

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 Friday, 17 May 2013 at 9.53am
(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

1 THE COMMISSIONER: Mr Hunt.

2

3 MR HUNT: Commissioner, before we call the first witness
4 this morning, I want to amend a previous application in
5 relation to non-publication orders. In exhibit 15, which
6 is a complaint document, there is the name of an officer,
7 and the position was reached that the name of that officer
8 should be [Detective X], and I'd ask that that
9 non-publication order remain. Apart from that, in other
10 material that refers to Detective Sergeant Kirren Steel,
11 that that material can have that name attaching to it in
12 the transcript and otherwise.

13

14 THE COMMISSIONER: Thank you, Mr Hunt. Pursuant to
15 section 8 of the Special Commissions of Inquiry Act 1983,
16 I continue the non-publication order in relation to
17 Detective Sergeant Steel, that she is to be referred to as
18 [Detective X] in exhibit 15, but, in all other documents or
19 transcript, her name is permitted to be published; is that
20 right.

21

22 MR HUNT: Thank you.

23

24 MS LONERGAN: I seek your leave to interpose Mr Ian Lloyd.
25 I apprehend he will be a fairly short witness, so apologies
26 to Superintendent Mitchell, but it should not take too
27 long. I call Ian Lloyd.

28

29 <IAN SCOTT LLOYD, sworn: [9.55am)

30

31 <EXAMINATION BY MS LONERGAN:

32

33 MS LONERGAN: Q. Mr Lloyd, would you state your full
34 name for the record?

35 A. Ian Scott Lloyd.

36

37 Q. Mr Lloyd, you are a Queen's Counsel?

38 A. I am.

39

40 Q. You have been a Queen's Counsel since September 1989?

41 A. I have.

42

43 Q. And you specialise in criminal law?

44 A. I do.

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46 Q. You have had many years as a Crown Prosecutor?

47 A. I have.

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Q. I'll go through your qualifications in a little more detail shortly. You have prepared an expert report for the purposes of evaluating the Strike Force Lantle brief for the assistance of this Special Commission of Inquiry?

A. I have.

Q. That report is dated 7 May 2013.

A. Yes.

Q. You were provided with a qualifying letter by the Crown Solicitor's Office to assist you in consideration of material and relevant issues?

A. Yes.

Q. I show you a copy of a letter dated 1 May 2013.

A. Yes, that's a copy of what was sent to me.

MS LONERGAN: I tender at this stage, Commissioner, a copy of the letter from the Crown Solicitor's Office of 1 May 2013 as well as copy of Mr Lloyd's report together as an exhibit.

THE COMMISSIONER: Thank you, Ms Lonergan. The letter from the Crown Solicitor's Office to Mr Ian Lloyd QC of 1 May 2013 together with the report by Mr Lloyd will be admitted and marked exhibit 23.

MS LONERGAN: Excuse me, Commissioner, one matter is being cleared up. Commissioner, can I just make the qualifying letter an MFI for the moment until certain matters are clarified.

THE COMMISSIONER: The tender will now be restricted to the expert opinion report of Mr Ian Lloyd QC and that's exhibit 23, and the letter will now be MFI6.

EXHIBIT #23 EXPERT OPINION REPORT OF IAN LLOYD QC DATED 7/5/2013

MFI #6 LETTER FROM THE CROWN SOLICITOR'S OFFICE TO IAN LLOYD QC, DATED 1/5/2013

MS LONERGAN: Q. You were asked to review material that comprised the brief of evidence for Strike Force Lantle?

A. Yes.

1 Q. Can you outline for those present in court
2 approximately what the material comprised in terms of
3 volume?
4 A. I was given, as part of the brief of evidence and
5 materials supplied to me, what I understood to be the brief
6 of evidence that went to the DPP. It comprised some
7 12 volumes of documents extending to almost 3,000 pages.
8
9 Q. Are you able to state how many interviews or witness
10 statements were within the material, from your
11 recollection, approximately?
12 A. Obviously I didn't count them, but there would have
13 been dozens of records of interview and dozens of witness
14 statements.
15
16 Q. You reviewed that material with some care?
17 A. I read every word of the brief with care and
18 attention.
19
20 Q. How long did that take you to complete that task?
21 A. Three-plus days.
22
23 Q. I'm going to step back to your background and
24 experience. First of all, you were admitted to the bar in
25 1977?
26 A. I was.
27
28 Q. And prior to that you had qualified at the University
29 of Sydney with a honours degree in law?
30 A. Yes.
31
32 Q. You practised at the English bar as well as the Hong
33 Kong bar as well as the New York bar from 1985 to 1986?
34 A. I'm admitted in New York, but I haven't practised
35 there, although I did extradition work for the Hong Kong
36 government in New York.
37
38 Q. You took silk in New South Wales in September 1989?
39 A. I did.
40
41 Q. From 1977 until 1980 you practised in crime at the New
42 South Wales bar?
43 A. Yes.
44
45 Q. And from mid-1980 until late 1988 you practised as a
46 Crown Counsel with the Hong Kong government?
47 A. I did. I was a base grade Crown Prosecutor for

