



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 3

Margaret Cunneen SC

30 May 2014

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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.

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LATELINE.

Studio interview with Senior NSW Detective Peter Fox



Australian Broadcasting Corporation

Broadcast: 08/11/2012

Reporter: Tony Jones

Detective Chief Inspector Peter Fox, a 30-year veteran with the NSW police force, alleges a cover-up by the Catholic church into child sexual abuse and is calling for a Royal Commission.

Transcript

TONY JONES, PRESENTER: Detective Chief Inspector Peter Fox joined me in the studio just a short time ago.

Detective Chief Inspector Peter Fox, thanks for joining us.

PETER FOX, NSW POLICE: It's a pleasure, Tony.

TONY JONES: Let's start with how you got so frustrated and angry that you were publicly challenging the NSW Premier. Now your letter to Premier O'Farrell begins like this: "I've investigated so many sexual assaults in 30 years of policing that I've lost count. I've seen the worst society can dredge up, particularly the evil of paedophilia within the Catholic Church." What is the worst of it?

PETER FOX: Oh, Tony, I think most people would be absolutely crumpled up in tears to hear it. Just some examples of what I've sat and listened to is that one young boy at the hands of paedophile priest James Fletcher, he was 12 years of age when the priest drove to a secluded park outside of Maitland. He told the boy to remove his pants and the boy was totally unaware of what was going on and quite embarrassed, but that particular priest anally penetrated him.

The boy wasn't aware at that stage that his anus had been torn and he started bleeding. He was screaming in agony on the seat and his knuckles were turning white. And as the priest continued to thrust

<http://www.abc.net.au/lateline/content/2012/s3629022.htm>

14/05/2013

while he screamed, he said he focused on the St Christopher's Cross on the dashboard and watched it swaying back and forward to try and take his focus off the pain.

The priest never relented at any stage during that, and even after the act was completed, he was totally uncaring for the child and simply sat back in the driver's seat and had a cigarette while he finished sobbing.

TONY JONES: Some of these stories, in fact some of statements that you've taken from witnesses, victims, so upset a DPP solicitor that she simply couldn't go on with the case. Is that one of these?

PETER FOX: That was one of those cases. And, again, that was a solicitor that had dealt with many cases of sexual abuse. But the details and the graphic images that were conveyed in those statements so upset her. And she was well-known to me. She rang me up and apologised profusely, but said, "I just cannot stay with this case. I just can't handle it."

TONY JONES: You wouldn't be surprised about that, would you, because in fact most people don't want to hear these things, they're too awful for them to even comprehend.

PETER FOX: Well as I said in my letter to the Premier today, we do block a lot of those images away and we just accept the word paedophile or molestation. But when you actually sit down with those victims and you're looking into their eyes, police are not immune from it. And I sat there with so many of those victims and you can't but help feel their pain. The agony is still there and it will always be there to some degree.

And to just be so cold, even though I'm in a professional role, not to have some empathy for what that individual has gone through as a child just wouldn't be human.

TONY JONES: Some of them you saw in mental institutions, some committed suicide. You spoke to their relatives. All were terribly, terribly damaged.

PETER FOX: Oh, absolutely. And, you know, one young boy, I actually had my wife drop me off in Maitland and I went to the psychiatric ward of Maitland Hospital and I sat with that young fellow for a number of hours just reassuring him that he didn't have to go on with the matter if he wasn't up to it. We broke for a number of months before he was ready to come back.

These aren't easy things and there's got to be a lot of compassion and a lot of understanding from police. Sometimes these people aren't up to going through to taking it to court and we've got to sometimes take that hard pill and sit back and say, "OK, it's frustrating that we won't get this guy, but we can't put them through that ordeal."

The degree of courage those that do come back and say, "Listen, I want to finish that statement. I want to see him taken to court." How we can sit back and say they do not deserve our fullest support, because, my God, they've got some courage to be able to stand up and do what they've got to do and say what they've got to say in court and relive that ordeal.

Whether you're the Premier of NSW or you're just somebody sitting back watching this on TV tonight, it's got to move you. It can't but move you. It's terrible.

TONY JONES: As we've heard, the scale of this abuse in Newcastle-Maitland Diocese over many years is truly shocking. It's astonishing in fact. 400 victims, 14 clergy charged (inaudible), six Catholic teachers convicted, three priests currently on trial. How does this much evil get concentrated in one small area?

PETER FOX: I don't think it takes a detective chief inspector to work that out, Tony. Alarm bells were ringing there for me many, many years ago, so much so that I actually detailed a number of reports to hierarchy within the Police Department to launch fuller investigations.

It was quite evident that something was going on. These priests were operating in adjoining parishes abusing children, they were meeting at meetings together. In many cases that I came across, one priest who had previously faced paedophile charges was donating parish money to the legal support of another priest to defend him against those charges.

I had other priests that hadn't been charged with anything removing evidence and destroying it before we were able to secure it. And we just went around in circles.

TONY JONES: This is actually - this is - as horrific as the litany of sexual crimes against children are, to me one of the most disturbing lines in your letter was along these lines: "I can testify from my own experience the Church covers up, silences victims, hinders police investigations, alerts offenders, destroys evidence and moves priests to protect the good name of the Church." You're saying you have evidence of all of this?

PETER FOX: Oh, not only do I have evidence, it's irrefutable. Most of that is fact that's been admitted by many of them. We encounter it all the time. For people to sit back and say it's not going on, they've got their head in the sand. The greatest frustration is that there is so much power and organisation behind the scenes that police don't have the powers to be able to go in and seize documents and have them disclose things to us.

TONY JONES: If things were covered up, if there was serious cover-up, how high up the chain did it go to your sure knowledge?

PETER FOX: I have definite information that - of some covering up certainly to a number of diocese bishops. It potentially goes even higher than that.

TONY JONES: Higher than that? You mean into the top levels of the Church hierarchy, is that what you're saying?

PETER FOX: That's correct. I've got no doubt. You know, to sit back and sort of say, "Listen, each of these diocese are self-autonomous and there's no-one above that knows what goes on at those lower levels," we live in a real world and it would be as if, you know, I'm doing something in the police force at Raymond Terrace and I'm not accountable to somebody else at a higher level at Newcastle or in Sydney.

That's how the chain-of-command in any organisation works. To turn around and say, "No, we work something different. We didn't know about that," I think most of the public are smart enough to be able to put two and two together there.

TONY JONES: Proving it of course is the other thing, the critical thing and it's what you - I guess in a way it's what you've been searching for all this time. In 2010, two years ago, new witnesses started to come forward to give evidence about the activities of one paedophile priest called Father McAlinden. Now one of those witnesses I would describe as a key Church insider, a whistleblower. You took a statement from this person. How significant was that statement?

PETER FOX: When I was directed to hand that statement over, I described her statement - and I'd never used the term about a statement in my entire career before that - but I described that statement as explosive and I still describe it as explosive.

What is disclosed in that is monumental. I've spent a couple of months getting that statement, typing it down in very careful detail and spending an enormous amount of time with that particular witness who was, like many victims - and I should add, Tony, that she wasn't simply a witness; she'd also herself been a victim at a much earlier time of McAlinden.

So when she came forward and was able to give all that information, it just opened a can of worms. I was able to go to another number of witnesses who began corroborating various aspects and saying, "Yes, that is exactly what happened." So, the credibility towards that witness was certainly being elevated.

TONY JONES: So, what did that witness actually bring to the table, being an insider in the Church, what was she able to say about what was happening in terms of the cover-up?

PETER FOX: Tony, I understand that Strike Force Lantle has already sent some briefs off to the DPP for consideration. I don't want to say anything that may prejudice anything that's going on there.

But I think it's already been reported in the papers that some of the police that are attached to that have already indicated that there is an archbishop and at least two other priests that are implicated - or sorry, an archbishop, a bishop and a priest that are implicated in potential cover-up.

Now the DPP, I understand, has been sent those briefs and they're considering it now.

TONY JONES: One of the most disturbing things that you said earlier was that you were directed to give this material up. As I understand it, you were also ordered to stand down from the case, to no longer investigate this case. Is that a correct way of putting it?

PETER FOX: That's absolutely correct. That's spot on.

TONY JONES: And the reason given to you for being taken off this case which you'd obviously worked on for, well, as long as you could remember, I'd imagine?

PETER FOX: Well I worked on it since I started investigating Denis McAlinden in 1999. I had contact with various witnesses over the years. I actually even interviewed Bishop Leo Clarke, who in 2003 told me when I asked if he had knowledge of any other victims other than the one that I already, and very clearly said to me no.

I later seen documentation, after he passed away, that clearly indicated that he had full knowledge of other victims.

Boiling it down to just simple words, he lied. I was standing there with a colleague and he just straight-out lied to me about his knowledge of other victims. Hence the reason I say that some in the Church have no reservation about lying when it comes to it to conceal the fact that they had knowledge of these crimes.

TONY JONES: But let's just go through this because if I understand this correctly, you are the person - the investigator who knows the most about this case, you are the person who has interviewed the whistleblower, the key witness, you've got the statement in front of you that you think is dynamite and you are told by a superior to stand down from the case and give over your material. Is that how it happened?

PETER FOX: Yes. That's it in a nutshell.

TONY JONES: And are you able to tell us who that superior was?

PETER FOX: It's a very senior officer within the NSW Police and I was quite dismayed at it. That particular witness was quite distraught when I told her that I'd been told to hand the whole matter over.

TONY JONES: Because you had a personal relationship.

PETER FOX: A personal professional relationship.

TONY JONES: Of trust, a relationship of trust.

PETER FOX: Well originally she actually came forward to a newspaper reporter, Joanne McCarthy, and after many months she finally convinced this witness to come forward and speak to police. She actually said - refused and then she said, "The only police officer I will speak to is Peter Fox."

I didn't know her and it was explained that she had spoken to a number of other families who had dealt with me in the past and she said she would feel comfortable dealing with me. Now, on that basis of course I'm not going to turn her away, of course I'm going to say, "Yes, come in and sit down and we'll get the statement." I have my own thoughts on it. A lot of other people may have their thoughts.

TONY JONES: About why you were taken off the case.

PETER FOX: I was just - I was very, very disappointed. I'm not being critical of any of the investigators that are working on Strike Force Lantle. They were handed the matter. But as to the reasons why that was done when I pursued the matter for over a decade, I don't know.

TONY JONES: Do you believe it was because you're too independent of mind, that you couldn't be controlled?

PETER FOX: Tony, I don't think I'd be lying if I said that a lot in the police force would consider me rather outspoken. I'm sure that some hierarchy in the police force won't be wanting to put me on their Christmas card list after the letter today and after speaking here tonight. I don't care.

At the end of the day, I don't know whether I'll face disciplinary charges or anything in relation to the stance I've taken. And again, I don't care. What I do care about is that there are so many victims out there. I can't divorce myself - even though I'm a detective, I can't say that I'm not human and I haven't heard their pain.

There's something very wrong when you have so many paedophile priests operating in such a small area for such an extended period of time with immunity. And my - I submitted report after report suggesting that we needed to do a lot more about investigating this. Why that didn't happen, I've never received a response.

TONY JONES: Let me just go - there has been some response from - to questions that we asked from the police. In a statement sent to us tonight the police saying that you were informed that Strike Force Lantle would be fully investigating the allegations. It was because they were under a different operational command or local area command than the one that you worked in, that you were not appropriately meant to be part of that strike force.

PETER FOX: I don't know who said that, Tony. That's the first time I've ever had those comments made to me.

TONY JONES: This is a statement from Assistant Commissioner Carlene York of the Northern Command NSW.

PETER FOX: I - she wasn't at the meeting when I was directed to hand all the documentation over. What I will say is that I did send her a report expressing my concern and the reasons why I felt that I should be left with carriage of that matter, detailing many of the issues you've raised tonight plus a lot more. Nothing changed.

TONY JONES: Does this statement seem legitimate to you? Does it seem like the real reason why you weren't allowed to continue that investigation?

PETER FOX: I was never told why. To sort of say that I was - Raymond Terrace is a stone's throw from Newcastle. It's only a few kilometres. As you pointed out, I had a lot of experience and you do, you build up a very strong rapport. It wasn't just that particular witness, but I'd also spoken to a number of other victims that had been terribly abused by McAlinden.

TONY JONES: In other words, you were a logical person to be on the taskforce? Strike force.

PETER FOX: You can say that, but it's something that I think most police are trained. We're instructed when you go to detectives courses is that you don't hand victims around like numbers. When they sit down and a victim talks to you, they open up to you, they pour their heart and soul out and they tell you things that they've never told another living soul. And then you've got to turn around say, "Well, I'm not going to talk to you anymore. You have got to go down and see these people." I know from my training that is something that I'd never encountered before.

TONY JONES: It's going to seem passing strange to most observers, as it does to me, I must say.

But let me just move on because you've actually called for a Royal Commission. If there were a Royal Commission, would this whistleblower, the insider who seems to know so much be prepared to talk at the Royal Commission, to give evidence and to lay out all of this in front of the public?

PETER FOX: Tony, I don't know. I was directed not to contact them again. My last contact with her was - she was virtually in tears when I handed her a copy of a statement and told her to hang on to it and that was my last contact with her. I don't mind saying that there was a lot more that was said at that meeting that I won't say here. I think that it is best left for another forum.

But to say that that was a very difficult moment and something that quite saddened me as an investigator of well over 30 years in this job.

TONY JONES: But do you believe that a Royal Commission is necessary for people like this to be able to come forward. Is that the only environment in which it would really work?

PETER FOX: There's so much that the police force can't do. We don't have power. I have gone to other government departments, I've gone to the Ombudsman over aspects of it. Still today there are some antiquated rules and laws where priests, for argument's sake, that have had allegations of abusing and molesting children, that is kept by the bishop.

If it's a school teacher in the Catholic school system, it goes to a different department. But the bishops still retain that. I don't know why. There's no obligation on them to pass that information on to police. And I don't think that's a secret.

The Victorian inquiry and I think the inquiries overseas and just history itself says that that doesn't happen. There's so much evidence on the basis that paedophile priests, once they become known by their hierarchy, the hierarchy has a systemic pattern of not forwarding that information on.

We need to get around that, because as I said in that letter to the Premier - and I don't want the issue to become adversarial, I don't want to enter into ...

TONY JONES: OK. Well, let's put it this way: I'm sure Barry O'Farrell will see this interview. He's up until now said no Royal Commission, he doesn't want to be pressure into having a Royal Commission. He, I understand, won't even reply to your letter. Here's your chance to say something to him. What do you say?

PETER FOX: Well, on that basis, I have three children at home. Probably like most families, I've got some of their photographs on the wall. They're now grown adults, but we still have the photos of when they were growing up on our wall. Two of them are now - have our grandchildren. I'm sure Mr O'Farrell has children. I understand he has two boys. A lot of these victims' families have similar photos. I've walked into their homes and I've seen them.

We're lucky. We haven't had to go through what some of those other families have gone through. If Mr O'Farrell just sits back and he can look up on that wall and see those pictures of his boys, he has a lot of thanks to give that his boys were never ever abused in the way that some of these other families have.

And if he has any compassion and humanity for some of these victims, he's got to turn around. Why can we have an inquiry in Victoria - and the police down there have been fantastic. We've seen the evidence that the Commissioner and the assistant commissioners have been right behind it and they're tabling stuff and yet I'm dismayed here in a state of NSW that we're saying it stops at the Murray River, they don't come up here.

When we can make a change that is going to stop more victims from being abused, that's the real difference. We can actually impact upon the number. And to sit back and say, "Listen, we're not going to do that," something is wrong in the state of NSW if that's the attitude.

TONY JONES: Detective chief inspector Peter Fox, an extraordinary story. We thank you very much for coming on Lateline to talk to us.

PETER FOX: Thank you very much, Tony, for airing it.

TONY JONES: And the full responses of the NSW Police to Lateline's questions will be posted on our website.

NSW POLICE STATEMENT

Responses to Lateline's questions from Assistant Commissioner Carlene York, Northern Region Commander.

1. What is your response to the letter and article in the Newcastle Herald today in particular the concerns raised by Detective Inspector Peter Fox?

The views of Detective Chief Inspector Fox are not necessarily the views of the NSW Police Force. All matters referred to NSW Police have and will continue to be investigated to their full extent. NSW Police Force are not in a position to comment on the call for a judicial enquiry, this issue should be referred to the appropriate authority.

<http://www.abc.net.au/lateline/content/2012/s3629022.htm>

14/05/2013

2. Are you 100 per cent happy with how the NSW Police are handling the allegations of cover ups and concealing crimes by members of the clergy?

NSW Police Force has investigated matters relating to Strike Force Lantle thoroughly. I am satisfied that all avenues of enquiry that we are aware of have been followed through and appropriate referrals made. I am not in a position to comment on any other investigations that may have occurred.

3. Is the Catholic Church and its senior officers fully cooperating with your investigations including Strike Force Lantle?

It is my understanding that as a whole the church have cooperated with police. All potential witnesses were offered an opportunity to provide information, one of whom declined to be interviewed.

4. Do you believe a judicial Inquiry would jeopardise current police investigations?

Unless further evidence comes to light, the NSW Police Force has fully investigated Strike Force Lantle matters. There are no further lines of enquiry to investigate thus any Judicial Inquiry should have no effect on current investigations. I cannot however comment on any other investigations that may be underway within NSW Police Force and any impact on them.

This matter now rests with the ODPP for a decision as to whether the matter can progress. The NSW Police Force cannot comment on the effect any judicial inquiry may have on a successful prosecution should the ODPP determine there that a prosecution may proceed

5. Have your officers been impeded in their investigations by any member of the clergy ? or officers or employees of the Catholic Church?

See question 3.

6. Why was Chief Inspector, Peter Fox asked to cease investigating the clergy matter and hand over all his evidence to other police?

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 consulted on numerous occasions and asked to provide information to assist the investigation.

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THE HERALD

OPINION: Don't block your ears to abuse, Mr Premier

By PETER FOX
Nov. 8, 2012, 4 a.m.

I HAVE investigated so many sexual assaults in my 35 years of policing I've lost count.

Having spent most of those years at the coal face I have seen the worst society can dredge up, particularly the evil of paedophilia within the Catholic Church.

I am not in an executive position or relying on statistics or reports being shielded from reality, I speak from first-hand experience with victims and their abusers.

It is not an easy story to hear and the reason so many cover their ears and turn away, I've visited victims in mental hospitals and listened to families tell of suicides. I have looked into their faces, seen their tears of pain, anguish and despair, listened to the hurt of betrayal and felt their isolation from not being believed.

We all hear the words "paedophile" or "child molester" but what do they really mean? The term "child abuse" sweeps over the acts sanitising images of this appalling crime. It's our inbuilt defence to protect us from those horrific images.

Listening to their stories, typing their statements, I relived their pain. I haven't blocked those images and they still haunt me. I visited them in psychiatric wards and saw the damage to their families. A solicitor from the DPP broke down reading one of my statements. The abuse was so abhorrent she asked to be relieved of the case. Is it any wonder people don't want to hear and turn away?

Victims are coming forward in ever-increasing numbers but they need our support. They need your support, Mr Premier. Police are making arrests but still the abuse goes on. It is not enough to say, "I welcome the police decision to arrest another person [priest] accused of paedophilia", when on average it takes 21 years to report these crimes and the priest continues to prey on more little children.

Often the church knows but does nothing other than protect the paedophile and its own reputation. It certainly doesn't report abuse as revealed by the current Victorian Inquiry.

I can testify from my own experience that the church covers up, silences victims, hinders police investigations, alerts offenders, destroys evidence and moves priests to protect the good name of the church. None of that stops at the Victorian border.

Convicted priest Vincent Ryan was sent to Victoria when the church learned of his abuse, returning the following year after things cooled down to pick up where he left off.

Many police are frustrated by this sinister behaviour, which will continue until someone stops it. You have the power to do that, Mr Premier. The whole system needs to be exposed; the clergy covering up these crimes must be brought to justice and the network protecting paedophile priests dismantled. There should be no place for evil or its guardians to hide. Then and only then will the arrests begin to slow, signalling fewer children are being raped.

It is no longer enough to just arrest the wrongdoer 21 years after the crime.

Removing the support that harbours these criminals is like cutting the head from the beast. It tears down the veil of secrecy behind which these vile animals operate with the self-assurance of immunity.

A priest once gave evidence that the church's handling of child sex allegations was under control.

That priest was named by victims as having allegedly helped to cover up the rape of children.

His name continues to appear in other matters. Clearly everything is not under control. Alarm bells are ringing.

I have many family and friends who are Catholic. My children attend Catholic schools so I am not anti-Catholic. I voted for you, Mr O'Farrell, at the last election so my call for a royal commission is not politically motivated. My reason is from the suffering I have witnessed and a desire to make it stop.

There are more than just the victims and their families who want to see a royal commission. I have spoken to teachers who no longer want to be intimidated and silenced. I have sat with a priest and nun who were so distraught they felt forced to leave the church when they couldn't remain silent. I have taken reports of ostracism and reprisals against victims' families for giving evidence against priests at trial. If this doesn't warrant a royal commission something is very wrong.

Apologising is not enough. Compensating victims for treatment is not enough. Mr O'Farrell, please don't block your ears. Many priests don't want a royal commission nor does the hierarchy of the church, but God knows we need one.

Detective Chief Inspector Peter Fox is a Hunter police officer with more than 35 years' experience in the force.

Appendix B Terms of reference



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

Terms of Reference

Margaret Cunneen SC was appointed by Letters Patent issued in the name of the Governor of New South Wales on 21 November 2012. Amending Letters Patent were issued on 25 January 2013 so that the Inquiry will now 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) a member of the clergy or any religious order of the Catholic Church.

The Commission is also further authorised to establish such lawful arrangements as considered 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 its 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, are considered more appropriately referred to the National Royal Commission.

"National Royal Commission" means the Commission of Inquiry into institutional responses to child sexual abuse established by Letters Patent (as they may be amended, supplemented or replaced from time to time) issued in Our Name by Our Governor-General of the Commonwealth of Australia on 11 January 2013 under the *Royal Commissions Act 1902* (Cth), the corresponding Commission of Inquiry established by Letters Patent (as they may be amended, supplemented or replaced from time to time) issued in Our Name by Our Governor of the State of New South Wales under the *Royal Commissions Act 1923* (NSW), and any related Commission of Inquiry that may henceforth be established.

The Commissioner is due to provide a report on, or before, 31 May 2014.

Appendix C Letters Patent

ENTERED on the Record by me, in REGISTER OF PATENTS, No. 91, Page 12, this 21 st day of November 2012.	<p style="text-align: center;"><u>NEW SOUTH WALES</u></p>
	<p>ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.</p>
	<p>To MARGARET MARY CUNNEEN SC</p>
	<p>By these Our Letters Patent, made and issued under the authority of the Special Commissions of Inquiry Act 1983, We hereby, with the advice of the Executive Council, authorise you as Commissioner to inquire into and report to Our Governor of the said State on the following terms of reference concerning the police investigation of matters relating to Father Denis McAlinden referred to in the ABC Lateline television report broadcast on 8 November 2012:</p>
	<ol style="list-style-type: none">1. the circumstances in which Detective Chief Inspector Peter Fox was asked to cease investigating the matters and whether it was appropriate to do so; and2. the extent to which officials of the Catholic Church have co-operated with the investigation, including whether the 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,
DEPARTMENT OF PREMIER AND CABINET DIRECTOR GENERAL 	<p>AND hereby establish a Special Commission of Inquiry for this purpose.</p>
	<p>IN these Letters Patent:</p>
	<p>“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</p> <p>“official of the Catholic Church” includes (without limitation):</p>

- (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) a member of the clergy or any religious order of the Catholic Church.

AND pursuant to section 21 of the Special Commissions of Inquiry Act it is hereby declared that sections 22, 23 and 24 shall apply to and in respect of the Special Commission the subject of these Our Letters Patent.

AND OUR further will and pleasure is that you do, as expeditiously as possible, but in any case on or before 5 April 2013, deliver your report in writing of the results of your inquiry to the office of Our Governor in Sydney.

IN TESTIMONY WHEREOF, WE have caused these Our Letters to be made Patent and the Public Seal of Our State to be hereunto affixed.



WITNESS Her Excellency Professor
Marie Bashir, Companion of the
Order of Australia, Governor of the
State of New South Wales in the
Commonwealth of Australia.

Dated this 21st day of November 2012.


Governor

By Her Excellency's Command,


Premier.

NEW SOUTH WALES

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

To MARGARET MARY CUNNEEN SC

WHEREAS, by Letters Patent issued in Our Name by Our Governor of Our State of New South Wales on 21 November 2012, We appointed you as sole Commissioner to conduct an inquiry concerning the police investigation of certain matters referred to in the ABC Lateline television report broadcast on 8 November 2012,

AND, by Letters Patent issued in Our Name by Our Governor-General of the Commonwealth of Australia on 11 January 2013 and in Our Name by Our Governor of Our State of New South Wales, We established the National Royal Commission,

AND it is desirable that the Letters Patent of 21 November 2012 be altered and varied as follows.

NOW THEREFORE, by these Our Letters Patent, made and issued under the authority of the Special Commissions of Inquiry Act 1983 (NSW), We hereby, with the advice of the Executive Council, alter and vary the Letters Patent of 21 November 2012 as follows:

- (a) Add "(NSW)" after "Special Commissions of Inquiry Act 1983" in the paragraph beginning "By these Our Letters Patent";
- (b) Omit the words "concerning the police investigation of matters relating to Father Denis McAlinden referred to in the ABC Lateline television report broadcast on 8 November 2012" in the same paragraph;

ENTERED on the Record by me, in REGISTER OF PATENTS, No. 91 Page 28, this 25th day of January 2013.

DEPARTMENT OF PREMIER AND CABINET
DIRECTOR GENERAL

- (c) Omit the paragraphs numbered 1 and 2 and replace them with the following:

- "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,"

- (d) Insert after the paragraph beginning "AND hereby establish" the following paragraph:

"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."

- (e) Insert in the paragraph commencing "IN these Letters Patent" in the appropriate alphabetical order the following definitions:

" '*National Royal Commission*' means the Commission of Inquiry into institutional responses to child sexual abuse established by Letters Patent (as they may be amended, supplemented or replaced from time to

time) issued in Our Name by Our Governor-General of the Commonwealth of Australia on 11 January 2013 under the Royal Commissions Act 1902 (Cth), the corresponding Commission of Inquiry established by Letters Patent (as they may be amended, supplemented or replaced from time to time) issued in Our Name by Our Governor of the State of New South Wales under the Royal Commissions Act 1923 (NSW), and any related Commission of Inquiry that may henceforth be established."

" *'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)."

- (f) Insert "1983 (NSW)" after "Act" in the paragraph beginning "AND pursuant to section 21".
- (g) Omit "5 April 2013" in the paragraph beginning "AND OUR further will" and insert instead "30 September 2013".
- (h) Insert a new paragraph after that paragraph as follows:

"AND IT IS FURTHER DECLARED that these Letters Patent are to be read with the Letters Patent constituting your Commission."

IN TESTIMONY WHEREOF, WE have caused these Our Letters to be made
Patent and the Public Seal of Our State to be hereunto affixed.



WITNESS Her Excellency Professor
Marie Bashir, Companion of the
Order of Australia, Commander of
the Royal Victorian Order,
Governor of the State of New
South Wales in the Commonwealth
of Australia.

Dated this 2nd day of January 2013.


Governor

By Her Excellency's Command,



Premier.

NEW SOUTH WALES

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

To MARGARET MARY CUNNEEN SC

WHEREAS, by Letters Patent issued in Our Name by Our Governor of Our State of New South Wales on 21 November 2012, and altered and varied on 25 January 2013, We appointed you as sole Commissioner to conduct an inquiry concerning Police investigations of certain matters relating to alleged child sexual abuse involving Father Denis McAlinden or Father James Fletcher,

AND WHEREAS it is desirable that those Letters Patent be altered and varied to provide additional time for the preparation and delivery of your report,

NOW THEREFORE, by these Our Letters Patent, made and issued under the authority of the Special Commissions of Inquiry Act 1983 (NSW), We hereby, with the advice of the Executive Council, alter and vary the Letters Patent of 21 November 2012 (as altered and varied by the Letters Patent of 25 January 2013) by omitting "30 September 2013" in the paragraph beginning "AND OUR further will" and inserting instead "28 February 2014".

AND IT IS FURTHER DECLARED that these Letters Patent are to be read with the Letters Patent constituting your Commission.

ENTERED on the Record by me, in REGISTER OF PATENTS, No. 91 Page 137, this 28th day of August 2013.

DEPARTMENT OF PREMIER AND CABINET

DIRECTOR GENERAL


IN TESTIMONY WHEREOF, WE have caused these Our Letters to be made
Patent and the Public Seal of Our State to be hereunto affixed.



WITNESS Her Excellency Professor
Marie Bashir, Companion of the
Order of Australia, Commander of
the Royal Victorian Order,
Governor of the State of New
South Wales in the Commonwealth
of Australia.

Dated this 28th day of August 2013.



Governor

By Her Excellency's Command,



Premier.

NEW SOUTH WALES

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

To MARGARET MARY CUNNEEN SC

WHEREAS, by Letters Patent issued in Our Name by Our Governor of Our State of New South Wales on 21 November 2012, and altered and varied on 25 January 2013 and 28 August 2013, We appointed you as sole Commissioner to conduct an inquiry concerning Police investigations of certain matters relating to alleged child sexual abuse involving Father Denis McAlinden or Father James Fletcher,

AND WHEREAS it is desirable that those Letters Patent be altered and varied to provide additional time for the preparation and delivery of your report,

NOW THEREFORE, by these Our Letters Patent, made and issued under the authority of the Special Commissions of Inquiry Act 1983 (NSW), We hereby, with the advice of the Executive Council, alter and vary the Letters Patent of 21 November 2012 (as altered and varied by the Letters Patent of 25 January 2013 and 28 August 2013) by omitting "28 February 2014" in the paragraph beginning "AND OUR further will" and inserting instead "31 May 2014".

AND IT IS FURTHER DECLARED that these Letters Patent are to be read with the Letters Patent constituting your Commission.

ENTERED on the Record by me, in REGISTER OF PATENTS, No. ~~143~~ 91 Page 173, this 12th day of February 2014.

DEPARTMENT OF PREMIER AND CABINET


DIRECTOR GENERAL

IN TESTIMONY WHEREOF, WE have caused these Our Letters to be made
Patent and the Public Seal of Our State to be hereunto affixed.



WITNESS Her Excellency Professor
Marie Bashir, Companion of the
Order of Australia, Commander of
the Royal Victorian Order,
Governor of the State of New
South Wales in the Commonwealth
of Australia.

Dated this 12th day of February 2014.

Handwritten signature of Marie Bashir in black ink.

Governor

By Her Excellency's Command,

Handwritten signature of Barry Hawke in blue ink.

Premier.

Appendix D Reports of Dr Rodger Austin

Report of Dr Rodger Austin, 3 July 2013

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

OF

DR RODGER JOSEPH AUSTIN JCD STL

CANON LAWYER

FOR THE ATTENTION OF

THE COMMISSIONER

MS MARGARET CUNNEEN SC

REPORT
OF
DR RODGER JOSEPH AUSTIN JCD STL

Author of this Report

I, the undersigned, Rodger Joseph Austin, am the author of this Report. I was born on 13 August 1939. I am a canon lawyer. I obtained a degree in theology [STL] from the Ecclesiastical Theological Faculty of Sydney in 1967 and a doctorate in canon law [JCD] from the Pontifical Urban University, Rome in 1972.

I was a lecturer in canon law at the Catholic Theological Institutes in Sydney from 1972-1996. I was a judge of the Ecclesiastical Regional Tribunal of Sydney 1979-2004 and of the Tribunal of Appeal for Australia and New Zealand 1981-2004. I was ordained a priest in 1967 and Pope John Paul II dispensed me from all obligations arising from ordination in 2004. I held various ecclesiastical offices in the Diocese of Wollongong and the Archdiocese of Sydney between 1972 and 1989. I was Assistant Secretary to the Australian Catholic Bishops Conference in Canberra 1989-1991. I have contributed to theological and canonical journals in Australia and overseas.

I am self-employed as a Canon Law adviser and consultant to diocesan bishops, diocesan agencies, parishes, religious institutes and other Catholic Church organisations and individuals. I am an Advocate for the Ecclesiastical Regional Tribunal of Sydney of the Catholic Church.

My Curriculum Vitae is annexed to this Report as Annexure 'A'.

Agreement to Expert Witness Code of Conduct

I, Rodger Joseph Austin, acknowledge for the purpose of Rule 31.23 of the *Uniform Civil Procedure Rules 2005* that I have read the Expert Witness Code of Conduct in Schedule 7 to the Rules and agree to be bound by it.

I have been requested to provide an expert report with respect to the following matters.

Relationships between a Bishop and Priest of a Diocese

1. The relationship under Canon law between a Bishop and a Priest of a Diocese, including the extent to which the Bishop holds a position of authority in relation to the priest.

Interface between Canon Law and civil law

2. The interface between Canon law and civil law and, in particular (as relevant to the context of reporting allegations of child sexual abuse committed by a priest), whether or not Canon law may override or displace any applicable civil law obligations.
3. (a) In concise terms, with respect to allegations of child sexual abuse committed by a priest the Canon law requirements for a Bishop to undertake an investigation of such allegations and applicable procedures.

Please summarise the position as at (i) 1956; (ii) 1976; (iii) 1983-1987; (iv) 1993-1995; and (v) the present time.

(b) What are the Canon law requirements for documenting investigative steps (whether by the Bishop or person appointed by the Bishop to undertake an investigation) and for retaining such documents?

4. Whether Canon law imposes any (a) obligations or (b) restrictions upon a Bishop or priest in terms of reporting to Police of allegations of child sexual abuse committed by a priests and, if so, the nature of such obligations or restrictions (including any change in the position from 1950 onwards as per above).
5. In summary terms, a description of the evolution of any Church protocols or procedure (whether or not mandated by Canon law) relating to the reporting of allegations of child sexual abuse. To the extent applicable, please include reference to any relevant directives or guidelines provided by the Congregation for the Doctrine of the Faith or the Vatican.

The "secret archive"

6. In concise terms, a description of the Canon law requirements for the establishment and maintenance of a "secret archive" (cf. Canon 489) including:
 - (a) What is the nature of a secret archive?;
 - (b) What type of documents should be stored in the secret archive, and why?;
 - (c) Should documents relating to allegations of child sexual abuse be stored in a secret archive?;
 - (d) Who has responsibility for and control of such secret archive and documents?;
 - (e) Which persons are permitted access to documents in such secret archive?;
 - (f) What are the requirements for (i) retention, and (ii) destruction of documents held in the secret archive?
7. Canon 489 §2 states that *"Each year documents of criminal cases concerning moral matters are to be destroyed whenever the guilty parties have died, or ten years have elapsed since a condemnatory sentence concluded the affair. A short summary of the facts is to be kept, together with the text of the definitive judgement."*

In this respect:

- (a) Is a Bishop bound or expected to follow Canon 489 §2 and destroy documents as contemplated by that canon? What consequences follow, under Canon law, if he does not do so?
- (b) Does Canon 489 §2 have the effect that documents are required to be destroyed under Canon law 10 years after the perpetrator had died and which thus may not be later available to Police who later may be investigating allegations of concealment (by Church officials) of offences committed by the perpetrator?
- (c) How does the apparently mandatory language of Canon 489 §2 co-exist with any civil law obligations that may exist regarding the retention of documents?

Laicisation and impediments to exercise of Ministry

- 8. What is meant by the laicization of a priest (under Canon law) and whether or not it is the same as dismissal?;
- 9. What steps were required under Canon law to:
 - (a) remove a priest's faculties as at 1993?;
 - (b) laicise a priest as at 1995?
 - (c) if the process involved in either (a) or (b) above has since changed, please summarise the change and the basis thereof.
- 10. (a) To what extent did the letter dated 19 October 1995 from Bishop Leo Clarke to Fr Denis McAlinden (copy attached) correctly set out the applicable Canon law process as at that date?
 - (b) Did the reference (in the letter dated 19 October 1995 to "*your good name will be protected ...*") reflect an applicable Canon law requirement?

PRELIMINARY AND EXPLANATORY STATEMENT

1. In order to provide a response to the matters hereinbefore set out it is necessary to make a preliminary and explanatory statement with regard to the law of the Catholic Church.
2. From the earliest times the legislation promulgated by the Church was referred to as *ius canonicum* - *canon law*. Since the Twelfth Century, the Church has referred to the laws enacted by secular authorities as *the civil law*.

Canon law can be defined as that system of laws promulgated by lawful ecclesiastical authority by which the constitution and governance of the Church is regulated and the actions of the members of the Church are directed towards its purpose.¹

THE CODE OF CANON LAW

3. The development of the Church's legal system from New Testament times until the present is very complex.² For the purposes of this Report it is necessary to note the following.

Code of Canon Law 1917-1983

4. As requested by the First Vatican Council [1869-1870] Pope Pius X undertook, from 1904 to 1917, the reform of canon law. In the process of reform it was decided to adopt a codified approach to canon law, a decision in large part influenced by the codification of civil legislation in Europe in the Eighteenth and Nineteenth Centuries.³

Pope Benedict XV promulgated the Code of Canon Law on 27 May 1917 and decreed that it come into force on 17 May 1918.

The 1917 Code of Canon Law remained in force until 27 November 1983.

The official text of the 1917 Code of Canon Law is in Latin: *Codex Iuris Canonici* PII X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus. The text of canons of the 1917 Code of Canon Law to which I refer in this Report are taken from Stanislaus Woywod – Callistus Smith, *A Practical Commentary on the Code of Canon Law* New and Revised Edition (New York: Joseph F. Wagner, Inc., 1957). The 1917 Code of Canon Law is identified as CIC17.

Code of Canon Law 1983

5. On 25 January 1959 when Pope John XXIII convened the Second Vatican Council [1962-1965] he said it would be accompanied and completed by the revision of the 1917 Code of Canon Law.⁴ On 25 November 1967 Pope Paul VI inaugurated the work of the Pontifical Commission for the Revision of the 1917 Code of Canon Law that was brought to completion on 22 April 1982.

¹ cf. Felix M. Cappello SJ *Summa Iuris Canonici* 3 Vols. Editio Sexta (Rome: Pontificia Universitas Gregoriana, 1961)I:8.

² cf. Amleto G. Cicognani *Canon Law* Second Revised Edition Authorized English Version of *Ius Canonicum* (Maryland: Newman, 1934); Alphonsus M. Stickler *Historia Iuris Canonici* 6 Vols. (Rome: Pontificia Studiorum Universitas Salesiana, 1950); James A. Coriden *An Introduction to Canon Law* (London: Chapman, 1991).

³ Cicognani, 417-418.

⁴ Pope John XXIII Allocutio 25 January 1959.

On 25 January 1983 Pope John Paul II promulgated the revised Code of Canon Law and decreed that it come into force on 27 November 1983.

The official text of the 1983 Code of Canon Law is in Latin: *Codex Iuris Canonici* auctoritate Ioannis Pauli PP. II promulgatus.

The English translation of the *Codex Iuris Canonici* approved for use in Australia is *The Code of Canon Law New Revised English Translation* Prepared by the Canon Law Society of Great Britain and Ireland in association with the Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society (London: Harper-Collins, 1997). The text of canons quoted in this Report is taken from this translation.

The 1983 Code of Canon Law is identified as CIC83.

After the 1983 Code of Canon Law came into force further legislation has been promulgated by the Roman Pontiffs, John Paul II and Benedict XVI.

6. In the Catholic Church there is an essential relationship between the teaching of the Church and its legislation, such that it is necessary to consider the legislation with reference to its theological sources and the teaching of the Church that pertains to it.

In respect of the 1983 Code of Canon Law it is the teaching of the Second Vatican Council that is of particular importance.

RELATIONSHIPS BETWEEN A BISHOP AND PRIEST OF A DIOCESE

1. The relationship under Canon law between a Bishop and a Priest of a Diocese, including the extent to which the Bishop holds a position of authority in relation to the priest.

