERISP	Electronically Recorded Interview of Suspected Person
Georgiana	Strike Force Georgiana
info report	information report
intel report	intelligence report
JIRT	Joint Investigative Response Team
LAC	local area command
Lantle	Strike Force Lantle
Lozano	Strike Force Lozano
MCCF	Maitland Clergy Central Fund
ODPP, Office of the DPP	New South Wales Office of the Director of Public Prosecutions
OIC	officer in charge
Ombudsman	The New South Wales Ombudsman

PIC	Police Integrity Commission
POI	person of interest
PSO	Professional Standards Office
RA	request for assistance
SC	Senior Counsel
SCC	State Crime Command
SIRG	Special Issues Resource Group
TOR 1	term of reference 1
TOR 2	term of reference 2
VCT	Victims Compensation Tribunal

Glossary

Apostolic nunciature	A top-level diplomatic mission (equivalent to an embassy) representing the Holy See in a foreign state such as Australia
Apostolic nuncio	A bishop or archbishop appointed by the Pope as his representative to the particular churches (archdioceses and dioceses) in Australia and the head of the apostolic nunciature; he also acts as ambassador of the Holy See to Australia according to international law
Assistant priest	A priest who is appointed to a parish by the diocesan bishop to assist the parish priest in the pastoral care of the parish community
Australian Catholic Bishops Conference	The assembly of the bishops in Australia established by the Holy See to provide a structure in which bishops jointly exercise certain pastoral functions for the good of the church
Bishop (diocesan)	A priest who has been appointed by the Pope to lead a specific diocese
Canon law	The basic law of the Church, promulgated by legislative authorities within the Church, by which members of the Church are internally regulated
Case narrative	Record of the description of the circumstances that give rise to any actions taken regarding an incident involving police action, proposed action or a decision not to take action
Celebret	A document given to a priest intending to work in or visit another diocese, signed by the priest's bishop and attesting to the fact that the priest is in good standing in his diocese
Central Names Index number	A unique numeral identifier generated by police and assigned to a person relevant to an incident or investigation
Coadjutor bishop	A bishop appointed by the Pope to a specific diocese to assist the incumbent bishop with pastoral governance of the diocese and who has immediate right of succession on the death, resignation or transfer of the incumbent bishop
College of Consultors	The permanent college of priests chosen from the Council of Priests, numbering between six and 12, whose purpose is to assist the bishop in the governance of the diocese in accordance with canon law
Congregation for the Doctrine of the Faith	A dicastery of the Roman Curia whose role is to promote and safeguard the Catholic doctrine on faith and morals
Consultor	A priest who is a member of the College of Consultors
Computerised Operational Policing System	A criminal intelligence database used by the New South Wales Police Force in which information relating to all aspects of crime is recorded, including criminal incidents and criminal histories
Council of Priests	A group of priests who represent priests incardinated into a diocese and priests who are exercising priestly ministry in the diocese; assists the bishop in the governance of the diocese in accordance with canon law
Deacon	A person who has been ordained and who exercises ministry especially in respect of worship and works of charity; in the third grade of ordained clerics below bishop and priest
Dicastery	A department of the Roman Curia

Diocese	A defined community of Catholics determined on the basis of territory whose pastoral care is entrusted to a bishop appointed by the Pope
E@gle.i	The New South Wales Police Force investigation management system
Episcopacy	The position or office of bishop; the period during which a bishop holds office
Excardinate	To transfer a cleric from the diocese into which he is incardinated to another diocese into which he then becomes incardinated
Faculties	The empowerment by the diocesan bishop of a priest to exercise his priestly ministry in a diocese
Holy See	The Pope and the various departments of the Roman Curia (the bureaucracy of the Holy See); commonly referred to as 'the Vatican'
In camera hearing	See Public in camera hearing
Incardinate	To attach a priest or a deacon to a diocese or religious institute, establishing a commitment and permanent link to that diocese or institute. Incardination in a diocese entails obligations and rights on the part of both the priest and the diocese. Under canon law a priest is bound to obey the bishop and faithfully accept and fulfil the ministry to which the bishop appoints him; the priest must also reside in the diocese unless his absence is authorised by the bishop
Inquiry Information Centre	The information centre the Commission established; located at the Justice Access Centre Wallsend
Local area command	A geographical division of the New South Wales Police Force responsible for providing a police service to that specific area, including general duties officers, detectives, highway patrol officers and traffic duty officers. There are over 80 local area commands in New South Wales
Laicisation	A voluntary process regulated by canon law in which a priest requests from the Pope a dispensation from his clerical obligations. From the time laicisation is granted, the person ceases to be a priest, and he can no longer wear priestly garb (or vestments) or refer to himself as a priest. The process of laicisation is dependent on cooperation from the priest concerned: in the absence of such cooperation the process cannot be completed
Monsignor	The title of those priests who have received an honour from the Pope for their service to the Church
New South Wales Police Force ranks	In descending order of seniority: Commissioner, Deputy Commissioner, Assistant Commissioner, Chief Superintendent, Superintendent, Chief Inspector, Inspector, Senior Sergeant, Sergeant, Leading Senior Constable, Senior Constable, Constable. Note that if an officer is designated 'Detective', that word may appear before his or her rank
Officer in charge	An officer of the New South Wales Police Force who has been given authority over a specific investigation
Ordination	The means by which a man becomes a deacon, a priest or a bishop in the Catholic Church
Parish	A community of the faithful, generally in a territorial area, whose pastoral care is entrusted to a parish priest
Parish priest	The priest in charge of a parish; the proper pastor of the parish entrusted to him, exercising a duty to provide pastoral care for the community entrusted to him under the authority of the diocesan bishop

Private hearing	A hearing of the Commission, used as part of its investigations, at which only the subpoenaed person (and his or her legal representative) is present with Commission personnel
Public hearing	A hearing of the Commission that is held in public
Public in camera hearing	That part of a hearing of the Commission that the Commissioner has directed should take part in camera and at which two or more persons authorised to appear are typically present
Roman Curia	The centralised bureaucracy of the Holy See
Sex Crimes Squad	Specialised squad of the State Crime Command established to ensure provision of a specialist sexual assault response to support local area commands across New South Wales
State Crime Command	A division of the New South Wales Police Force consisting of 12 squads specialising in particular types of crime
Vicar general	A priest appointed by the diocesan bishop to assist in the governance of the diocese and with the same executive power of governance throughout the whole diocese as belongs by law to the diocesan bishop, with the exception of matters reserved to the bishop
Vicar capitular	A priest appointed to govern a diocese after the death, resignation, transfer or deprivation of the bishop and until a new bishop is appointed and has taken up office. The position is now known as 'diocesan administrator', under the 1983 Code of Canon Law
Zimmerman House	Established on 4 September 2007 to provide child protection and healing services within the Catholic Diocese of Maitland–Newcastle; now known as Zimmerman Services
Zimmerman Services	The centralised team established following a restructure to provide child protection and healing services for the Catholic Diocese of Maitland–Newcastle, replacing Zimmerman House on 27 June 2011



Hope

*I go darkly through life
Hard wired and bare in despair
Then emptiness fills with hope.*

– artist Lina Basile, survivor
of abuse by McAlinden