1 several years. I was then promoted to senior Crown
2 Counsel. I ended up heading the fraud unit at the Crown
3 Prosecutor's chambers in Hong Kong.
4

5 Q. For those not familiar with that type of title, your
6 role was evaluating briefs prepared for prosecution of
7 criminal offences?

8 A. On a day-to-day basis as a Crown in Hong Kong, as well
9 as in Sydney, in order to do my work, I was reading police
10 briefs of evidence on a day-to-day basis.
11

12 Q. Did briefs that you have reviewed to date include
13 briefs relating to sexual assault of children?

14 A. Unfortunately on an increasing basis.
15

16 Q. Has your expertise and brief review also extended to
17 concealing offences?

18 A. Concealing offences aren't so common as sexual assault
19 offences. I think, over the years as a Crown both in Hong
20 Kong and Australia, approaching 15 years of experience,
21 I probably would have reviewed and/or prosecuted 20 to
22 30 cases of concealing offences.
23

24 Q. From mid September 1980 until 1995, you practised as a
25 Crown Prosecutor working within the office of the New South
26 Wales department of Public Prosecutions.
27

28 THE COMMISSIONER: Director of Public Prosecutions.
29

30 MS LONERGAN: Director of Public Prosecutions, thank you,
31 Commissioner.
32

33 Q. You were also promoted to senior Crown Prosecutor for
34 New South Wales during that time period?

35 A. Yes.
36

37 Q. In your role as senior Crown Prosecutor, did you have
38 a role in evaluating briefs - that is police briefs
39 prepared for prosecution - that were to be dealt with by
40 staff under your supervision as well as your own briefs?

41 A. As senior Crown Prosecutor, my role was probably
42 80 per cent advocacy in the courtroom and, at that level,
43 I was mainly prosecuting homicide cases of some degree of
44 noteworthiness. The other 20 per cent was administrative
45 work, supervising the work of probably 60 Crown prosecutors
46 and reading and reviewing complex briefs of evidence
47 prepared by the police.

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Q. Is it fair to say that, on a daily basis, you had cause to be reviewing and evaluating the thoroughness and quality of police briefs?

A. Indeed. I think the more serious the cases that I was dealing with, the more thoroughly I reviewed the briefs of evidence, because there was more at stake both for the police and the alleged complainant or victim of crime.

Q. You had a period as general counsel for the New South Wales Independent Commission Against Corruption. Was there also a prosecutorial aspect to that work?

A. I was one of the first general counsel appointed at ICAC and at the time I was on secondment from the state Crown Prosecutor's. That secondment came about because of my work with ICAC in Hong Kong. ICAC in Hong Kong is a prosecuting agency. In New South Wales it's not; it really is an investigative exposing situation, as is clear from, I suppose, the current investigation being conducted by ICAC.

Q. In 1995 you resigned from the government-related senior Crown Prosecutor position and went to the private bar?

A. Indeed. I thought the time had come after many years of government service to go back into private practice.

Q. Whilst at the private bar you have appeared for accused and defended them?

A. Since I left the Crown, estimating the breakdown on a percentage basis of my work, it would probably be, in New South Wales, 80 per cent defending, 20 per cent prosecuting for various government departments. In Hong Kong, where I still practise, probably 80 per cent of my work would be prosecuting serious fraud trials.

Q. You also hold some academic positions and have in the past. Could you outline what your academic positions are and the subjects you lecture in and/or write about?

A. I think in most of my career whilst practising law full time, I've always had academic positions on a part-time basis. Most recently I lectured part-time at Notre Dame University in criminal law, and I most recently was appointed an adjunct professor at Newcastle University and I'm about to present in the second semester this year a series of lectures on evidence.