7. The teaching of the Church is that the Catholic Church is not one single monolithic structure but a communion of individual or particular Churches which are also called dioceses.⁵

The teaching of the Church is that a diocese is a portion of the People of God entrusted to a bishop to be shepherded by him with the cooperation of the priests.⁶ The diocesan Bishop is not the delegate of the Roman Pontiff but governs the particular Church assigned to him as the vicar and ambassador of Christ.⁷ He governs his diocese by his "counsels, exhortations and example, but over and above that also by the authority and sacred power exercised in the name of Christ".⁸

In the Diocese entrusted to his pastoral care the 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 Roman Pontiff.⁹ The diocesan bishop's power is legislative, judicial and executive.¹⁰

8. It is the teaching of the Church that the relationship between a priest and his Bishop has its foundation in the spiritual reality, namely that priests share and exercise with the Bishop the one priesthood and ministry of Christ through their reception of the Sacrament of Holy Orders.¹¹

All members of the Church are referred to generically as "Christ's faithful". Those who are ordained, that is sacred ministers, "in law are also called clerics" and consequently the law refers to the "clerical state".¹²

As a member of the Catholic Church a priest already possesses the obligations and rights common to all Catholics.¹³

Ordination as a priest brings with it the obligations and rights pertaining to the status of 'a cleric' in the Church.¹⁴

9. No man who is a member of the Catholic Church can be ordained a priest unless, as stated in CIC83 canon 265, he is incardinated into a diocese.

Incardination is ordinarily established by ordination as a deacon. Incardination is the permanent attachment of an ordained minister to the diocese to whose service he has committed himself. Incardination can only be lost in accordance with the procedures established in the Code of Canon Law.

⁵ Vatican II Dogmatic Constitution on the Church n.23.

⁶ Vatican II Decree on the Bishops' Pastoral Office in the Church n.11; cf. CIC83 canon 369.

⁷ Vatican II Dogmatic Constitution on the Church n.27.

⁸ Ibid.

⁹ Vatican II Decree on the Bishops' Pastoral Office in the Church 8(a); cf. CIC83 canon 381 §1.

¹⁰ Cf. CIC17 canons 335 §1, 1519; CIC83 canon 391 §1.

¹¹ Cf. Vatican II Dogmatic Constitution on the Church n.28.

¹² CIC83 canon 207 §1.

¹³ CIC83 canons 208-223.

¹⁴ CIC83 canons 273-289.

A priest, whilst remaining incardinated in his own diocese, may be permitted to exercise his priestly ministry in another diocese only in accordance with the norms of canon law.

Incardination constitutes a spiritual bond as well as an authentic legal bond. CIC83 canon 275 §1 provides that "since all clerics are working for the same purpose, namely the building up the body of Christ, they are to be united with one another in the bond of brotherhood and prayer. They are to seek to cooperate with one another, in accordance with the provisions of particular law".

Incardination into a diocese establishes obligations and rights incumbent upon the priest and the diocese. A priest is "bound by a special obligation to show reverence and obedience to his diocesan Bishop" for he shares with the Bishop in the responsibility for the diocese. [CIC83 canon 273] He is obliged to accept and faithfully fulfil the ministry to which he is appointed by the diocesan Bishop. [CIC83 canon 274 §2] He is bound to reside in the diocese unless his absence is authorised [CIC83 canon 283]. A diocese is obligated to provide "remuneration [for the priest who is] dedicated to the ecclesiastical ministry" and "such social welfare he may need in infirmity, sickness or old age". [CIC83 canon 281]

10. It is the teaching of the Church that a priest is dependent upon the diocesan Bishop in the exercise of his priestly ministry.¹⁵ Subsequent to his ordination a priest requires "faculties" in order to exercise his priestly ministry in the diocese in which he is incardinated.

A faculty is an empowerment to act. Faculties are important in the pastoral ministry within a diocese. Some faculties are given by the law. For his ministry within the diocese, the priest is granted faculties by the diocesan Bishop. They provide the priest with the authorisation to perform certain functions and with the delegation to perform services usually reserved to a higher authority. A priest is not entitled to these faculties as they are freely granted by the diocesan Bishop.

The fact that a priest is incardinated into a diocese does not give him the right to be appointed to a specific ministry, such as a parish priest.

11. The Church requires the diocesan Bishop to "relate to his priests not merely as a ruler towards his subjects, but rather as a father and friend".¹⁶ Drawing on the teaching of the Church, CIC83 canon 384 specifies three aspects in which the diocesan Bishop must care for his priests: "defend their rights ... ensure they fulfil the obligations proper to their state ... and see they have the means needed for the development of their spiritual and intellectual life".

"Clerics are obliged", as stated in CIC83 canon 277 §1, "to observe perfect and perpetual continence for the sake of the Kingdom of heaven, and are therefore bound to celibacy". CIC83 canon 277 §2 warns clerics "to behave with due prudence towards persons whose company can endanger their obligation to observe continence or give rise to scandal among the faithful". In CIC83 canon 277 §2, the Church legislates for the diocesan Bishop "to establish more specific norms concerning this matter and to pass judgement in particular cases concerning the observance of this obligation". It is well within the competence of the diocesan Bishop to make a judgement about a priest's inappropriate behavior.

¹⁵ Vatican II Dogmatic Constitution on the Church n.23.

¹⁶ Congregation for Bishops *Directory for the Pastoral Ministry of Bishops* (2004):76.

INTERFACE BETWEEN CANON LAW AND CIVIL LAW

2. *The interface between Canon law and civil law and, in particular (as relevant to the context of reporting allegations of child sexual abuse committed by a priest), whether or not Canon law may override or displace any applicable civil law obligations.*

12. The interface of canon law and the civil law is expressed in different ways in the 1983 Code of Canon Law.

First, CIC 83 canon 22 states:

When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, in so far as it is not contrary to divine law, and provided it is not otherwise stipulated in canon law.

The remittance to the civil law is referred to as the canonization of the civil law. It involves the reception of the civil law into the juridical order of the Church, whereby the Church adopts the civil law in place of its own legislation in respect of a specific issue.

By way of example, CIC83 canon 1290 provides that "whatever the local civil law decrees about contracts, both generally and specifically, and about the voiding of contracts, is to be observed regarding matters which are subject to the governance of the Church, and with the same effect, provided that the civil law is not contrary to divine law, and that canon law does not provide otherwise".

Second, there are a number of canons in the 1983 Code of Canon Law that require the provisions of the civil law be observed. For example, in the matter of contracts of employment CIC83 canon 1286 1^o requires that "the civil laws relating to labour and social life" be observed.

13. In respect of the issue of reporting allegations of child sexual abuse, it is necessary to consider in the first instance the 1917 Code of Canon Law.

CIC17 canon 2198 provided that an offense which violates the law of both Church and State may be punished by both. Among such, in accordance with CIC17 canon 2359 §2, was a crime committed against the sixth commandment with a minor under the age of sixteen years.

The 1917 Code of Canon Law provided in canon 120 §1 that "all law suits against clerics, both civil and criminal, must be brought into the ecclesiastical court, unless other provisions have been legitimately made for some countries". This was referred to as the *privilegium fori*, but it did not mean that a priest could not be taken to the civil courts in the matter of sexual abuse of a minor.

On the contrary, CIC17 canon 120 §2 stated that a priest could be sued in the civil court provided the diocesan Bishop gave permission. The law further stated that the Bishop "should not refuse such permission without a just and serious reason, especially when the plaintiff was a lay person".

The 1917 Code of Canon Law did not prohibit any person from going to the secular courts in respect of the issue of child sexual abuse committed by a priest.

14. The *privilegium fori* was abolished with the promulgation of the revised Code of Canon Law which came into effect on 27 November 1983. Consequently any person who seeks to make a claim of sexual abuse against a priest can go immediately and directly to the civil law.

In respect of the issue of reporting allegations of child sexual abuse, there are no norms in the 1983 Code of Canon Law that override or replace any applicable civil law obligations.

On 3 May 2011 the Congregation for the Doctrine of the Faith issued a *Circular Letter to assist Episcopal Conferences in developing guidelines for dealing with cases of sexual abuse of minors perpetrated by clerics*.

The General Considerations articulated at the beginning of this Letter included the following statement regarding Cooperation with Civil Authority:

Sexual abuse of minors is not just a canonical delict but also a crime prosecuted by civil law. Although relations with civil authority will differ in various countries, nevertheless it is important to cooperate with such authority within their responsibilities. Specifically, without prejudice to the sacramental internal forum, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed. This collaboration, moreover, not only concerns cases of abuse committed by clerics, but also those cases which involve religious or lay persons who function in ecclesiastical structures.

On 6 February 2012 the then Prefect of the Congregation for the Doctrine of the Faith, reiterating the statement of the Circular Letter, said:

Certainly no less important than any of the other elements, the cooperation of the Church with civil authorities in these cases recognizes the fundamental truth that the sexual abuse of minors is not only a crime in canon law, but is also a crime that violates criminal laws in most civil jurisdictions. Since civil laws vary from nation to nation, and the interaction between Church officials and civil authorities may be different from one nation to another, the manner in which this cooperation takes place will necessarily differ in various countries as well. The principle, however, must remain the same. The Church has an obligation to cooperate with the requirements of civil law regarding the reporting of such crimes to the appropriate authorities. Such cooperation naturally extends also to accusations of sexual abuse by religious or laity who work or volunteer in Church institutions and programs. In this regard, Church officials must avoid any compromise of the sacramental internal forum, which must remain inviolable.

3. (a) *In concise terms, with respect to allegations of child sexual abuse committed by a priest the Canon law requirements for a Bishop to undertake an investigation of such allegations and applicable procedures. Please summarise the position as at (i) 1956; (ii) 1976; (iii) 1983-1987; (iv) 1993-1995; and (v) the present time.*

(i) 1956

15. The 1917 Code of Canon Law provided in canons 1939-1946 the procedure for investigating information received by the Bishop in respect of a canonical offence.

However, on 9 June 1922 the Congregation for the Doctrine of the Faith [then called Congregation of the Holy Office] issued an Instruction on the manner of proceeding in the investigation and prosecution of certain canonical crimes, including that of sexual abuse of minors. This document was issued in strict secrecy and it was never published in the official publication of the Holy See, *Acta Apostolicae Sedis*.

There are diverse views as to whether every diocesan Bishop received this document. According to the Congregation for the Doctrine of the Faith, the 1922 Instruction was given as needed to bishops who had to deal with particular cases such as sexual abuse of children.

According to this Instruction, if the Bishop received information about an alleged sexual abuse of a minor by a priest and he judged that it indicated a crime may have been committed, he was obliged to proceed immediately with an investigation, "so that it may be determined whether the accusation has any basis and what that may be". He could conduct the investigation personally or appoint another priest to do it. The person making the allegation is to be interviewed under oath. The archives are to be accessed to see if any other accusations have been made against the priest. The investigation involved taking evidence from the accuser under oath, testing the credibility of the allegations by examining witnesses who know both the accuser and the accused, and interviewing witnesses who may be able to offer testimony about the alleged crime.

With the closure of the investigation the Bishop, having consulted the Promoter of Justice, has four options:

- 1) if the allegation is completely unfounded, he is to order this fact to be declared in the acts, and the documents of accusation are to be destroyed;
- 2) if the evidence of a crime is vague and indeterminate, or uncertain, he is to order the acts to be kept in the secret archive, to be brought up again should anything else happen in the future;
- 3) if, however, the evidence of a crime is considered grave enough, but not yet sufficient to file a formal complaint he is to order that the accused be admonished according to the norm of CIC17 canon 2307, adding, if necessary, the *explicit threat of a trial* should some other new accusation be brought against him. The acts are to be kept in the secret archive, and vigilance is to be exercised for a period with regard to the conduct of the accused [CIC17 canon 1946 §2 2°];
- 4) if certain or at least probable arguments exist for bringing the accused to trial, he should order the priest to be cited and formally charged.

The Bishop upon receiving an allegation of sexual abuse of a minor by a priest had to immediately inform the Apostolic See and also as to the outcome of the case if it proceeded to an ecclesiastical trial.

16. If it were to be argued that the Bishop was either ignorant of the Instruction or did not possess the Instruction, then he would still be obliged to act in accordance with the norms of canon law - CIC17 canons 1939-1946.

The allegation had to be investigated either by the Bishop or a priest appointed by the Bishop. [CIC17 canons 1940, 1944] The investigation was to be secret and conducted with the greatest caution, lest the good reputation of any person be endangered. [CIC17 canon 1943] The Bishop had to decide when there were sufficient reasons to institute the judicial investigation. [CIC17 canon 1942]

When the investigation was completed, the acts of the investigation with the investigator's own opinion were presented to the Bishop. Three outcomes were possible:

- if there were certain or at least probable and sufficient reasons for instituting a criminal trial, the priest was to be summoned to appear and the trial conducted in accordance with the law;
- if the allegation seemed to lack a solid foundation a decree was to be issued to that effect and all the acts of the investigation preserved in the secret archives;
- if there were indications of an offense but not sufficient proofs to institute a trial, the acts were to be preserved in the secret archives and the conduct of the suspected person watched; if the Bishop judged it advisable the suspect was to be interviewed and if there was a reason for doing so the Bishop was to give him an admonition. [CIC17 canon 1946]

(ii) 1976

17. In 1976 the 1917 Code of Canon Law was still in force.

However, on 16 March 1962 the Congregation of the Holy Office issued the Instruction – *Crimen sollicitationis* – to replace the 1922 Instruction. The 1922 and 1962 Instructions are identical in content although the 1962 Instruction contained an Appendix with formulas to be used during the process. The Instruction was addressed to Bishops and other Local Ordinaries and stated that it was "to be kept carefully in the secret archive for internal use" and that it was "not to be published or augmented with commentaries".

Whether this Instruction reached every diocesan bishop is questioned. According to the Congregation for the Doctrine of the Faith "copies of the 1962 re-print were meant to be given to the Bishops gathering for the Second Vatican Council (1962-1965). A few copies of this re-print were handed out to bishops who, in the meantime, needed to process cases reserved to the Holy Office but, most of the copies were never distributed".

The situation in 1976 is the same as has been outlined in nn.15-16 above for the year 1956.

(iii) 1983-1987

18. The revised Code of Canon Law came into effect on 27 November 1983, and in accordance with the norm of law in CIC83 canon 6 §1 3°, the 1962 Instruction would cease to have legal effect.

However, the then Cardinal Ratzinger, Prefect of the Congregation for the Doctrine of the Faith, on 18 May 2001 stated that the "Instruction *Crimen Sollicitationis*, issued by the Supreme Sacred Congregation of the Holy Office on March 16, 1962, [remained] in force until now".

Consequently in 1983-1987 the Bishop was to deal with allegations of sexual abuse in accordance with the procedure established in the 1962 Instruction.

The Instruction required a proper investigation into allegations of sexual abuse by a priest.

Even if a Bishop was not aware of his obligation to follow the procedure of the 1962 Instruction, the norms of CIC83 canon 1717-1719 required that he enquire, either personally or through another suitable person, about the facts and circumstances, and about the imputability of the offence, unless such an inquiry seems entirely superfluous.

(iv) 1993-1995

19. The position as at 1993-1995 is the same as for the period 1983-1987.

(v) the present time

20. On 30 April 2001 Pope John Paul II issued an Apostolic Letter whereby he promulgated *Norms concerning the more grave delicts reserved to the Congregation for the Doctrine of the Faith*. The norms were published on 18 May 2001.

These norms were subject to amendment and a review was undertaken. Subsequently Pope Benedict XVI approved and ordered the promulgation of revised norms on 21 May 2010.

In accordance with these norms the following crimes are reserved to the Congregation for the Doctrine of the Faith:

- 1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.
- 2° the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology.

A cleric who commits the delicts mentioned above in §1 is to be punished according to the gravity of his crime, not excluding dismissal.

As a consequence of these norms CIC83 canon 1395 §2 was amended such that the age limit of sixteen years was increased to eighteen years.

As of 30 April 2001, if the Bishop receives a report of sexual abuse by a priest, which has at least the semblance of truth, the preliminary investigation must be completed and the Bishop is to forward the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Bishop how to proceed further.

21. The Bishop is obliged to undertake a preliminary investigation in accordance with CIC83 canons 1717 and 1719 and then refer the matter to the Congregation for the Doctrine of the Faith and await its direction.

If the Bishop "receives information, which has at least the semblance of truth, about [this] offence, he is to enquire carefully, either personally or through another suitable person, about the facts and circumstances, and about the imputability of the offence, unless such an inquiry seems entirely superfluous". [CIC83 canon 1717 §1] "Care is to be taken that this investigation does not call into question anyone's good name". [CIC83 canon 1717 §2]

If the Bishop determines that the information lacks any semblance of truth, then he is to commit the reasons for his decision in writing and the documentation is to be preserved in the secret archive.

If the Bishop determines the information is credible he is obliged to conduct an investigation, the purpose of which is to ascertain whether there are solid grounds for determining that the cleric has violated canon 1395 §2.

22. The person conducting the investigation has "the same powers and obligations as an auditor in a process (trial)". [CIC83 canon 1717 §3] CIC83 canon 1428 §1 empowers the investigator to decide what "proofs are to be collected and the manner of their collection". The relevant canons in the 1983 Code of Canon Law that govern the collection of proofs are canons 1526-1587.

The information assembled by the investigator may include:

Declarations [canons 1530-1538]

- the statement of the person against whom the alleged crime was committed;
- the statement of the person bringing forward the allegation, if not the victim;
- the statement of the priest accused of the alleged crime;
- all such declarations must be in writing.

Documentary Proof [canons 1539-1546]

- public ecclesiastical documentation cf. canon 1540 §1;
- public civil documentation cf. canon 1540 §2;
- other documentation which is designated as private cf. canon 1540 §1.

Testimony of Witnesses [canons 1547-1573]

- the investigator can decide which persons are to be interviewed;
- all testimony obtained from witnesses is to be in writing; and if recorded initially must be transcribed into writing - canon 1567 §2.
- witnesses must be given the opportunity to add or omit or vary the written record before signing it.

Experts [canons 1547-1573]

- Included in the acts of the investigation could be reports from professional persons given in their capacity as a professional, such as doctors, counselors, psychologists and psychiatrists.

Access and Inspection [canon 1582-1583]

- The investigator may "visit some place or inspect some thing" as part of the investigative process [canon 1582]. Such access or inspection is to be recorded in a written document [canon 1583].

23. When it has been completed the investigator presents all the documentation assembled during the investigation, together with a written report, to the Bishop. The Bishop is required to transmit the documentation relating to the preliminary investigation to the Congregation for the Doctrine of the Faith.

3. (b) What are the Canon law requirements for documenting investigative steps (whether by the Bishop or person appointed by the Bishop to undertake an investigation) and for retaining such documents?

24. As stated in CIC83 canon 1719 the documentation of the investigation comprises:

- the acts of the investigation;
- the decree of the Bishop by which the investigation is opened;
- the decree of the Bishop by which the investigation is closed; and
- all those matters which preceded the investigation.

Having received information which he judges has a semblance of truth that a priest has violated CIC83 canon 1295 §2, the Bishop must issue a decree establishing the investigation. This Decree is required irrespective of who conducts the investigation. If a suitable person is appointed to undertake the investigation then that person must be named in the Decree. The Decree must also contain any specific directions given by the Bishop for the conduct of the investigation.

When the investigation has been completed, the Bishop is to issue a decree whereby the investigation is closed. This Decree is issued only after the investigator has presented all the acts of the investigation to the Bishop.

Matters which preceded the investigation would include: the initial information about the alleged crime received by the Bishop; the record of interview with the person making the allegation; and the documentation, if any, of proceedings already held in the courts.

The acts of the investigation comprise all the documentation assembled by the investigator in carrying out the investigation.

CIC83 canon 1719 requires that all the documentation of the investigation is "to be kept in the secret curial archives, if they are not necessary for the penal process".

4. Whether Canon law imposes any (a) obligations or (b) restrictions upon a Bishop or priest in terms of reporting to Police of allegations of child sexual abuse committed by a priests and, if so, the nature of such obligations or restrictions (including any change in the position from 1950 onwards as per above).

25. The Code of Canon Law makes no reference to the obligations of a Bishop or a priest reporting to Police of allegations of child sexual abuse committed by a priest. The reason for this is that such is a matter of the civil law.

However the two statements, quoted in this Report in n.14 above, are without ambiguity in stating that the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed by "Church officials" and that includes bishops and priests.

The only restriction upon a bishop or priest in reporting such allegations is referred to in the two statements: "In this regard, Church officials must avoid any compromise of the sacramental internal forum, which must remain inviolable". [cf. CIC83 canon 983 §1]

Therefore the only restriction on a bishop or a priest in reporting allegations of sexual abuse is if his knowledge of the abuse committed by a priest was obtained in the course of sacramental confession.

5. In summary terms, a description of the evolution of any Church protocols or procedure (whether or not mandated by Canon law) relating to the reporting of allegations of child sexual abuse. To the extent applicable, please include reference to any relevant directives or guidelines provided by the Congregation for the Doctrine of the Faith or the Vatican.

26. In April 1992 the Australian Bishops Conference approved a *Protocol for dealing with Allegations of Criminal Behaviour*.

The Protocol was not promulgated as ecclesiastical law and did not in any way affect the obligations of the Bishop in canon law. Nevertheless, the Protocol was to be observed by a diocesan Bishop if an accusation was made against a priest in his Diocese.

If the Bishop "received information of alleged criminal behavior" the Protocol [6.1] required him to refer the matter "immediately to the Special Issues Resource Group", which was to ensure a preliminary investigation was undertaken [7.1-7.5] and then report to the Bishop [7.6].

If the report considered "there is substance to the complaint and the matter requires further investigation" the Bishop was "forthwith (within hours)" to require the priest "to attend for an interview" [8.1]. If the matter was to be investigated further the priest was to stand down [administrative leave] from his "public duties" [9.1].

As the Protocol did not in any way affect the obligations of the Bishop in canon law, the Bishop was obliged to act in accordance with the norms of canon law. Therefore, if it was established that the priest had, as stated in CIC83 canon 1395 §2, "offended in other ways against the sixth commandment of the Dialogue with a minor under the age of sixteen years" the Bishop was to proceed according to the 1962 Instruction.

27. In December 1996 the Australian Catholic Bishops Conference and the Australian Conference of Leaders of Religious Institutes adopted *Towards Healing Principles and procedures in responding to complaints of sexual abuse against Personnel of the Catholic Church in Australia*. This document was comprehensively revised in 2000 and again in January 2010.

The 2010 *Towards Healing* provides principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia.

As with the 1992 Protocol, *Towards Healing* is not ecclesiastical law and does not in any way affect the obligations a Bishop has in canon law in respect of allegations of sexual abuse committed by a priest.

28. The legislation promulgated 30 April 2001 and 21 May 2012 by the Apostolic See in respect of the delict of sexual abuse of minors, the competency of the Congregation for the Doctrine of the Faith with regard to that crime and procedure for dealing with such an offence have been addressed in n.20 of this Report.

THE "SECRET ARCHIVE"

6. In concise terms, a description of the Canon law requirements for the establishment and maintenance of a "secret archive" (cf. Canon 489) including:

- (a) What is the nature of a secret archive?;
- (b) What type of documents should be stored in the secret archive, and why?;
- (c) Should documents relating to allegations of child sexual abuse be stored in a secret archive?;
- (d) Who has responsibility for and control of such secret archive and documents?;
- (e) Which persons are permitted access to documents in such secret archive?;
- (f) What are the requirements for (i) retention, and (ii) destruction of documents held in the secret archive?

29. CIC83 canons 486-491 regulate ecclesiastical archives in respect of a diocese. The law refers to three types of archives: general; secret; and historical.

Each diocesan curia [diocesan/chancery office] must have a general archive where documents are to be properly filed and kept under lock and key. The custody of the general archive is the responsibility of the Bishop and the Chancellor, from whom permission must be obtained to access the general archive. It is not permitted to remove documents from the general archive except for a short time and only with the permission of the Bishop or the Chancellor. [cf. CIC83 canons 486 §2, 487, 488]

CIC83 canon 489 §2 establishes the obligation that each diocesan curia must have "a secret archive" which is separate from the general archive or by way of exception it can be located in a specially secured portion of the general archive, provided that it cannot be removed.

(a) What is the nature of a secret archive?

30. The nature of the secret archive is determined by reason of the documents which are to be kept in it, the custody of the archive, the access to the archive and the prohibition against removal of documents from the archive.

(b) What type of documents should be stored in the secret archive, and why?

31. The law determines certain documents which are to be kept in the secret archive. In the 1983 Code of Canon Law canons 269 2°, 377 §2, 413 §2, 489 §2, 1082, 1133, 1339 §2, and 1717 §3 indicate documentation is to be kept in the secret archive.

The Bishop has the authority to determine other documentation which is to be kept in the secret archive.

The documentation to be kept in the secret archive is usually highly confidential or personal and may include matters of conscience.

(c) Should documents relating to allegations of child sexual abuse be stored in a secret archive?

32. Canon 1719 §3 explicitly states that the documentation pertaining to the preliminary investigation in accordance with canon 1717 must be kept in the secret archive.

Also, if the documentation received by the Bishop about sexual abuse of a minor was judged not to have a semblance of truth, this should be kept in the secret archive.

(d) Who has responsibility for and control of such secret archive and documents?

33. In accordance with the norm of law in CIC83 canon 490 §1 "only the Bishop is to have the key of the secret archive" and in canon 490 §3 "documents are not to be removed from the secret archive".

(e) Which persons are permitted access to documents in such secret archive?

34. Only the Bishop has the right to access the secret archive and the permission of the Bishop is required for any other person, including the Chancellor, to access the secret archive.

(f) What are the requirements for (i) retention, and (ii) destruction of documents held in the secret archive?

35. CIC83 canon 489 §2 regulates the retention of documents in the secret archive by way of identifying what, and when, certain documents are to be destroyed.

The law states: "Each year documents of criminal cases concerning moral matters are to be destroyed whenever the guilty parties have died, or ten years have elapsed since a condemnatory sentence concluded the affair. A short summary of the facts is to be kept, together with the text of the definitive judgement".

The only documents in the secret archive to which this norm applies are those pertaining to an ecclesiastical criminal trial which reached a definitive judgement in respect of moral matters. This includes trials with regard to an offence of sexual abuse against a minor.

There are two situations provided for CIC83 canon 489 §2. First, the priest who was found guilty of the crime of sexual abuse of a minor has died; and second, the priest who was found guilty in an ecclesiastical trial which concluded ten years ago and still lives.

In these instances not all the information is destroyed because the law requires "a short summary of the facts is to be kept, together with the text of the definitive judgement". The judgment must set out the facts of the particular case, the law that is applicable, and the arguments and reasons by which the tribunal reached the decision.

7. Canon 489 §2 states that *"Each year documents of criminal cases concerning moral matters are to be destroyed whenever the guilty parties have died, or ten years have elapsed since a condemnatory sentence concluded the affair. A short summary of the facts is to be kept, together with the text of the definitive judgement."*

In this respect:

- (a) Is a Bishop bound or expected to follow Canon 489 §2 and destroy documents as contemplated by that canon? What consequences follow, under Canon law, if he does not do so?
36. A Bishop is obliged to observe the laws of the Church, indeed CIC83 canon 392 §1 states that he is to promote "the observance of all ecclesiastical laws".
- The failure of a Bishop to observe the norm of law in CIC83 canon 489 §2 does not constitute a crime in canon law and hence no penal action can be taken against a Bishop who does so.
- (b) Does Canon 489 §2 have the effect that documents are required to be destroyed under Canon law 10 years after the perpetrator had died and which thus may not be later available to Police who later may be investigating allegations of concealment (by Church officials) of offences committed by the perpetrator?
37. If a Bishop does destroy the documents of an ecclesiastical trial relating to a priest found guilty of sexual abuse of a minor in accordance with CIC83 canon 489 §2, not all the information is destroyed.
- The law requires "a short summary of the facts is to be kept, together with the text of the definitive judgement". This documentation remains perpetually in the secret archive.
- (c) How does the apparently mandatory language of Canon 489 §2 co-exist with any civil law obligations that may exist regarding the retention of documents?
38. The two statements quoted in n.14 of this Report in reference to co-operation with civil authorities were concerned with the reporting of allegations of sexual abuse.

The statement of the Apostolic See that "sexual abuse of minors is not just a canonical delict but also a crime prosecuted by civil law" is the foundation for the co-operation in these matters but it is also the acknowledgment that the provisions of the civil law is to be observed. In my opinion this must extend to the retention of records relating to sexual abuse of minors under the age of eighteen years.

Until some other provision is made by the Apostolic See, it is my opinion that a diocesan bishop can dispense from the obligation to destroy the documentation required by CIC83 canon 489 §2.

LAICISATION AND IMPEDIMENTS TO EXERCISE OF MINISTRY

8. What is meant by the laicization of a priest (under Canon law) and whether or not it is the same as dismissal?

39. By virtue of his ordination a priest acquires the juridical status of a cleric. This juridical status can be lost only through death or the procedures established in canon law. Two ways in which the cleric can lose the clerical state are: dismissal and dispensation.

CIC83 canon 290 2° states that "a cleric loses the clerical state by a penalty of dismissal legitimately imposed". Dismissal is the punishment of a cleric who has committed a crime for which the penalty includes dismissal from the clerical state. The penalty must be imposed in accordance with the norms of canon law.

CIC83 canon 290 3° states: "a cleric loses the clerical state by rescript of the Apostolic See". The Apostolic See, that is, the Congregation for Clergy, issues a document [rescript] whereby the cleric is dispensed from the obligations he undertook by virtue of his ordination. This process is referred to as "laicisation" because a cleric who loses the clerical state is in law a lay person.

9. What steps were required under Canon law to:

(a) remove a priest's faculties as at 1993?

40. As stated in n.10 of this Report the Bishop freely grants faculties to a priest, they are not something to which he is entitled. To withdraw faculties is an administrative act by the Bishop and is subject the provisions of canon law for executing such acts.

In accordance with CIC83 canon 50 the Bishop, before issuing a decree to withdraw faculties from a priest, must "seek out the necessary information and proofs and, insofar as possible, to consult (the priest) whose rights could be harmed".

In accordance with CIC83 canon 51 the Bishop's decree "must be issued in writing" and must "express, at least in summary form, the reasons for the decision".

(b) laicise a priest as at 1995?

41. The procedure is established by the Apostolic See and the current norms were promulgated on 14 October 1980. The documentation required is to be assembled by the Bishop or, as is usual, a priest delegated by him. All such documentation is then forwarded to the Apostolic See.

The primary and essential requirement is that the priest must present a petition to the Roman Pontiff in which he must state the reasons for which he is seeking the dispensation and why his decision to do so is irrevocable. The petition must include his personal history including family background and upbringing, seminary formation and priestly ministry. The Bishop must add his opinion including the pastoral efforts made to assist the priest remain in ministry.

(a) if the process involved in either (a) or (b) above has since changed, please summarise the change and the basis thereof.

42. There have been no changes to the procedure in respect of either matter.

10. (a) To what extent did the letter dated 19 October 1995 from Bishop Leo Clarke to Fr Denis McAlinden (copy attached) correctly set out the applicable Canon law process as at that date?

43. In light of the content of the letter I would understand Bishop Clarke had formed the view that: first, Fr McAlinden should no longer be regarded as a cleric or belong to the clerical state with its obligations and rights; and second, Fr McAlinden was not suitable to exercise the priestly ministry.

In respect of the first Fr McAlinden was requested "to petition the Holy See for a Rescript of Laicization". As the petition is to be made freely by the priest such a request by the Bishop could be regarded as a breach of the procedure.

In respect of the second matter, the Bishop proposed to act in accordance with CIC83 canon 1044 §2 which states that a priest is impeded from the exercise of his priestly ministry if he "suffers from insanity or some psychological infirmity ... until such time as the [Bishop], having consulted an expert, has allowed" him to exercise his ministry.

The process as described in the letter includes matters already stated in the law, such as the right to propose recourse against the decree [cf. CIC83 canon 221 §1]. It appears that the procedural issues stated in the final paragraph on page one of the letter have been adapted from the canons regulating the process of the removal of a priest from the office of parish priest. In my view this did not correctly set out the applicable Canon law process.

To issue a decree in respect of CIC83 canon 1044 §2 is an administrative act, and therefore the Bishop was obliged to observe the norms of law in CIC83 canons 50 and 51.

It is to be noted that one of the principles adopted for the revision of the Code of Canon Law was: "The use of power in the Church must not become arbitrary, because natural law prohibits such arbitrary use of power, as do also divine positive law and the law of the Church".¹⁷ Power can be used arbitrarily both by commission and omission.

First, the Bishop was obliged "to seek out the necessary information and proofs and, insofar as possible, to consult (the priest) whose rights could be harmed". The diocesan Bishop must have the evidence, having consulted experts, that the priest does suffer from some psychological infirmity such that the priest is to be prohibited [impeded] from exercising his priestly ministry.

In reaching his decision the diocesan Bishop is obliged to consider all the relevant evidence available to him. Such evidence would include any previous behavioural issues in respect of the priest that are relevant to the issue of the psychological infirmity. The Bishop is then obliged to consult with the priest, if possible. How that consultation process takes place is to be determined by the Bishop.

Second, in accordance with CIC83 canon 51 the Bishop must issue a written decree in which he must express "at least in summary form, the reasons for the decision". These reasons must relate to the law and the facts.

¹⁷ Pontifical Commission for the Revision of the Code of Canon Law, *Communications* 1 (1969) 82.

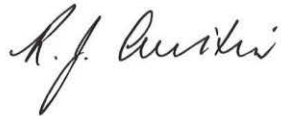
(b) Did the reference (in the letter dated 19 October 1995 to "*your good name will be protected ...*" reflect an applicable Canon law requirement?

44. It is my opinion that this statement has been taken from CIC83 canon 1717 §2 pertaining to the preliminary investigation into an alleged crime.

The procedure to be followed by the Bishop in the matter of the existence of a psychological infirmity is of its nature confidential, but it is not an investigation into a crime.

Moreover, if it was established that Fr McAlinden was impeded from the exercise of orders, the decree which must be issued in writing by the Bishop is a document of the external forum and the fact that Fr McAlinden was impeded from the exercise of his priestly ministry would be publicly known.

As a rule a priest is regarded to be in good standing if he is able to exercise his ministry. A decree that a priest because of a psychological infirmity is unable to exercise his ministry does not mean he is not in good standing. Such a situation ought not be detrimental to a priest's good name.



Rodger J Austin

3 July 2013

ANNEXURE 'A'

CURRICULUM VITAE

DR RODGER J AUSTIN JCD STL

Summary

I was born in Sydney on 13 August 1939. I am a canon lawyer. I obtained a degree in theology in Sydney in 1967 and a doctorate in canon law in Rome in 1972. I was a lecturer in canon law at the Catholic Theological Institutes in Sydney from 1972-1996. I was a judge of the Ecclesiastical Regional Tribunal of Sydney 1979-2004 and of the Tribunal of Appeal for Australia and New Zealand 1981-2004. I was ordained a priest in 1967 and obtained a dispensation from all obligations arising from ordination in 2004. I held various ecclesiastical offices in the Diocese of Wollongong and the Archdiocese of Sydney between 1972 and 1989. I was Assistant Secretary to the Australian Catholic Bishops Conference in Canberra 1989-1991. I have served as a Director of a number of not-for-profit Church organisations. I have contributed to theological and canonical journals in Australia and overseas.

I am self-employed as a Canon Law adviser and consultant to diocesan bishops, diocesan agencies, parishes, religious institutes and other Catholic Church organizations and individuals. I am an Advocate for the Ecclesiastical Regional Tribunal of Sydney of the Catholic Church.

Qualifications	STL	Licentiate in Theology Ecclesiastical Faculty of Sydney, Manly, 1967
	JCD	Doctorate in Canon Law Pontifical Urban University, Rome, 1972

Professional Appointments

1972-1975 Lecturer in Canon Law
Theological Faculty of Sydney, Manly

1972-1975 Lecturer in Canon Law
Marist Fathers Seminary, Sydney

1975-1989 Lecturer in Canon Law
Catholic Theological Union, Hunter's Hill

1982-1989 Lecturer in Canon Law
St Paul's National Seminary, Kensington

1984-1989 Lecturer in Canon Law
Catholic Institute of Sydney, Manly

1991-1996 Lecturer in Canon Law
St Paul's National Seminary, Kensington

1979-2004 Judge Ecclesiastical Regional Tribunal of
Sydney

1981-2004 Judge Ecclesiastical Tribunal of Appeal for
Australia and New Zealand

**Ministerial
Appointments**

2005 Advocate for the Ecclesiastical Regional Tribunal of Sydney and Ecclesiastical Tribunal of Appeal for Australia and New Zealand

1972-1983 In the Catholic Diocese of Wollongong: Chancellor; Diocesan Consultor; Bishop's Secretary; Director of Centacare; Member of Council of Priests, Diocesan Welfare and Liturgical Commissions.

1984-1989 In the Catholic Archdiocese of Sydney: Episcopal Vicar for Religious

1989-1991 Assistant Secretary Australian Catholic Bishops' Conference Canberra

1991-2004 Independent Canon Law Consultant

*2004 dispensed from obligations undertaken in ordination to priesthood in 1967; returned to the status of a lay person in the Church.

Present

2004 - Canon Law Advisor and Consultant

Board commitments

Chairman of the Board of Directors of Our Lay of Consolation Aged Care Services Limited

Director of the Canon Law Society of Australia and New Zealand

**Professional
Activities**

Member of the Canon Law Society of Australia and New Zealand

Member of the Canon Law Society of Great Britain and Ireland

Member of the Canon Law Society of America

Member of the City of Sydney Law Society

Report of Dr Rodger Austin, 16 January 2014

**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
OF
DR RODGER JOSEPH AUSTIN JCD STL
CANON LAWYER**

**FOR THE ATTENTION OF
THE COMMISSIONER
MS MARGARET CUNNEEN SC**

16 JANUARY 2014

**REPORT
OF
DR RODGER JOSEPH AUSTIN JCD STL**

Author of this Report

I, the undersigned, Rodger Joseph Austin, am the author of this Report. I was born on 13 August 1939. I am a canon lawyer. I obtained a degree in theology [STL] from the Ecclesiastical Theological Faculty of Sydney in 1967 and a doctorate in canon law [JCD] from the Pontifical Urban University, Rome in 1972.

I was a lecturer in canon law at the Catholic Theological Institutes in Sydney from 1972-1996. I was a judge of the Ecclesiastical Regional Tribunal of Sydney 1979-2004 and of the Tribunal of Appeal for Australia and New Zealand 1981-2004. I was ordained a priest in 1967 and Pope John Paul II dispensed me from all obligations arising from ordination in 2004. I held various ecclesiastical offices in the Diocese of Wollongong and the Archdiocese of Sydney between 1972 and 1989. I was Assistant Secretary to the Australian Catholic Bishops Conference in Canberra 1989-1991. I have contributed to theological and canonical journals in Australia and overseas.

I am self-employed as a Canon Law adviser and consultant to diocesan bishops, diocesan agencies, parishes, religious institutes and other Catholic Church organisations and individuals. I am an Advocate for the Ecclesiastical Regional Tribunal of Sydney of the Catholic Church.

My Curriculum Vitae is annexed to this Report as Annexure 'A'.

Agreement to Expert Witness Code of Conduct

I, Rodger Joseph Austin, acknowledge for the purpose of Rule 31.23 of the *Uniform Civil Procedure Rules 2005* that I have read the Expert Witness Code of Conduct in Schedule 7 to the Rules and agree to be bound by it.

I have been requested to provide an expert report with respect to the following matters.

Structure of the Catholic Church in Australia

1. Please provide a brief outline of the structure of the Catholic Church in Australia including the archdioceses and dioceses (geographical and non-geographical).

Definitions

2. Please provide a concise definition of the following terms:
 - a. Coadjutor Bishop;
 - b. College of Consultors;
 - c. Consultor;
 - d. Council of Priests;
 - e. Episcopate;
 - f. Excardinate;
 - g. Metropolitan [for example metropolitan diocese or metropolitan bishop];
 - h. Vicar capitular; and
 - i. Vicar general.

STRUCTURE OF THE CATHOLIC CHURCH IN AUSTRALIA

Please provide a brief outline of the structure of the Catholic Church in Australia including the archdioceses and dioceses (geographical and non-geographical).

I note here that all references to canons in this Report are to canons of the 1983 Code of Canon Law.

The teaching of the Catholic Church is that the Church is a communion of particular Churches. The Church is to be understood with her double dimension and reality: universal and particular. It is not a monolithic structure made up of a variety of divisions.

The universal Church

The universal Church is the community of all Catholics throughout the world. The Pope, as the Bishop of the Church of Rome, is the Chief Pastor of the universal Church and by virtue of his office has full, supreme and universal authority over the whole Church.

The particular Church

A particular Church is a portion of the People of God entrusted to a bishop to be shepherded by him with the cooperation of the priests. The Bishop is not the delegate of the Roman Pontiff but governs the particular Church as the vicar and ambassador of Christ.

The Latin and the Eastern Churches

The universal Church has traditionally been distinguished into 'East' and 'West', such geographical designations arising from the division of the Roman Empire in the third century. The universal Church comprises twenty-one Eastern Churches and the one Latin or Roman Church.

The Code of Canon Law which came into effect on 27 November 1983 governs the Latin Church and the Eastern Churches are governed by the Code of Canons of the Eastern Churches which came in to effect on 1 October 1991.

In the Latin Church a particular church is called a diocese and in the Eastern Churches it is called an eparchy.

In Australia the vast majority of Catholics belong to the Latin Church. However five Eastern Churches have established eparchies for the members of their Churches living in Australia: the Ukrainian Church; the Maronite Church; the Melkite Church; the Chaldean Church; and the Syro-Malabar Church. These five particular Churches comprise those Catholics who belong to that Eastern Church by reason of their baptism.

Australia

What follows in this part of the Report pertains only to the Latin Church.

1. Particular Churches [dioceses/archdioceses]

The fundamental and primary reality of the Catholic Church in Australia is the particular Churches. There are twenty-eight particular Churches. These dioceses [21] and archdioceses [7] are defined by territory, such that each Church comprises all the Catholics who live within a specific territory. The territory is determined in the establishment of the diocese but can be altered at a future time. [canons 372, 373]

The Bishop of each diocese possesses all the ordinary, proper and immediate power required for the exercise of his pastoral office, without prejudice to the supreme authority of the Roman Pontiff. [canons 381 §1, 391 §1]

Each diocesan Bishop is immediately subject to the authority of the Roman Pontiff and is accountable to him, for the exercise of the pastoral governance of the diocese.

2. Ecclesiastical Provinces

An ecclesiastical province is established by the Roman Pontiff. A province is a grouping of a number of neighbouring dioceses under the presidency of one of the dioceses, as determined in the establishment of the province. [cf. canon 431 §1] The diocese to which the presidency is ascribed is called an 'archdiocese' and the bishop an 'archbishop'. The archbishop is called 'the Metropolitan' and the archdiocese is referred to as a 'Metropolitan See'. The other dioceses which constitute the province are called suffragan dioceses.

The purpose of an ecclesiastical province is "to promote common pastoral action among the dioceses and foster more closely relations between the diocesan Bishops". [cf. canon 431 §1]

In respect of an ecclesiastical province, authority is exercised by the Metropolitan and the provincial council.

The Metropolitan has no power of governance over the suffragan dioceses, other than as specifically provided for in canon 436 §1. [canon 436 §3] The Metropolitan is competent: to see that faith and ecclesiastical discipline are carefully observed in the Province and to notify the Roman Pontiff if there are any abuses; to conduct a canonical visitation if the suffragan Bishop has neglected it, provided that the Apostolic See has given its prior approval; and to appoint a diocesan administrator when a suffragan diocese becomes vacant, if the college of consultors has failed to do so as required by canon 421 §1.

The provincial council has the power of governance especially legislative power. Any laws drawn up by a provincial council are only promulgated once they have been reviewed by the Apostolic See. [canon 446] No provincial council has been held in Australia since the 1983 Code of Canon Law came into effect.

In Australia there are five ecclesiastical provinces – Adelaide, Brisbane, Melbourne, Perth and Sydney.

The five metropolitan sees are:

- the Archdiocese of Adelaide with two suffragan dioceses – Port Pirie and Darwin;
- the Archdiocese of Brisbane with four suffragan dioceses – Cairns, Rockhampton, Toowoomba and Townsville;
- the Archdiocese of Melbourne with three suffragan dioceses – Ballarat, Sale and Sandhurst;
- the Archdiocese of Sydney with nine suffragan dioceses – Armidale, Bathurst, Broken Bay, Lismore, Maitland-Newcastle, Parramatta, Wagga Wagga, Wilcannia-Forbes and Wollongong.

The Archbishop of each of the Metropolitan Sees is an Archbishop. The Archbishop of Sydney is also a member of the College of Cardinals whose task is to assist the Roman Pontiff in his governance of the universal Church.

There are two other issues to be noted in this context.

First, whilst a diocese which is designated a metropolitan see is called an archdiocese, other dioceses are, for specific reasons, established as an archdiocese and the diocesan bishop an archbishop.

In Australia there are two such archdioceses: the Archdiocese of Canberra-Goulburn and the Archdiocese of Hobart. As archdioceses these two particular Churches do not belong to an ecclesiastical province. Nevertheless, they are required to relate to a province. The Archdiocese of Canberra-Goulburn relates to the Province of Sydney and the Archdiocese of Hobart relates to the Province of Melbourne.

Second, there are two Ordinariates established in Australia. The first, the Military Ordinariate, was established in 1986 and comprises all those Catholics who are members of the Armed Forces and includes their spouses and children. The second, the Personal Ordinariate of Our Lady of the Southern Cross, was established in 2012 and comprises those Anglicans who come into full communion with the Catholic Church. The pastoral care of the members of these Ordinariates is entrusted to an Ordinary appointed by the Pope.

Neither of these structures are particular Churches although in terms of law they are equated with a diocese and the ordinary with a diocesan bishop. Neither of them are part of an ecclesiastical province.

The Bishops Conference

The Australian Bishops Conference, established by the Apostolic See, is an assembly of the Bishops in Australia. The purpose of a Bishops Conference is to provide the structure in which the bishops jointly exercise certain pastoral functions for the good of the Church. It is a means whereby bishops can address issues which confront the whole nation. [canon 447]

By law, the membership of the Bishops Conference includes those who preside over all the particular Churches [diocesan bishops] in Australia as well as those who are equivalent to them in law, for example those who govern a diocese when it is vacant [diocesan administrator], the two aforementioned Ordinaries, as well as auxiliary bishops and coadjutor bishops. The Bishops of the Eparchies of the Eastern Churches may be accorded membership of the Conference, if its statutes approved by the Apostolic See so provide, otherwise they may be invited to attend. [canon 450]

The Bishops Conference has authority to make decisions which are binding but only in those matters prescribed in the universal law of the Church or by special mandate of the Apostolic See. [canon 455 §1] Such decisions are reviewed by the Apostolic See before promulgation. [canon 455 §2] Apart from these matters the Bishops Conference does not possess authority over a diocese/archdiocese or its bishop/archbishop. [canon 455 §1].

As a permanent institution, the Bishops Conference has its own internal structures including a general secretariat. [cf. canon 451]

The Apostolic Nuncio

The Apostolic Nuncio, appointed by the Roman Pontiff, represents the Pope to the particular Churches in Australia and at the same time acts as the ambassador of the Holy See to the Commonwealth Government according to international law. [cf. canons 363 and 365] Any assistance he may give to diocesan bishops must be without prejudice to the exercise of their lawful power. [cf. canon 364 2°]

DEFINITIONS

Please provide a concise definition of the following terms.

a. Coadjutor bishop

A coadjutor bishop is a bishop who has been appointed by the Roman Pontiff to a specific diocese to assist the incumbent diocesan bishop with his pastoral governance of the diocese and who has the right to succession. The letter of appointment provides the coadjutor bishop with special faculties, according to needs of the diocesan bishop and the particular diocese. [canon 403 §3]

When the diocese becomes vacant, either by the death, resignation or transfer of the incumbent diocesan bishop, the coadjutor bishop immediately becomes the Bishop of the diocese. [canon 409 §1]

b. College of Consultors

The College of Consultors is established in each diocese. It is a permanent college of priests, freely chosen from among the members of the Council of Priests, in a number not less than six and not greater than twelve. Its purpose is to assist the Bishop in his governance of the diocese in those matters determined by law, of which there are sixteen in the Code of Canon Law. [canon 502 §1]

c. Consultor

A Consultor is a priest who is a member of the College of Consultors.

d. Council of Priests

The Council of Priest is mandatory in each diocese. The Council of Priests is a group of priests who represent the priests [the *presbyterium*/presbyterate] who are incardinated in the diocese and priests who are actually exercising the priestly ministry in the diocese.

Described as “the bishop’s senate”, the Council of Priests is consultative in nature and its role is to assist the bishop in the governance of the diocese, so that the pastoral welfare of people may be most effectively promoted. [canon 495 §1] The bishop is to consult this Council on affairs of greater importance concerning the Christian life of the faithful and the governance of the diocese. [canon 500 §2]

About half the members of the Council of Priests are elected by the priests; some are ex-officio, for example the vicar general; and others can be freely appointed by the Bishop. [canon 497]

e. Episcopate

Episcopate [also episcopacy] is a term used to refer to those who have been ordained bishops and sometimes to refer collectively to all bishops or a group of bishops.

f. Excardinate

Incardination is the permanent attachment of an ordained minister to the diocese to whose service he has committed himself. Excardination is the transfer of a cleric from the diocese in which he is incardinated to another diocese in which he then becomes incardinated. The process of excardination is regulated by canons 267-268.

g. Metropolitan [for example metropolitan diocese or metropolitan bishop]

The term 'metropolitan' in reference to a diocese means an archdiocese that together with its suffragan dioceses constitutes an ecclesiastical province. The archbishop of a metropolitan archdiocese is called a 'Metropolitan'. [cf. canon 435]

h. Vicar capitular

When a diocese becomes vacant by the death, resignation, transfer or deprivation of the bishop, a priest is elected to govern the diocese, provided that the Apostolic See has not made some other provision.

Under the 1917 Code of Canon Law, the diocesan consultors elected the priest who was to govern the diocese until the new bishop was appointed and took up his office as Bishop of the diocese. The priest so elected was called the 'Vicar capitular'.

Under the 1983 Code of Canon Law, which came into effect on 27 November 1983, the College of Consultors elects the priest and he is called the "diocesan Administrator. [canon 421 §1]

i. Vicar general

The diocesan curia consists of those persons and structures which assist the diocesan bishop in the governance of the diocese. Among those persons, the office of vicar general is pre-eminent. The vicar general is a priest freely appointed by the diocesan bishop. [cf. canons 475, 477 §1, 479]. If an auxiliary bishop or a coadjutor bishop is appointed to a diocese, the bishop is required to appoint him as vicar general. [cf. canon 421 §1]

The vicar general by virtue of his office has the same executive power of governance throughout the whole diocese that belongs by law to the diocesan bishop, with the exception of those matters reserved to the bishop. The power of the vicar general is ordinary, that is it is attached to the office, and vicarious, that is it derives from the power of the bishop and is exercised in the name of the bishop. [cf. canons 479 §1, 131 §2]



Rodger J Austin

16 January 2014

ANNEXURE 'A'

CURRICULUM VITAE

DR RODGER J AUSTIN JCD STL

Summary

I was born in Sydney on 13 August 1939. I am a canon lawyer. I obtained a degree in theology in Sydney in 1967 and a doctorate in canon law in Rome in 1972. I was a lecturer in canon law at the Catholic Theological Institutes in Sydney from 1972-1996. I was a judge of the Ecclesiastical Regional Tribunal of Sydney 1979-2004 and of the Tribunal of Appeal for Australia and New Zealand 1981-2004. I was ordained a priest in 1967 and obtained a dispensation from all obligations arising from ordination in 2004. I held various ecclesiastical offices in the Diocese of Wollongong and the Archdiocese of Sydney between 1972 and 1989. I was Assistant Secretary to the Australian Catholic Bishops Conference in Canberra 1989-1991. I have served as a Director of a number of not-for-profit Church organisations. I have contributed to theological and canonical journals in Australia and overseas.

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Qualifications	STL	Licentiate in Theology Ecclesiastical Faculty of Sydney, Manly, 1967
	JCD	Doctorate in Canon Law Pontifical Urban University, Rome, 1972

Professional Appointments

1972-1975	Lecturer in Canon Law Theological Faculty of Sydney, Manly
1972-1975	Lecturer in Canon Law Marist Fathers Seminary, Sydney
1975-1989	Lecturer in Canon Law Catholic Theological Union, Hunter's Hill
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**FOR THE ATTENTION OF
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13 FEBRUARY 2014

REPORT
OF
DR RODGER JOSEPH AUSTIN JCD STL

Author of this Report

I, the undersigned, Rodger Joseph Austin, am the author of this Report. I was born on 13 August 1939. I am a canon lawyer. I obtained a degree in theology [STL] from the Ecclesiastical Theological Faculty of Sydney in 1967 and a doctorate in canon law [JCD] from the Pontifical Urban University, Rome in 1972.

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I, Rodger Joseph Austin, acknowledge for the purpose of Rule 31.23 of the *Uniform Civil Procedure Rules 2005* that I have read the Expert Witness Code of Conduct in Schedule 7 to the Rules and agree to be bound by it.

I have been requested to provide an expert report with respect to the following matters:

1. Please explain the role of the Congregation for the Doctrine of the Faith ("CDF"), in particular with respect to complaints of child sexual abuse by clergy;
2. Please explain the role of the Apostolic Nunciature to the Holy See (including the role of the Apostolic Nunciature with respect to communications between the Holy See and Dioceses and whether all such communications would be conducted through the Apostolic Nunciature);
3. Whether the CDF or any other dicastery within the Holy See (other than the Apostolic Nunciature) would be expected to have documents relating to complaints of child sexual abuse by Fletcher or McAlinden.

PREFATORY NOTE OF EXPLANATION

See

1. The term 'see' is derived from the Latin word *sedes* which means a 'seat'. In Christian usage it came to refer to the authority of a bishop as well as the location in which he exercised authority.

In the 1983 Code of Canon Law the word 'see' is used in reference to a diocese [particular church] which is described as an 'episcopal see' [cf. canons 409, 412, 416]. If a diocese is established as a metropolitan archdiocese, it is referred to as a 'metropolitan see' [cf. canons 437, 440, 501].

See of Rome

2. St Peter was the first bishop of the See of Rome. The description 'apostolic see' in reference to the Church of Rome and the authority of the Roman Pontiff was in use as early as fifth century [cf. Ecumenical Council held at Ephesus in 431]. The other term used in reference to the See of Rome is "Holy See". Both these terms are used in the Code of Canon Law.

The Holy/Apostolic See

3. The juridical status of the Holy See is universally recognised to be international. The Holy See is not a state but is recognised as parallel and somewhat analogous. It is a signatory to the Vienna Convention 1969.

The Holy See enters into concordats with nations and other civil entities [cf. canon 3]. Papal Legates [Apostolic Nuncio] have been appointed by the Roman Pontiff to some one hundred and eighty nations [cf. canon 362] and are subject to the norms of international law. The Holy See participates in some thirty four Intergovernmental Organizations and Bodies and International Programmes.

Vatican City State

4. A distinct entity from the Holy See is the Vatican City State, established by reason of the execution on 11 February 1929 and the ratification on 7 June 1929 of the Lateran Treaty between the Holy See and Italy. The Roman Pontiff is Head of State and holds legislative, executive and judicial power in respect thereof.

The Vatican City State is universally recognised under international law. It participates in some seven International and Intergovernmental Organizations.

Roman Curia

5. The Catholic Church is the community of all Catholics throughout the world of which the Roman Pontiff [the Pope] is the Chief Pastor and in respect of which, by virtue of his office, he has full, supreme and universal authority.

In the exercise of his pastoral ministry for the good and service of the universal Church and the particular Churches, the Pope "usually conducts the affairs of the Church through the Roman Curia which performs its function in his name and by his authority". [canon 360]

The Roman Curia, the origins of which are found in the Apostolic Constitution of Pope Sixtus V of 22 January 1588, is a complex of institutes.

The generic name grouping all of the bodies of the Roman Curia is 'dicasteries' among which are congregations, tribunals, councils and commissions.

The competency of each dicastery is regulated by the norms of law in the Apostolic Constitution *Pastor Bonus* promulgated by Pope John Paul II on 28 June 1988 and which came into effect on 1 March 1989.

Legal definition

6. Canon 361 contains a definition, for the purposes of the Code of Canon Law, of the terms Apostolic See and Holy See, which are used interchangeably in the Code.

"In the Code the terms Apostolic See or Holy See mean not only the Roman Pontiff, but also, unless the contrary is clear from the nature of things or from the context, the institutes (departments) of the Roman Curia".

1. Please explain the role of the Congregation for the Doctrine of the Faith ("CDF"), in particular with respect to complaints of child sexual abuse by clergy.

The Congregation for the Doctrine of the Faith ("CDF") is one of the dicasteries of the Roman Curia. The competency of the CDF is to promote and safeguard the doctrine on faith and morals. 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 behavior 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. [cf. Apostolic Constitution *Pastor Bonus* Art. 48, 52]

Among the more serious canonical offences or crimes against 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, in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor; and

the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen years, for the purposes of sexual gratification, by whatever means or using whatever technology. [cf. Norms promulgated for the Congregation of the Doctrine of the Faith, 30 April 2001]

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

Whenever a Bishop receives a report of one of these crimes, which has at least the semblance of truth, once the preliminary investigation has been completed [cf. canon 1717], he is to send the documentation to the CDF which, unless it deals with the case, will direct the Bishop how to proceed further. [cf. Norms Art 16.]

2. Please explain the role of the Apostolic Nunciature to the Holy See (including the role of the Apostolic Nunciature with respect to communications between the Holy See and Dioceses and whether all such communications would be conducted through the Apostolic Nunciature).

An Apostolic Nuncio is a bishop or an archbishop appointed by the Roman Pontiff as the representative of the Pope not only to the particular Churches [dioceses/archdioceses] but also to the State according to international law. [cf. canon 363 §1] The role of the Apostolic Nuncio in relation to the particular Churches is established in canon 364, whilst the role in relation to the State is expressed in canon 365.

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. He is to foster close relationships with the diocesan Bishops and their particular Churches and also with the Bishops Conference.

Canon 364 2° requires the Apostolic Nuncio to assist Bishops in the pastoral governance of their dioceses by action and counsel. However, he does not exercise a supervisory function over them and may not do anything which would infringe upon the exercise of their lawful episcopal power.

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.

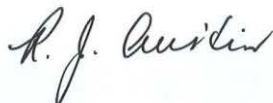
For example, documentation that is to be sent by a diocesan Bishop in Australia to the CDF in respect of a crime of child sexual abuse committed, or allegedly committed, by a cleric is sent to the CDF through the Apostolic Nunciature in Canberra.

3. Whether the CDF or any other dicastery within the Holy See (other than the Apostolic Nunciature) would be expected to have documents relating to complaints of child sexual abuse by Fletcher or McAlinden.

As noted in the response to n.1 above the competency of the CDF in respect of child sexual abuse by clerics is exclusive and hence no other dicastery of the Roman Curia can deal with such a matter.

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.



Rodger J Austin

13 February 2014

ANNEXURE 'A'

CURRICULUM VITAE

DR RODGER J AUSTIN JCD STL

Summary

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Appendix E Expert Opinion Report of Ian Lloyd QC, QC, dated 7 May 2013

Ian Lloyd QC

**Trust Chambers
10/287 Elizabeth street
Sydney NSW 2000**

EXPERT OPINION REPORT OF IAN LLOYD QC

Introduction

1. I have been asked by the NSW Crown Solicitor to provide an expert opinion report on the thoroughness or otherwise of a NSW police investigation (codenamed Strike Force Lantle) into historic allegations of sexual assaults upon children by present and former members of the Roman Catholic clergy attached to the Maitland –Newcastle Diocese of the Roman Catholic Church (RCC) and allegations of the concealing of any such offences from the NSW Police by present and former RCC clergy and lay staff of the RCC during the period 1985-1999. Strike Force Lantle (SFL) conducted its investigations over a lengthy period from late 2010 to late 2012. I understand that this expert opinion report will be provided to the Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Hunter (Inquiry), and may be made public in due course.

2. In order to provide my expert opinion I have been provided by the NSW Crown Solicitor's Office with what I understand to be the full Brief of Evidence (BOE) prepared by members of SFL and a variety of other documents. Such BOE comprises hard copy documents (including voluminous witness statements, transcripts of ERISP interviews, written and email correspondence, investigators reports and notes, COPS reports and documents seized and/or obtained from the RCC) approaching 3000 pages in length contained in multiple box files, together with a comprehensive 255 page Covering Report to the BOE prepared by Detective Sergeant Jeff Little of the Newcastle City LAC. In the body of his Covering Report (entitled 'Police Submission') Det Sgt Little states his own opinion on the sufficiency of evidence gathered by SFL to support possible charges of the common law offence of misprision of felony and/or the statutory indictable offence of concealing a serious indictable offence (under s316(1) of the NSW Crimes Act 1900) against a number of present or former RCC clergy and/or lay staff of the RCC.

3. Det Sgt Little's covering report is directed through his superiors (including Assistant Commissioner York) to the NSW Director of Public Prosecutions (DPP). I understand that the DPP is yet to advise on the matters raised by Det Sgt Little in his Covering Report, pending the findings of the current Inquiry. In forming my opinion on the thoroughness of the investigation conducted by SFL, I make no comment and provide no opinion on the merits or otherwise of

the views expressed by Det Sgt Little on the sufficiency of evidence to support any criminal charges against any person/s mentioned in the Covering Report. Obviously, these are matters for the DPP to address at a more appropriate time in the future.

Qualifications

4. I graduated from the University of Sydney with an Honours degree in Law in 1977. I was admitted to the NSW Bar in June 1977. I was admitted to the English Bar (Grays Inn) in 1985, the Hong Kong Bar in 1985 and the New York Bar in 1986. I took silk in NSW in September 1989.

5. From 1977 until July 1980 I practised in the area of crime at the NSW Bar. From August 1980 until mid September 1988 I was employed as a Crown Counsel with the Hong Kong Government. Whilst employed as a prosecutor in Hong Kong I prosecuted many hundreds of criminal trials covering a broad spectrum of criminal offences including murders, drug importations and supplies, adult and child sexual assaults, ICAC corruption charges and serious fraud charges. I directly supervised a number of other local and expatriate prosecutors. On an almost daily basis I reviewed briefs of evidence prepared by police in order to give advice to investigating police as to the sufficiency of evidence to support the laying of criminal charges. In order to give such advice I reviewed the police covering reports and briefs of evidence with an eye to the thoroughness of those police investigations. If I was of the opinion that police investigations were in any way deficient I would raise requisitions for the investigating police to address.

6. From mid September 1988 until 1995, I was employed as a Crown Prosecutor working within the Office of the NSW DPP. During this time I was promoted to the position of the Senior Crown Prosecutor for NSW, having the responsibility of directly allocating and supervising the work of some 65 Crown Prosecutors and personally having the carriage of some of NSW's most heinous murder trials. I frequently appeared for the Crown in appellate proceedings in the NSW Court of Criminal Appeal. I was also seconded for a period of time as General Counsel for the NSW ICAC. As Senior Crown Prosecutor, on a daily basis I had cause to review the thoroughness of police investigations and briefs of evidence concerning allegations of major criminality. In 1995 I resigned from the position of Senior Crown Prosecutor and returned to private practice at both the NSW and Hong Kong Bars. Since then, apart from appearing for persons accused of committing serious criminal offences, I have continued to prosecute on fiat major criminal cases for both the Commonwealth and NSW Governments, as well as the Hong Kong Government. I have also held academic positions at the University of Technology, the Chinese University of Hong Kong, the University of Notre Dame and Newcastle University. I am a former Justice of the Fiji Court of Appeal.

Code of Conduct for Expert Witnesses

7. I acknowledge for the purposes of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the expert witness code of conduct in Schedule 7 to the Rules and agree to be bound by it.

Scope of the investigation conducted by Strike Force Lantle

8. The subject matter of the investigation conducted by SFL is set out in two undated Terms of Reference (TOR) documents. In short, the TOR of SFL were 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 [four named alleged victims of sexual assaults]".

9. Over different periods of time a number of police officers were assigned to the investigation, these officers having to report to more senior police. Det Sgt Jeff Little became the OIC of SFL. Det Insp Graeme Parker of the Newcastle City LAC assumed command of SFL and the role of reviewer. Det Insp Paul Jacob of the NSW Police State Crime Command, Sex Crimes Squad, provided expert consultation to SFL as to the investigation of sexual assaults. From the time of its commencement in late 2010, members of SFL had available to them various earlier prepared reports authored by senior police officers concerning historical allegations of sexual assaults upon young persons by present and former clergy of the Maitland-Newcastle Diocese of the RCC. The original allegations of sexual assaults upon young persons by clergy of the RCC centered upon two persons, Father James Fletcher and Father Dennis McAlinden (both now deceased). The allegations of concealing the commission of the sexual assaults that had allegedly taken place centered upon a now deceased former RCC Bishop Leo Clarke and a current serving senior member of the RCC, although other senior clergy formerly and currently attached to the Maitland-Newcastle Diocese of the RCC were also investigated.

10. By mid 2011 SFL had encountered allegations of sexual assault at the hands of current or former RCC clergy upon persons other than the four complainants the subject of SFL's TOR. Likewise, additional allegations had been made concerning the overall management by the RCC of allegations of sexual assaults perpetrated by former and present RCC clergy. In order to avoid 'mission creep' and in an effort to complete the investigation in a timely manner it was decided that SFL would focus upon the original allegations the subject of the TOR. Any additional victims who came forward would have their allegations managed under existing police channels of investigation. The manner in which the RCC managed allegations of sexual assaults by RCC clergy was not to form part of the investigation. It was determined that the police investigation would focus on whether or not there was evidence to support criminal charges, and not upon any perceived deficiencies in the way

the RCC managed issues of allegations of sexual assaults upon young persons at the hands of RCC clergy.

Methodology of the investigation

11. At an early stage of the investigation Det Sgt Little prepared a comprehensive Investigation Plan (IP) for the conduct of the investigation by SFL. The IP appropriately identified the details of the allegations to be investigated (the mission), existing COPS intelligence, resources needed by SFL, documents and exhibits to be identified and seized, criminal offences to be explored, persons of interest, known victims, sources of information, previous police investigations into the subject matter, execution strategies and details of many other facets of the investigation. In executing the IP, in the early stages of the investigation, members of SFL obtained and reviewed earlier prepared internal police reports, COPS intelligence reports, witness statements and exhibits the subject of existing police files and holdings concerning the subject matter the subject of the TOR. The material obtained and reviewed included a variety of reports and files compiled by Det Insp Fox of the NSW Police. At different times, members of SFL sought clarification from Det Insp Fox on a variety of matters arising from his earlier reports.

12. Some of the complainants the subject of the TOR had signed witness statements and/or affidavits prior to the investigation of SFL commencing. It was decided that all complainants would be re-interviewed by members of SFL and that this would be by way of recorded electronic interviews in order for there to be an accurate account of the interview process. Identified suspects and/or persons of interest would also be interviewed electronically and, where necessary, by way of ERISP interview.

13. Efforts were made to obtain all relevant documentation held by the RCC, including by the use of search warrant. Documentation relating to the subject matter of the TOR was also obtained from the Ombudsman and the Wood Royal Commission archives. Material was obtained from a number of media outlets including the Newcastle Herald and the ABC. Any persons able to corroborate or support the complainants' allegations were interviewed in person or, on occasion, by telephone interview.

Thoroughness of the Investigation conducted by SFL

14. I have reviewed the full BOE 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.

15. In my opinion, the investigative techniques deployed by the members of SFL in gathering evidence and information were appropriate to the task at hand. Given the sensitivity of the subject matter of the investigation, and the

obvious trauma that had been inflicted on the identified victims of child sexual assaults many years ago, it was entirely sensible to keep the number of investigators to a minimum, and keep details of the inquiries being conducted in strict confidence given previous adverse media publicity.

16. The decision was made to interview important witnesses (including victims), persons of interest and suspects by way of electronically recorded Q & A interviews. A perusal of just some of the transcripts of the recorded interviews shows that the interviews were both thorough and fair to the interviewee. Given the historical nature of the subject matter, that decision was entirely appropriate, it being the fairest and best way of obtaining an accurate account of a person's evidence and recollections of long ago events.

17. In my opinion appropriate measures were undertaken to safeguard the integrity of the investigation and the confidentiality of the evidence and information gathered during the course of the investigation. In my opinion, considering the TOR of SFL, all appropriate leads and lines of inquiry were pursued by members of the task force. Likewise, every effort was made to obtain all relevant historical and contemporary documents and records from the RCC. It is worth noting that Det Sgt Little managed to interview all but one of the still living and identified persons of interest and/or suspects. The one exception, a still serving senior member of the RCC clergy, exercised his legal right to refuse to be questioned by police. The comprehensive 255 page Covering Report to the BOE prepared by Det Sgt Little shows him to be a highly competent investigator.

18. I note that the investigation conducted by SFL 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 and comprehensive Covering Report was not unreasonable.



Ian Lloyd QC

7 May 2013

Appendix F Public notice of Inquiry

Public notice about the Inquiry was published in several national newspapers between December 2012 and February 2013.

The notice was in the following terms:



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

Margaret Cunneen SC was appointed by Letters Patent issued in the name of the Governor of New South Wales on 21 November 2012. Amending Letters Patent were issued on 25 January 2013 so that the Commissioner will now 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.

"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).

In order to ensure that all relevant information is obtained, the Commissioner has been given the special powers under sections 22, 23 and 24 of the *Special Commissions of Inquiry Act 1983* (NSW).

The Commissioner will be assisted by Julia Lonergan SC, David Kell and Warwick Hunt of Counsel and the Crown Solicitor.

Court dates

A mention for the Inquiry will take place at **10am** on Wednesday, **13 February 2013** in Court 7B, Level 7, John Maddison Tower, 88-90 Goulburn Street, Sydney. On this occasion, applications for leave to appear will be taken and the process to be followed by the Inquiry will be outlined, including the means by which the Inquiry will inform itself in relation to the terms of reference.

Dates for public hearings, some of which will be held in Newcastle, will be notified via the Inquiry's website.

Please refer to Practice Note no.1 on the website, which explains the authorisation process for parties who wish to appear at public hearings before the Commission.

Submissions date

The Commissioner has extended the time for the provision of written submissions to the Inquiry, to **4pm** on Friday, **1 March 2013**.

Submissions should comply with the Directions for Written Submissions, which can be obtained from the Inquiry's website (at www.lawlink.nsw.gov.au) or by contacting Ms Emma Sullivan, Special Counsel of the Crown Solicitor's Office, at email address sisa@agd.nsw.gov.au

Report date

The Commissioner is due to provide a report on, or before, **30 September 2013**.

Contacting the Inquiry

Individuals or organisations who believe they are substantially and directly interested in any subject matter of the Inquiry, or who have information relevant to the Inquiry, are invited to contact Ms Sullivan, in writing, at the address below in order to inform the Inquiry of their interest, and the extent of assistance that they can provide to the Inquiry.

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

GPO Box 25, Sydney NSW 2001

Phone: (02) 9224 5282

Email: sisa@agd.nsw.gov.au

Website: www.lawlink.nsw.gov.au

Appendix G Practice notes

Practice note no. 1, 4 February 2013



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

PRACTICE NOTE no. 1 – AUTHORISATION TO APPEAR AT PUBLIC

HEARINGS

Preamble

It is likely many individuals and groups may wish to assist the Commissioner's Inquiry without seeking authorisation to appear. It is possible to assist the Inquiry by making written submissions or by providing a factual statement or giving evidence or other information. Any of those things can be done without the need to seek authorisation to appear. If you want to discuss the ways you might participate you can contact Emma Sullivan, Special Counsel at the Crown Solicitor's Office on (02) 9224 5029.

This Practice Note is directed to those individuals or organisations considering seeking authorisation to appear at public hearings.

Authorisation to appear

1. The Commissioner may authorise a person (or a solicitor or barrister on their behalf) to appear at the public hearings, or a specified part of the public hearings, of the Inquiry if it is shown to the satisfaction of the Commissioner that the person is substantially and directly interested in any subject-matter of the inquiry (or otherwise satisfies the requirement of s 12(2) of the *Special Commissions of Inquiry Act 1983*). Authorisation may be:
 - (a) granted subject to conditions or limitations;
 - (b) made subject to altered or additional conditions or limitations at any time;
 - (c) withdrawn by the Commissioner.
2. The Terms of Reference of the Inquiry deal with two enumerated matters that are substantially (if not wholly) distinct. In such circumstances, it may be expected that, in most cases, a person authorised to appear at the public hearings (as contemplated by paragraph 1 of this Practice Note), will be authorised to appear only in so far as the public hearing relates to either paragraph 1 or paragraph 2 of the Terms of Reference (rather than both).
3. Applications for authorisation to appear at the public hearings of the Inquiry should be made at the mention on 13 February 2013. Prior notice of the application for authorisation, its stated basis (including whether it relates to paragraph 1 or

paragraph 2 of the Terms of Reference, or both), should be provided in writing to the Solicitor to the Inquiry as soon as practicable.

4. The Commissioner will continue to receive and consider subsequent applications for authorisation to appear during the course of the public hearings. It is expected that an explanation for any delay in making an application to appear will be provided.
5. It is expected that any person granted authorisation to appear at the public hearings will take such steps as may reasonably be required to assist with the orderly conduct of the Commission.
6. Authorisation to appear entitles the person to whom it is granted to participate in the public proceedings of the Inquiry subject to the Commissioner's control and to such extent as the Commissioner considers appropriate. In this respect, the Commissioner may (either when authorisation is granted or subsequently):
 - (a) limit the person's participation to the provision of submissions in writing;
 - (b) grant (or refuse to grant) leave to examine and cross-examine witnesses;
 - (c) limit the particular topics or issues upon which the person may examine and cross-examine witnesses;
 - (d) impose time limits upon examination and cross-examination.
7. The Commission reserves the right to vary or depart from the above practices from time to time where considered necessary or desirable to do so.

4 February 2013

Practice note no. 2, 14 February 2013



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

PRACTICE NOTE no. 2 – CONDUCT OF PUBLIC HEARINGS

Legal representation of persons giving evidence at public hearings

1. The Commissioner may authorise a person giving evidence at a public hearing to be legally represented. Applications to authorise legal representation of witnesses should be made at the relevant hearing date, or such prior occasion as may be appropriate. Prior notice of the application for authorisation, and its stated basis, should be provided in writing to the Solicitor to the Inquiry. See also Practice Note no. 1.

Conduct of the public hearings

2. Subject to the control of the Commissioner, Counsel Assisting will determine what witnesses are to be called, what documents are to be tendered to the Commission, and in what order witnesses will be called and examined. It may be necessary to call some witnesses to give evidence on more than one occasion.
3. The Commission may decide to receive the evidence of a witness orally or in statement form (such as by a statutory declaration). The Commission will decide whether to require a witness giving evidence by statement to attend for examination or cross-examination.

Application for witnesses to appear before the Commission

4. All witnesses at a public hearing will be called by Counsel Assisting.
5. Any person wishing to have evidence of a witness or witnesses placed before the Commission is to notify Senior Counsel Assisting of the names of such witnesses, and provide a signed statement of their expected evidence (if possible in the form of a statutory declaration) as soon as practicable.
6. If considered necessary or desirable, Counsel Assisting and/or Commission staff may interview such witnesses and take or request further statements from such witnesses. It is not necessary that any such interviews or obtaining of additional statements or information occur in the presence of the person, or legal representatives thereof, who sought to have the evidence of such witnesses placed before the Commission.

7. Counsel Assisting will determine whether or not to call the witness. An application may be made directly to the Commissioner to call the witness only after the above procedure has been completed and Counsel Assisting has indicated that the witness will not be called.

Examination and cross-examination of witnesses

8. All witnesses at a public hearing will be called by Counsel Assisting. Typically, Counsel Assisting will call and then examine (including cross-examine) the witness unless in particular instances Counsel Assisting (or the Commissioner) permits a witness' own legal representative to lead his or her evidence.
9. In the usual case, Counsel Assisting will call and examine (including cross-examine) the witness. In some circumstances, the witnesses might be examined (including cross-examined) by more than one of the Counsel Assisting. Subject to the discretion of the Commissioner, the witness may next be cross-examined by or on behalf of any person considered by the Commission to have sufficient interest to do so, and may then be examined by his or her own legal representative. Counsel Assisting may re-examine. At all times, duplication and repetition is to be avoided and the Commissioner will disallow any questions of such nature.
10. In determining whether a person has a sufficient interest to cross-examine a particular witness (either at all or as to a particular topic), the Commissioner may call upon the person to:
 - (a) identify the purpose of the proposed cross-examination;
 - (b) set out the issues to be canvassed; and
 - (c) state whether a contrary affirmative case is to be made in some respect, and if so the details of that case.
11. The Commissioner may:
 - (a) limit the particular topics or issues upon which the person may examine and cross-examine witnesses; and
 - (b) impose time limits upon examination and cross-examination.
12. The Commissioner may:
 - (a) disallow questions posed to witnesses; and
 - (b) ask questions of a witness at any time.
13. A copy of any document proposed to be put to a witness in cross-examination must be provided to Counsel Assisting as soon as possible after a decision is made to use the document for such purpose, and in all cases, prior to its intended use.

Procedures to be adopted in putting parties on notice as to material potentially adverse to interest

14. The details of the evidence to be adduced to the Commission will generally not be provided in advance of the public hearing to any person who is authorised to appear before the Commission (and will generally not otherwise be published in advance of the public hearing).
15. However, where practicable, a person or organisation who or which to the prior knowledge of Counsel Assisting will be the subject of allegations before a public hearing of the Commission will, if practicable, be notified of that fact before the hearing, with such particulars, if any, as are considered appropriate by Counsel Assisting the Commission, or will, if practicable, be notified as soon as reasonably convenient thereafter and provided with a copy of the material portion of the transcript or such particulars, if any as are considered appropriate by Counsel Assisting, and may be given an opportunity to contest those allegations, if requested.

Publication of proposed witness list and hearing hours

16. At or shortly prior to the commencement of each week of a public hearing, the Commission may publish on its website a list of witnesses proposed to be called that week. The scheduling of witnesses as published may be subject to change from time to time.
17. The public hearing of the Inquiry will sit from Monday to Friday of each week. Usual hearing hours will be from 10.00am to 1.00pm and from 2.00pm to 4.00pm.

Procedures relating to the tender and inspection of documents

18. Subject to the control of the Commissioner, Counsel Assisting will determine whether and which documents are to be tendered, and when they will be tendered.
19. Any person wishing to have a document placed before the Commission at a public hearing must notify the Commission by providing a copy of the document to the Solicitor to the Inquiry. Counsel Assisting will decide whether or not to tender the document. An application may be made directly to the Commissioner to tender a document only after the above procedure has been completed and Counsel Assisting has indicated that the document will not be tendered.
20. Any person (or legal representative of that person) having been granted authorisation to appear before the Commission may request to inspect and copy any book, document or writing tendered in evidence (and not subject to any relevant order restricting publication or access) for the purpose only of appearance before the Commission. Commission staff may require suitable arrangements to be made with

the person seeking inspection and/or copying of tendered documents, including as to the costs of any such copying, before permitting access to the document(s).

21. Documents and other articles may be tendered to the Commission, by Counsel Assisting, and received into evidence outside formal hearings of the Commission.