1 Q. You were a justice of the Fiji Court of Appeal for a
2 period?

3 A. I was a justice of the Fiji Court of Appeal. That
4 position came to an end when I sat on the Fiji Court of
5 Appeal and myself and two others presiding handed down a
6 judgment declaring the government of Commander Bainimarama.
7 illegal and the President, the next day, sacked us all.
8

9 Q. Mr Lloyd, I'm going to move to the task that you
10 accomplished for the assistance of the Commission.
11 Paragraph 9 of your report deals with the background, as
12 you read it, to the investigative tasks completed by
13 Detective Sergeant Little.
14

15 Before we come to that, by way of preliminary
16 observation, before the matter got to Detective Sergeant
17 Little, this Commission has evidence that the brief, in its
18 infancy, was started off by some material being provided to
19 the police in late April 2010 and there were various
20 machinations through various police hierarchy, decisions
21 being made about what local area command should pursue the
22 investigation, the extent to which the sex crimes unit of
23 the State Crime Command should assist or investigate, and
24 there was a period of about five months before the matter
25 was - with an officer and charge and investigations
26 commenced. Are you with me on that?

27 A. I understand the background.
28

29 Q. In your experience, and bearing in mind the matters
30 that were being investigated, what's your opinion about
31 that period of machinations in the background and whether
32 that was something that was out of the ordinary for a
33 matter of this nature?

34 A. Given the historical nature of the complaints and
35 given the complexity of the matter, I don't see that as
36 unsurprising and I don't see that as unreasonable.
37

38 Q. In paragraph 9 of your report you outline your
39 evaluation of the "policemanning", to use a sexist term -
40 "personing" of the investigation. You mention the role of
41 Detective Inspector Paul Jacob providing expert
42 consultation to Strike Force Lantle. Are you aware of
43 Detective Inspector Jacob's qualifications and background
44 in broad terms?

45 A. I am. I suppose I must declare an interest here. In
46 my time as a Crown Prosecutor I remember, in prosecuting
47 homicide cases, on the odd occasion Inspector Jacob had

1 prepared the brief of evidence which I later prosecuted.
2 If you are asking me about the interplay between the
3 Newcastle investigators and Inspector Jacob --
4

5 Q. Yes, whether that was appropriate?

6 A. I would have thought it was a perfect marriage. Given
7 that the police made the decision that the matter would be
8 investigated by the Newcastle Local Area Command and given
9 that I have seen documentation where at least some police
10 in Newcastle thought that the matter might better go to
11 Sydney to the specialist squad, I would have thought, given
12 the decision to keep it in Newcastle, commonsense prevailed
13 and they used Inspector Jacob as a consultant, so you
14 really got the best of both worlds.
15

16 Q. In paragraph 10 of your report you raise the matter of
17 the need to avoid mission creep in an effort to complete
18 the investigation in an appropriate fashion. Can you
19 explain for the assistance of those in court the
20 ramifications, as you see it, and as you have seen it in
21 your role as a prosecutor, of mission creep?

22 A. Well, when any strike force or task force is set up,
23 it's crucial to keep in mind what is the subject or the
24 focus of the investigation. I've read the terms of
25 reference which were promulgated by the police. There was
26 an initial one containing complaints by three complainants.
27 The terms of reference were, shortly thereafter, slightly
28 amended to include a fourth complainant.
29

30 It became clear, though, once investigations
31 commenced, that many other alleged victims of sexual
32 assault at the hands of the clergy were coming forward. If
33 the strike force was to investigate these additional
34 complaints by new alleged victims, clearly the
35 investigation could have gone on for ever and given that
36 there was some concern that the strike force conduct its
37 investigations in a timely fashion, it would have been very
38 unlikely for that to occur if it had taken on board all new
39 complaints by newly-identified alleged victims.
40

41 Q. Are problems created for prosecutors if an
42 investigation is conducted in a way where there are no
43 clearly defined parameters of investigation?

44 A. I don't think it's so much a problem for the
45 prosecutors, who can deal with any brief of evidence given
46 to them, but it is a real problem for the police in trying
47 to confine an investigation to what it is essentially about

1 and doing it in a timely fashion.

2
3 Q. Under the heading of "Methodology of the
4 investigation", you proffer some opinions about the way in
5 which Detective Sergeant Little went about his
6 investigation. Could you outline your opinion as to the
7 methodology adopted and whether it was appropriate?