Non-publication orders and closed hearings

22. In an appropriate case, the Commissioner may:
 - (a) direct non-publication of the name, or the use of a pseudonym, to protect the name of any witness or any person about whom evidence is given;
 - (b) give directions otherwise preventing or restricting the publication of evidence given before the Commissioner or of matters contained in documents tendered to the Commission; and
 - (c) direct during a public hearing that part of such a hearing take place in private, and may give directions as to the persons who may be present during such part of the hearing to be held in private.
23. Any person who is authorised to appear who seeks a direction for a closed hearing for particular evidence, or a direction for non-publication of particular evidence must (as soon as is reasonably practicable) provide Counsel Assisting in advance with a copy of the proposed application, the form of the direction sought, the content of the proposed evidence and any submissions in support of the application.

Further matters

24. At the conclusion of the evidence at the public hearings, it will be determined who will have the right to address the Commission, when, in what form (eg only in writing), on what issues, and in what order.
25. The Commission reserves the right to vary and/or depart from the above practices from time to time where considered necessary or desirable to do so.

14 February 2013

Practice note no. 3, 29 August 2013



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

PRACTICE NOTE no. 3 – SUBMISSIONS TO THE INQUIRY AND NOTICES OF POTENTIAL ADVERSE FINDINGS

Preamble

It is proposed to give persons who have previously been granted authorisation to appear at the public hearings of the Inquiry ("authorised persons"), the opportunity to make submissions in relation to the Inquiry's terms of reference, either in writing, orally, or both, at the conclusion of the evidence and before service of notice of potential adverse findings.

This is an elective procedure to provide authorised persons with an opportunity to summarise the matters that they might wish to draw to the attention of the Commissioner, in advance of the possible service of a notice of potential adverse findings.

Authorised persons will also be provided with the opportunity to make written submissions in relation to any notice of potential adverse findings.

Written submissions

1. The Commissioner invites written submissions relating to the Inquiry's terms of reference from authorised persons by **Monday, 16 September 2013**. Submissions should be provided in both electronic and hard-copy form to Ms Emma Sullivan, Special Counsel of the Crown Solicitor's Office, GPO Box 25, Sydney NSW 2001, email: emma.sullivan@agd.nsw.gov.au
2. Any written submissions made by authorised persons may be circulated, by those assisting the Commissioner, to other authorised persons as soon as practicable after 16 September 2013.

Public oral submissions

3. Authorised persons are not obliged to make oral submissions, but may wish to avail themselves of the opportunity to do so.
4. Those authorised persons who wish to make oral submissions are invited to do so in public at a specially fixed 3-day submissions hearing at Court No 1, Newcastle Supreme Court from **Monday, 23 to Wednesday, 25 September 2013**.

5. The Commissioner is likely to impose time-limits on any authorised persons making oral submissions. An indicative maximum period of two hours is provided as a guide.
6. Authorised persons wishing to make oral submissions are requested to advise those assisting by **Monday, 16 September 2013** of their desire to do so. The date, time and period allocated within the special fixture for such submissions will be notified as soon as practicable thereafter.
7. Authorised persons will have the right to reply to all written and oral submissions by providing, to those assisting the Commissioner, any further written submissions by **Friday, 11 October 2013**.
8. Authorised persons making oral or written submissions will not be limited by their submissions if and when subsequently making further submissions in response to any notice of potential adverse findings (see further below).

Confidential oral and written submissions

9. Authorised persons who have participated in any hearings held *in camera* ought not address matters arising from those *in camera* hearings in their general written submissions or in their public oral submissions.
10. Authorised persons wishing to make submissions on matters that have been dealt with *in camera* should address those matters in the form of separate and distinct written or oral confidential submissions.

Confidential written submissions

11. The Commissioner invites confidential written submissions relating to the Inquiry's terms of reference from authorised persons by **Monday, 16 September 2013**. Submissions should be provided in both electronic and hard-copy form to Ms Emma Sullivan, Special Counsel of the Crown Solicitor's Office, GPO Box 25, Sydney NSW 2001, email: emma.sullivan@agd.nsw.gov.au
12. Any confidential written submissions made by authorised persons may be circulated, by those assisting the Commissioner, to other authorised persons as soon as practicable. In this respect, authorised persons should assume that a confidential written submission lodged with the Commission may be circulated, by those assisting, to such other authorised persons who were present at the *in camera* hearing to which the particular confidential submission relates.

Confidential oral submissions

13. Authorised persons wishing to make confidential oral submissions are requested to advise those assisting by **Monday, 16 September 2013** of their desire to do so. The date and time allocated for such submissions within the special fixture will be notified as soon as practicable thereafter.

Other matters

14. Authorised persons will be provided with the opportunity to reply to confidential submissions (whether written, oral or both) that relate to *in camera* hearings at which they were present, by providing any further confidential written submissions by **11 October 2013**.

15. Authorised persons making oral or written confidential submissions will not be limited by those submissions if and when subsequently making further submissions in response to any notice of potential adverse findings.

Notice of potential adverse findings

16. If the Commissioner forms a provisional view that an adverse finding on a critical or significant issue may be made against an authorised person, a notice of potential adverse findings will issue to that person, setting out:

a. The form of the proposed adverse findings; and

b. A summary statement of facts (referable to the relevant evidence) relating to the proposed adverse findings.

17. Any person who receives a notice of potential adverse findings will be given three weeks to respond in writing to such notice.

Further matters

18. Written submissions lodged with the Commission by authorised persons are not to be published or otherwise circulated by such authorised persons.

19. The Commissioner reserves the right to vary and/or depart from the above practices at any time when considered necessary or desirable to do so.

29 August 2013

Amended practice note no. 3, 5 November 2013



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

AMENDED PRACTICE NOTE no. 3 – SUBMISSIONS TO THE INQUIRY AND NOTICES OF POTENTIAL ADVERSE FINDINGS

Preamble

It is proposed to give persons who have previously been granted authorisation to appear at the public hearings of the Inquiry ("authorised persons"), the opportunity to make submissions in relation to the Inquiry's terms of reference, either in writing, orally, or both, at the conclusion of the evidence and before service of notice of potential adverse findings.

This is an elective procedure to provide authorised persons with an opportunity to summarise the matters that they might wish to draw to the attention of the Commissioner, in advance of the possible service of a notice of potential adverse findings.

Authorised persons will also be provided with the opportunity to make written submissions in relation to any notice of potential adverse findings.

Written submissions

1. The Commissioner invites written submissions relating to the Inquiry's terms of reference from authorised persons by **Monday, 16 September 2013**. Submissions should be provided in both electronic and hard-copy form to Ms Emma Sullivan, Special Counsel of the Crown Solicitor's Office, GPO Box 25, Sydney NSW 2001, email: emma_sullivan@agd.nsw.gov.au
2. Any written submissions made by authorised persons may be circulated, by those assisting the Commissioner, to other authorised persons as soon as practicable after 16 September 2013.

Public oral submissions

3. Authorised persons are not obliged to make oral submissions, but may wish to avail themselves of the opportunity to do so.
4. Those authorised persons who wish to make oral submissions are invited to do so in public at a specially fixed 3-day submissions hearing at Court No 1, Newcastle Supreme Court from **Monday, 23 to Wednesday, 25 September 2013**.

5. The Commissioner is likely to impose time-limits on any authorised persons making oral submissions. An indicative maximum period of two hours is provided as a guide.
6. Authorised persons wishing to make oral submissions are requested to advise those assisting by **Monday, 16 September 2013** of their desire to do so. The date, time and period allocated within the special fixture for such submissions will be notified as soon as practicable thereafter.
7. Authorised persons will have the right to reply to all written and oral submissions by providing, to those assisting the Commissioner, any further written submissions by **Friday, 11 October 2013**.
8. Authorised persons making oral or written submissions will not be limited by their submissions if and when subsequently making further submissions in response to any notice of potential adverse findings (see further below).

Confidential oral and written submissions

9. Authorised persons who have participated in any hearings held *in camera* ought not address matters arising from those *in camera* hearings in their general written submissions or in their public oral submissions.
10. Authorised persons wishing to make submissions on matters that have been dealt with *in camera* should address those matters in the form of separate and distinct written or oral confidential submissions.

Confidential written submissions

11. The Commissioner invites confidential written submissions relating to the Inquiry's terms of reference from authorised persons by **Monday, 16 September 2013**. Submissions should be provided in both electronic and hard-copy form to Ms Emma Sullivan, Special Counsel of the Crown Solicitor's Office, GPO Box 25, Sydney NSW 2001, email: emma_sullivan@agd.nsw.gov.au
12. Any confidential written submissions made by authorised persons may be circulated, by those assisting the Commissioner, to other authorised persons as soon as practicable. In this respect, authorised persons should assume that a confidential written submission lodged with the Commission may be circulated, by those assisting, to such other authorised persons who were present at the *in camera* hearing to which the particular confidential submission relates.

Confidential oral submissions

13. Authorised persons wishing to make confidential oral submissions are requested to advise those assisting by **Monday, 16 September 2013** of their desire to do so. The date and time allocated for such submissions within the special fixture will be notified as soon as practicable thereafter.

Other matters

14. Authorised persons will be provided with the opportunity to reply to confidential submissions (whether written, oral or both) that relate to *in camera* hearings at which they were present, by providing any further confidential written submissions by **11 October 2013**.

15. Authorised persons making oral or written confidential submissions will not be limited by those submissions if and when subsequently making further submissions in response to any notice of potential adverse findings.

Notice of potential adverse findings

16. If the Commissioner forms a provisional view that an adverse finding on a critical or significant issue may be made against an authorised person, a notice of potential adverse findings will issue to that person, setting out:

- a. The form of the proposed adverse findings; and
- b. A summary statement of facts (referable to the relevant evidence) relating to the proposed adverse findings.

17. The notice of potential adverse findings may set out the form of proposed adverse findings, and a summary statement of the facts (as referred to in para 16 above) by way of annexing the relevant section(s) of the Commissioner's draft report containing her provisional views.

18. A notice of potential adverse findings (together with any annexed materials) is strictly confidential to the recipient, and authorised persons will be expected to give an appropriate confidentiality acknowledgment before receiving any section(s) of the draft report.

19. Any person who receives a notice of potential adverse findings will be given three weeks to respond in writing to such notice. Upon application, an extension of a further week may be granted by the Commissioner, depending on the nature and extent of the notice of potential adverse findings served upon the person.

Further matters

20. Written submissions lodged with the Commission by authorised persons are not to be published or otherwise circulated by such authorised persons.

21. The Commissioner reserves the right to vary and/or depart from the above practices at any time when considered necessary or desirable to do so.

5 November 2013

Appendix H List of summonses to produce documents

Individual/organisation	Number of summonses issued
1. Alexander, Dr M (Rutherford Family Medical Practice)	1
2. Apter, John (Regional Manager, Catholic Church Insurances Limited)	2
3. Australian Episcopal Conference of the Roman Catholic Church (Australian Catholics Bishops' Conference)	4
4. Babineau, Julia (Chief Executive Officer, Justice and Forensic Mental Health Network)	1
5. Bergin, Dr Denis	1
6. Bishop of the Catholic Diocese of Maitland-Newcastle	15
7. Blaszczyński, Professor Alex	1
8. Bowles, Martin PSM (Secretary, Department of Immigration and Citizenship)	1
9. Brennan, Father Tim (Executive Officer of the National Committee for Professional Standards)	1
10. Brydon, Trevor (Medico-Legal Supervisor, Hunter New England Area Health Authority)	1
11. Callinan, William	2
12. CGU Insurance Australia	1
13. Collins, Ray (Director, Catholic Schools Office Maitland-Newcastle)	3
14. Commissioner, Corrective Services New South Wales	1
15. Commissioner of Police, New South Wales Police Force	31
16. Director of Public Prosecutions New South Wales	2
17. Enright Solicitors	1
18. Farley, Anthony (Executive Director, Catholic Commission for Employment Relations)	2
19. Fowler, Dr Ian	1
20. Fox, Detective Chief Inspector Peter	5
21. Fried, Dr Robyn (Valentine Family Medical Practice)	1
22. Haggett, Superintendent Charles	1
23. Harris Wheeler Lawyers	1
24. Harrison, Howard	1

Individual/organisation		Number of summonses issued
25.	Hart, Monsignor Allan (Secretary, Maitland Diocese of Maitland-Newcastle Clergy Central Fund)	1
26.	Henry Davis York	2
27.	Johns, Dr Derek	1
28.	Keevers, Helen	2
29.	Lucas, Father Brian	3
30.	Makinson & d'Apice Solicitors	1
31.	Malone, Bishop Michael	1
32.	Maloney, Philip (General Counsel, Little Company of Mary Health Care Limited)	1
33.	Manus, Dr John (Mind and Matter Consulting)	1
34.	Matthews, Simon (Assistant Manager Psychological Assessments, Centre for Corporate Health Pty Ltd)	1
35.	McCarthy, Joanne	1
36.	Norton Rose Fulbright Solicitors	2
37.	Pell, Cardinal George (Catholic Archdiocese of Sydney)	2
38.	Phillips Fox	1
39.	Phillips, Dr Lisa	1
40.	Robbs, Former Detective Senior Constable Jason	1
41.	Salmon, Michael (Director of Professional Standards Office New South Wales/Australian Capital Territory)	1
42.	Short, Diayne (Medical Records Manager, Lake Macquarie Private Hospital)	1
43.	Smith, Suzanne	1
44.	Steel, Former Detective Sergeant Kirren	1
45.	Tayler, Former Detective Chief Inspector Brad	1
46.	University of Newcastle	1
47.	Usher, Reverend Monsignor John	1
48.	Walsh, Dr Bernard A (Adult Cognitive Impairment Diagnostic Clinic)	1
49.	Wilson, Archbishop Philip	2
50.	Woodward, Sister Evelyn	3

Appendix I Media releases



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

Media Release

Friday 25 January 2013

Further scope to the Commission announced today

Changes to the Inquiry's Terms of Reference announced today now permit the Commissioner for the Special Commission of Inquiry, Margaret Cunneen SC, to inquire into matters relating to alleged child sexual abuse by Father James Fletcher, in addition to Father Denis McAlinden.

The Commissioner today encouraged people and organisations with information relevant to the Inquiry to continue to come forward and be heard.

"I am acutely aware of the sensitivities of the issues before the Inquiry and the intense public interest in the final report," the Commissioner said today.

"In light of this, I would like to take the opportunity to assure those affected that we will do whatever we can to ensure that anybody who has information relevant to the Inquiry will be heard. Life was very different for children in previous generations than it is today. This Inquiry understands that.

"The Inquiry will make it possible for individuals to provide evidence in a private hearing, if they wish. In appropriate circumstances, confidentiality will be maintained through the use of non-publication orders.

"Public hearings will also be held by the Inquiry. These will be advertised and noted on the Inquiry's website. Some of these hearings will be held in Newcastle," the Commissioner said.

The Special Commission of Inquiry was announced by the Premier on 9 November 2012 following allegations made to the media by Detective Chief Inspector Peter Fox

about matters relating to the police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle.

The amended Terms of Reference also include provision for information to be shared with the Royal Commission into Child Sexual Abuse. This means that victims or members of the public with information beyond the scope of the Special Commission of Inquiry can have that information provided directly to the Royal Commission.

Changes announced today to the Special Commission of Inquiry include:

- Further scope to investigate matters relating to alleged child sexual abuse by Father James Fletcher, in addition to Father Denis McAlinden.
- Written submissions will be accepted up until 4pm on 1 March 2013.
- A mention for the Inquiry will take place at 10am on 13 February 2013 in Court 7B, Level 7, John Maddison Tower, 86-90 Goulburn Street, Sydney. On this occasion, applications for leave to appear will be taken.
- The Commissioner is now due to report on, or before, 30 September 2013.

Contact details for the Special Commission of Inquiry are as follows:

- Postal address: GPO Box 25, Sydney NSW 2001
- Telephone: (02) 9224 5282
- Email: jsa@agd.nsw.gov.au
- Website: www.lawlink.nsw.gov.au



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

Terms of Reference

Margaret Cunneen SC was appointed by Letters Patent issued in the name of the Governor of New South Wales on 21 November 2012. Amending Letters Patent were issued on 25 January 2013 so that the Inquiry will now 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) a member of the clergy or any religious order of the Catholic Church.

The Commission is also further authorised to establish such lawful arrangements as considered 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 its 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, are considered more appropriately referred to the National Royal Commission.

"National Royal Commission" means the Commission of Inquiry into institutional responses to child sexual abuse established by Letters Patent (as they may be amended, supplemented or replaced from time to time) issued in Our Name by Our Governor-General of the Commonwealth of Australia on 11 January 2013 under the *Royal Commissions Act 1902* (Cth), the corresponding Commission of Inquiry established by Letters Patent (as they may be amended, supplemented or replaced from time to time) issued in Our Name by Our Governor of the State of New South Wales under the *Royal Commissions Act 1923* (NSW), and any related Commission of Inquiry that may henceforth be established.

The Commissioner is due to provide a report on, or before, 30 September 2013.

For media enquiries contact:

Scott Crebbin on 0419 751 805



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

Media Release

Wednesday 13 February 2013

Formal opening of public hearings by Commissioner Margaret Cunneen SC

Public hearings for 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 formally opened today in Sydney.

Commissioner Margaret Cunneen SC announced that public hearings will be held from 6-17 May and 24 June to 12 July, 2013 in Newcastle, at which evidence will be taken, and encouraged people with relevant information to come forward.

"There may be a number of persons identifying themselves as victims of Father McAlinden or Father Fletcher who may have information that is relevant to the Inquiry and who may now desire to come forward," the Commissioner said.

"This process has already started to occur. I strongly encourage these people to contact the Inquiry so that their voices may now be heard, and so that steps can be taken to consider the information that may be available. It has rightly been said that child sexual abuse is no longer a crime in which the conspiracy of silence continues to the grave.

"Children are inherently vulnerable and innocent. The sexual abuse of children is abhorrent. It exploits their vulnerability, irreparably damages their innocence and casts a shadow over their whole lives. It can be very difficult for children to break their silence about sexual abuse, and when they do, the collective responsibility to take action weighs heavily on all. When sexual abuse is committed by those in positions of trust and authority, it is even more abhorrent.

"This Inquiry provides an important opportunity for persons who held relevant positions within the Catholic Church to come forward and provide information to the Inquiry about relevant matters that occurred in the past."

Since its establishment on 21 November 2012, the Commissioner noted investigative steps undertaken by the Inquiry to date, including the issuing of a large number of summonses compelling the production of documents, and the conducting of private hearings.

The Commissioner also outlined how the Special Commission of Inquiry will work with the National Royal Commission into Institutional Responses to Child Sexual Abuse.

"This will include arrangements for the referral and sharing of evidence, information and matters coming to the attention of the Inquiry, which may fall outside the scope of terms of reference, but which may be of relevance to the National Royal Commission," the Commissioner said.

The Commissioner also highlighted in her opening that:

- The Diocese of Maitland-Newcastle has had a very troubled history regarding issues of child protection and the sexual abuse of children.
- Father Denis McAlinden and Father James Fletcher, named in the terms of reference, have been recognised, including by the Diocese, as having committed sexual abuse against children whilst serving in, or being incardinated to, the Maitland-Newcastle Diocese.

The terms of reference for the Inquiry, require the Commissioner to inquire and report on the following matters:

- The circumstances in which Detective Chief Inspector Peter Fox was asked to cease investigating relevant matters and whether it was appropriate to do so ("First Term of Reference"); and
- 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 ("Second Term of Reference").

The date for written submissions has been extended to 4.00pm Friday, 1 March 2013. The Commission is now due to report on or before 30 September 2013.

Contact details for the Special Commission of Inquiry are as follows:

- Postal address: GPO Box 25, Sydney NSW 2001
- Telephone: (02) 9224 5282
- Email: sisa@agd.nsw.gov.au
- Website: www.lawlink.nsw.gov.au



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

Media Release

Wednesday 27 February 2013

Inquiry Information Centre

The Special Commission of Inquiry has set up an information centre in Wallsend, Newcastle to give people the opportunity to speak confidentially to members of the Inquiry team and to provide information relevant to the Inquiry.

The Inquiry Information Centre will operate on specific days in March, April and May 2013. Please note the Commissioner, Margaret Cunneen SC, will not be in attendance at the Centre.

Dates:	Hours of operation:
Monday 4 March 2013	10am-4pm
Tuesday 5 March 2013	10am-4pm
Wednesday 3 April 2013	10am-4pm
Thursday 4 April 2013	10am-4pm
Friday 5 April 2013	10am-4pm
Sunday 5 May 2013	10am-4pm

*After hours by appointment

The Commissioner has continued to encourage everyone with relevant information to contact the Inquiry.

"I strongly encourage those people with information relevant to the Inquiry's terms of reference to come forward and be heard," the Commissioner said.

"The Inquiry team understands that this may be incredibly hard to do and wishes to help people by making the process as easy as possible – for people to talk to my team in confidence or just gain further information about their options for participating in the Inquiry," the Commissioner said.

The Information Centre can help with questions such as:

- What are my options to be involved?
- Is my experience relevant to the terms of reference?
- How does the Inquiry relate to the Royal Commission?

- What support is available to me?

The Inquiry Information Centre is located at the Justice Access Centre, Floor 1, Suite 2, 84 Nelson Street, Wallsend.

The Commission is due to report on or before 30 September 2013. The Terms of Reference for the Inquiry can be found on the website below.

Contact details for the Special Commission of Inquiry are as follows:

- Postal address: GPO Box 25, Sydney NSW 2001
- Telephone: (02) 9224 5282
- Email: sisa@agd.nsw.gov.au
- Website: www.lawlink.nsw.gov.au

For media enquiries contact:

Scott Crebbin on 0419 751 805



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

Media Release

Monday, 22 April 2013

Public Hearings – Media Information

Public hearings for 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 will be held in the Newcastle Supreme Court, Court Room No. 1, Church Street, Newcastle, from 6 May to 17 May and from 24 June to 12 July 2013.

Media are advised that no cameras, photographic or recording devices are to be used in the public hearing room at any time. The exception to this will be the opening to be given by Counsel Assisting, Ms Lonergan SC on Monday 6 May 2013 regarding TOR 1 and Monday 24 June regarding TOR 2. A pool TV camera will provide vision for networks and recording of the opening remarks will be allowed. Photography is not allowed.

Media wishing to attend the public hearings should register by emailing Scott Crebbin – scott.crebbin@me.com or calling 0419 751 805. This will assist with media planning and ensure media are kept up to date in the lead up to and during the hearings.

It is expected that parts of the hearings in May, June and July, and the evidence of particular witnesses, will be taken *in camera* (ie without access by the media or general public) where the Commissioner considers it desirable to do so including so as not to prejudice, by pre-trial publicity, any potential future criminal proceedings or influence any evidence witnesses might give at any such proceedings. Accordingly, the evidence of sexual abuse victims and certain witnesses is likely to be given *in camera* and subject to non-publication orders. The necessity for such procedures arises primarily due to the fact the Inquiry was announced against the background of an existing Police investigation (Strike Force Lantle) into alleged concealment offences by officials of the Maitland-Newcastle Diocese.

The Commissioner may also at times make non-publication orders in respect of matters such as the name of a person or particular aspects of their evidence. Such orders may be made having regard to, among other things, the particular sensitivities of victims of Father Denis McAlinden and Father James Fletcher.

Witness lists will be published on the website in the week prior to commencement of the public hearings - www.lawlink.nsw.gov.au. Transcripts of the day's proceedings will be posted on the website overnight.

Contact details for the Special Commission of Inquiry are as follows:

- Postal address: GPO Box 25, Sydney NSW 2001
- Telephone: (02) 9224 5282
- Email: sisa@agd.nsw.gov.au
- Website: www.lawlink.nsw.gov.au

For media enquiries contact: Scott Crebbin on 0419 751 805



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

Media Release

Tuesday, 11 June 2013

Public Hearings – Media Information

Public hearings for 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 will resume in the Newcastle Supreme Court, Court Room No. 1, Church Street, Newcastle, from 10am Monday 24 June 2013.

The first week of hearings (Monday 24 June to Friday 28 June 2013) will consist of the final witnesses pertaining to Term of Reference 1 (“TOR 1”).

On Monday 1 July 2013 at 10am public hearings for Term of Reference 2 (“TOR 2”) will commence. An additional week has been added to these public hearings, which will now conclude on Friday 19 July 2013.

Opening remarks will be given at the start of the TOR 2 public hearings by the Commissioner, Margaret Cunneen SC and Counsel Assisting, Julia Lonergan SC. A pool TV camera will provide vision for TV networks and recording of the opening remarks will be allowed. Photography is not allowed.

Media arrangements in place for public hearings held in May will again apply, which include no cameras, photographic or recording devices to be used in the courtroom at any time.

Media wishing to attend the public hearings should register by emailing Scott Crebbin – scott.crebbin@me.com or calling 0419 751 805. This will assist with media planning and ensure media are kept up to date in the lead up to, and during, the hearings.

As previously advised, it is expected that parts of the hearings, and the evidence of particular witnesses, will be taken *in camera* (ie without access by the media or general public) where the Commissioner considers it desirable to do so including so as not to prejudice, by pre-trial publicity, any potential future criminal proceedings or influence any evidence witnesses might give at any such proceedings. Accordingly, the evidence of sexual abuse victims and certain witnesses is likely to be given *in camera* and subject to non-publication orders. The necessity for such procedures arises primarily due to the fact the Inquiry was announced against the background of an existing Police investigation (Strike Force Lantle) into alleged concealment offences by officials of the Maitland-Newcastle Diocese. However, no adverse inferences should be drawn from the fact of certain persons giving evidence *in camera*.

The Commissioner may also at times make non-publication orders in respect of matters such as the name of a person or particular aspects of their evidence. Such orders may be made having regard to, among other things, the particular sensitivities of victims of Father Denis McAlinden and Father James Fletcher.

A witness list and an indicative list of issues for the TOR 2 public hearings have been posted on the Inquiry's website and are available at www.lawlink.nsw.gov.au. Transcripts of the day's proceedings will be posted on the website within 24 hours.

Inquiry Information Centre:

The Inquiry will hold a further Inquiry Information Centre session on Sunday 23 June 2013 from 10am to 4pm at the Wallsend Justice Access Centre, Floor 1, Suite 2, 84 Nelson Street, Wallsend for persons who may have information of relevance to the Inquiry.

Contact details for the Special Commission of Inquiry are as follows:

- Postal address: GPO Box 25, Sydney NSW 2001
- Telephone: (02) 9224 5282
- Email: sis@agd.nsw.gov.au
- Website: www.lawlink.nsw.gov.au

For media enquiries contact: Scott Crebbin on 0419 751 805



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

Media Release

Friday 30 August 2013

On Wednesday, 28 August 2013, the Governor-in-Council issued further Letters Patent providing an extension to the date for Commissioner Cunneen SC to deliver her report to the Governor in relation to the Special Commission of Inquiry into police investigations of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle ("Inquiry"). The Commissioner is now required to report on or before 28 February 2014.

The likelihood of such an extension had been foreshadowed by Premier Barry O'Farrell in Parliament on Thursday, 22 August 2013.

On 25 January 2013 expanded Terms of Reference were announced and the original reporting date was extended to 30 September 2013.

The Commissioner sought an extension of time for the preparation of her report so as to allow sufficient time to undertake the process of properly and thoroughly considering the significant quantity of evidence and documents obtained during the Inquiry's investigations to date, including eight weeks of public hearings in Newcastle (from 6 to 12 May 2013 and 24 to 28 June 2013 for Term of Reference One, and from 1 July to 2 August 2013 for Term of Reference 2), as well as an extensive number of *in camera* hearings.

The Commissioner is also required to consider submissions from authorised parties before finalising her report to the Governor.

As the Inquiry was announced against the background of an ongoing police investigation, the Commissioner will prepare an additional, confidential report to the Governor to continue to protect the integrity of the Inquiry's own processes as well as any potential future criminal proceedings.

For media enquiries contact:

Scott Crebbin on 0419 751 805

Appendix J ABC News article

Praise for child sex abuse info centre - ABC News (Australian Broadcasting Corporati... Page 1 of 2



Set an Australian
location for local news
and weather

Praise for child sex abuse info centre

Posted Fri 26 Apr 2013, 7:54am AEST

A Church counsellor has praised an information centre set-up to allow people to come forward in the lead-up to a probe into sexual abuse by Hunter Valley priests.

The Special Commission of Inquiry was triggered by allegations made by Chief Inspector Peter Fox that police were pressured to close investigations into abuse by two Maitland-Newcastle Catholic Diocese priests.

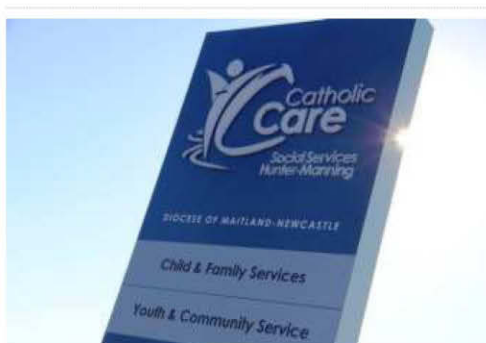


PHOTO: The Maitland-Newcastle Catholic Diocese has a co-ordinator of healing and support who is helping people contact the NSW Special Commission of Inquiry into sexual abuse. (ABC News: Dan Cox)

MAP: Newcastle 2300

The information centre opens for the last time on May 5, and aims to give people the opportunity to speak confidentially to members of the Inquiry team.

The Church's co-ordinator of healing and support Maureen O'Hearn says she has helped around a dozen people through that process.

"Everyone I've been with has found the experience to be really positive," she said.

"They've found the people at the Commission to be really respectful and warm and very supportive.

"Yes, for all the people I've accompanied, it's been a very positive experience and they've felt very acknowledged and very validated by that experience."

<http://www.abc.net.au/news/2013-04-26/praise-for-child-sex-abuse-info-centre/46523...> 22/05/2014

Ms O'Hearn says the local information centre has proved crucial in allowing people to tell their story in the lead-up to the Special Commission.

"This has worked," she said.

"Having those information centres, and having them so well publicised, has certainly made it easier for people just to go, basically, to a shopfront in Wallsend.

"It has made it very accessible and much less threatening, so I think that all of those things have really helped and really encouraged people to tell their story."

The Special Commission of Inquiry's public hearings begin in Newcastle on May 6.

Topics:child-abuse, sexual-offences, catholic, newcastle-2300, muswellbrook-2333

Appendix K Indicative list of issues: term of reference 2 public hearings

The following list of issues derives from the Inquiry's Terms of Reference, but is not to be considered exhaustive, and may be subject to change.

1. What were the police investigations of relevant matters (being matters relating directly or indirectly to alleged child sexual abuse involving Fathers Denis McAlinden or Father James Fletcher)? In this respect, it is proposed the following investigations will be examined:
 - a. The Watters/Fox investigation of Fr Denis McAlinden from 1999 to 2005 ("Watters Investigation");
 - b. The Flipo investigation of Fr Denis McAlinden from 2001 ("Flipo Investigation");
 - c. The Fox investigation of Fr James Fletcher from 2002 to 2004 ("Fox Investigation");
 - d. The Strike Force Lantle investigation of alleged concealment of sexual abuse offences committed by Frs Denis McAlinden and James Fletcher by certain officials of the Catholic Church from 2010 and following ("Lantle Investigation").
2. What material (whether information, documents or knowledge, and whether recorded or not) was (potentially) within the knowledge of the Catholic Church, through the knowledge of officials of the Catholic Church, from the point of commencement of the respective police investigations of relevant matters?
3. In relation to the Watters Investigation, whether officials of the Catholic Church:
 - a. Facilitated, assisted or co-operated with the investigation?
 - b. Hindered or obstructed the investigation?
4. In relation to the Flipo Investigation, whether officials of the Catholic Church:
 - a. Facilitated, assisted or co-operated with the investigation?
 - b. Hindered or obstructed the investigation?
5. In relation to the Fox Investigation, whether officials of the Catholic Church:
 - a. Facilitated, assisted or co-operated with the investigation?
 - b. Hindered or obstructed the investigation?
6. In relation to the Lantle Investigation, whether officials of the Catholic Church:
 - a. Facilitated, assisted or co-operated with the investigation?
 - b. Hindered or obstructed the investigation?
7. Whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person(s) for a specified offence(s) (certain matters relating to this issue to be dealt with at public *in camera* hearings).
8. Any further matters the Commissioner considers not otherwise covered by the foregoing paragraphs, that relate to paragraph 2 of the Terms of Reference.

Appendix L Apology by Bishop William Wright, 1 July 2013

SPECIAL COMMISSION OF INQUIRY
INTO MATTERS RELATING TO THE POLICE INVESTIGATION OF
CERTAIN CHILD SEXUAL ABUSE ALLEGATIONS IN THE CATHOLIC
DIOCESE OF MAITLAND-NEWCASTLE

At Newcastle Supreme Court
Court Room Number 1, Church Street, Newcastle NSW

On Monday, 1 July 2013 at 10.05am
(Day 1)

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC
Mr David Kell
Mr Warwick Hunt

Crown Solicitor's Office: Ms Emma Sullivan,
Ms Jessica Wardle

.01/07/2013 (1)

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Transcript produced by Merrill Corporation

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<WILLIAM WRIGHT, sworn: [11.35am]

<EXAMINATION BY MS LONERGAN:

MS LONERGAN: Q. Bishop Wright, you've prepared a statement that you wish to read out to those present in court?

A. That is correct.

As Bishop of Maitland-Newcastle, I wish to make an unreserved apology on behalf of the diocese to all those who have suffered as a result of acts or omissions by members of the diocese in relation to the matters before this Special Commission of Inquiry.

My apology must begin with an acknowledgment of the wrongs done. I acknowledge that two men, Denis McAlinden and James Fletcher, now deceased, but once priests of the diocese, repeatedly committed acts of sexual abuse of children. I acknowledge that these sexual predators used their position in the diocese to gain access to these children and to conceal their acts.

1
2 I acknowledge that the children, so abused, sometimes
3 suffered further hurt when they were not believed because
4 the offender was the priest. I acknowledge that when
5 matters were reported, church authorities sometimes failed
6 to act, or to act effectively, either to support abused
7 children and their families or to ensure that other
8 children were protected from abuse by those offenders in
9 the future.

10
11 I acknowledge that victims of McAlinden and Fletcher
12 and their families sometimes also suffered from the
13 attitudes and actions of some in the church community
14 towards them when they told their stories.

15
16 I acknowledge that the abuse perpetrated by McAlinden
17 and Fletcher, exacerbated on occasion by the failures of
18 church leaders, caused real and enduring harm to those
19 children who were abused, to their families, and to many
20 others who have been affected by this sorry history in
21 their community.

22
23 I am totally committed to the care and nurturing of
24 children in safety and in love. I find the willful harming
25 of children for personal sexual gratification abhorrent.
26 I feel outraged and disgusted at the sexual assault of
27 children by men who betrayed their positions of trust,
28 their sacred calling, and the basic tenets of our Christian
29 faith.

30
31 And so as Bishop, I apologise unreservedly on behalf
32 of the diocese to those who suffered abuse, to their
33 families and friends, and to all who have subsequently been
34 harmed by the unfolding of these matters.

35
36 My apology is intended to express the deep sorrow of
37 the Catholic community that such things ever happened to
38 people in our church; also our desire that the victims now
39 have the chance to tell their stories with confidence of
40 acceptance and are able to obtain justice, to the extent
41 that that is possible; also our commitment to assisting
42 those who were abused, as best we can; and our ongoing
43 commitment to doing all in our power to protect children
44 from such abuse now and in the future.

45
46 I am not currently in a position to comment on the
47 specifics of the facts relating to McAlinden and Fletcher,

1 nor the management of their matters by leaders of the
2 Maitland diocese or other persons in the wider Catholic
3 Church or the police. I was not in the diocese at the
4 times these events occurred and until I became Bishop,
5 I had no personal knowledge of these matters.
6

7 These issues are rightly for the Special Commissioner
8 to address and to investigate and I, for my part, approach
9 those investigations with an open mind.
10

11 To both police involved in Strike Force Lantle and
12 counsel assisting the Special Commissioner, I have and will
13 continue to direct all diocesan personnel to provide all
14 possible hospitality and logistical support to facilitate
15 access to any relevant records held by the diocese and to
16 endeavour to make the diocese and all its constituent
17 services as transparent as possible to ensure that all
18 relevant material comes to light.
19

20 I welcome public inquiries such as this Commission of
21 Inquiry and the forthcoming national Royal Commission. It
22 is my hope that, beyond establishing the facts of what has
23 happened in the past and contributing to child protection
24 regimes now and in the future, such inquiries will
25 contribute substantially to raising community awareness of
26 the damage done by child sexual abuse.
27

28 I hope that this increased community understanding of
29 the problem will help reduce the sense of isolation that
30 has been experienced by victims of abuse and the reluctance
31 that still exists in the broader community to report abuse
32 whenever, wherever it occurs.
33

34 I and the diocesan leadership team are committed to
35 the safety, welfare and well-being of children. Bishop
36 Michael Malone was determined that past wrongs and errors
37 were not repeated, and I have continued to commit
38 significant and ongoing resources to Zimmerman Services,
39 which is a specialist child protection unit within the
40 diocese, reporting to statutory authorities investigating
41 allegations of abuse, and providing innovative personalised
42 healing and support services to people affected by a
43 history of child sexual abuse in the diocese.
44

45 With those remarks, I thank the Special Commission of
46 Inquiry for undertaking this vital work.
47

1 THE COMMISSIONER: Thank you, Bishop Wright, most
2 sincerely, for your assistance to date and your sentiments
3 this morning. Thank you.
4
5 MS LONERGAN: Bishop Wright will be recalled at the end of
6 evidence in this public hearing, probably at the third
7 week, so, Commissioner, could Bishop Wright be excused?
8 Yes.
9
10 THE COMMISSIONER: Yes, thank you, Bishop Wright.
11
12 THE WITNESS: Thank you, Commissioner.
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14 <THE WITNESS WITHDREW
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M J WATTERS (Ms Lonergan)

Transcript produced by Merrill Corporation

Appendix M Legal representatives authorised to appear

Term of reference 1

Individual/organisation	Representative(s)
AJ	Ms Maria Gerace, instructed by Clinch Long Letherbarrow (until 20 December 2013) and Ellis Legal, Lawyers and Advocates (from 20 December 2013)
Commissioner of Police and relevant officers of the NSW Police Force	Mr Wayne Roser SC & Mr Patrick Saidi, instructed by Henry Davis York
The Catholic Diocese of Maitland-Newcastle and relevant personnel	Mr Lachlan Gyles SC, Ms Jennifer Single and Mr Richard Perrignon (15 May 2013 to 17 May 2013) instructed by Makinson & d'Apice
Fox, Detective Chief Inspector Peter	Mr Mark Cohen, instructed by Mr Greg Willis
Lucas, Father Brian	Mr Peter Skinner, instructed by Carroll & O'Dea Solicitors
McCarthy, Joanne	Mr Winston Terracini SC & Mr Martin Rush, instructed by Mr Alex Irving
Quinn, Former Detective Justin Tayler, Former Detective Inspector Brad	Mr Robert McIlwaine, Legal Representation Office

Term of reference 2

Individual/organisation	Representative(s)
ABC AH AJ AP BAZ Stanwell, Michael	Ms Maria Gerace, instructed by Clinch Long Letherbarrow (until 20 December 2013) and Ellis Legal, Lawyers and Advocates (from 20 December 2013)
BG BI BJ Walsh, Father Glen	Legal Representative Office (including instructing Mr Clifford Fraser at relevant times for Father Walsh)
Callinan, William	Mr William Potter, instructed by Nolan Commercial Law Practice
The Catholic Diocese of Maitland-Newcastle and relevant personnel	Mr Lachlan Gyles SC & Ms Jennifer Single, instructed by Makinson & d'Apice

Individual/organisation	Representative(s)
Commissioner of Police and relevant officers and former officers of the NSW Police Force	Mr Wayne Roser SC & Mr Patrick Saidi, instructed by Henry Davis York
Doyle, Elizabeth Muxlow, David	Mr Benjamin Bickford, instructed by Carroll & O'Dea Solicitors (represented Mr Muxlow from 15 August 2013 who was previously represented by Makinson & d'Apice)
Fox, Detective Chief Inspector Peter	Mr Mark Cohen, instructed by Mr Greg Willis
Gogarty, Peter	Self-represented
Harrigan, Father Desmond	Burke & Mead Lawyers
Hart, Monsignor Allan	Mullane & Lindsay Lawyers
Keevers, Helen	Dr Peggy Dwyer, instructed by Uther, Webster & Evans
Lucas, Father Brian	Mr Peter Skinner and Mr Adrian Williams, instructed by Carroll & O'Dea Solicitors
Malone, Bishop Michael	Mr Simon Harben SC & Mr Simon McMahon, instructed by Carroll & O'Dea Solicitors
McCarthy, Joanne	Mr Winston Terracini SC & Mr Martin Rush, instructed by Mr Alex Irving
Professional Standards Office and Davoren, John	Mr David Baran, instructed by SMK lawyers
Redgrove, Sister Paula	Corrs Chambers Westgarth
Usher, Monsignor John	Mr Stephen Rushton SC instructed by Corrs Chambers Westgarth
Wilson, Archbishop Philip	Ms Jane Needham SC & Mr Gary Doherty, instructed by Iles Selley Lawyers

Note:

1. Relevant officers and former officers of the NSW Police Force include Detective Superintendent John Kerlatec, Detective Inspector David Waddell, Inspector David Matthews, Assistant Commissioner Carlene York, Detective Inspector Paul Jacob, Inspector Anthony Townsend, Assistant Commissioner Max Mitchell, Detective Sergeant Jeffrey Little, Detective Chief Inspector Wayne Humphrey, Superintendent Charles Haggett, Detective Senior Constable Jason Freney, Inspector Graeme Parker, Inspector Fay Dunn, Superintendent John Gralton, Detective Sergeant Kristi Faber, Detective Inspector Mark Watters, Mr Donald Brown, Former Detective Senior Constable Jason Robbs and Detective Senior Constable Jacqueline Flipo
2. Relevant personnel of the Catholic Diocese of Maitland-Newcastle include Sean Tynan, Lisa Wollschlager, Father Gerard Mackie, Father James Saunders, Bishop William Wright, Father William Burston, Father Robert Searle, Michael Bowman and Maureen O'Hearn.

Appendix N Public and in camera hearing witness list

Term of reference 1: public hearing

Witness	Dates evidence given	Transcript page references
Dunn, Inspector Fay	27 June 2013	1562–1572
Faber, Detective Sergeant Kristi	28 June 2013	1623–1674
Fox, Detective Chief Inspector Peter	6–10 May 2013; 11 December 2013	17–112; 114–194; 227–290; 298–401; 452–508; 1680–1774
Frenay, Detective Senior Constable Jason	26 June 2013	1409–1445
Gralton, Superintendent John	28 June 2013	1574–1623
Grant MP, Troy	8 May 2013	196–226
Humphrey, Detective Chief Inspector Wayne	25–27 June 2013	1304–1339; 1344– 1408; 1446–1498
Jacob, Detective Inspector Paul	16 May 2013	872–927
Kerlatec, Detective Superintendent John	10 May 2013	403–449
Little, Detective Sergeant Jeffrey	24 June 2013	1093–1144
Lloyd QC, Ian	17 May 2013	1006–1019
Matthews, Inspector David	13 May 2013	606–622
McCarthy, Joanne	24–25 June 2013	1144–1212; 1214– 1303
Mitchell, Assistant Commissioner Max	16–17 May 2013	990–1004; 1020– 1089
Parker, Detective Chief Inspector Graeme	27 June 2013	1498–1562
Quinn, Former Detective Sergeant Justin	16 May 2013	948–989
Taylor, Former Detective Chief Inspector Brad	13–15 May 2013	623–635; 747–771; 773–870
Townsend, Inspector Anthony	16 May 2013	927–948
Waddell, Detective Inspector David	13 May 2013	502–606
York, Assistant Commissioner Carlene	14 May 2013	637–747

Term of reference 1: in camera

AJ, Detective Chief Inspector Peter Fox, Ms Joanne McCarthy, Detective Chief Inspector Graeme Parker and Former Detective Sergeant Kirren Steel gave in camera evidence in relation to term of reference 2.¹

¹ Non-publication orders over the evidence of AJ, Detective Chief Inspector Peter Fox, Ms Joanne McCarthy and Former Detective Sergeant Kirren Steel were lifted by the Commissioner.

Term of reference 2: public hearing

Witness	Dates evidence given	Transcript page references
AH	23 July 2013	1429–1434
Austin, Dr Rodger	31 July 2013	2213–2276
BJ	26 July 2013	1832–1860
Bowman, Michael	30 July 2013	2076–2092; 2147–2149
Brown, Former Detective Senior Constable Donald	10 July 2013	695–714
Burston, Father William (Bill)	17–19 July 2013; 29 July 2013	1222–1257; 1259–1355; 1357–1379; 1928–1941
Callinan, William	30 July 2013	2092–2145
Davoren, John	29–30 July 2013	1975–1999; 2009–2076
Doyle, Elizabeth	29 July 2013	1944–1974
Flipo, Detective Senior Constable Jacqueline	10 July 2013	715–772
Fox, Detective Chief Inspector Peter	2–5 July 2013; 9 July 2013; 11 December 2013	109–221; 223–338; 340–459; 463–569; 575–692; 1680–1774
Harrigan, Father Desmond	26 July 2013	1861–1885
Hart, Monsignor Allan	19 July 2013; 23 July 2013	1380–1427; 1434–1548
Keevers, Helen	31 July 2013	2151–2188
Lucas, Father Brian	24–26 July 2013; 9 September 2013	1550–1668; 1670–1774; 1776–1832; 2435–2442
Malone, Bishop Michael	10–12 July 2013; 15 July 2013	773–825; 828–970; 972–1019; 1023–1148
O’Hearn, Maureen	1 August 2013	2308–2332
Robbs, Former Detective Senior Constable Jason	1 August 2013	2275–2301
Saunders, Father James (Jim)	17 July 2013	1150–1222
Searle, Father Robert	29 July 2013	1893–1928
Tynan, Sean	31 July 2013	2188–2213
Usher, Monsignor John	9 September 2013	2342–2434
Watters, Detective Inspector Mark	1 July 2013	24–107
Wright, Bishop William	1 July 2013; 1 August 2013	21–24; 2333–2336

Term of reference 2: in camera

ABC, AJ, AP, Dr Rodger Austin, BAZ, BI, Father William Burston, Mr William Callinan, Mr John Davoren, Ms Elizabeth Doyle, Sister Patricia Egan, Detective Chief Inspector Fox, Mr Peter Gogarty, Monsignor Allan Hart, Detective Sergeant Jeffrey Little, Father Brian Lucas, Father Gerard Mackie, Bishop Michael Malone, Mr David Muxlow, Ms Maureen O'Hearn, Mr Edward Owens, Sister Paula Redgrove, Mr David Ryan, Mr Michael Stanwell, Mr Mark Sullivan, Mr Sean Tynan, Father Glen Walsh, Archbishop Philip Wilson, Ms Lisa Wollschlager, Bishop William Wright and additional persons (victim/relative of victim) gave in camera evidence in relation to term of reference 2.²

² Non-publication orders over the evidence of some of the persons who gave in camera evidence in relation to term of reference 2 were lifted by the Commissioner.

Appendix O Decision by Commissioner Margaret Cunneen SC regarding the question of contempt of the Commission on 13 May 2013

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

Question of Contempt of the Commission on 13 May 2013

DECISION

1. The public hearings of the Inquiry in relation to what has been described as the first Term of Reference commenced in Newcastle Courthouse on Monday, 6 May 2013.
2. I am assisted in these hearings, and in the Inquiry generally, by the Crown Solicitor and Counsel Assisting.
3. The parties who have been authorised to appear at the public hearings include Detective Chief Inspector Peter Fox ("DCI Fox", represented by Mr Mark Cohen of counsel instructed by Mr Greg Willis, solicitor) and the Commissioner of Police, together with 13 nominated police officers who had been summonsed to give evidence, (represented by Mr Wayne Roser SC and Mr Patrick Saidi instructed by Henry Davis York).
4. DCI Fox gave oral evidence during the first week of the public hearings, commencing 6 May 2013. His evidence concluded on 10 May 2013.
5. On Monday, 13 May 2013, evidence was given by Detective Inspector David Waddell. From 2008 to 2011 Detective Inspector Waddell held the position of Crime Manager at Lake Macquarie Local Area Command. In the course of his oral testimony, Detective Inspector Waddell gave certain evidence regarding a police investigation, Strike Force Georgiana, which was being conducted from Lake Macquarie Local Area Command. Strike Force Georgiana was directed at investigating allegations of child sexual assault including by certain persons formerly associated with the Catholic Diocese of Maitland-Newcastle.
6. Detective Inspector Waddell gave evidence that Strike Force Georgiana had been "scaled back" in 2010.¹ At a further point in his evidence Detective Inspector Waddell was asked some questions by Mr Rush of counsel who appeared for Joanne McCarthy. The following exchange took place:

Q: "I put it to you that, in a conversation with Joanne McCarthy on 4 May 2010, you told Joanne McCarthy [that] Georgiana is finalising some outstanding cases but it is essentially closed."

A: "That would be potentially correct, yes. That was the status of Georgiana at that stage."²
7. Following the luncheon adjournment that day, Mr Saidi made an application. Mr Saidi handed up a copy of a document recording a tweet said to have been made by DCI Fox using the Twitter service at about 12:35pm that day.

¹ Transcript p 509.

² Transcript p 560.

8. "Twitter" is an online social networking service and micro-blogging service that enables its users to send and read text-based messages of up to 140 characters. These messages are known as "tweets".

9. The tweet complained of by Mr Saidi was in the following terms:

"Detective Inspector Waddell gives evidence that in May 2010 he was closing down Strike Force Georgiana investigating child sex abuse by Hunter clergy."

10. At the time of the relevant tweet, the Inquiry was sitting and DCI Fox was present in the hearing room.

11. During the course of the application, Mr Cohen confirmed that the relevant tweet did, in fact, originate from DCI Fox.³

12. Mr Saidi criticised the tweet as containing false information.⁴ This issue is discussed further below.

13. Mr Said also submitted that the tweet could also constitute a contempt of the Commission. Mr Saidi's application was that the matter of the tweet should be referred to the appropriate authority, said to be either an appropriate officer at the Crown Solicitor's Office or, alternatively, the Registrar of the Supreme Court, for consideration to be given for DCI Fox to be dealt with for contempt of the Commission.⁵

14. The application was made orally by Mr Saidi. At that stage the Inquiry was in the midst of taking further oral evidence from witnesses. To permit Mr Cohen time to provide a considered response to the application, I directed that he provide any written submissions that he wished to make on behalf of DCI Fox by 24 May 2013. Subsequently, I directed that Mr Saidi file written submissions in reply by 31 May 2013. Each party provided written submissions in accordance with these directions.

The contentions advanced on behalf of DCI Fox

15. In his written submissions, Mr Cohen advances a number of contentions on behalf of DCI Fox. It is convenient to note the various contentions although, as will become apparent below, in the circumstances I do not find it necessary to deal with all the matters advanced.

16. First, Mr Cohen contends that, under the *Special Commissions of Inquiry Act 1983* (NSW) ("the Act") I have no power to refer any potential contempt to the Registrar of the Supreme Court. As is clear from the nature of his oral application, Mr Saidi contends otherwise.

17. Accordingly, Mr Cohen contends that I am the only body that, prima facie, may exercise a power to punish for contempt of the Commission. As will become evident, I do not agree with Mr Cohen's analysis. In my view, in certain circumstances I do have power under the Act to refer a potential contempt of the Commission to be dealt with, as appropriate, by the Registrar of the Supreme

³ Transcript p 577.

⁴ Transcript p 576.

⁵ Transcript pp 576-577.

Court.⁶

18. Secondly, Mr Cohen contends that there has not been any conduct on the part of DCI Fox that constitutes contempt of the Commission.
19. Thirdly, Mr Cohen contends that the tweet did not contain false information as alleged by Mr Saidi.
20. Fourthly, Mr Cohen contends that s 24(d) of the Act is invalid because the imposition by me of a penalty for contempt would offend the *Kable* principle. In this respect, Mr Cohen seemingly contends that the imposition of a penalty for contempt would constitute a judicial function that cannot be exercised by me as Commissioner.
21. Fifthly, Mr Cohen contends that, if the matter is otherwise a potential contempt, he was nonetheless at liberty to advance his tweet by reason of an implied constitutional freedom of expression attaching to governmental and political communications.

The reply submissions

22. In his written reply submissions, Mr Saidi submits that it is unnecessary for me to consider most of the submissions advanced by Mr Cohen because these are matters on which the Crown Solicitor (or presumably some other person if required) could give advice if the matter is referred to him for that purpose.
23. Mr Saidi states that his application is only that the matter of DCI Fox's tweet be referred to a third person or body for the purpose of, in effect, obtaining an advice as to whether the issue of alleged contempt by DCI Fox should be taken further in the circumstances.

Further analysis - overview

24. Mr Saidi's application, on behalf of NSWPF, is that I should refer the issue of DCI Fox's tweet to the appropriate authority, said to be either the Crown Solicitor or alternatively the Registrar of the Supreme Court, for the purpose of considering whether DCI Fox should be dealt with for contempt of the Commission.
25. As indicated above, I am assisted in the Inquiry generally by both the Crown Solicitor and Counsel Assisting. This has been the position since at least late 2012 following the establishment of the Inquiry.
26. In such circumstances, there is something inherently artificial in the suggestion that I ought consider referring the issue of DCI Fox's tweet to the Crown Solicitor for the purpose of advising.
27. As described below, I consider that I would have power to refer a potential contempt, in an appropriate case, to the Registrar of the Supreme Court.
28. I am not persuaded that the matter of DCI Fox's tweet should be the subject of any further action taken as a potential alleged contempt of the Commission. In this respect, I am not persuaded that I should refer the matter of DCI Fox's tweet

⁶ Depending on the circumstances, this may involve the Registrar obtaining legal advice from the Crown Solicitor, or some other appropriate person, in respect of the potential contempt and related issues.

to the Registrar of the Supreme Court for consideration to be given for DCI Fox to be dealt with for contempt of the Commission.

Section 24 of the Act

29. Section 24 of the Act is entitled "Particular powers of Commissioner" and provides:

"For the purposes of a Special Commission, the Commissioner shall have all such powers, rights and privileges as are vested in the Supreme Court or in any Judge thereof in or in relation to any proceedings, in respect of the following matters:

- (a) compelling the attendance of witnesses,*
- (b) compelling witnesses to answer questions which the Commissioner deems to be relevant to the Special Commission,*
- (c) compelling the production of books, documents and writings, and*
- (d) punishing persons guilty of contempt or of disobedience of any order or summons made or issued by the Commissioner."*

30. Section 24 applies only in circumstances where in the relevant Letters Patent the Governor declares that the section shall apply to and in respect of the Special Commission: s 21(1). The Letters Patent for the present Commission include such a declaration by the Governor and, accordingly, s 24 applies to the Commission.⁷

Conduct in the face of the Commission

31. DCI Fox's tweet occurred while the Inquiry was sitting and while DCI Fox was present in the hearing room.
32. An issue arises as to whether such conduct could constitute contempt "in the face of" the Commission.
33. In *Morris v Crown Office* [1970] 2 QB 114 at 122 Lord Denning MR referred to the phrase "in the face of the court" and said:

"The phrase 'contempt in the face of the court' has a quaint old-fashioned ring about it; but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power — a power instantly to imprison a person without trial — but it is a necessary power."

34. For the purposes of the law of contempt, in my view the conduct of DCI Fox in sending a tweet from within the hearing room, while the hearings of the Inquiry are being conducted, constitutes conduct occurring "in the face of" the Commission. This is so even though I did not observe DCI Fox making the tweet

⁷ The Letters Patent dated 21 November 2012, p 2, as altered by the Letters Patent dated 25 January 2013, relevantly provides: "And pursuant to section 21 of the *Special Commission of Inquiries Act* 1983 (NSW) it is hereby declared that sections 22, 23 and 24 shall apply to and in respect of the Special Commission the subject of these our Letters Patent."

when he did so. See *Registrar of the Court of Appeal v Collins* [1982] 1 NSWLR 682 at 684.⁸

35. In other words, contempt “in the face of” the tribunal can occur even if the conduct is not, in fact, seen or heard by the presiding officer.

Dealing with a potential contempt in the face of the Commission

36. In procedural terms, a potential contempt in the face of the Commission can be dealt with in different ways.
37. The matter may be dealt with by the Commissioner in a summary fashion, subject to the need to provide procedural fairness in respect of matters such as: (i) the provision, orally or in writing, of a statement of charge; (ii) the provision of an adequate opportunity, which may require an adjournment, to make a defence to the charge; (iii) the conduct of the summary hearing before the Commissioner. The summary procedure is intended to be reserved for matters involving a compelling need to act urgently.⁹ Quite properly, Mr Saidi’s application does not ask me to deal with the present matter in such a fashion.
38. I note that any determination of contempt by a Commissioner must not lead to a committal for contempt for an indeterminate term. It may also be that any committal for a fixed term should not extend beyond the term of the Special Commission. See *Ferraro v Woodward* (1978) 143 CLR 103 at 106-107.
39. I do not accept Mr Cohen’s contention, to the extent so advanced, that I would not have power to deal, in summary manner, with a contempt in the face of the Commission. Thus, for example, in *Ferraro v Woodward* (1978) 143 CLR 103 the High Court proceeded on the basis that a Commissioner (Woodward J) under the *Royal Commissions Act* 1923 (NSW) could deal himself deal with a matter and make a finding of contempt, if satisfied beyond reasonable doubt, and direct that the person be committed to prison pursuant to a (properly crafted) warrant for a fixed term.
40. Alternatively to dealing in a summary fashion with a contempt in the face of the Commission, in my view, the Commission has power to refer the issue of the potential contempt to the Registrar of the Supreme Court.
41. In *Ferraro v Woodward* the then form of s 18 of the *Royal Commissions Act* 1923 (NSW) was in similar terms to s 24 of the Act, including a vesting in the Commissioner of all such powers, rights and liabilities as are vested in the Supreme Court or any judge thereof in respect of “punishing persons guilty of contempt.”
42. In *Ferraro v Royal Commissioner* (unreported, 2 February 1978, NSWCA) Moffit P (with whom Street CJ and Glass JA agreed) said of s 18 that “the power conferred is to punish summarily for contempt of the inquiry in a way equivalent to the power to punish summarily for contempt in judicial proceedings.”¹⁰

⁸ Consider also *R v El Jamal* [2009] NSWSC 686 at [4]; *European Asian Bank AG v Wentworth* (1986) 5 NSWLR 445 at 463 per Priestley JA.

⁹ *Keeley v Brooking* (1979) 143 CLR 162 at 173.

¹⁰ The decision was overruled by the High Court for other reasons in *Ferraro v Woodward* (1978) 143 CLR 103, but the decision did not affect this part of the reasons of the Court of Appeal.

43. In my view, the exercise of power under s 24 cannot be restricted to the use of the summary procedure for contempt in the face of the Commission. This construction is supported by the fact that action for breaches of order and failing to attend in response to a summons, also referred to in s 24(d), would typically not have occurred in the face of the Commission and thus could not properly be dealt with in a summary fashion. In my view, the reference to "contempt" in s 24(d) comprehends all of the general law of contempt.
44. This approach to s 24 is supported by authority. Thus, in *R v Arrowsmith* [1950] VLR 78 at 85 Dean J said, of an identically worded provision in s 3(1)(d) of the *Royal Commission (Communist Party) Act 1949*, that:

"It was contended for the respondents that in [the principal Act] the reference to contempt was limited to contempt in relation to the particular matters referred to in sec. 3(1), namely matters of procedure, and that the general law of criminal contempt was not made applicable. But as it was conceded that by [the amending Act] the general law of contempt was applicable, this contention could have no effect except as to penalty as the latter Act is retrospective. Despite arguments drawn from the specific reference in section 3(1) to a number of matters of procedure, and also notwithstanding the doubts on the extent of the original power suggested by the amendment, I am unable to take such a restricted view of the original provision. 'Contempt' must mean contempt of every kind and cannot be limited to some kind of contempt only. There is no justification for giving to the word anything less than its full legal meaning. It follows that if the publications in question be contempt they were a contempt when published and did not become so by reason of any retrospective operation of the later Act. The later Act removed any possible doubt, and gave the power to punish to other Judges of the Court."

45. In my view, and consistent with the approach taken in *Arrowsmith*, the reference to "contempt" in s 24(d) contemplates the whole of the general law of contempt, adapted to the context of a special commission. This extends to picking up the power of a Supreme Court judge under Pt 55 r 11(1) of the *Supreme Court Rules*, to direct the Registrar (or the Prothonotary) of the Supreme Court to commence, or to consider the commencing of proceedings in the Supreme Court for contempt of the Commission.

Alleged invalidity of s 24

46. As noted above, Mr Cohen seemingly contends that s 24(d) of the Act is invalid to the extent that it permits findings and punishment for contempt. This argument is seemingly based on *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 and Mr Cohen's contention that this Commission has been clothed with power by the Australian Parliament.
47. Two matters need be stated. First, I am not empowered, sitting as a Commissioner under the Act, to declare part of the Act to be invalid. Only a relevant superior court has power to make a declaration of invalidity of a provision of a NSW Act.
48. Secondly, I do not find Mr Cohen's contentions to be persuasive in any event. The contention that I am somehow clothed with power by the Australian Parliament is

incorrect. The Letters Patent for this Commission have been issued only by the NSW Governor. I also do not agree with Mr Cohen's suggestion that I am somehow exercising, or purporting to exercise, the judicial power of the Commonwealth. This is clearly not the case.

49. Further, the restrictions on State legislative power deriving from the *Kable* principle remain an evolving area at least in so far as potentially impacting on the State Parliament's capacity to impose restrictions, or otherwise intrude upon, the functions of State courts. But this Special Commission is not a State court.
50. Moreover, putting to one side issues arising under Ch III of the Commonwealth Constitution (which have no present application), the doctrine of the separation of powers has no general application at State level and the State Parliament can vest judicial power in non-judicial tribunals, as well as vesting non-judicial power in State courts. See *Clyne v East* (1967) 68 SR (NSW) 385; *Building Construction Employees and Builders' Labourers Federation of NSW v Minister for Industrial Relations* (1986) 7 NSWLR 372; *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 at 94, 109.

Referral to the Registrar of the Supreme Court

51. Although I regard myself as having power to refer the matter of the potential contempt for consideration by the Registrar of the Supreme Court, in the present case I am not persuaded that I should exercise this power.
52. At least where there has not been a previous direction precluding tweeting, I do not regard the mere act of tweeting from a hearing room, in the form of reporting on aspects of the evidence, as necessarily involving a contempt in the face of the tribunal.¹¹
53. I am conscious that there has been some debate between the parties as to the accuracy or otherwise of DCI Fox's tweet. I note that the tweet refers to Detective Inspector Waddell being involved in "closing down" Strike Force Georgiana. The excerpt of the question from Mr Rush and the answer from Detective Waddell, quoted above, refers to Strike Force Georgiana being then "essentially closed". This is different from any suggestion in the tweet, if reasonably conveyed, of Detective Waddell being involved in conduct comprising the shutting down of Strike Force Georgiana. There may be some force in the criticism by Mr Saidi as to the accuracy of the tweet. However, an inaccurate tweet does not necessarily constitute a contempt of court.
54. For present purposes, I do not find it necessary to enter into any detailed analysis of the accuracy or otherwise of the impugned tweet. Further, to the extent that the tweet could be suggested to be inaccurate, I would not be prepared to find that it was deliberately so.
55. The most likely respect in which conduct involving the tweeting of evidence of a witness may amount to a contempt is if it may have a real tendency to influence witnesses who were yet to give evidence in relation to the matter. This is a matter

¹¹ Consider, by analogy, the NSW Law Reform Commission report, *Sound Recording of Proceedings of Courts and Commissions: The Media, Authors and Parties* (1984), para 2.41 (use of unobtrusive sound recorder where no prior prohibitory order does not interfere with proceedings and administration of justice such as to constitute contempt in the face of the court). I note that the matter of recording court proceedings is now regulated in NSW by statute.

which I am well equipped to assess. DCI Fox's tweet referred, in very brief terms, to Detective Inspector Waddell having been involved in "closing down" the Strike Force Georgiana investigation. In respect of the hearings on the first Term of Reference, Detective Inspector Waddell was followed by witnesses who are, almost exclusively, serving or former police officers. Most of these officers have already provided statements of evidence to the Inquiry, and/or been examined in private hearing. Most did not, or are not expected to, give evidence touching upon Strike Force Georgiana. Further, the conduct in relation to Strike Force Georgiana (as distinct from Strike Force Lantle) is a matter that is on the periphery of issues being considered by the Inquiry.

56. Even if the substance of the tweet could be characterised as inaccurate or potentially misleading, I do not think that there is any real risk that the tweet may have a tendency to influence witnesses who were, or are, yet to give evidence in relation to the matter.
57. In these circumstances, I am not persuaded that I should refer the issue of DCI Fox's tweet to the Registrar of the Supreme Court for consideration regarding potential proceedings for contempt.
58. Notwithstanding my finding on this matter, I would, however, firmly discourage any person who is a witness required to give evidence before the Inquiry from engaging in tweeting regarding the subject matter of the evidence of any other witness. Such practice may distract from the important work being undertaken by the Inquiry.

Concluding remarks

59. In light of my findings, I do not regard it necessary to consider Mr Cohen's argument of a defence to contempt based upon an implied constitutional freedom of expression attaching to governmental and political communications nor to consider whether any such constitutional question could properly be determined within the forum of the Special Commission.

Margaret Cunneen SC

Commissioner

11 June 2013

Appendix P Commissioner's opening remarks



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

REMARKS OF COMMISSIONER MARGARET CUNNEEN SC ON THE FORMAL OPENING OF THE INQUIRY

13 February 2013

Welcome

1. Welcome to the first mention and formal opening 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.

Purpose of today

2. The purpose of this morning's hearing is to make some general remarks to indicate the terms of the Inquiry and formally to open the Inquiry.
3. Also, it provides an opportunity for any party who may be substantially and directly interested in any subject matter of the Inquiry to indicate an interest in assisting the Inquiry by seeking authorisation to appear at future public hearings of the Inquiry. I will return to this aspect shortly.

Genesis of the Inquiry – *Lateline* program

4. I begin by making some general remarks about the genesis of this Inquiry.
5. This Inquiry arose following the broadcast of an ABC television report on the *Lateline* program on 8 November 2012.

6. During that broadcast, a senior NSW Police officer, Detective Chief Inspector Peter Fox, made certain statements regarding alleged child sexual abuse by Catholic priests, including Father Denis McAlinden and Father James Fletcher (both now deceased), who had been associated with the Maitland-Newcastle Diocese. Detective Chief Inspector Fox referred to what he believed to be the covering-up of such conduct by the Catholic Church, including the relocation of impugned priests, in what he suggested was an attempt to protect the good name of the Church, and the apparent hindering of associated Police investigations into such alleged child sexual abuse.
7. During that same broadcast, Detective Chief Inspector Fox also made certain statements to the effect that he had been ordered, by senior Police, to cease investigating such matters and had been directed to hand over his files in relation to such matters.

The Inquiry – Terms of Reference

8. Following the *Lateline* program, pursuant to Letters Patent dated 21 November 2012 and 25 January 2013, issued in the name of the Governor of NSW and in accordance with the *Special Commissions of Inquiry Act 1983*, I have been commissioned to inquire into and report on certain matters arising.
9. In particular, the Terms of Reference for the Inquiry require me to inquire into and report upon the following matters:
 - (i) the circumstances in which Detective Chief Inspector Peter Fox was asked to cease investigating relevant matters and whether it was appropriate to do so (which can conveniently be described as the “**First Term of Reference**”); and
 - (ii) 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 (the "**Second Term of Reference**").

10. The following terms are defined in the Terms of Reference:

*"**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).*

The expression "**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

The expression "**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) a member of the clergy or any religious order of the Catholic Church.

Matters of emphasis

11. It is convenient, at this point, to note some matters of significance.
12. First, children are inherently vulnerable and innocent. The sexual abuse of children is abhorrent. It exploits their vulnerability, irreparably damages their

innocence and casts a shadow over their whole lives. It can be very difficult for children to break their silence about sexual abuse, and when they do, the collective responsibility to take action weighs heavily on all.

13. Further, the perpetrators of such child sexual abuse, including in a clerical context, will often hold positions of trust in relation to the child. When sexual abuse is committed by those in positions of trust and authority, it is even more abhorrent. The commission of such acts of sexual abuse always involves a reprehensible betrayal of the faith and trust placed in that person by the child and the child's family.
14. Secondly, the Diocese of Maitland-Newcastle has had a very troubled history regarding issues of child protection and the sexual abuse of children perpetrated by persons associated with the Diocese, including certain priests.
15. Two of those priests were Father Denis McAlinden and Father James Fletcher. Both of these persons are named in the Commission's Terms of Reference. Each has been recognised, including by the Diocese, as having committed sexual abuse against children whilst serving in, or incardinated to, the Maitland-Newcastle Diocese.
16. Father Denis McAlinden is regarded by many as having a history of sexual offending against children over four decades. Many persons identifying themselves as victims of Father McAlinden have come forward over time. Father McAlinden died in 2005. In June 2010 Father McAlinden was publicly described by the then Bishop of the Maitland-Newcastle Diocese as having been "a predator", who should have been dealt with earlier.
17. Father James Fletcher was ultimately convicted and sentenced in NSW in 2004 of having committed nine offences relating to the sexual abuse of a minor, who had been an altar boy. The sentencing judge described these offences as involving a "gross and inexcusable breach of trust." Over time, a number of other victims of Father Fletcher came forward.

18. Following the conviction of Father Fletcher, in December 2004, the then Bishop of the Maitland-Newcastle Diocese issued an apology to the victims and the victim's families for the pain and suffering caused by the criminal actions of Father Fletcher. Father Fletcher died in gaol in January 2006.
19. A third matter of importance should be noted. There may be a number of persons identifying themselves as victims of Father McAlinden or Father Fletcher who may have information that is relevant to the Inquiry and who may now desire to come forward. This process has already started to occur. I strongly encourage these people to contact the Inquiry so that their voices may now be heard, and so that steps can be taken to consider the information that may be available. It has rightly been said that child sexual abuse is no longer a crime in which the conspiracy of silence continues to the grave.
20. I note also that the Commission's website, about which I will comment further shortly, includes some contact details for support services and victims of sexual assault and victims' families.
21. Fourthly, this Inquiry will principally look at matters that occurred in the past. In doing so, while there may be some important aspects that are regarded as immutable, some care may need to be taken about necessarily judging events of the past solely by today's knowledge and standards.
22. Fifthly, this Inquiry is required to consider whether Church officials have, among other things, failed to co-operate with or have hindered relevant Police investigations. Such non-co-operation or hindrance, if it occurred, need not have amounted to a criminal offence to be of relevant interest to this Inquiry.
23. Sixthly, and flowing on from what I have just said, this Inquiry provides an important opportunity for persons who held relevant positions within the Catholic Church to come forward and provide information to the Inquiry about relevant matters that occurred in the past.

24. Conceivably, this may include information both as to the good and the bad that occurred in the past, including (if it be so) an acknowledgment that things could well have been handled differently and better. I encourage any such persons who may have relevant information also to come forward and provide it to the Inquiry.

The National Royal Commission

25. It is necessary also to mention the National Royal Commission into Institutional Responses to Child Sexual Abuse, established by Letters Patent issued by the Governor-General on 11 January 2013 under the Commonwealth *Royal Commissions Act* 1902 (Cth), and the relationship of that National Royal Commission to the present Inquiry.
26. The terms of reference of the National Royal Commission are broadly stated and that body is not required to report until the end of 2015. Consistent with its terms of reference, the Royal Commission can look at, among other things, any private or non-governmental organisation, including a religious organisation (such as a Diocese), that is, or was in the past, involved with children, and to consider the institutional responses to allegations and incidents of child sexual abuse and related matters.
27. The present Inquiry is authorised, by the further Letters Patent issued on 25 January 2013, to establish arrangements in relation to the National Royal Commission. This will include arrangements for the referral and sharing of evidence, information and matters coming to the attention of the Inquiry which may fall outside the scope of terms of reference but which may be of relevance to the National Royal Commission.

The Inquiry's website

28. The Inquiry has set up a website, which can be accessed via www.lawlink.nsw.gov.au, from which the precise terms of reference for this Inquiry and other relevant information can be obtained.

Process to be followed by the Inquiry

29. Since the establishment of the Inquiry on 21 November 2012, extensive investigative work has been undertaken by this Commission to date, including the compulsory acquisition of documentary evidence, and the identification and interviewing of potential witnesses.
30. The Commission has already issued a large number of summonses compelling the production of documents from relevant persons and organisations. The Inquiry has commenced reviewing that material. Further summonses for production are likely to be issued.
31. Further, the Commission is empowered to conduct private hearings with relevant persons, including prior to the holding of any public hearings. The Commission will continue to use its powers in this regard, as appropriate.
32. I turn now to say a few words about the processes expected to be followed in relation to the Inquiry going forward.
33. The Inquiry, including its amended Terms of Reference, has been widely advertised in major State and regional newspapers including during the past fortnight.
34. The Inquiry has invited written submissions from any interested persons in relation to matters arising under its Terms of Reference. The date for the provision of such written submissions has been extended until 4.00pm on 1 March 2013.
35. I have already referred to the Terms of Reference governing the present Inquiry. The Terms of Reference deal with two enumerated matters that are substantially, if not wholly, distinct.
36. As I have said, what I have described as the First Term of Reference relates to the circumstances in which Detective Chief Inspector Fox was asked to cease investigating relevant matters and whether it was appropriate to do so. The

Second Term of Reference relates to 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 may have been hindered or obstructed by such officials.

37. The Commission will hold separate public hearings in relation to the First Term of Reference and the Second Term of Reference. Dates have been fixed for the public hearings in May and June of this year.

ENDS

Appendix Q Correspondence between the New South Wales Crown Solicitor and Apostolic Nuncio and Congregation of the Doctrine of the Faith August–December 2013



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29 August 2013

His Excellency Msgr. Gerhard Ludwig Müller
Prefect, Congregation Doctrine of the Faith
Piazza del S. Uffizio, 11, 00193
ROMA ITALY

By fax: 0011 39 06 69 88 34 09 By email: cdf@cfaith.va

Dear Msgr. Müller

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

Pursuant to Letters Patent issued under the *Special Commissions of Inquiry Act 1983* (NSW), Ms Margaret Cunneen SC has been appointed as Commissioner to inquire into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle in New South Wales, Australia as set out in the attached Letters Patent.

The New South Wales Crown Solicitor assists the Commissioner.

Inquiry's terms of reference

Pursuant to Letters Patent dated 21 November 2012 and 25 January 2013 (copies **attached** for your reference), the Commissioner is 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.

"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).

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201203450 D2013/382138

Those Letters Patent were altered and varied by further Letters Patent of 28 August 2013 to provide additional time for the preparation and delivery of the Commissioner's report. That report is now required to be delivered by 28 February 2014.

The Bishop of the Maitland-Newcastle Diocese, Bishop William Wright, has publicly committed the Diocese to co-operating fully with the Inquiry. A copy of a pastoral letter from Bishop Wright dated 28 June 2013 is **attached** for ease of reference.

To date, the Inquiry has been assisted by officials from the Maitland-Newcastle Diocese in a number of respects, including by the provision of documents or facilitating access to documents, interviews with senior staff members of the Diocese and through facilitating access to relevant witnesses.

It may also be noted that, during the course of the Inquiry, Bishop Wright issued an unreserved apology to victims of sexual abuse committed by Father Fletcher and Father McAlinden.

Further background regarding priests named in terms of reference

Father James Fletcher

Father James Fletcher (DOB: 20 November 1941) was ordained to the (then) Maitland Diocese at Mayfield on 7 December 1968. A copy of Fr. Fletcher's 'Appointments' record is **attached**.

On 6 December 2004, Fr. Fletcher was convicted of numerous offences relating to his sexual abuse of a boy, and sentenced to 10 years imprisonment.

On 7 January 2006, Fr. Fletcher died in New South Wales, while still in custody.

There is evidence before the Inquiry that Fr. Fletcher may have sexually abused numerous other boys.

Father Denis McAlinden

Father Denis McAlinden (DOB: 24 January 1923), was ordained in Kilkenny, Ireland on 5 June 1949. He arrived in the (then) Maitland Diocese on 5 December 1949 and became ordained to that Diocese thereafter. A copy of Fr. McAlinden's 'Appointments' record is **attached**.

In 1992, Fr. McAlinden was acquitted of 3 counts of indecent assault of a 10 year old girl in Perth, Western Australia.

Fr. McAlinden spent many years in dioceses overseas, including Papua New Guinea, New Zealand and the Philippines. The Inquiry has sought relevant documentation from those international dioceses, and has been assisted by the voluntary provision of documents.

There is evidence before the Inquiry that Fr. McAlinden sexually abused numerous other young girls, and at least one boy.

Fr. McAlinden died on 30 November 2005 in Western Australia.

Request for any relevant documentation

For completeness, the Commissioner has requested that I write to Your Excellency to ask whether the Congregation for the Doctrine of the Faith ("CDF") has any documentation of relevance to the Inquiry's investigations.

In particular, it would assist the Inquiry if you could arrange to provide to me with 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.

As the Commissioner is to provide her report to the New South Wales Governor on or before 28 February 2014, she would be most grateful for your reply at your earliest convenience.

The Commissioner has otherwise requested that I extend on her behalf, her regards and appreciation in advance for considering this request.

Yours faithfully

Signed 

Peter Anet

A/Crown Solicitor

Encl.



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Solicitor's
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30 August 2013

Archbishop Paul Gallagher
Apostolic Nunciature Australia
PO Box 3633
MANUKA ACT 2603

By fax: 02 6295 3690

Dear Archbishop Gallagher

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

Pursuant to Letters Patent issued under the *Special Commissions of Inquiry Act 1983* (NSW), Ms Margaret Cunneen SC has been appointed as Commissioner to inquire into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle in New South Wales, Australia as set out in the attached Letters Patent.

The New South Wales Crown Solicitor assists the Commissioner.

Inquiry's terms of reference

Pursuant to Letters Patent dated 21 November 2012 and 25 January 2013 (copies **attached** for your reference), the Commissioner is to inquire into and report on the following matters:

3. 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
4. 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.

"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).

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201203450 D2013/387122

Those Letters Patent were altered and varied by further Letters Patent of 28 August 2013 to provided additional time for the preparation and delivery of the Commissioner's report. That report is now required to be delivered by 28 February 2014.

The Bishop of the Maitland-Newcastle Diocese, Bishop William Wright, has publicly committed the Diocese to co-operating fully with the Inquiry. A copy of a pastoral letter from Bishop Wright dated 28 June 2013 is **attached** for ease of reference.

To date, the Inquiry has been assisted by officials from the Maitland-Newcastle Diocese in a number of respects, including by the provision of documents or facilitating access to documents, interviews with senior staff members of the Diocese and through facilitating access to relevant witnesses.

It may also be noted that, during the course of the Inquiry, Bishop Wright issued an unreserved apology to victims of sexual abuse committed by Father Fletcher and Father McAlinden.

Further background regarding priests named in terms of reference

Father James Fletcher

Father James Fletcher (DOB: 20 November 1941) was ordained to the (then) Maitland Diocese at Mayfield on 7 December 1968. A copy of Fr. Fletcher's 'Appointments' record is **attached**.

On 6 December 2004, Fr. Fletcher was convicted of numerous offences relating to his sexual abuse of a boy, and sentenced to 10 years imprisonment.

On 7 January 2006, Fr. Fletcher died in New South Wales, while still in custody.

There is evidence before the Inquiry that Fr. Fletcher may have sexually abused numerous other boys.

Father Denis McAlinden

Father Denis McAlinden (DOB: 24 January 1923), was ordained in Kilkenny, Ireland on 5 June 1949. He arrived in the (then) Maitland Diocese on 5 December 1949 and became ordained to that Diocese thereafter. A copy of Fr. McAlinden's 'Appointments' record is **attached**.

In 1992, Fr. McAlinden was acquitted of 3 counts of indecent assault of a 10 year old girl in Perth, Western Australia.

Fr. McAlinden spent many years in dioceses overseas, including Papua New Guinea, New Zealand and the Philippines. The Inquiry has sought relevant documentation from those international dioceses, and has been assisted by the voluntary provision of documents.

There is evidence before the Inquiry that Fr. McAlinden sexually abused numerous other young girls, and at least one boy.

Fr. McAlinden died on 30 November 2005 in Western Australia.

Request for any relevant documentation

For completeness, the Commissioner has requested that I write to Your Excellency to ask whether the Apostolic Nunciature has any documentation of relevance to the Inquiry's investigations.

By way of background information, I note that on 23 May 1995 the then Bishop of the Maitland-Newcastle Diocese, Bishop Leo Clarke wrote to Reverend Brambilla regarding Father McAlinden and requested assistance with contacting the Apostolic Nuncio in the Philippines (copy **attached**). I also **attach** for your reference, three further letters between the Diocese and the Apostolic Nuncio.

In particular, it would assist the Inquiry if you could arrange to provide to me with copies of any documents in the Apostolic Nunciature's archives (or any other repository which may hold such materials and to which there may be 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.

As the Commissioner is to provide her report to the New South Wales Governor on or before 28 February 2014, she would be most grateful for your reply at your earliest convenience.

The Commissioner has otherwise requested that I extend on her behalf, her regards and appreciation in advance for considering this request.

Yours faithfully
Signed

Peter Anet
A/Crown Solicitor

Encl.



APOSTOLIC NUNCIATURE
AUSTRALIA

PO Box 3633
Manuka ACT 2603

Canberra, 2 September 2013

N. 414/13

Dear Sir,

I received this morning your letter of August 30, relating to 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.**

May I assure that I have taken careful note of the request you have transmitted on behalf of Commissioner Margaret Cunneen SC.

I shall be submitting the request to my Superiors and will write to you again when I have received a reply from Rome.

With kind regards, I am

Faithfully yours,

Signed

Archbishop Paul R. Gallagher
Apostolic Nuncio

Mr **Peter ANET**
Deputy Crown Prosecutor
New South Wales Government
SYDNEY – NEW SOUTH WALES





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Solicitor's
Office**

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22 October 2013

His Excellency Msgr. Gerhard Ludwig Müller
Prefect, Congregation Doctrine of the Faith
Piazza del S. Uffizio, 11, 00193
ROMA ITALY

By fax: 0011 39 06 69 88 34 09 By email: cdf@cfaith.va

Dear Msgr. Müller

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

I refer to my letter of 29 August 2013 regarding my request for documentation of relevance to the Inquiry's investigations.

I enclose a copy of that letter for ease of reference.

I would be grateful if you could inform me whether you have been able to locate any relevant documentation or information in the archives of the Congregation for the Doctrine of the Faith.

The Commissioner is to provide her report to the New South Wales Governor on or before 28 February 2014, and would accordingly be most grateful for your reply at your earliest convenience.

The Commissioner has otherwise requested that I again extend on her behalf, her regards and appreciation in advance for considering this request.

Yours faithfully
Signed


I V Knight
Crown Solicitor

Encl. (1)

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201203450 D2013/476562



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22 October 2013

His Excellency Archbishop Paul Gallagher
Apostolic Nunciature Australia
PO Box 3633
MANUKA ACT 2603

By fax: 02 6295 3690

Dear Archbishop Gallagher

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

I refer to my letter of 30 August 2013, and to your letter in response dated 2 September 2013 regarding my request for documentation of relevance to the Inquiry's investigations.

I understand from your letter that you were submitting my request to your superiors in Rome, and that you would write to me again upon receipt of a reply.

I would be grateful if you could inform me whether you have received a reply, and whether any relevant documentation or information has been located in the archives held by the Congregation for the Doctrine of the Faith.

The Commissioner is to provide her report to the New South Wales Governor on or before 28 February 2014, and would accordingly be most grateful for your reply at your earliest convenience.

The Commissioner has otherwise requested that I again extend on her behalf, her regards and appreciation in advance for considering this request.

Yours faithfully
Signed

 I V Knight
Crown Solicitor

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201203450 D2013/476254



APOSTOLIC NUNCIATURE
AUSTRALIA

PO Box 3633
Manuka ACT 2603

Canberra, 13 November 2013

N. 533/13

Dear Commissioner Cuneen,

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 on 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.

Ms **Margaret CUNEEN**
Commissioner
Special Commission of Inquiry into matters
Relating to the Police Investigation of certain
sexual abuse allegations in the Catholic Diocese
of Maitland-Newcastle
Crown Solicitor's Office
SYDNEY – NSW

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.

Yours sincerely,
Signed

Archbishop Paul R. Gallagher
Apostolic Nuncio



**Crown
Solicitor's
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14 November 2013

His Excellency Archbishop Paul Gallagher
Apostolic Nunciature Australia
PO Box 3633
MANUKA ACT 2603

By fax: 02 6295 3690

Dear Archbishop Gallagher

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

I refer to your letter of 13 November 2013 to Commissioner Cunneen SC in response to my letter of 30 August 2013, and to your discussion with Ms Vale of my Office on 12 November 2013.

The Commissioner has requested that I respond on her behalf regarding the matters raised in your letter.

Co-operation extended to Inquiries and Royal Commissions

May I note at the outset that the Commissioner is grateful for your indication that the Holy See has encouraged the cooperation of ecclesiastical entities, and their representatives, with the matters the subject of inquiry by this Commission.

In a similar vein (and particularly in the context of the provision of documents to inquiries and Royal Commissions), I note Cardinal George Pell's evidence on 27 May 2013 before the Victorian Parliamentary Inquiry into the handling of child abuse by religious and other organisations, where reference was made to the assurance from a senior official within the Vatican that 'every document the Vatican had' would be made available to the national Royal Commission into Institutional Responses to Child Sexual Abuse. Cardinal Pell also indicated his belief that the same position would be taken by the Vatican with respect to providing documents to the Victorian Parliamentary Inquiry (a copy of the relevant page of the transcript is **attached** for ease of reference).

Of course, this Commission is separate and distinct from both the Royal Commission and the Victorian Parliamentary Inquiry, but I trust that the sentiment of cooperation would similarly extend to this Commission's processes.

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201203450 D2013/516495

Vienna Convention on Diplomatic Relations (1961)

I note the application of the Vienna Convention on Diplomatic Relations ("Convention"), and in particular your reference to the operation of Article 24 of that Convention. Of course, the Commissioner's request for assistance in relation to relevant documentation did not seek to invoke any compulsory processes, which it is accepted would be neither appropriate nor effective in the circumstances.

Specific request for documentation

Notwithstanding the Convention, your letter of 13 November 2013 states that the 'Apostolic Nunciature will nevertheless be pleased to consider specific requests for information... bearing in mind the expectation that it would not be appropriate to seek internal communications'.

In my letter of 30 August 2013, and in the context of background information provided regarding Fathers Denis McAlinden and James Fletcher, a specific request for relevant documentation was set out, which I have extracted in full for ease of reference:

Request for any relevant documentation

For completeness, the Commissioner has requested that I write to Your Excellency to ask whether the Apostolic Nunciature has any documentation of relevance to the Inquiry's investigations.

*By way of background information, I note that on 23 May 1995 the then Bishop of the Maitland-Newcastle Diocese, Bishop Leo Clarke wrote to Reverend Brambilla regarding Father McAlinden and requested assistance with contacting the Apostolic Nuncio in the Philippines (copy **attached**). I also **attach** for your reference, three further letters between the Diocese and the Apostolic Nuncio.*

In particular, it would assist the Inquiry if you could arrange to provide to me with copies of any documents in the Apostolic Nunciature's archives (or any other repository which may hold such materials and to which there may be 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.*

I would otherwise be grateful if you would please confirm what is meant by your reference to 'internal communications' – as you may appreciate, if this is intended to refer to communications within the Holy See, or within the Church generally (that is, as between the Diocese of Maitland-Newcastle or the Holy See) or as between the Apostolic Nunciature of Australia and the Holy See, it is respectfully suggested that such restriction may significantly impair the utility of the request for the documentation. Further, such an approach would also appear to be potentially at odds with the statements of cooperation evidenced by both the first paragraph of your letter and the commitments made by Cardinal Pell before the Victorian Parliamentary Inquiry and, accordingly, it may be that you have in mind a more limited notion of 'internal communications'. I look forward to your clarification regarding this matter.

201203450 D2013/S16495

Confirmation of status regarding previous correspondence to the Congregation of the Doctrine of the Faith

By letters dated 29 August 2013 and 22 October 2013, the Commission sought assistance from Msgr Muller, the Prefect of the Congregation of the Doctrine of the Faith ("CDF"), in the same terms as was requested in my letter to the Apostolic Nunciature of Australia, dated 30 August 2013.

I have not yet had a reply to that correspondence, and would be most obliged if you would please confirm whether it has been received by Msgr Muller, and whether I ought regard your letter of 13 November 2013 as being a response also on behalf of the CDF, or whether your reply relates only to the Apostolic Nunciature of Australia (such that I should continue to expect to receive a reply from the CDF).

Tender of correspondence

Please note that for completeness, the Commission's processes are such that it will be appropriate that Counsel Assisting tender into evidence the correspondence relating to the request for documentation from the CDF and the Apostolic Nunciature of Australia (I note that this approach has been taken with similar requests for documentation from other entities). In a similar manner, there may also be further reference to the correspondence in the Commissioner's report to the New South Wales Governor.

Reporting date of 28 February 2014

As indicated in previous correspondence, the Commissioner is to provide her report to the New South Wales Governor on or before 28 February 2014. I would be most grateful for your reply with respect to these matters at your earliest convenience.

Once again, I reiterate the Commissioner's appreciation for consideration of the request regarding documentation to facilitate the Commission's important work.

Yours faithfully
Signed

 I V Knight
Crown Solicitor



APOSTOLIC NUNCIATURE
AUSTRALIA

PO Box 3633
Manuka ACT 2603

Canberra, 6 December 2013

N. 533/13

Dear Crown Solicitor Knight,

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 e 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.

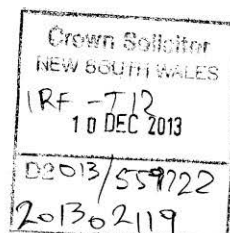
The "internal communications", to which I referred in my letter of November 13 last, are those between the Apostolic Nunciatures in Australia and in the Philippines. Such communications are confidential, as is the case for those of the diplomatic missions of any Country. I do however wish to inform you 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 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

...

Mr **Ian V. KNIGHT**
Crown Solicitor
New South Wales Government
SYDNEY – NSW

(Encl.s)



both men had been dead for more than six years. The Congregation for Doctrine of the Faith has no competence to proceed canonically in the cases of deceased clerics.

Should the Commission wish to present similar requests in the future, may I respectfully observe that the internationally recognized practice should be followed by sending a formal request to the Secretariat of State through the usual diplomatic channels.

With the assurance of my esteem and good wishes, I remain


Sincerely yours,

Signed

Archbishop Paul R. Gallagher
Apostolic Nuncio

Appendix R Term of reference 1: selected key documents

NSW Police Force report, 25 November 2010

NSW POLICE SERVICE		
Local Area Command, Port Stephens. 0/20/197839		
		Raymond Terrace Stn Ph: 0418 201581 25 November 2010.
		D/20 10 197839 F20 10 1
ISSUE: Allegations of child sexual abuse and cover-up within the Maitland Newcastle Diocese of the Catholic Church.		
BACKGROUND: In 1999 Detective Mark WATTERS and I investigated priest Denis McALINDEN following allegations by AE that he had sexually assaulted her as a child. The Catholic Diocese disclosed that McALINDEN was believed to be in Ireland and we were given an assurance to be notified upon his return. Incredibly the church was not in contact with McALINDEN. We took the assurances on face value and swore a warrant for McALINDEN's arrest.		
In 2002 I commenced unrelated investigations of priests James FLETCHER and Desmond HARRIGAN. In 2003 I interviewed priest Vincent RYAN in June Gaol regarding suspected links to FLETCHER, HARRIGAN and others alleged to be involved with paedophilia in the Hunter area.		
Soon after commencing investigations I learned that Bishop Michael MALONE and Vicar General James SAUNDERS had alerted FLETCHER to the police investigation and disclosed the identity of the alleged victim. This negatively impacted on the investigation and was reported to the ODPP for consideration of charges for hindering a police investigation; however it was elected not to proceed.		
Bishop MALONE then refused a request by me to remove FLETCHER from his parish or restrain him from visiting schools. In defiance of my request MALONE extended FLETCHER's parish to include both the Catholic High School and Catholic Primary School in Lochinvar.		
I later obtained statements from MALONE, SAUNDERS, HARRIGAN and priest William BURSTON. All had met with FLETCHER following the allegations. All those statements were remarkable for their author's poor recollection of critical conversations and smacked strongly of collusion and concealment.		
It was intended to execute a search warrant for pornographic images on FLETCHER's presbytery; however I learnt FLETCHER removed a quantity of homosexual pornographic videos and magazines before this could happen. I suspected this material contained some images of young boys as mentioned by a victim. Undoubtedly this happened directly as a result of MALONE and SAUNDERS' forewarning.		
I was told by a source that FLETCHER passed the mentioned pornography to priest Des HARRIGAN. HARRIGAN was heavily intoxicated when I confronted him in the presbytery at Raymond Terrace. He admitted being given homosexual pornographic magazines and videos by FLETCHER, but denied it contained illegal images of children. He claimed he owned the items and had inadvertently left them in FLETCHER's presbytery. He also said he had destroyed all these items but could give no plausible explanation why he decided to do so.		
Exhibit 216, Tab 79		

As the investigation progressed a priest and nun approach me separately to provide statements and information. That nun was later ostracised by her Order of St Joseph at Lockinvar for assisting police and forced to leave. She has not returned to the church. The priest disclosed to me details of inner workings of the diocese and what he referred to as 'the old boys club' of Hunter priests and his suspicions. He was pivotal in having another victim come forward with critical evidence that was later instrumental in FLETCHER's ultimate conviction.

The assistance rendered by this 'good priest' led to a series of clashes between him and senior clergy including Bishop MALONE. This priest suffered considerable stress from his treatment and was moved to Sydney. He has since elected to leave the priesthood and return to another profession. I have remained in contact with both these individuals who are highly critical of the silence within the church concerning child sexual abuse.

I was aware that Bishop Leo CLARK and Priest Patrick COTTER had been interviewed by police some years prior concerning alleged concealment of Vincent RYAN's activities. Sufficient evidence existed against COTTER but it was decided not to proceed purely on the basis of his age and health. I understand that the evidence was not in question.

Detective Ann JOY and I also spoke to Leo CLARK during my investigation. We predominately discussed FLETCHER and RYAN and his possible knowledge of their activities. I then asked about McALINDEN who I still believed to be overseas. (I later learned he had already returned to Australia and was residing in a Catholic facility near Perth.) I asked CLARK, "An alleged victim of Denis McALINDEN has told us that she believes the church is aware of at least two other alleged sexual assault victims of this priest. Do you have any knowledge of that?" He said, "No. You would have to ask Michael MALONE about that."

Redacted at Commissioner's direction

I was becoming disturbed by the number of priests in the region alleged to have been involved in sexually abusing children. They were all in adjoining parishes and giving one another support. This was compounded by senior clergy interfering in investigations and potentially concealing their knowledge of crimes and admonishing those prepared to speak out. All of this caused me considerable concern.

I recorded most of this information in a number of COPS Intelligence Reports for dissemination to State Crime Command. I also forwarded two reports expressing concern that a paedophile ring possibly existed in the Maitland Newcastle Diocese and should be investigated. I have never been contacted in respect to my reports. Since that time Maitland Newcastle Priests NP3 and NP4 have also been charged with child sex offences. I understand that others may also be under investigation.

In 2003-4 I also forwarded a series of reports and complaints to Ann BARWICK of the NSW Ombudsman's Office which conducted an investigation. I have been told their report was critical of the church but the findings cannot be made public. Nevertheless this process finally saw FLETCHER stood down by the church and prevented from accessing schools.

Page No.1

Exhibit 216, Tab 79

In late 2005 I was advised by the Catholic Church that Denis McALINDEN was critically ill in a Catholic Retirement Home in Subiaco, Perth. I made inquiries regarding his possible extradition but learnt he was not able to travel and he died two weeks later. Despite the church knowing McALINDEN's whereabouts for some time I was not informed until his death was imminent.

COMMENT:

Earlier this year Joanne McCARTHY of the Newcastle Herald contacted me. She indicated a woman; AS had confided in her allegations of being sexually assaulted in the 1960's by Catholic Priest Denis McALINDEN. AS allegedly had knowledge of a number of other women who had also been sexually assaulted including AK + AL

Although I had never met with: AS I had come across her name in 2003-4 when investigating FLETCHER. I was told AS was reluctant to speak to police as her knowledge implicated a number of high ranking clergy in 'covering up' known paedophile priests. She stated I was the only police officer she would speak with as she had apparently spoken to victims of paedophile priests and their families with whom I have dealt with. I agreed to meet with. AS

REDACTED

REDACTED

REDACTED.

AK is one of M. She provided me with a number of documents and a statement outlining McALINDEN sexually abusing her and her sister AL. AN and AV have also been sexually abused by McALINDEN and have never got over the trauma. AK still feels guilty at not being able to protect AN + AV.

Page No. 1

REDACTED

Redacted at Commissioner's direction

Documents in possession of ~~AK~~ and the statement of ~~AK~~ confirm without a doubt that retired Bishop Leo CLARK knew of a number of McALINDEN's victims. He knew of the serious nature of the abuse. He also knew that victims had complained of their suffering to various clergy under his direct supervision. When Detective JOY and I asked,

"An alleged victim of Denis McALINDEN has told us that she believes the church is aware of at least two other alleged sexual assault victims of this priest. Do you have any knowledge of that?"
He said, *"No. You would have to ask Michael MALONE about that."*

Clearly he told us a blatant lie and concealed the names of victims known to the church. By doing so he concealed crimes that McALINDEN committed and his admissions of abuse. Worse still is the fact that CLARK knew McALINDEN was still at large and had returned to Australia with the potential to continue committing his crimes.

During my service I have had to speak to hundreds of victims of sexual assault. All of them are disturbing. Sexual assaults of children are the most abhorrent and abuse of children by the clergy is amongst the worst. To conceal such a crime is akin to condoning that behaviour. I do not believe such conduct can ever, or should ever be forgiven by the law.

Page No. 4

Exhibit 216, Tab 79

I have seen the pain of the victims of child sexual abuse within the Church. I have visited victims in psychiatric institutions and seen the damage it has caused their families. I spoke to a member of the Newcastle ODPF who broke down crying and was unable to continue reading a victim's statement, apologising to me when she requested to be removed from the case.

I took another statement from a mother who was unaware of years of sexual abuse her son was suffering at the hands of her family priest. As a teenager he came home in a drunken stupor. When he attempted to hang himself in the family barn his mother screamed hysterically trying to take the weight of his bending legs until another son arrived to cut him down. In desperation the family called their priest for the boy to stay overnight in his presbytery with the aim of counselling him when sobered. This priest took advantage of the situation and buggered the boy again that night. This same priest, James FLETCHER is one of those whom fellow clergy went to such extraordinary lengths to protect.

Reprisals are another distasteful aspect of sexual abuse within the church. Some have reported to me having had their cars damaged and eggs thrown at their homes following guilty verdicts after a family member disclosed abuse. Most victims' families are devout Catholics who are surrounded by friends until someone comes forward with allegations of abuse. The family is ostracised within their community and particularly at church. They are no longer spoken to and made to feel unwelcome. They have backs blatantly turned on them until they no longer attend. Most believe this is silently condoned by other priests and perpetuates the silence of abuse in fear of speaking out.

RECOMMENDATION:

I believe there is sufficient evidence to conduct a full and comprehensive investigation into the conduct of the Maitland Newcastle Diocese of the Catholic Church. There is more than enough evidence to put before the Attorney General under section 316 of the Crimes Act to prosecute a number of clergy based on evidence already cited. I strongly believe that further investigation will only enhance such a brief and possibly disclose other offences and or offenders.

AE revealed that in the 1990's she also told the church of her abuse but nothing was done and the police were not told until she decided to do so herself. Sadly AE died in 2007 after years of counselling and psychiatric treatment resulting from her abuse. Her husband BD spoke to me this year and is more than prepared to assist with any police inquiry as the failure of the church to act has impacted negatively on the lives of his entire family. The damage done by such abuse and concealment is enormous. The passage of time should never preclude the New South Wales Police Force from protecting these families and bring persons to justice for such crimes. If we fail to investigate and prosecute such conduct the potential for it to continue remains unaltered.

Over more than a decade of investigating members of the Maitland Newcastle clergy I have built up an excellent knowledge base. I also have an extensive network of contacts within and outside the church. I have also built up a reputation and trust among victims and their families as evidenced by:

AJ approach to speak with me. I have spoken to Sister Paula REDGROVE who has also indicated her preparedness to speak with me and provide a statement of her knowledge. I remain objective but passionate to assist with any inquiry or investigation.

Page No. 5

In view of the number of priests charged over the past decade within the Maitland Newcastle Diocese I am requesting consideration be given to the establishment of a task force to undertake a full investigation. I submitted similar reports in 2004 only to see more cases of abuse disclosed since that time. My own experiences coupled with recent evidence strongly indicates that paedophilia by the clergy is widespread in the Hunter and is being concealed by experienced and senior staff within the diocese. Without intervention these crimes are likely to continue.

In order to protect victims and put a stop to these ongoing crimes I respectfully ask that this request be given favourable consideration.

Signed

Peter R FOX
Detective Chief Inspector
Crime Manager
Port Stephens Command

1. Port Stephens Commander. The recommendations of Det Chief Inspector Fox are supported. Given the nature of these allegations, these matters appear beyond the scope of an LAC investigation & could be more appropriately dealt with by a task force. Referred to region.

Signed *hgh. h/Commander*
27/11/10

2. Operations Manager Northern Region

Newcastle LAC have been allocated to investigate allegations that Malone, REDACTED and others failed to disclose information relating to sexual abuse of AL and AK. 2. All material held by DCI 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.

3. Commander Northern Region

Investigation should continue by Newcastle City. Signed
to determine the extent of the allegations. Consideration must be given to additional resources at the appropriate time. To ensure all matters are considered. Ops Manager Northern Region
It should be noted the Newcastle investigation is the lead role & are to continue. Signed 2/12/10

4. Commander Port Stephens LAC

Notes: I have informed C/Insp Fox of this outcome

Signed 27/11/10

5. Commander Newcastle City LAC

For Files & EVID INTO EACRE.1 WITH APPROPRIATE CHARGES

Page No. 6

Signed

Wayne D. Humphrey 27/11/11
Detective Chief Inspector
Crime Manager - ALAC

Investigator's note, 3 December 2010

NSW Police

INVESTIGATOR'S NOTE

Investigation: S/F LANTLE

Title of Note: Case Conference in relation to S/F LANTLE

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 *AKAL* GOGERTY. 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.

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.

Exhibit 216, Tab 85

STATE OF NEW SOUTH WALES
INVESTIGATIVE NOTE

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 AS. FOX indicated that AS 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 REDATED, HART, CLARKE and LUCAS. He indicated that she was from an inter 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 who was a teacher at Merriwa.

Inspector FOX indicated that he had begun obtaining a statement from I 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 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 former 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.

Exhibit 216, Tab 85

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 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 *AT* 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.

Inspector TOWNSEND arrived at this time and was briefed by Sgt STEEL. Present for this briefing were:

- Supt. MITCHELL
- DCI TAYLER
- Insp. PARKER
- Insp. TOWNSEND
- Det. Sgt. STEEL
- Det. Sen. Const. FRENEY
- Det. Sen. Sgt. QUINN

Det. Sgt. STEEL indicated that she had spoken with Helen KEEVERS earlier that morning. KEEVERS was the Manager of Zimmerman House for 30 years. She indicated that she had a high level of knowledge about MCALINDEN'S offending and other priests and victims. She indicated that she has seen numerous critical documents outlining such conduct.

She indicated that the most crucial documentation had been forwarded by Zimmerman House to the Catholic Church's Insurance body. She made reference to a document authored by Monsignor COTTER where he indicated that it was fortunate that MC ALINDEN'S offending was on children and not adults and females. She also indicated that MCALINDEN had engaged in a course of conduct regularly used by Catholic Priests where children were taken swimming in deep water so that they would need to hold onto the priest for assistance.

Page 2
Investigator's Note

STEEL outlined the 'Encompass' program that was set up by Archbishop PELL to treat priests who have problems (primarily child abuse). The program maintained files outlining the problem behaviours and identified treatment plans. KEEVERS indicated that PELL had closed the program down without notice. She indicated that the files relating to the program had been moved by a man known to her for storage.

STEEL indicated that senior clergy moved MCALINDEN to P.N.G. for a period after his offending behaviour was discovered.

REDACTED

Other Senior Clergy (BURSTON/HART and LUCAS) were involved in cover ups.

KEEVERS told STEEL that police would only get one chance at a search warrant because she is certain that Church members would destroy documents.

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 5 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 1.15pm

Exhibit 216, Tab 85

Prepared By: Detective Senior Sergeant Justin Patrick Quinn
Registered No: 26028
Date: 3/12/2010

Exhibit 216, Tab 85

Email from Fox to McCarthy, 2 December 2010

Fairfax Media Mail - Joanne email 12



Joanne email 12

Joanne McCarthy <jmccarthy@fairfaxmedia.com.au> 5 March 2013 13:12
To: Ashleigh McNeilly <amcneilly@fairfaxmedia.com.au>
Cc: Irving Solicitors <irvingsolicitor@harboursat.com.au>, Chad Watson <chad.watson@fairfaxmedia.com.au>

Joanne McCarthy

Senior Journalist, Newcastle Newspapers

jmcCarthy@fairfaxmedia.com.au

m 0419 977 330 | t 02 4385 2534 Like us here



----- Forwarded message -----

From: Peter Fox [REDACTED]

Date: 2 December 2010 23:19

Subject: Fox

To: Joanne McCarthy <jmccarthy@fairfaxmedia.com.au>

Joanne

The following is from my diary of events.

1/12/10

11.30am contacted by Justin QUINN requesting I provide to him any statements or documentation I had concerning any church related investigations. The conversation was amicable and I explained a lot of additional material I could provide from sources and contacts I had acquired over more than a decade of investigating Catholic Church paedophilia. He agreed to come to my office the following day with Kirin STEEL to pick up the statements and speak to me.

11.50am

Telephoned region and asked for TOWNSEND. Graham PARKER explained Tony was in Sydney. He advised he had given Tony the report I had sent the preceding week and was told by Tony that he knew about the matter. Left a message for Tony to call me as I wished to discuss my report and request for a task force investigation in more detail.

1 pm

Supt HAGGETT came to my room and said I was to be at Waratah Stn for a meeting the next day at 12md. I asked and was told it was in relation to 'The Catholic Church Investigation.' I was told staff from State Crime

<https://mail.google.com/mail/?ui=2&ik=11011000240&ik=not9not=ASU&asprh=not9th=12d2852b7c22777f>

418

Exhibit 216, Tab 84

and Newcastle would be present.

2/12/10

Arrived at Waratah 12.10pm meeting deferred to 12.20pm to await Wayne HUMPHREY & region staff.
(HUMPHREY never arrived)

Meeting consisted of HAGGETT who remained mute throughout. Kirin STEEL who also remained mute. Justin QUINN & Brad TAYLOR, both of whom had minimal to say. A young male (Not introduced & not known to me) took minutes of the meeting. Graham 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).

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.

I was told the investigation related to AK and AL. I was asked about my dealing with these women and I explained I had spoken to both some months ago and not since. I had obtained a statement from AK which I understood QUINN had obtained. I stated I had planned to see AK when she came down around Xmas to complete her statement as she was not up to giving detail of the sexual abuse some months back, but had provided detail of the surrounding circumstances.

I was asked if I had obtained any other statements. I indicated, ^{AJ} & ^{MIKE STILLWELL} and explained who they were and made it very clear both were fragile and needed to be spoken to with care. I said it took 5 or 6 sittings to obtain ^{AJ} statement. MITCHELL asked if ^{AJ} 'was a witness or victim. I told him she was both. He asked when her offences were committed and I said 1961 and he appeared to look skyward. It gave me the impression 'don't tell me we are we looking at things that long ago'. That's how it appeared to me. I told him she also had evidence implicating very senior members of the clergy in concealment, protection of offenders and inaction. ^{REDACTED} She is a very intelligence woman who moved in the inner workings of the church in this area and has a lot of knowledge. I described her statement as 'explosive' and that she needed to be dealt with correctly as she had suffered over the years and had not coped well, but had an excellent memory and was sure of events.

Asked how I came to contact AS I explained that I came across her name in the FLETCHER investigations and that she had sought me out to speak to as she had spoken to a number of victim's families I had dealt with in the past. Also the fact I was an original investigator re McALINDEN.

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.

https://www.e-ssoia.com/portal/portal?cid=291141044a0a2d9&sourceid=9&ent=ASU9&sourceid=9&id=12d2052b7e237777

Exhibit 216, Tab 84

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 mediatory with witnesses and this would not be allowed if the matter was to go ahead.

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 '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.

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 I ^{AK AL} and Peter GOGERTY. (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.

I then spoke about the hurt these crimes had caused, the nun & priest who left over the conduct. That crimes went far beyond the matters raised and if this was going to be examined properly it would require a task force and for rabbits to be chased down all burrows. (I appeared to get a nod of agreement from STEEL) I then said, "From the statement of (^{AS}) alone I believe there is enough to charge a number of high ranking clergy under section 316" I also said there are a lot more people that need to be interviewed if this is to be done properly and they need to be spoken to the right way, with care and experience. If I am able to assist with any of my knowledge or contacts I'd be happy to do so. I stated that my report also indicated first hand knowledge I had as I had been involved with McALINDEN from the start, had interviewed CLARK who had definitely lied to me in order to hide victims.

I received a wall of blank faces and silence. I said I have dealt with victims and these crimes are amongst the worse we can investigate and those that conceal these crimes are as bad as those that perpetrate no matter when they happened. They all appeared to look uneasily at each other but said nothing. Might just be me but it was a look as if they did not all agree with each other behind the scenes on my comments.

I said I had reported on these concerns 6 years ago and since then 4 or 5 more clergy had been charged. I hope this isn't repeated for more victims. MITCHELL said, "Who did you report that to." I said, "I sent 2 reports to state crime and created two intell reports and disseminated those also. They are still on the system" He said, "What happened about those?" I said, "They went into the black hole."

I was told to send all material I had to Newcastle by that afternoon without fail and thanked for coming. I returned as I had come down, separately to HAGGETT. I provided the documents in an envelope to Scott METCALFE to drop down.

Joanne I have no doubt they will periodically check my work mobile, desk phone for numbers in & out and look for yours. Also my work E Mail. I'll take the punt on my home internet and my wife's mobile. Penny is fine with his. If you do call her keep it very short and I will endeavour to get back to you. Sorry this has turned to 007 stuff but I have a hell of a lot to loose and Max would love to see me out of the job, because that is what would happen –disobey direction, beach of code of conduct etc.

I called in and told AJ what has happened and gave her two copies of her statement. I urged her to call you in the next day or two. I didn't want to tell her to do anything but she indicated she would not be talking to them without a support persons. She then said that would either be you or me. Don't know how that will go down but will leave that to her.

If my calls to you over the past 6 weeks are picked up I will just have to explain you were chasing up the Abernethy fires re David GEDDES.

In concluding I should keep my head down but this is all bullshit. I won't give up that easy but have to be very careful of any traps. Not sure how much I can do now but will just see what happens for a while. I have a lot they would need – if they are serious. Just not sure if they will come near me.

Why is this happening – not sure? None of it makes sense. If this was any form of genuine inquiry I would have been welcomed as an asset. They didn't even want to hear me out on what was very relevant first hand knowledge. With your knowledge, contacts etc you could have been signed up to some form of agreement and confidentiality until the investigation is over to ensure evidence is not tainted. I thought about this and tried to examine it objectively. It is very unusual to involve someone like you, but you have a lot more contacts and the ability to bring others forward. You also know how much of this fits together. A very unusual partnership but one that should be explored with the right motive and objectives in mine. Anyway that won't be happening with things as they are - will it?

I really cannot speak to you at all tomorrow and your appearance will be seen by them and reported to region as me thumbing my nose at what I was directed today.

The pricks can shove it. The whole thing stinks and they can bit me.

Email from Gralton to Fox, 30 March 2012



Re: NP Trail
John Gralton to: Peter Fox
Cc: Gabrielle McDonald, Graeme Parker, David Swilks, Ian Mather,
Craig Rae

30/03/2012 15:36

Peter,
(cc: A/A/C Swilks, DI Parker and Sgt McDonald as requested by AC York & others included in original email from you)

In response to the specific issues you raise (which I have highlighted in red):

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 for D/Sgt FABER?

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. Are all the directions given to me by Mr MITCHELL still in force & if so for what period?

Yes, until lifted the direction remains in place.

3. Am I yet able to be told the reason for those directions?

The investigation is highly protected and will be until finalised.

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.

Regards,

John Gralton
Commander
Newcastle City

Peter Fox—26/03/2012 15:57:22—In 2010 I made submissions to investigate paedophile activity by t...

From: Peter Fox/18127/Staff/NSWPolice
To: John Gralton/25360/Staff/NSWPolice@NSWPolice, Ian Mather/21728/Staff/NSWPolice@NSWPolice
Cc: Carlene York/18995/Staff/NSWPolice@NSWPolice, Craig Rae/22212/Staff/NSWPolice@NSWPolice
Date: 26/03/2012 15:57
Subject: NP Trail

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. I obtained statements before being aware of inquiries at Newcastle. I contacted investigators there & was then directed by Superintendent MITCHELL to surrender 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.

Complying with my directions I am reporting I was contacted today by Det Sgt Kristy FABER

Exhibit 216, Tab 119A

requesting I assist in connection with the trail of Fr ^{NP} which is currently underway. I was asked if I could obtain a photograph of Fr James FLETCHER from about 1980. I was also asked to ascertain the whereabouts of Fr FLETCHER & ^{NP} around that time & if they had access to Campbell's Hill Church at Maitland or any association between them.

I spoke to persons (But not Joanne McCARTHER) in confidence who are assisting. I may have further contact to secure photographs & other information. A number of those persons are in contact with Ms McCARTHER, one of them mentioned being aware I was not permitted to speak with McCARTHER. I did not discuss this further other than say that was correct.

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 for 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?

Peter Fox
Detective Chief Inspector
Crime Manager
Port Stephens LAC
MOBILE NUMBER

Exhibit 216, Tab 119A

Response from Fox to Little, 5 April 2012

Hi Pete,

Thanks for your email. This has been a complex and protracted investigation and to ensure completeness in this regard, 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. You mention, *"There are lots of important bits I have collected over the years, most of it in my head."* In the event of any legal proceedings, I'm sure you'll appreciate my determination to properly get to the bottom of this matter. So, just to clarify:

1. You mentioned that *"Before Malone retired he commented there was a paedophile network of priests in the Newcastle/Maitland Diocese. Nice to know what he knew & meant by that."*

- 1.1. Who did MALONE make this comment to?

I was advised this comment was made by MALONE to a number of persons including BS. BS has relayed the comment to a number of other persons. I didn't think it was that big a surprise considering what MALONE said about 'Inheriting a Poison Chalice' in the media and not being told by Leo CLARKE of the extent of allegations within the Newcastle-Maitland Diocese when he took over the Bishop's role in the mid 90's. I think anyone looking at the Newcastle-Maitland Diocese in the past 15 years would have come up with the same conclusion as I did considering the number of priests charged. MALONE of course may have more to base his comment on. CLARK's involvement with AJ, AK & AL are good examples which is also corroborated when CLARK lied to Ann JOY and myself.

- 1.2. With such a serious allegation, what supportive statement or evidence did you obtain from him?

I was directed by Superintendent MITCHELL 18 months ago to cease any investigation. I was directed not to speak with Joanne Macarthur and surrender all statements and documentation. Mr GRALTON has indicated those directions are still enforced and ongoing.

Exhibit 26

I had investigated McALINDEN over a number of years from the start, interviewing victims & witnesses, some of whom are now deceased. I had experience with similar investigations. Despite all this I have never been given any clear reason for the directions other than it is highly protected? Nevertheless I have adhered to the directions. I made it clear to Mr MITCHELL that I had a wealth of information but was never approached or permitted to take matters like this further.

2. You mention, *"There is a lot of info on past priests (now deceased) that the church knew were paedophiles that were never charged, but victims in the Hunter paid compensation."*

2.1. From where does this information come?

That comes from a lot of sources over the years. I cannot now specifically recall them all but they would include people you have spoken to like B I and Helen KEEVERS. I would imagine Joanne McARTHUR would assist if you want to pursue that. I spoke to someone who has close friends/victims that disclosed to this person some incidents involving **Redacted** & I have asked this person if they will speak to you but they declined – sorry I did try

2.2. What specific priests are you referring to?

Where do we start?

REDACTED

Denis McALINDEN of course with many victims. (He also abused in Western Australia by the way)

Exhibit 26

REDACTED

2.3. Did you take any action regarding same?

As per 1.2 I would love to investigate these matters further if allowed I am keen & I know of a lot of persons prepared to talk with me I am pretty confident that charges can be identified

3. You mention, "That was clearly evident back in the late 90's as I mentioned in reports I sent to SCC in 2003-4 & the Intell reports from back then. FLETCHER used to have gatherings at Muswellbrook of a little group that included NP HARRIGAN, BURSTON, SAUNDERS & RYAN,

Redacted That collection is incredible considering their crimes or involvement in concealing. I personally had dealings with all of them."

- 3.1. In reference to "...their crimes or involvement in concealing. I personally had dealings with all of them." and resultant of your investigations, what charges were laid relating to "concealing"?

To date I haven't charged any of them. BURSTON & SAUNDERS went with MALONE when all three met with FLETCHER. not only forewarning FLETCHER that he was under investigation by NSW Police but also disclosed to him which of his victim's had complained. This allowed FLETCHER to dispose of images and other material in his possession before police could execute a search warrant. HARRIGAN later admitted taking possession of homosexual pornographic material and videos from FLETCHER.

Redacted HARRIGAN admitted to me they were homosexual

Redacted He had destroyed them all by the time I spoke to him, claiming they were his property. He was drunk off his face when he spoke to me and never tried to hide the bottle of vodka.

Redacted

What I was saying here is that these gatherings were highly suspicious and further investigation may turn something up. FLETCHER and RYAN are now convicted paedophiles.

Redacted

Exhibit 26

Redacted

When I got statements from SAUNDERS and BURSTON they had an incredible lapse of memory that was identical in respect to the same conversations with FLETCHER about the allegations. There is no doubt in my mind these two and a third held a 'scrum down' before coming in to see me with identical memory lapses.

I did prepare a brief against Bishop MALONE and spoke to the ODPP but we decided against charging him on the basis of keeping him & others on-side to give evidence against FLETCHER. Documents I seized during the search warrant at the Diocese showed he was concerned about charges against him and others for their actions and he got legal advice on behalf of all from. One of those was LUCAS (Mr Fix It). I wouldn't mind having a closer look at BURSTON & SAUNDERS with their dealings with other matters to see if there is enough to put something together. They have been involved with so many of those charged and are often in the background.

4. You mention, *"I spoke to Vince RYAN who would be well worth interviewing"*.

4.1. When you spoke to him, what information / evidence did Vincent RYAN offer relative to victims AL, AK
Peter COGARTY or AJ

I did not know any of these victims when I spoke to RYAN. Where does Peter COGARTY fit in? I know about the offences against him by FLETCHER but didn't know he was in your inquiry.

4.2. What specific evidence do you believe RYAN can offer relative to
AL, AK, Peter COGARTY or
AJ

Exhibit 26

I don't know if he could offer anything in relation to their specific matters. My point in interviewing him is that he was from the Hunter and admitted offences, which is rare amongst paedophile priests. He may have information on the network of priests and concealing of offences if he is approached the right way and prepared to speak. He opened up to me a decade back. We cannot just keep sitting back waiting for victims to turn up - we should be pro-active in stopping these crimes.

5. You mentioned, "*Troy GRANT who locked him up has some really interesting stories too.*"

5.1. What information / evidence do you know / believe he possesses relative to this investigation?

I spoke to Troy years ago in confidence whilst I was charging FLETCHER. I don't wish to breach that confidence and he of course is still available should anyone wish to speak with him. I am unaware if he has anything knowledge of this matter.

6. You mention, "*There are a lot more victim's of McALINDEN that can be tracked down. I would suggest in excess of 10.*" REDACTED

6.1. REDACTED

7. REDACTED

7.1. REDACTED

7.2. REDACTED

Exhibit 26

7.3. What is it about the "Healing Program" do you say is "questionable"?

If you are only asking about AL, AK
Peter QOGARTY (Not COGARTY) or AJ this does
not 'directly' relate. REDACTED & LUCAS were instrumental in putting
together the Towards Healing Programme. I have had a number of
dealings there with Sister Angela RYAN and Evelyn WOODWARD.

Redacted

8. You mention, "

Redacted

*I doubt you will be allowed
to pursue all that because of the scale. That's why I did the reports to
SCC 8 years back."*

8.1. On what do you base your assertion pertaining to

Redacted

Redacted

Exhibit 26

Redacted

8.2. In light of the seriousness of their content, would you be so kind as to provide relevant copies of your "... reports to SCC 8 years back." as they relate to this investigation.

Ma'am YORK asked for those 3 years ago and despite my calls to State Crime no one can discover what happened to them. (I should have kept a copy) Two Intelligence Reports I 107133494 & I 21949203 were referred to in those reports and for that reason I made sure the intelligence reports were disseminated to SCC Sex Crimes Squad. I did say 8 years ago but looking at the reports it was 6 years ago 2006.

9. You mention, "*The Fletcher & McALINDEN matters should be filed at Maitland, there may be some documents there worth looking at, in particular the stuff we seized on warrants from the diocese office.*"

9.1. Do you mean MAITLAND Police Station or somewhere else?

Yes - I filed them at Maitland Police Station years ago. They should be there. I know some police went looking through my office for the material I was later directed to surrender

NP

9.2. To ensure I go straight to the relevant item/s, of this material, what documentation do you know is contained within it that specifically relates to AL, AK Peter COGARTY or

AJ

Exhibit 26

Peter GOGARTY's earlier statement is there but I don't know how he relates to this matter or why you keep mentioning him. If you are allowed please enlighten me. The statements of MALONE x 2, statements of BURSTON, SAUNDERS, HARRIGAN. They relate to their conduct mentioned above with FLETCHER. There should be copies of seized material from the Diocese where AJ is mentioned. (That's where I first came across her name in the 1st place but didn't speak to her until this matter)

10. You mention, *"There was also material filed at the court from the trial."*

- 10.1. Of this material, apart from GOGARTY's tendency evidence as it supported victim AB what specifically supports allegations of concealing offences by clergy formerly & currently attached to the MAITLAND-NEWCASTLE Diocese of the Catholic Church relative to AL, AK Peter GOGARTY or AJ?

What I supplied with the statements implicates REDACTED CLARK, HART & LUCAS. Clearly they concealed McALINDEN. I was prepared to run a brief on that alone. I can only think evidence from Sister Paula REDGROVE and other peripheral witnesses would firm that up and of course lead into more offences.

Exhibit 26

11. You mention, "... LUCAS is really a linchpin with his previous OS, Vatican connection, training & being a qualified lawyer. He's been involved in the background of so many over the years, as set out by AK, AL & AJ. He is the church's 'Mr Fix-It' travelling all over the country.

11.1. I understand LUCAS' alleged involvement as it pertains to this investigation, however, would you specifically clarify your assertion, "He is the church's 'Mr Fix-It' travelling all over the country." and point me in the direction of actual evidence or anything else upon which you base this please.

His involvement with AJ, AK and AL is clearly documented. There is so much on LUCAS a book could be written. **Redacted**

REDACTED

In the early 90's LUCAS and others interviewed NP2 over allegations that he sexually assaulted young boys. NP2 admitted the offences and similar to McALINDEN, LUCAS caused him to be removed from ministry for a time, but kept the matter from police.

REDACTED

Exhibit 26

REDACTED

12. You mention, *"You should jump on the net and have a read of his evidence during the Wood Royal Commission in the middle of the Hunter matters, it makes interesting reading."*

12.1. I have read his evidence. Is there evidence I'm not seeing or something specifically the Royal Commission didn't act upon?

Jeff I could type for hours on this but clearly you need to sit down with me so I can go through this with you. You need to read his evidence carefully in conjunction with what AK, AL &

AJ say in their statements. I thought it was pretty straight forward.

13.. You mention, *"I don't have any more documents off the top of my head ... Diary entries I'd have to check, but mostly it is in my head."*

13.1. If you would, please let me know the outcome of checking your diary entries including book and page numbers for any relevant entries. Is it possible this could be done with some priority?

Exhibit 26

I have a lot more documents but I don't think they relate to the matters you are looking at. Mate if I was on the investigation I would have the time to go through diaries and everything else, which is why I did the reports and asked time and again to be involved in this. I don't have time to go through everything, certainly not with priority with everything else on my plate at present.

Jeff I gather from the comments here you have been told to confine the investigation only to the matters in the statements I supplied. Clearly this needs a Task Force commitment to look at all matters properly, but for some reason beyond my comprehension the Department is reluctant. Over the past 15 years priest after priest has been charged in the Hunter and Blind Freddy can see the problem goes much deeper. Every time they are investigated it is done piecemeal by different commands. **Redacted**

She has called witnesses in my FLETCHER matter to give evidence in NP. The same names are cropping up continually with priests charged and those supporting them - Does our hierarchy just put that down to coincidence? I have successfully investigated and prosecuted similar matters, set precedent law to such a degree the ODPP has requested police with similar matters elsewhere in the state to contact me to assist in putting their briefs together, which I have been happy to do. I don't want to sound big-noting but I do have some experience which you appear to know from the amount of questions you have asked. I am still at a loss why this was directed out of my hands in the first place and not returned after the 3 police given it (TAYLOR, QUINN & STEELE) left the job in quick succession.

Jeff I know you walked into this & cannot help whatever has been going on behind the scenes. I do appreciate the job you are trying to do and hope you are being given a free hand. Please feel free to ring me any time for assistance.

Thanks for you assistance Pete. I look forward to your response email.

Kindest regards,

Exhibit 26

Jeff LITTLE

Detective Sergeant
Newcastle City Local Area Command
Crn Church & Watt Street, Newcastle NSW 2300
Phone: (02) 4929 0004 | Eaglenet: 70004
Fax: (02) 4929 0634 | Eaglefax: 70634
Email: littjief@police.nsw.gov.au

From: Peter Fox/18127/Staff/NSWPolice
To: Graeme Parker/24632/Staff/NSWPolice@NSWPolice, Jeffrey Little/27476/Staff/NSWPolice@NSWPolice
Cc: John Gralton/25360/Staff/NSWPolice@NSWPolice
Date: 05/04/2012 14:01
Subject: Re: Fw: Church Inquiry

Graeme

Without knowing where your matters have gone it's hard to say what else can be done. There are lots of important bits I have collected over the years, most of it in my head. Where would I start? For instance:

Before Malone retired he commented there was a paedophile network of priests in the Newcastle/Maitland Diocese. Nice to know what he knew & meant by that. That was clearly evident back in the late 90's as I mentioned in reports I sent to SCC in 2003-4 & the Intell reports from back then. FLETCHER used to have gatherings at Muswellbrook of a little group that included NP, HARRIGAN, BURSTON, SAUNDERS & RYAN. **Redacted** That collection is incredible considering their crimes or involvement in concealing. I personally had dealings with all of them.

I spoke to Vince RYAN who would be well worth interviewing. He has been tucked away by the Catholic Church since his release. Troy GRANT who locked him up has some really interesting stories too.

There is a lot of info on past priests (now deceased) that the church knew were paedophiles that were never charged, but victims in the Hunter paid compensation. That was mostly in the time of Leo CLARK & his predecessor but some residue was handed over to MALONE. I don't know if anyone approached him before he left as I remember at some stage him stating publically he was prepared to hand 'everything over' to police if asked. There are a lot more victim's of McALINDEN that can be tracked down. I would suggest in excess of 10.

REDACTED

I could go on but it is really something that needs a major investigation beyond a LAC as it expands. **Redacted**

Exhibit 26

Redacted I doubt you will be allowed to pursue all that because of the scale. That's why I did the reports to SCC 8 years back.

I don't have any more documents off the top of my head - I was directed by Max to surrender it all - which I did. (The reasons for which I am still at a loss) Diary entries I'd have to check, but mostly it is in my head. The Fletcher & McALINDEN matters should be filed at Maitland, there may be some documents there worth looking at, in particular the stuff we seized on warrants from the diocese office. There was also material filed at the court from the trial.

Before finishing can I just say LUCAS is really a linchpin with his previous OS, vatican connection, training & being a qualified lawyer. He's been involved in the background of so many over the years, as set out by AK, AL & AJ. He is the church's 'Mr Fix-It' travelling all over the country. You should jump on the net and have a read of his evidence during the Wood Royal Commission in the middle of the Hunter matters, it makes interesting reading.

Graeme I could go on but so would any investigation, not that I am saying it shouldn't. As with Kristy's inquiries, I still have contact with a lot of families & people with extensive connections in the church & am only too willing to assist with any aspect you might want to pursue.

Peter Fox
Detective Chief Inspector
Crime Manager
Port Stephens LAC
Redacted

Exhibit 26

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Appendix S Term of reference 2: selected key documents

Letter from Cotter to Clarke, 17 May 1976

Bishop-elect
Most Rev L.M. Clarke O.D.
St. Paul's Seminary.

P.O. Box 693K
Newcastle 2300
17-5-76

Dear Monsignor Clarke,

A trouble which I knew existed flared up during Thursday & Friday last week.

Fr. Denis McAlinden, Parish Priest of Forster-Tumbarry on the coast 100 miles north of Newcastle aged 53, wished to go to W.A. to Bishop Thomas for a period some three years ago. Bishop Tooley prevailed on him to stay. Now it is on again but for a different reason and Fr. McAlinden is intending to visit St Paul's this week to discuss the matter with Bishop Thomas. He would not want to do this without your knowing about it nor, of course, would I agree to allow him to do it without your prior knowledge.

This is some of the background. Fr. McAlinden a rugged character, always one not to be taken for granted, is a man of very good faith and pastoral hard work. He received the bishop's permission to go to New Guinea on mission spending time in Mendi & Mt. Hagen between Feb. 1969 & Sept. '73 when he returned to his own diocese

Exhibit 57

2

of Maitland. He then was Adm in a parish, parish priest of Kendall, and since 1-11-1975 Parish priest of Forster-Tumcurry.

He is a man who can become very bad tempered. He had a serious accident some ten years ago which has left him with a slight limp and I believe, doctors advise a warm or temperate climate for him.

His change while in New Guinea from Mende to Mt. Hagen must have been for some reason. Bishop Tobey hinted to us that it involved an incident associated with his bad temper. In any case he returned to Maitland requesting permission to go to W.A. pleading genuine interest in the missions etc. and that I believe is sincere. The bishop did not give permission and Father Macalinden received the appointments mentioned above - the last one taking place on 1-11-75 after bishop's death - but it had been arranged long term before bishop's illness owing to the passing of Kendall Parish to Kismore diocese which is another story again that you will be looking at and discussing with us before you come to any final terms with Bishop Satterthwaite.

So by agreement Fr. Mac came from Kendall to Forster-Tumcurry on 1-11-75.

3

On May 6th (I think) a deputation came from Forster-Tuncurry to the Education office to complain that Mr. Mac had struck a child about the head while giving a religion lesson in preparation for forthcoming confirmation. Mr. Coolahan passed the situation on to me. A week later, while I was away in Sydney for our talk, a further deputation (led by a young solicitor) came to Newcastle with other charges against Mr. Mac. In my absence Mr. Coolahan saw them. These charges have to do with 'de sexto' in an unusual way but I think not extremely serious.

On Saturday morning I discussed the situation and the charges with the other consultants.

On Saturday evening I went to Forster-Tuncurry to meet a group of some ten or twelve people convened by telephone independently of Mr. Mac. I stayed with them to a late hour but they insisted that Mr. Mac had to go. He has lost all credibility - the children are scared of him - in the circumstances he himself should not want to stay in the parish etc. etc.

The 'de sexto' business. Mr. Mac has an inclination to interfere (touching only) with young girls - aged perhaps 7 to 12 or so. The furor came by striking the boy about the head.

in the presence of the whole class caused the girls to give the other information to their mothers which they had till then withheld.

On examination this is found to be factual. Having dealt with the people I had a long session with Mr. Mac at the Presbytery.

Slowly very slowly he admitted some indiscreet but then agreed that it was a condition that had been with him for many years.

He feels no such inclination towards the mature female but towards the little ones only. There never has been any physical assault or damage but inevitably it leaves a psychological scar on the child's mind and attitude and religious outlook.

Mr. Mac finally came to the point of asking me to try to arrange some treatment for him. He is willing to resign his charge of the parish - beginning to feel some embarrassment saying Mass & preaching.

I have never heard of this condition before and knowing Mr. Mac, as we do, we think it cannot be real serious, nor do we believe that there is any danger of a development into assault or rape. At the same time what has been going on is more than

can be tolerated.

Last night we had a further meeting of Consultors and agreed to accept Fr Mac's resignation & to fill the parish by promoting Fr. A. Brady senior Curate at present at Raymond Terrace. This leaves a vacancy for an assistant at Raymond Terrace in a situation in which we are already down three.

The point is that I would still say that we can recommend Fr. Mac to Bishop Thomas provided of course the Bishop is told something of all this background. The reason why Father wants to go so very much now is because it will afford a good cover-up for his resigning the parish. The priests and his own family, most of whom live in Sydney, will not wonder because his desire to go to Geraldton a few years ago was well known.

My recommendation is that we try to find some appropriate treatment for him over the next two months & so during which time he stays with members of his family in Sydney. Then that Bishop Thomas be asked to accept him for one or two years, after which he would come back to the diocese.

If Fr. McElinden does in fact go to St. Paul to see Bishop Thomas I will, of course ask him to see you first - which no doubt he would want to do anyway.

This is written in a hurry and I don't want to get it typed by anyone
So please excuse the effort.

Everything else is O.K. We have 18 bishops and the pro-nuncio coming at this stage.

Coat of arms arrived & book is gone to printer.

On Tuesday June 1st it would be better to meet at Doyalson at 11.30 rather than 12 noon if you can make it. We will be there at 11.30.

With all best wishes

Respectfully yours

Signed

Bishop Elect
Most Reverend LM Clarke
St Paul's Seminary

PO Box 693K
Newcastle 2300
17-5-76

Dear Monsignor Clarke,

A trouble which I knew existed flared up during Thursday and Friday last week.

Fr. Denis McAlinden, Parish Priest of Forster-Tuncurry on the coast 100 miles north of Newcastle aged 53, wished to go to W.A. to Bishop Thomas for a period some three years ago. Bishop Toohey prevailed on him to stay. Now it is on again, but for a different reason and Fr. McAlinden is intending to visit St Paul's this week to discuss the matter with Bishop Thomas. He would not want to do this without your knowing about it nor, of course, would I agree to allow him do it without your prior knowledge.

This is some of the background. Fr. McAlinden is a rugged character, always one not to be taken for granted, is a man of very good faith and pastoral hard work. He received the Bishop's permission to go to New Guinea on mission spending time in Mendi and Mt Hagen between February 1969 and September 1973 when he returned to his own diocese of Maitland. He then was Adm in a parish, parish priest of Kendall, and since 1-11-1975 parish priest of Forster-Tuncurry.

He is a man who can become very bad tempered. He had a serious accident some ten years ago which has left him with a slight limp and, I believe, doctors advise a warm or temperate climate for him.

His change while in New Guinea from Mendi to Mt Hagen must have been for some reason. Bishop Toohey hinted to us that it involved an incident associated with his bad temper. In any case he returned to Maitland requesting permission to go to WA pleading genuine interest in the Missions etc. and that I believe is sincere. The Bishop did not give permission and Father McAlinden received the appointments mentioned above – the last one taking place on 1-11-75 after the bishop's death – but it had been arranged long term before bishop's illness owing to the passing of Kendall Parish to Lismore diocese which is another story again that you will be looking at and discussing with us before you come to any final terms with Bishop Satterthwaite.

So by agreement Fr. Mac came from Kendall to Forster-Tuncurry on 1-11-75.

On May 6th (I think) a deputation came from Forster-Tuncurry to the Education Office to complain that Fr. Mac had struck a child about the head while giving a religion lesson in preparation for forthcoming confirmation. Fr. Coolahan passed the situation on to me. A week later, while I was away in Sydney for our talk, a further deputation (led by a young solicitor) came to Newcastle with other charges against Fr. Mac. In my absence Fr. Coolahan saw them. These charges have to do with 'de sexto' in an unusual way but I think not extremely serious.

On Saturday morning I discussed the situation and the charges with the other consultants.

On Saturday evening I went to Forster-Tuncurry to meet a group of some ten or twelve people convened by telephone independently of Fr Mac. I stayed with them to a late hour but they insisted that Fr. Mac. had to go. He has lost all credibility – the children are scared of him - in the circumstances he himself should not want to stay in the parish etc. etc.

The 'de sexto' business. Fr. Mac has an inclination to interfere (touching only) with young girls – aged perhaps 7 to 12 or so. The furor cause by striking the boy about the head in the

Exhibit 57

presence of the whole class caused the girls to give the other information to their mothers which they had till then withheld.

On examination this is found to be factual. Having dealt with the people I had a long session with Fr. Mac at the Presbytery.

Slowly very slowly he admitted some indiscretions but then agreed that it was a condition that had been with him for many years.

He feels no such inclination towards the mature female but towards the little ones only. There never has been any physical assault or damage but inevitably it leaves a psychological scar on the child's mind and attitude and religious outlook.

Fr. Mac finally came to the point of asking me to try to arrange some treatment for him. He is willing to resign his charge of the parish – beginning to feel some embarrassment saying Mass and preaching.

I have never heard of this condition before and knowing Fr. Mac as we do, we think it cannot be real serious, nor do we believe that there is any danger of a development into assault or rape. At the same time what has been going on is more than can be tolerated.

Last night we had a further meeting of Consultors and agreed to accept Fr Mac's resignation and to fill the parish by promoting Fr. A. Brady Senior Curate at present at Raymond Terrace. This leaves a vacancy for an assistant at Raymond Terrace in a situation in which we are already down three.

The point is that I would still say that we can recommend Fr. Mac to Bishop Thomas provided of course the Bishop is told something of all this background. The reason why Father wants to go so very much now is because it will afford a good cover-up for his resigning the parish. The priests and his own family, most of whom live in Sydney, will not wonder because his desire to go to Geraldton a few years ago was well known.

My recommendation is that we try to find some appropriate treatment for him over the next two months or so during which time he stays with members of his family in Sydney. Then that Bishop Thomas be asked to accept him for one or two years, after which he would come back to the diocese. If Fr. McAlinden does in fact go to St. Paul's to see Bishop Thomas I will, of course ask him to see you first – which no doubt he would want to do anyway.

This is written in a hurry and I don't want to get it typed by anyone so please excuse the effort.

Everything else is o.k. We have 18 bishops and the Pro-Nuncio coming at this stage.

Coat of Arms arrived and book is gone to printer.

On Tuesday June 1st it would be better to meet at Doyalson at 11.30 rather than 12 NOON if you can make it. We will be there at 11.30.

With all best wishes.

Respectfully Yours

P.D. Cotter

Exhibit 57

Letter from McAlinden to Malone, 5 December 1995

8.12.95

Received

Signed

P.O. Box 305,
Tolmount, W.A. 6913
5th December, '95.

Page 5
MISSING

Most Rev. M. Malone, D.D.,
Bishop of Auckland, Auckland.

Dear Bishop,

Enclosed please find my response to your letter and documents received during the month of November. As I had no transport, I have had to depend for the most part on someone collecting my mail and delivery it to me. Even so I have endeavoured to supply an honest appraisal of the situation as I have seen it over the 46 years of my priesthood.

On leaving the Philippines, my plan had been to return to Ireland, as Bishop Clarke demanded in a letter he wrote to Bishop Rantap. However, after a visit to my doctor - Dr. A. Pang - in W.A., I was referred to a Specialist who recommended an operation as urgent. Fortunately, my medical cover with H.B.F. was still available, otherwise I could never have afforded the operation which cost in excess of \$20,000. With a second operation pending early in the New Year, I was able to renew my medical cover with H.B.F., after which - trusting it would be successful - had planned to return to Ireland as soon as capable of travelling.

My immediate plan, on advice, is to go up-country from now till after Christmas in order to prepare for the next operation arranged for January 2nd. The hospitality of some of the priests has truly remarkable - in both Perth and Geraldton Dioceses.

May I wish you all the joys and blessings of the Christmas season.

Sincerely Yours in Christ.

Signed

Exhibit 78

To Those Whom It May Concern

I have studied the documents sent me, and especially the Canon as marked relating to "Irregularities & other Impediments" in Can. 1044, and "Obligations & Rights of Clerics" in Can. 277; I shall endeavor to reply honestly to the best of my ability.

A. Canon 1044 - §1 and §2.

I do not in any way consider that at the time of reception of Orders there existed any irregularity for reception of Orders nor any impediment to the reception of Orders.

Just prior to Ordination — at most within a year of the event — I had completed a full course in Applied Psychology and Child Psychology under Professor H. Thomas Long, (P.S.R.), and was fully aware of whatever could be classified as an "aberration".

I had a very normal childhood in a family of 4 boys & 2 girls, during which time there was no evidence of deviation from what is perfectly normal, mentally or morally. Whether was that any evidence of this during my Juniorate which I entered at the age of about 12 years. During those years at the Redemptorist Juniorate very strict supervision was maintained and vigilantly monitored on matters such as "particular friendships", and never ever was any suggestion made that I had shown the least inclination towards such a tendency. At least once during each term every student had a very searching heart-to-heart interview with the Director, which would certainly have disclosed any "aberration" had such been present. In fact, the same could be said of my years in the Noviciate and Major Seminary — likewise conducted by the Redemptorists. In all those years my favorite companions were those who engaged in vigorous games on the football field or handball courts. Indeed, I was looked upon, and at times made fun of, as belonging to the group noted for vigorous sports, strenuous hiking and mountain climbing; most

Exhibit 78

was planning to spend our lives on foreign missions where we considered life to be rugged and demanding. Some of that group are alive and active to day, whose names I could supply to back up my testimony.

Prior to Ordination (1949), I had become very much obsessed with the idea of going to China, but by '49 the Communists had taken over that country. Meanwhile Bishop Gleeson, C.S.S.R. invited me to Maitland Diocese, at a time when many migrants were arriving there.

Hence, my first assignment was Chaplain to a Migrant ship travelling to Australia with around 3,000 people. During the 6 weeks voyage I had to contact all families from Ireland, the U.K. and Malta, and became quite friendly with many of them and their children for whom we organized schooling and sports; but never for a moment was there any thought or inclination to do anything wrong with them.

Bishop Gleeson had promised that after some years he would release me to go to foreign missions; but when Bishop Tooke took over the Diocese he insisted there was no record of such a promise — I had received an invitation from

Bishop Cavalea in Kenya with books on the Swahili language.

However, during those early years I had continued to keep fit, playing Rugby League, Handball and Marist Brothers, Squash etc., still with a view to going on the Missions. Even after my accident in 1962, that barred me from all sports, I still continued annually to request to go to the Missions, till eventually Bishop Tooke gave in early in 1969, though I was obliged to return to Maitland after each 3 year period, until in 1981 I was forced to return for a hip-replacement — the result of the 1962 accident. During all those years in P.N.G. I had no problems whatsoever, even though I was called on to do regular clinical work before we got a permanent nurse and hospital

On the various occasions when things did go wrong, I never for a moment tried to minimise my guilt by blaming some uncontrollable tendency — always making sure of receiving the Sacrament of Penance before offering Mass. Likewise when I visited a qualified psycho-analyst some years ago in Castle Hill, after 5 or 6 consultations, he assured me he found nothing in the nature of an aberration.

Hence, the Conclusion is obvious that at the time of my Ordination, during the years of preparation for the same, and for several years afterwards, during my years in P.W.G., ~~and~~ ~~no~~ no sign of any aberration that could give rise to an impediment for the reception of Orders was apparent. Nor was it a case of "Ignorance of Irregularities or Impediments" — they were just not present. So that, even if I wanted a dispensation — (which I certainly do not) — I could not in conscience seek for it, knowing that the conditions do not apply.

∴ at the time of my Ordination there was no impediment whatsoever to the valid and lawful reception of Orders, and hence Canon 1044 does not apply.

2. Canon 279

Yes, for I have failed miserably in observation of "perfect and perpetual continence" in relation to my vow of Chastity in matters about which I have been accused and of which I have accused myself, though some of the individual cases mentioned by Fr. Lucas (1993) did not occur, most of all that concerning

AK who had divorced her husband and entered a civil marriage to another, after failing to bring up her children as Catholics, neither did the case happen that was brought to court in W.A. in 1992.

I have seen in these failures the fact that I allowed my spiritual life to become weakened with the excuse of being too busy — barely, "fitting in" prayers of obligation and a Divine Office, though managing a daily Rosary.

However, as I explained to Fr. Lucas in '93, that, by the grace of God and the help of our Blessed Lady, I had already become completely free from all such wrong-doings, in fact, regarded as an abomination. The following practices have been ever so effective: —

(1) In 1987, I joined the Marian Movement of Priests, having made a Retreat with a group of priest-members. (I am aware that, for some unknown reason, some Bishops have not approved of this Movement, though Archbishop Hickey does sponsor it in his Diocese).

I have found that the daily consecration to our Lady: "I who belong to the Marian Movement of Priests, called to form the army of your Priests, today renew my consecration to your Immaculate Heart" — and "by this act of consecration I intend to live with you and through you all the obligations assumed by my baptismal and priestly consecration" — as a daily reminder of my obligations and duties as a priest, and the need to seek graces and helps I require to comply.

Exhibit 78

- ② This led me to put into practice the advice and example of the late Bishop Fulton Sheen to make a daily Holy Hour; this I have done ever since ^{now for several years.} Even when not able to get to a Church at my usual hour 3-4 p.m., I've made the Holy Hour wherever I happened to be.
- ③ In 1992 I went to Rome for the International Retreat "Towards A.D. 2000", having, on the way, spent 8 days at Medjugorje; found the Retreat a wonderful booster to this renewal of priestly life. After this the main theme of the daily Holy Hour centred around devotion to the Divine Mercy which gave me new hope.
- ④ Shortly after this I went back to one of my early practices of devotion, that sadly had lapsed over the years - namely, the slowly "Way of the Cross"; this frequently is joined to my Holy Hour which extends it to an extra $\frac{1}{2}$ hour, using the meditations of Fr. Barchmann's Welsh, the Cistercian, "Divine Mercy and the Eucharistic Way of the Cross".
- ⑤ Even long before 1987, I had begun the practice of saying the 15 Decades of the Rosary daily, but usually this was while driving in the car. Since '87 I've endeavoured to keep up the practice, but more often in an environment more suitable for meditation on at least 5 Decades.
- ⑥ Each day at Mass and on several other occasions, such as Holy Hour, Rosary, Divine Office, I pray for all those who may have been injured in any way by my actions.

Fortunately, at a very early age, I'd been taught the power of prayer, and now feel I can claim to be a living example of that power. So much so, that when I spoke to Fr. Lucas, about 3 yrs ago, I assured him I had no worry or fear of falling back into the problems of the past. In fact, no way would I have opened up and confessed so freely to Fr. Lucas, admitting my past failings, had I not been convinced that this

was a thing of the past.

Hence, while I have failed miserably regarding Canon 277, I believe I'm now more a priest than for many years — a repentant priest. So, while condemning myself in ~~as~~ uncertain terms, the sad experience has taught me greater compassion towards others who have sinned, so that the work of the Confessional had become one of the greatest means of making reparation for my past sins. In my ~~own~~ priestly ministry I've always made a special effort, not only to be available for ~~missions~~ ^{missions}, but endeavored to encourage frequent confessions. I never I happened to be, and have always felt a share in that heavenly joy when one sincerely repents.

In 1990, on the way to Rome for the Retreat, I spent up to 8 hours daily ^{at Marikina} on 7 days hearing Confessions. So to be deprived of Faculties was the greatest punishment I ever had to suffer. In fact, it was that, more than anything else, that drew me to the Philippines, something that came about in quite an extraordinary manner — again, I believe it was the power of prayer. Since being deprived of Faculties, I'd prayed earnestly each day for a return of ~~the~~ privilege, but had no idea how it could come about. Then I received an invitation from Bishop Bantigue of San Pablo, Laguna, through the apparent intervention of a Somascan Priest who knew of my situation and with whom I had previously spent many hours hearing Confessions at Conales and ^{on} days of Recollection.

Bishop Bantigue at first asked me to undertake the position of Chaplain to the San Pablo Colleges Complex where there was an enrollment of over 7,500 pupils, ranging from Kinder Garden through primary, secondary, teachers college, university and including a Medical College. However, I made a point of explaining my situation and past history to the good Bishop, and advised him why my Faculties had been withdrawn. This, at first, prompted him to alter the appointment, and

instead posted me to the Cathedral of San Pablo with full faculties of the Diocese. Here, on each Wednesday and Friday, I could spend up to a minimum of 6 hours in the Confessional, as well as becoming regular Confessor to priests, seminarians and nuns, as well as to other individuals at various times in bays and during Fiestas.

However, after a few months, Bishop Bantigue again appointed me to San Pablo College Complex, thinking, like myself, that here was an opportunity to make up for past failures. There I was surprised to discover that the practice of Confessions had been sadly neglected, though there was daily Mass for each grade of school. It became necessary, therefore, to re-instruct the students, after an absence of up to 4 years, after which it was a case of regular, 6 to 8 hours on 5 days each week, not only for pupils, but also for the staff. Hence, for the next 6 months or so I would have heard no less than 10 thousand Confessions. So, here again, I had a most tremendous experience of the power of prayer, and had a conviction that God had really forgiven me and truly restored me to full priestly life again. When I was leaving, as Bishop Clarke had demanded, Bishop Bantigue, who had been ill, sent for me to thank me, most of all, as he remarked, for my work in the Confessional in both San Pablo Cathedral and the College Complex. I regard the good Bishop as very much a genuine good shepherd, a man of compassion and understanding.

Hence, while I admit my failures in the past regarding Canon 277, I know of other repentant priests and even a few Bishops, who are serving as active ministers in the Church. I can understand why, in view of some objections, it is necessary to be restricted to private practice of priestly duties, something I am now prepared to be content with; but I see no reason to be completely deprived of those priestly duties. Nowhere do I recall having condemned anyone for what he had done provided he genuinely repented — not even St. Peter —

who, far from being denoted, was restored to the Papacy. As noted in the original letter and document from Bishop Clarke, I have the right to appeal; hence, I wish to make it quite clear that, if necessary I am prepared not only to make my appeal but to go to Rome if necessary in order to maintain my Priesthood. I was ordained a "Priest for ever" and intend to remain so till death, be that sooner or later, — and the way matters stand at present it could be sooner.

As to regard to the threat of someone contacting the police, I fail to see where this has any relevance to any of the Canons; indeed, if you would advise it, I'd be prepared to go to the police and accuse myself. There may even be work to be carried out in prison, as I had occasion to discover. On the night before the judge's summing up of my case in the Court in Perth, I had to spend the night in maximum security prison. In the course of conversation with the prison nurse I discovered she had contracted an invalid marriage after the death of her first husband, and subsequently had given up the practice of her faith. While I cannot recall the conversation which we had, I was informed shortly after that she had gone to have her marriage rectified and had returned to the Church. This information was conveyed to me by Titiano Bogoni who is now a seminarian at Propaganda. He was given the information by the woman's very delighted son, who happened to be a friend of his and wished to thank me. So, it seems that there is room for the Episcopate even in prison.

NB. 2. In the study of applied psychology we were strongly warned against forcing individual cases into particular categories.

Appendix T Apology by Bishop Michael Malone, 15 July 2013

SPECIAL COMMISSION OF INQUIRY
INTO MATTERS RELATING TO THE POLICE INVESTIGATION OF
CERTAIN CHILD SEXUAL ABUSE ALLEGATIONS IN THE CATHOLIC
DIOCESE OF MAITLAND-NEWCASTLE

At Newcastle Supreme Court
Court Room Number 1, Church Street, Newcastle NSW

On Monday, 15 July 2013 at 9.55am
(Day 10)

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC
Mr David Kell
Mr Warwick Hunt

Crown Solicitor's Office: Ms Emma Sullivan,
Ms Jessica Wardle

.15/07/2013 (10)

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MS LONERGAN: Commissioner, I understand that Bishop Malone would like to make a statement that he has prepared.

THE COMMISSIONER: Yes, bishop, by all means.

THE WITNESS: May it please you, Commissioner, and the Commission and ladies and gentlemen. I just have a prepared statement to conclude my public evidence.

I thank Commissioner Cunneen and members of the Special Commission for giving me an opportunity to make a prepared statement as I conclude my public evidence. I also commend the Commission for conducting a thorough and wide-ranging inquiry.

My 17 years as bishop of the diocese of Maitland-Newcastle saw a gradual awakening in me to the horror of sexual abuse in the church. During those years the diocese moved from shock and disbelief to an angry rejection of such criminal behaviour of some clergy and church personnel.

Any organisation runs the risk of becoming a cold and indifferent bureaucracy and that includes the Catholic Church. In such a bureaucracy its leaders can spend more time protecting the organisation than lovingly serving the faithful men and women who constitute it. When

1 this happens, vulnerable children and adults can fall
2 through the cracks. Their deep needs remain unmet and, as
3 we have found, even criminally exploited.

4
5 Constant vigilance and authentic accountability can
6 mitigate the tendency to exploit. Church leaders, most of
7 whom are wonderful committed people, must be transparent
8 and put in place processes and procedures which genuinely
9 protect the young and vulnerable.

10
11 Fortunately, here in the diocese we saw the need to do
12 just that and put in place an effective Child Protection
13 Unit now known as Zimmerman Services. Since 2005 the
14 diocese, through this unit, has attempted to redress past
15 failures and neglect by offering effective training of
16 church personnel, prompt attention to cases of abuse,
17 support for victims, and healing for fractured families and
18 communities.

19
20 It will probably take some years to rebuild lost
21 confidence in the Catholic Church. Healing and
22 reconciliation can come about when people see that things
23 are different and that their genuine needs are met in an
24 open and compassionate way. I pray daily for the victims
25 of sexual abuse, asking God to grant them peace of mind,
26 healing and reconciliation with all people, including the
27 Catholic Church.

28
29 Bishop Bill Wright, the current bishop of
30 Maitland-Newcastle, made a heartfelt apology at the opening
31 of phase 2 of this inquiry. I welcome his apology and add
32 my own sincere sorrow that any actions of mine may have
33 added to the pain of victims and to their families and this
34 includes a flippant comment of mine late last week when
35 I spoke of not destroying secret documents. My words then
36 were insensitive and I apologise.

37
38 The evils of sexual abuse should never have happened
39 but they did. With better systems in place, may they never
40 happen again. Thank you, Commissioner.

41
42 THE COMMISSIONER: Thank you so much, bishop.

43
44 MS LONERGAN: Commissioner, may I inquire of Bishop Malone
45 whether he is prepared to have that statement tendered as
46 an exhibit as part of his evidence to assist this
47 Commission's inquiries?

.15/07/2013 (10)

1147

M J MALONE

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1
2 THE WITNESS: By all means, yes.
3
4 MS LONERGAN: I tender a copy of Bishop Malone's
5 statement.
6
7 THE COMMISSIONER: Thank you, Ms Lonergan. Bishop
8 Malone's statement of this afternoon will be exhibit 110.
9
10 EXHIBIT #110 PUBLIC STATEMENT BY BISHOP MALONE
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.15/07/2013 (10)

1148 M J MALONE

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Appendix U Public hearing exhibit list

Exhibit Number	Description
1	'To do list' by Peter Fox, undated
2	Handwritten note pages by Peter Fox
3	Statement of Troy Grant, dated 29 April 2013 and letter from the NSW Crown Solicitor to Troy Grant, dated 28 March 2013
4	Statement of John Kerlatec, dated 8 April 2013
5	Statutory declaration of Andrew Grono, dated 2 May 2013
6	Statement of David Waddell, dated 18 March 2013
7	Diary entries of David Waddell, dated 9 April 2010 – 31 August 2010
8	Statement of David Michael Matthews, dated 1 May 2013
9	Statement of Brad Tayler, dated 6 May 2013
10	Statement of Carlene York, dated 15 February 2013
11	Terms of Reference of Strike Force Lantle, assigning Detective Sergeant Jeffrey Little , undated
12	ABC <i>Lateline</i> transcript, 'Studio interview with Senior NSW Detective Peter Fox', dated 8 November 2012
13	Diary entries of Brad Tayler, dated 20 May – 18 November 2010
14	Report by Brad Tayler re complaint by AL re Kirren Steel, dated 10 December 2010
15	Letter from AL to Carlene York, dated 9 November 2010
16	Internal documents from NSW Police Force Systems in relation to a complaint by AL
17	Statement of Paul Jacob, dated 9 April 2013
18	Terms of Reference of Strike Force Lantle assigning Kirren Steel and Jason Freney, undated
19	Statement of Anthony Townsend, dated 15 February 2013
20	Investigator's note by Justin Quinn re contact with AL, dated 19 November 2010
21	Investigator's note by Justin Quinn re contact with AL regarding the continuation of her statement, dated 30 November 2010
22	Statement of Max Mitchell, dated 15 February 2013
23	Expert opinion report by Ian Lloyd QC, dated 7 May 2013 and letter to Ian Lloyd QC from the NSW Crown Solicitor, dated 1 May 2013
24	Correspondence provided to the Ministers Office by Dr Andrew Morrison re McAlinden, various dates
25	Statement of Jeffrey Little, dated 7 March 2013
26	Response from Peter Fox to questions by Jeffrey Little re email from Peter Fox to Graeme Parker, dated 5 April 2012
27	e@gle.I HELP entry titled 'Confirmation by D/C/Insp. FOX – Nil further information' by Jeffrey Little, dated 5 April 2012

Exhibit Number	Description
28	Article titled 'Police delve into church' by Joanne McCarthy, dated 8 May 2010, the <i>Newcastle Herald</i>
29	Article titled 'Inquiry into church cover-up 'disgrace'' by Joanne McCarthy, dated 18 April 2011, the <i>Newcastle Herald</i>
30	Complaint made by Joanne McCarthy to the Police Integrity Commission, 11 April 2011
31	Article titled 'Parish Priest Faces Inquiry' by Joanne McCarthy, dated 31 May 2013, the <i>Newcastle Herald</i>
32	Article titled 'Questions for Police on Church Inquiries' by Joanne McCarthy, dated 13 October 2010, the <i>Newcastle Herald</i>
33	Statement of Wayne Humphrey, dated 14 February 2013
34	Application for the extradition of Denis McAlinden by Mark Watters, dated 25 September 2005
35	Handwritten notes by Wayne Humphrey, dated 21 September 2010-13 October 2010
36	Handwritten notes by Wayne Humphrey, dated 16 May 2011
37	Typescript of handwritten notes by Wayne Humphrey, dated 16 May 2011
38	Handwritten notes by Wayne Humphrey, dated 6 September 2010
39	Statement of Jason Freney, dated 8 May 2013
40	Statement of Graeme Parker, dated 7 March 2013
41	Statement of Fay Dunn, dated 20 June 2013
42	Statement of John Gralton, dated 15 February 2013
43	Job description for Crime Manager, dated 28 July 2005
44	Duty book entry of Kristi Faber, dated 30 May 2008
45	Statement of Kristi Faber, dated 6 May 2013
46	Statutory declaration of Miriam White, dated 26 June 2013
47	Affidavit of Mark Watters, dated 14 May 2013
48	Statement of Mark Watters, dated 19 June 2013
49	Transcript of conversation between Peter Fox and Michael Malone prepared by Peter Fox
50	Excerpt of private hearing transcript of Peter Fox, dated 27 March 2013
51	NSW Police statement of Peter Fox, dated 28 May 2003
52	NSW Police statement of James Saunders, dated 21 May 2003
53	NSW Police statement of Desmond Harrigan, dated 20 May 2003
54	NSW Police statement of William Burston, dated 20 May 2003; and NSW Police statement of William Burston, dated 8 September 2003
55	NSW Police report by Peter Fox re Ombudsman notification involving James Fletcher, dated 21 May 2003
56	NSW Police report by Peter Fox re Ombudsman notification involving James Fletcher and AH, dated 29 May 2003
57	Handwritten letter from Patrick Cotter to Leo Clarke, dated 17 May 1976 and NSW Crown Solicitor's Office typescript of letter from Patrick Cotter to Leo Clarke, dated 17 May 1976

Exhibit Number	Description
58	Letter from Leo Clarke to Ray Kalisz, dated 2 February 1988
59	Report of Derek Johns to Leo Clarke, dated 5 November 1987
60	Letter from Leo Clarke to Denis McAlinden, dated 12 February 1993
61	Letter from Leo Clarke to Denis McAlinden, dated 27 February 1993
62	Letter from Leo Clarke to Thomas Brennan, dated 5 March 1993
63	Letter from Leo Clarke to James McGuinness, dated 1 April 1993
64	Letter from Leo Clarke to Pedro Bantigue, dated 8 November 1994
65	Letter from Leo Clarke to Pedro Bantigue, dated 10 May 1995
66	Letter from Leo Clarke to Franco Brambilla, dated 23 May 1995
67	Letter from Leo Clarke to Denis McAlinden, dated 19 October 1995
68	Letter from Denis McAlinden to Leo Clarke, dated 26 October 1995
69	NSW Police Force report by Peter Fox re 'Allegations of child sexual abuse and cover-up within the Maitland Newcastle Diocese of the Catholic Church', dated 25 November 2010
70	Letter from Denis McAlinden to John Toohey, dated 3 December 1959
71	Letter from Denis McAlinden to AC, dated 24 August 1960
72	Minutes of meeting of Diocesan Consultors, dated 15 – 16 May 1976
73	Letter from Allan Hart to R M Castillo, dated 20 June 1995
74	Letter from Michael Malone to Denis McAlinden, dated 2 November 1995
75	Letter from Michael Malone to Denis McAlinden, dated 22 December 1995
76	Letter from Denis McAlinden to Michael Malone, dated 27 January 1996
77	Fax message from Michael Malone to Peter Fox, dated 23 May 2003
78	Letter from Denis McAlinden to Michael Malone, dated 5 December 1995
79	Email from Natasha Mewing to the NSW Crown Solicitor, attaching letter from Natasha Mewing to the NSW Crown Solicitor, dated 4 July 2013
80	Duty book entry of Peter Fox and typescript, dated 29 December 2003
81	Excerpts of statement of Peter Fox, dated 7 February 2013
82	Statement of Donald Brown, dated 13 May 2013
83	Statement of Jacqueline Flipo, dated 16 May 2013
84	Statement of Jacqueline Flipo, dated 27 June 2013
85	Statement of Michael Malone, dated 8 July 2013
86	Further supplementary statement of Michael Malone, dated June 2013
87	NSW Police statement of Michael Malone, dated 21 May 2003
88	Letter from Pedro Bantigue to Leo Clarke, dated 8 June 1995
89	Letter from Michael Malone to Franco Brambilla, dated 20 June 1995
90	Letter from Michael Malone, dated 26 April 1996 attaching ACBC Plenary meeting pastoral letter to the Catholic people of Australia and media statement of Michael Malone, dated 24 April 1996

Exhibit Number	Description
91	Handwritten note of telephone message from UR55 to Michael Malone, attached to handwritten note of Michael Malone re conversation with UR55
91A	Handwritten note of Michael Malone re conversation with UR55, dated 3 December 1997
92	Minutes of meeting No. 37 of the Committee of the Maitland Clergy Central Fund, dated 5 August 1997; and Fax message from Frank Coolahan to Berni Mears, dated 13 August 1997
93	Letter from William Burston to John Davoren, dated 10 August 1999
94	Letter from William Burston to James McGuinness, dated 10 August 1999
95	Letter from William Burston to Denis McAlinden, dated 10 August 1999
96	Letter from James Fletcher to James Saunders, dated 24 June 2002
97	Letter from Michael Malone to James Fletcher, dated 3 October 2004
98	Letter from Michael Malone to AE, dated 12 October 1999
99	Letter from Mark Watters to Bishop's Chancery, dated 8 October 1999
100	Email from John Davoren to Michael Malone, dated 4 March 2003; and Child Sexual Abuse Information Dissemination to NSW Police Child Protection Enforcement Agency form, dated 4 March 2002
101	Apology from Michael Malone to the Community, dated 8 May 2010
102	Towards Healing summary of facilitated meeting held in Sydney on 29 August 2002, dated 2 September 2002
103	Letter from Barry Hickey to Michael Malone, dated 28 June 2002
104	Pastoral message to Diocesan Community from Michael Malone, dated 16 May 2003, Media statement of Michael Malone, dated 14 May 2003 and Catholic Commission for Employment Relations media release, dated 15 May 2003
105	Minutes of meeting of Deans, dated 2 August 1995
106	2002 diary of Michael Malone
107	Letter from Denis McAlinden to Michael Malone, dated 27 February 1996
108	Letter from William Burston to Denis McAlinden, dated 16 May 1996
109	Miscellaneous notes by Michael Malone re James Fletcher, undated – partial non-publication order applies
110	Statement of Michael Malone, dated 16 July 2013
111	Statutory declaration of James Saunders, dated 26 June 2013
112	Diocese of Maitland clergy appointment document of James Saunders
113	Minutes of meeting of the College of Consultors, dated 2 January 1986; and Minutes of meeting of the College of Consultors, dated 5 June 1986
114	Minutes of combined meeting of Deans and Consultors, dated 8 - 9 September 1988
115	Diocese of Maitland clergy appointment document of William Burston
116	Handwritten file note of Michael Malone, dated 27 April 2004
117	Fax message from Michael Malone to Catholic Commission for Employment Relations (attention Michael McDonald) enclosing Form 5.1 Child Protection Information Details Ombudsman Act 1974 re James Fletcher re AB, dated 27 April 2004

Exhibit Number	Description
118	Email from John Davoren to Michael McDonald 'FW: Re the [AH] matter', dated 19 March 2003
119	Diocese of Maitland clergy appointment document of Allan Hart
120	Diary entries of Allan Hart, dated 31 January – 6 February 1993 and 14 - 20 March 1993
121	Letter from Leo Clarke to Austin Hayes, dated 5 March 1993; and Letter from Leo Clarke to Denis McAlinden, dated 5 March 1993
122	Fax message coversheet from Chancellor's Secretary to Allan Hart
123	Letter from Bishop of Nottingham to Leo Clarke, dated 6 April 1993
124	Pan Australian Travel Agency Invoice – open ticket to Port Moresby for Denis McAlinden
125	Excerpts from the Ombudsman's report re 'An investigation into the Catholic Commission for Employment Relations' systems for reporting and responding to child abuse allegations against employees', dated April 2004
126	Statutory declaration of AH, dated 26 June 2013
127	Letter from Denis McAlinden to Leo Clarke, dated 27 April 1993
128	Letter from Allan Hart to Denis McAlinden, dated 14 May 1993; and Fax message from Allan Hart to Brian Lucas, dated 14 May 1993, attaching letter from Allan Hart to Denis McAlinden, dated 14 May 1993
129	Letter from Allan Hart to Denis McAlinden, dated 18 May 1993
130	Letter from Allan Hart to the Sister Administrator of Poor Sisters of Nazareth, dated 20 May 1994
131	Minutes of meeting of Deans, dated 4 May 1994
132	Letter from R M Castillo to Leo Clarke, dated 29 May 1995
133	Letter from Paul Gamble to Laurie Rolls, dated 28 November 1995; and Letter from Laurie Rolls to Allan Hart, dated 5 January 1996
134	Diary entries of Allan Hart, dated 19 – 25 March 1995 and 11 – 17 June 1995, including page of telephone numbers and addresses
135	Oath of Office of Allan Hart, dated 27 September 1990
136	Handwritten notes by Allan Hart and typescript, undated
137	Letter from Denis McAlinden to Frank Coolahan, dated 30 March 1994
138	Statutory declaration of Allan Hart, dated 16 March 2013
139	Statutory declaration of Allan Hart, dated 25 March 2013
140	Letter from Denis McAlinden to Pedro Bantigue, dated 16 July 1995
141	Letter from R M Castillo to Allan Hart, dated 29 July 1995
142	Affidavit of Brian Lucas, dated 11 March 2013
143	CV of Brian Lucas
144	Letter from John Usher to Brian Lucas, dated 26 October 1987
145	Essay titled, 'When Clergy are Accused by Criminal Acts,' by Kevin Matthews, dated 1988
146	Photograph of Denis McAlinden

Exhibit Number	Description
147	Canon Law Society of Australia and New Zealand, Proceedings of the thirtieth annual conference – ‘Are our Archives safe?’ by Brian Lucas, dated 7-11 October 1996
148	Statutory declaration of Brian Lucas, dated 30 April 2013
149	Affidavit of Brian Lucas, dated 23 July 2013
150	Summons 9(c) served on Brian Lucas, dated 19 July 2013
151	Report on matters discussed at the meeting of the Special Issues Committee of the Australian Catholic Bishops’ Conference, dated 16 November 1992
152	Document titled, ‘Points for Discussion,’ undated
153	Diary entries of Brian Lucas, dated 11-17 June 1995
154	Catholic Archdiocese of Sydney media release, dated 16 March 1992
155	Four Corners media statement of Brian Lucas, dated 5 July 2012
156	Handwritten note by Leo Clarke re Denis McAlinden, dated 27 February 1993
157	Letter from Denis McAlinden to Leo Clarke, dated 13 September 1994
158	Letter from Leo Clarke to Denis McAlinden, dated 8 November 1994
159	Handwritten note by BJ re telephone conversation with Michael Malone, dated 8 June 2002
160	Diocese of Maitland clergy appointment document of Desmond Harrigan
161	Statutory declaration of Desmond Harrigan, dated 12 July 2013
162	NSW Police statement of Robert Searle, dated 19 May 2003
163	Diocese of Maitland clergy appointment document of Robert Searle
164	Letter from John Davoren to William Burston, dated 24 August 1999
165	Report by Dr Adam Frost re William Burston, dated 24 July 2013
166	Diocese of Maitland clergy appointment document of Denis McAlinden
167	Statement of Elizabeth Doyle, dated 2 July 2013
168	Letter from Leo Clarke to A Lauer, dated 18 October 1995
169	Email from Elizabeth Doyle to Jeffrey Little attaching documents associated with the search for documents relevant to alleged purchase of airline ticket for Denis McAlinden in 1993 following request from Jeffrey Little, dated 18 January 2012
170	Email from Elizabeth Doyle to John Davoren with handwritten notations, dated 5 July 2002
171	Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency form, dated 24 August 1999
172	Statement of complaint by AE, dated 5 October 1999
173	Letter to AE from John Davoren, dated 8 October 1999
174	Letter from John Davoren to Michael Malone, dated 8 October 1999
175	Letter from John Davoren to Michael Malone, dated 7 February 2000
176	Letter from John Davoren to Michael Malone, dated 28 February 2000
177	Letter from John Davoren to Michael Malone, dated 31 March 2000
178	Letter from Michael Malone to John Davoren, dated 10 May 2000
179	Statement of complaint by AC, dated 12 June 2002

Exhibit Number	Description
180	Letter from John Davoren to AC, dated 14 June 2002
181	Statutory declaration of Kylie Cronin, dated 2 July 2013
182	Statutory declaration of Malcolm Lanyon, dated 3 July 2013
183	Statutory declaration of Ann Joy, dated 4 July 2013
184	Statutory declaration of Scott Metcalfe, dated 2 July 2013
185	Statutory declaration of Stephen Rae, dated 2 July 2013
186	Statutory declaration of Hamish Fitzhardinge, dated 17 July 2013
187	Statutory declaration of Jillian Kelton, dated 22 July 2013
188	Statutory declaration of Joseph Bianchini, dated 5 April 2013
189	Statutory declaration of Julie Craig, dated 27 June 2013
190	Email from John Davoren to Michael McDonald 'Re [AH] matter,' dated 18 March 2003
191	Email correspondence between Rosanna Harris and Mark Watters, dated 1 – 3 August 2005, attaching Confidential Sexual Abuse Information Dissemination Form, dated 24 August 1999 and email from Mark Watters to Michael Salmon, dated 1 August 2005
192	Statutory declaration of Michael Bowman, dated 18 July 2013
193	Letter from the NSW Crown Solicitor to Michael Bowman, dated 15 July 2013
194	NSW Police statement of William Callinan, dated 12 June 2003
195	Diary entry of William Callinan, dated 20 June 2002
196	Diary entry of William Callinan, dated 19 March 2003
197	Diary entries of William Callinan, dated 17 and 19 May 2003
198	Diary entry of William Callinan, dated 23 May 2003
199	Statement of Helen Keevers, dated 15 February 2013
200	NSW Police COPS Report C 7532960 – Sexual Offence – Victim AE, dated 28 November 2010
201	Email from Peter Messer to Helen Keevers, dated 27 October 2005
202	Email from Peter Messer to Angela Ryan (cc: Helen Keevers), dated 28 October 2005
203	File note by Helen Keevers re Denis McAlinden's address, dated 4 November 2005
204	Towards Healing: principles and procedures in responding to complaints of abuse against personnel of the Catholic Church of Australia, dated December 2000
205	Towards Healing December 2000 amendments May - June 2003
206	Statutory declaration of Sean Tynan, dated 27 June 2013
207	Statutory declaration of Sean Tynan, dated 29 July 2013
208	Letter from Marita Wright to Michael Malone, dated 1 February 2008 – non-publication order applies as of 23 August 2013
209	Report of Dr Rodger Austin, dated 3 July 2013
210	Letter from the NSW Crown Solicitor to Dr Rodger Austin, dated 19 June 2013
211	Document titled 'Instruction of the Supreme Sacred Congregation of the Holy Office', Vatican Polyglot Press, dated 16 March 1962
212	Duty book entry of Jason Robbs, dated 30 December 2003

Exhibit Number	Description
213	Statutory declaration of Maureen O’Hearn, dated 3 June 2013
214	Statutory declaration of William Wright, dated 29 July 2013
215	Letter from William Wright to the Catholic Diocese of Maitland-Newcastle, dated 1 March 2013
216	TOR 1 Tender bundle
217	Statutory declaration of Shane Frearson, dated 23 June 2013
218	Statutory declaration of Janice Wilson, dated 14 August 2013
219	TOR 2 Tender bundle
220	Statutory declaration of Michael Salmon, dated 31 July 2013
221	Statutory declaration of Michael Salmon, dated 26 June 2013
222	Statement of BI, dated 13 August 2013
223	Medical records of Leo Clarke, various dates
224	Terms of Reference of Strike Force Lantle assigning Kirren Steel and Jason Freney, undated
225	Terms of Reference of Strike Force Lantle assigning Jeffrey Little, undated
226	Statutory declaration of John Usher, dated 9 August 2013
227	Email from John Usher to Michael Casey, dated 20 June 2012
228	Summons 2(c) served on Peter Fox, dated 23 September 2013
229	Letter from Greg Willis to the NSW Crown Solicitor, dated 3 October 2013
230	Statutory declaration of Matthew Meares, undated
231	Open letter from Peter Fox to Premier Barry O’Farrell, undated
232	Open letter from Peter Fox to Premier Barry O’Farrell published in the Newcastle Herald on 8 November 2012
233	Statutory declaration of Peter Gogarty, dated 18 October 2013
234	Article titled ‘Pell urged to quit over abuse cover-up claims’ by Josephine Tovey, dated 9 November 2012, <i>The Border Mail</i>
235	Wikipedia entry re ‘The Barber’
236	Urban dictionary entry re ‘Penske file’
237	Memorandum from Annette Henderson to Dennis Jordan, dated 5 March 2012 attaching Accountable Forms Register for Duty Books and Archiving spreadsheet for Duty Books from Central Hunter LAC
238	Statement of BD, dated 2 August 2008
239	The Australian Catholic Directory List of Deceased Clergy in Australia, 1788 – 2013 entry re Peter Quinn, dated 23 August 2008
240	Letter from Helen Keevers to Laurie Rolls re coverage with CGU for complaints by AZ and AX, dated 29 October 2008
241	Joint pastoral message to the people of the Dioceses of Hamilton and Maitland-Newcastle from Denis Browne and Michael Malone, dated 27 November 2008 and letter from Denis Browne regarding McAlinden, dated 4 December 2008

Exhibit Number	Description
242	Statutory declaration of William Callinan, dated 23 November 2013 and letter from NSW Crown Solicitor to William Callinan, dated 22 November 2013
243	Profile of Clerics Accused or Convicted of Child Sexual Assault, undated
244	Summons 19(a) served on the Catholic Schools Office of the Diocese of Maitland-Newcastle on 25 January 2013 re documents relating to Denis McAlinden and response, dated 8 February 2013
245	Summons 19(b) served on the Catholic Schools Office of the Diocese of Maitland-Newcastle on 25 February 2013 re documents relating to James Fletcher and response, dated 7 February 2013
246	Relevant correspondence between the NSW Crown Solicitor's Office and the Diocese of Geraldton, Western Australia, dated 18 February-11 March 2013
247	Relevant correspondence between the NSW Crown Solicitor's Office and the Diocese of Bunbury, Western Australia, dated 18 February-5 March 2013
248	Relevant correspondence between the NSW Crown Solicitor's Office and the Diocese of Hamilton, New Zealand, dated 20 March-16 April 2013
249	Relevant correspondence between the NSW Crown Solicitor's Office and the Archdiocese of Mount Hagen, Papua New Guinea, dated 25 March-24 April 2013
250	Relevant correspondence between the NSW Crown Solicitor's Office and the Diocese of Mendi, Papua New Guinea, dated 25 March-31 May 2013
251	Letter from the NSW Crown Solicitor to P Taval of the Diocese of Kerema, dated 25 March 2013
252	Relevant correspondence between the NSW Crown Solicitor's Office and the Diocese of San Pablo, the Philippines, dated 25 March-9 May 2013
253	Relevant correspondence from the NSW Crown Solicitor's Office to the Congregation for the Doctrine of the Faith, Rome, Italy, dated 29 August and 22 October 2013
254	Relevant correspondence between the NSW Crown Solicitor's Office and the Apostolic Nunciature Australia, Manuka, ACT, dated 30 August -14 November 2013
254(a).	Letter from Paul Gallagher to the NSW Crown Solicitor attaching documents relating to Denis McAlinden and James Fletcher, dated 6 December 2013
255	Statutory declaration of Sean Tynan, dated 4 December 2013
256	Summons 11(b) served on Australian Catholic Bishops Conference re documents concerning James Fletcher or Denis McAlinden and response, dated 6-25 February 2013
257	Excerpts of private hearing transcript of Ray Hanley, dated 26 February 2013
258	Summons 5(b) served on the NSW Office of the Director of Public Prosecutions re documents relating to a brief of evidence prepared by Fox in relation to possible charges to be preferred against Michael Malone and response, dated 20 March 2013
259	Statutory declaration of Andrew Cooley, dated 26 June 2013
260	Letter from Michael Greene to the NSW Crown Solicitor re Shaun McLeod, dated 12 December 2013
261	Statutory declaration of Todd Clayton, dated 16 December 2013 and letter from the NSW Crown Solicitor to Michael Greene, dated 3 December 2013
262	Statutory declaration of Lesley Honeyman, dated 17 December 2013
263	Statutory declaration of UR6, dated 29 November 2013

Exhibit Number	Description
264	Statutory declaration of Jason Freney, dated 17 December 2013
265	Excerpts from the hearing of <i>R v Denis McAlinden</i> (No 672 of 1992), dated 4 March - 16 July 1992 produced by the Office of the Director of Public Prosecutions for Western Australia and related correspondence, dated 31 January to 7 February 2013
266	Excerpt of private hearing transcript of AO, dated 26 March 2013 and related private hearing exhibit 99, Submission of AO, dated 14 January 2013
267	Excerpt of private hearing transcript of BM, dated 15 April 2013 and related private hearing exhibit 125, statement of BM, dated 10 March 2013
268	Summons 2(d) served on Peter Fox, dated 4 December 2013 and relevant correspondence dated 4 - 12 December 2013
269	Summons 2(e) served on Peter Fox, dated 9 December 2013
270	Summons 1(z) served on the NSW Police Commissioner, dated 4 December 2013 and response, dated 13 December 2013
271	Statutory declaration of Helen Keevers, dated 22 December 2013 and letter from the NSW Crown Solicitor to Helen Keevers, dated 17 December 2013
272	Affidavit of AJ, dated 23 April 2013
273	Email correspondence between AJ and Joanne McCarthy, ending with email from AJ to Joanne McCarthy re '1995', dated 14 February 2013
274	Affidavit of Joanne McCarthy, dated 7 June 2013
275	Email from Peter Fox to Joanne McCarthy, dated 9 April 2011 attaching the NSW Police statement of AJ, dated 29 June 2010
276	Email correspondence ending with email from Peter Fox to Joanne McCarthy, dated 10 December 2010
277	Affidavit of McCarthy, dated 8 October 2013
278	NSW Police statement of Glen Walsh, dated 10 June 2004
279	File note by Michael Malone re phone call from Glen Walsh, dated 23 April 2004
280	File note by Michael Malone re phone call from James Saunders, dated 27 April 2004
281	Fax message from Michael Malone to Catholic Commission for Employment Relations (attention Michael McDonald) enclosing Form 5.1 Child Protection Information Details Ombudsman Act 1974 re James Fletcher re AB, dated 27 April 2004
282	Letter from Michael Malone to BG, dated 27 August 2004
283	Statutory declaration of BAZ, dated 2 August 2013
284	Statutory declaration of AP, dated 16 August 2013
285	Statutory declaration of Paula Redgrove, dated 28 August 2013 and letter from the NSW Crown Solicitor to Richard Leder, dated 7 August 2013
286	Article titled 'In the name of the fathers' by Joanne McCarthy, dated 10 June 2006, the <i>Newcastle Herald</i>
287	Article titled 'Priest left arrest warrant, decades of accusations' by Joanne McCarthy, dated 29 September 2007, the <i>Newcastle Herald</i>
288	Article titled 'Secrets of the bishops' by Joanne McCarthy, dated 27 April 2010, the <i>Newcastle Herald</i>

Exhibit Number	Description
289	Handwritten notes by Kristi Faber, undated
290	Article titled 'Newcastle's Police 'Strikefarce'' by Joanne McCarthy, dated 23 December 2010, the <i>Newcastle Herald</i>
291	Excerpts from TOR 2 public hearing transcript of evidence of Jacqueline Flipo, dated 10 July 2013
292	Excerpts from TOR 2 public hearing transcript of evidence of Mark Watters, dated 1 July 2013
293	Excerpts from TOR 2 public hearing transcripts of evidence of Peter Fox, dated 2 July 2013 and 5 July 2013
294	Duty book of Kirren Steel, dated 21 September 2010 – 9 December 2010
295	Findings in the inquest into the death of James Fletcher, dated 5 May 2006
296	Brief envelope re NSW Police Force COPS Event E8026529, dated 1999
297	Excerpts from TOR 1 public hearing transcript of evidence of Wayne Humphrey, dated 25 June 2013
298	Excerpts of the statutory declaration of Ann Joy, dated 4 July 2013
299	Excerpts from TOR 1 public hearing transcript of evidence of Troy Grant MP, dated 8 May 2013
300	Private hearing transcript of evidence of Sister Lauretta Baker, dated 19 April 2013
301	Report of Dr Rodger Austin, dated 16 January 2014 and letter from the NSW Crown Solicitor to Dr Rodger Austin, dated 9 January 2014
302	Remarks on sentencing of Judge Armitage in the matter of <i>Regina v James Patrick Fletcher</i> , dated 11 April 2005
303	NSW Police Force COPS Information Report Summary I7885027, dated 18 November 1999
304	Excerpts of the NSW Police Statement of AJ, dated 29 June 2010
305	Excerpts of TOR 2 in camera transcript of evidence of AJ, dated 8 July 2013
306	Excerpts of TOR 2 in camera transcript of evidence of Michael Malone, dated 22 November 2013
307	Letter from Makinson & d'Apice to the NSW Crown Solicitor regarding Monsignor Frank Coolahan, dated 30 January 2014
308	Excerpts of TOR 1 public hearing transcript of evidence of Kristi Faber, dated 28 June 2013.
309	Excerpts from TOR 2 in camera transcript of evidence William Wright, dated 12 August 2013
310	Letter from Mr Sean Tynan to the NSW Crown Solicitor regarding the date range of the abuse of victims AK and AL by Denis McAlinden, dated 6 February 2014
311	Letter from Justin Bianchini to AR, dated 8 November 2013
312	Letter from William Wright to AR, dated 16 January 2014
313	Handwritten note of Michael Malone re BI and AH, dated 13 December 2000
314	Handwritten note of Michael Malone re William Burston conversation with BI re AH, dated 3 January 2001
315	NSW Police statement of BI, dated 8 May 2003
316	NSW Police statement of BI, dated 24 June 2003

Exhibit Number	Description
317	Statement of BI, dated 21 June 2013
318	Handwritten note by Michael Malone re BI and AH, dated 13 December 2000
319	Supplementary expert report of Dr Rodger Austin, dated 13 February 2014 and letter from the NSW Crown Solicitor to Dr Rodger Austin, dated 11 February 2014
320	Letter from Maureen O'Hearn to the NSW Crown Solicitor, dated 20 May 2014

Dramatis Personae

AB	Victim of Fletcher from 1982 to 1984 in Maitland
ABC	Victim of McAlinden from 1956 to 1958 in Singleton
ABI	Victim of McAlinden in 1986 and 1987 in Adamstown
AC	Victim of McAlinden from 1951 to 1956 in Taree
AE	Victim of McAlinden in 1953 and 1954 in Raymond Terrace; died 11 November 2007
AH	Victim of Fletcher from 1989 to 1994 in Dungog
AJ	Victim of McAlinden in 1960 or 1961 in Singleton
AK	Victim of McAlinden from 1961 to October 1962
AL	Victim of McAlinden from 1961 to October 1962
AO	Victim of McAlinden in 1975 and 1976 in Forster-Tuncurry
AP	Victim of McAlinden from 1986 to 1996/1997 in Adamstown
AQ	Victim of McAlinden in 1986 and 1987 in Adamstown
AR	Victim of McAlinden in 1991 in Western Australia
Austin, Dr Rodger	Former priest and canon law expert to the Commission
Bantigue Navidad, Monsignor Pedro	Bishop of San Pablo, Philippines, from 1967 to 1995; died 20 November 2012
BD	Husband of AE
BG	Sister of AB
BI	Father of AH; former employee of the Maitland–Newcastle Diocese
BJ	Mother of AH
BL	Mother of AO
BM	Father of AO
Bowman, Michael	Director of Catholic schools from 1996 to 2004
Brambilla, Archbishop Franco	Apostolic Pro Nuncio in 1995
Brown, Detective Senior Constable Donald	Former police officer serving from 1990 to 2010; assisted in taking statement from Father Searle in May 2003 as part of the Fletcher investigation while attached to the Maitland Detectives Office
Burston, Father William (Bill)	Priest of the Maitland-Newcastle Diocese from 1970; Vicar General from 1996 to 2001

Callinan, James (Jim)	Director of Catholic Education in the Catholic Schools Office in the Diocese of Maitland-Newcastle in 1996 and 1997
Callinan, William	Principal St Brigid's Catholic Primary School at Branxton and St Mary's Catholic Infants School at Greta in 2003
Castillo, Father Mario Rafael	Episcopal Vicar of the San Pablo Diocese, Philippines
Clancy, Cardinal Edward	Archbishop of Sydney from 1983 to 2001
Clarke, Bishop Leo	Bishop of the Maitland-Newcastle Diocese from 1976 to 1995; died 3 June 2006
Clayton, Detective Senior Constable Todd	Attached to Lake Macquarie Local Area Command since April 2012; worked on Strike Force Georgiana with Detective Sergeant Faber
Coolahan, Monsignor Frank	Priest of the Maitland-Newcastle Diocese; Director of Catholic Education at Catholic Schools office in 1976; died 27 August 2000
Cotter, Monsignor Patrick	Vicar Capitular of the Maitland-Newcastle Diocese from September 1975; Vicar General of the Maitland-Newcastle Diocese from June 1976; Dean of Eastern Deanery from 1988; died 28 July 2007
Davoren, John	Director of the NSW Professional Standards Office of the Catholic Church from 1997 to 2003
Doyle, Elizabeth	Employee of the Maitland-Newcastle Diocese from 1993; secretary to Bishop Leo Clarke; personal assistant to Bishop Malone and current Bishop Wright
Dunn, Inspector Fay	Acting Staff Officer to Northern Region Commander in February 2010
Faber, Detective Sergeant Kristi	Attached to Lake Macquarie Local Area Command; supervisor of Strike Force Georgiana since April 2008
Fitzhardinge, Hamish	Solicitor in the Newcastle Office of the Director of Public Prosecutions
Flipo, Detective Senior Constable Jacqueline	Attached to Lake Macquarie Local Area Command since 2001; officer in charge of investigating claims made by AF against McAlinden
Fletcher, Father James	Priest of the Maitland-Newcastle Diocese; convicted of nine offences of sexual abuse of AH and sentenced to ten years imprisonment on 6 December 2004; died 7 January 2006
Fox, Detective Chief Inspector Peter	Attached to Port Stephens Local Area Command as Crime Manager; on leave from duties since June 2012
Freney, Detective Senior Constable Jason	Attached to Newcastle City Local Area Command since June 2010; assigned to Strike Force Lantle from November 2010 to October 2011
Gaines, Bishop Edward	Bishop of Hamilton, New Zealand, from 1980 to 1994; died 6 September 1994
Gallagher, Archbishop Paul	Apostolic Nuncio in Australia since 2012
Gleeson, Bishop Edmund	Bishop of the Maitland-Newcastle Diocese (formerly known as the Diocese of East Maitland) from 1929 to 1956; died 4 March 1956

Gralton, Superintendent John	Commander of Newcastle City Local Area Command since May 2011
Grant MP, Troy	Senior Constable with the New South Wales Police from 1988 to 2008; had carriage of the investigation into Father Vincent Ryan from 1995 to 1997
Gogarty, Peter	Victim of Fletcher from 1974 to 1978 in Maitland
Grono, Detective Senior Constable Andrew	Former detective attached to the Busselton Detectives Office Western Australia as at 2005
Haggett, Superintendent Charles	Commander of Port Stephens Local Area Command in 2010; on extended sick leave since May 2012
Harrigan, Father Desmond	Priest of the Maitland-Newcastle Diocese since 1968; parish priest at Lochinvar from January 1995 to August 2002
Hart, Monsignor Allan	Priest of the Maitland-Newcastle Diocese since 1966; Vicar General from 1993 to 1995
Hatton MP, John	Independent member of the New South Wales Legislative Assembly and South Coast from 1973 to 1995
Hickey, Archbishop Barry	Archbishop of Perth from 1991 to 2012
Humphrey, Detective Chief Inspector Wayne	Attached to Newcastle City Local Area Command since 2009; appointed Crime Manager on 20 December 2010 with supervisory oversight of Strike Force Lantle from that time until March 2011; also acting Commander of Newcastle City LAC at various times between August and November 2010
Jacob, Detective Inspector Paul	Attached to the Sex Crimes Squad as Manager of the Sex Crime Team, State Crime Command since 2005
Johns, Dr Derek	Psychiatrist appointed to assess McAlinden in 1987
Joy, Detective Inspector Ann	Attached to the New England Local Area Command as Crime Manager; attached to Maitland Local Area Command from 1990 to 2004 for general criminal investigatory duties
Kalisz, Bishop Raymond	Bishop of Wewak, Papua New Guinea from 1980 to 2002; died 12 December 2010
Keevers, Helen	Manager of the Child Protection and Professional Conduct Unit of the Maitland-Newcastle Diocese (Zimmerman Services) between 1999 and June 2009
Kelton, Jillian	Senior solicitor in the Newcastle Office of the Director of Public Prosecutions
Kerlatec, Detective Superintendent John	Commander of Sex Crimes Squad, State Crime Command
Larkey, Janice	See: Janice Wilson
Little, Detective Sergeant Jeffrey	Attached to Newcastle City Local Area Command since 2010; appointed lead investigator of Strike Force Lantle on 30 December 2010

Lloyd QC, Ian	Former Senior Crown Prosecutor and expert to the Commission
Lucas, Father Brian	Member of the Special Issues Committee from 1989; Secretary to Archdiocese of Sydney in 1993; General Secretary of the Australian Catholic Bishops Conference
McAlinden, Father Denis	Priest of the Maitland-Newcastle diocese with a history of child sexual abuse that spanned five decades; died 30 November 2005
McCarthy, Joanne	Senior journalist with the Newcastle Herald since August 2002
McDonald, Michael	Executive Director of the Catholic Commission for Employment Relations
McGuinness, Bishop James	Bishop of Nottingham, United Kingdom from 1974 to 2000; died 6 April 2007
McKey, Detective Sergeant Rachel	Investigations Co-ordinator, Sex Crimes Squad, State Crime Command, reporting to Detective Chief Inspector Jacob
McLeod, Detective Senior Constable Shaun	Formerly attached to Lake Macquarie Local Area Command, took sick leave in July 2010 and later medically discharged from the NSW Police Force
Malone, Bishop Michael	Bishop of the Maitland-Newcastle Diocese from 1995 to June 2011; Coadjutor Bishop to Bishop Clarke from November 1994 to 1995
Matthews, Inspector David	Attached to Port Stephens Local Area Command; acting Commander from 5 November 2010 to 26 November 2010
Meares, Inspector Mathew	Professional Standards Duty Officer at Port Stephens Local Area Command since 2011
Metcalfe, Detective Sergeant Scott	Attached to Port Stephens Local Area Command since 2008
Mitchell, Assistant Commissioner Max	Assistant Commissioner of Police since May 2012; Commander of Newcastle City LAC in 2010
Müller, Archbishop Gerhard	Prefect of the Congregation for the Doctrine of the Faith as at 2013
NP, NP2, NP3, NP4, NP5, NP6, NP7	Particular persons associated with the Catholic Church and who are under investigation by NSW police force and/or facing criminal charges in relation to child sexual assault
O'Hearn, Maureen	Coordinator of Healing and Support, Zimmerman Services, Diocese of Maitland-Newcastle since December 2007
Parker, Detective Chief Inspector Graeme	Attached to Newcastle City Local Area Command; Region operations manager in 2010; Crime Manager since March 2011 with oversight of Strike Force Lantle investigation
Quinn, Bishop Peter	Bishop of Bunbury, Western Australia from 1982 to 2000; died 23 August 2008

Quinn, Detective Sergeant Justin	Investigations Manager at Newcastle City Local Area Command in 2010; also acting Inspector and Crime Manager at various times in 2010; left NSW Police Force in August 2011
Rae, Superintendent Craig	Commander of Lake Macquarie Local Area Command in April 2010 and commanding officer of Detective Inspector Waddell
Rae, Acting Inspector Stephen	Officer of Northern Region Command, Police Prosecutions Branch; acting staff officer to Assistant Commissioner York in April 2010
Redgrove, Sister Paula	Retired member of the Order known as the Institute of the Sisters of Mercy of Australia; joined the order in approximately 1933
Reid, Inspector Craig	Complaints investigator at Port Stephens Local Area Command in 2010
Robbs, Detective Senior Constable Jason	Former police officer between 1988 to 2008, principally attached to Lower Hunter Local Area Command; under supervision of Detective Chief Inspector Fox in 2003
Rolls, Laurie	Employee of Catholic Church Insurances Limited in 1995 and 1996
Ryan, Father Vincent	Priest of the Maitland-Newcastle Diocese convicted of multiple child sexual assault offences in 1997
Salmon, Michael	Director of the Professional Standards Office
Saunders, Father James (Jim)	Priest of the Maitland-Newcastle Diocese from 1963; Vicar General from 2001 to 2006 and acting Vicar General from August/September 2008 to June 2009
Schmidt, Bishop Firmin	Bishop of Mendi, Papua New Guinea, from 1966 to 1995; died 4 August 2005
Searle, Father Robert	Priest of the Maitland-Newcastle Diocese since 1974; Parish priest at Nelson Bay from December 1997 to February 2004
Stanwell, Michael	Principal of St Joseph's Primary School in Merriwa from 1986 to 1989
Steel, Detective Sergeant Kirren	Formerly attached to Newcastle City Local Area Command; officer in charge of Strike Force Lantle from October to December 2010
Tayler, Detective Chief Inspector Brad	Crime Manager at Newcastle City Local Area Command from 2008; took extended sick leave from December 2010; medically discharged from the NSW Police Force in December 2011
Thomas, Bishop Francis	Bishop of Geraldton, Western Australia from 1962 to 1981; died 5 August 1985
Toohy, Bishop John	Bishop of the Maitland-Newcastle Diocese (formerly known as the Diocese of East Maitland) from 1956 to 1975; Coadjutor Bishop to Bishop Gleeson from 1948 to 1956; died 24 September 1975
Townsend, Inspector Anthony	Operations Manager, Northern Region Command since October 2009; reporting to Assistant Commissioner York
Tynan, Sean	Manager of Maitland-Newcastle Diocese child protection and healing services unit (Zimmerman Services) since 2009

Ure, Detective Chief Superintendent John	Commander of the Northern Region Major Crimes Squad in 1995; supervisor to Troy Grant throughout Father Vincent Ryan investigation
Usher, Monsignor John	Chancellor of the Archdiocese of Sydney from 2005
Walsh, Father Glen	Priest of the Maitland-Newcastle Diocese from 1996
Waddell, Detective Inspector David	Crime Manager at Lake Macquarie Local Area Command in 2010
Watters, Detective Inspector Mark	Formerly attached to Lower Hunter Local Area Command from 1997 to 2000; based at Maitland police station in 1999; involved in investigation of AE's sexual abuse complaint against McAlinden
White, Miriam	Former administrative officer in NSW Police Force in Port Stephens Local Area Command as at 2010
Wilson, Janice	Former Sister Janice Larkey at Saint Joseph Order at Lochinvar, Maitland-Newcastle Diocese until 2003
Wright, Bishop William	Bishop of the Maitland-Newcastle Diocese from June 2011
York, Assistant Commissioner Carlene	Northern Region Commander since February 2010



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