8 A. Well, the methodology was entirely appropriate.
9 Detective Little had to deal with a couple of unusual
10 features. Firstly, he was investigating historical
11 complaints which, by definition, gave rise to probably a
12 history of police investigations by disparate groups of
13 police. One of the first things he identified in his
14 investigation plan was to obtain complete records or, as
15 the police refer to them, holdings from various police
16 stations and various police records of earlier
17 investigations. That evidence gathering from within the
18 police can take some time. So that was a unique feature of
19 the investigation.

20
21 Secondly, he decided, at an early stage, together with
22 some advice from Inspector Jacob, to conduct his
23 questioning of potential witnesses largely by way of ERISP
24 interview; that is, Q and A sessions. That appears to have
25 been brought about for entirely appropriate reasons, to
26 ensure that the evidence of potential witnesses was
27 accurately obtained so that there could be no real debate
28 about what they had to say. So those are unique features
29 that you don't always see in police investigations. Other
30 than that, he went about his work in the usual way.

31
32 Q. Can I ask you a question about material obtained from
33 reports and files compiled by Detective Chief Inspector
34 Fox. Can you assist with an opinion as to the usefulness
35 of that material for the ongoing investigation?

36 A. Indeed. I think Detective Chief Inspector Fox had
37 done a very fine job in taking witness statements, often in
38 difficult situations from clearly traumatised victims, as
39 children, of sexual assaults at the hands of the clergy.
40 It became clear to me from reading statements - some
41 signed, some not - taken by Detective Chief Inspector Fox
42 that he had done this in a very thorough fashion. It was
43 certainly of fundamental importance to the continuation of
44 the strike force based on the work that he had done.

45
46 Q. Is it fair to say that there was evident in the
47 material compiled by Detective Chief Inspector Fox a level

1 of empathy and good communication with victims of sexual
2 assaults that he had interviewed?

3 A. Undoubtedly. It's patently clear from reading the
4 whole brief of evidence and background records that
5 Detective Chief Inspector Fox had great empathy and had
6 formed a fine rapport with those complainants that he
7 interviewed.

8

9 Q. Moving to Detective Sergeant Little, reading the
10 transcripts of the records of interview, are you able to
11 make a comment about the apparent connection and
12 thoroughness of Detective Sergeant Little's approach and
13 establishing a rapport with those he interviewed, both
14 victims and others?

15 A. Indeed.

16

17 Q. Without going into detail of who or --

18 A. Indeed. One of the tasks that had to be conducted by
19 Detective Sergeant Little was to re-interview the
20 complainants that had earlier been spoken to by Detective
21 Chief Inspector Fox. That's never an easy situation for
22 one police officer, to re-interview a complainant who had
23 already formed a bond with a particular police officer, and
24 I think Detective Sergeant Little, as is shown in the
25 transcripts of his interview with complainants, formed a
26 very fine rapport.

27

28 With one or two of them - I don't know how much has
29 been said because I haven't read the transcripts of the
30 Special Inquiry, but with one complainant I know when the
31 strike force commenced there was some difficulty between
32 another police officer and a complainant, which gave rise,
33 in the end, to Detective Sergeant Little re-interviewing
34 that complainant, but only after being able to gain the
35 trust of that complainant, and he did so in a fine fashion.

36

37 Q. You raised the question of conducting these interviews
38 by ERISP. That is a video-recorded, sound-recorded
39 interview and you are nodding yes.

40 A. Yes.

41

42 Q. In your opinion, does using this methodology create
43 any problems in terms of compliance with the Criminal
44 Procedure Act for those ERISP interviews to be able to be
45 used as evidence in any ultimate criminal trial?

46 A. No, not at all. The Criminal Procedure Act allows for
47 a witness statement to be given in the form of a question

1 and answer form. There is one slight technical issue that
2 arises when that witness statement is comprised by way of a
3 transcript of an ERISP interview. It still has to meet the
4 technical requirements of the Criminal Procedure Act before
5 it could be tendered either at a committal proceeding or at
6 a summary hearing, which gives rise here to abiding to the
7 requirements of being signed and witnesses.
8

9 From what I could see of the brief of evidence, in the
10 main the transcripts of those interviews were, in their
11 introductory stages, obviously identifying the name of the
12 prospective witness, their age, and the jurat, as we
13 lawyers call it, was read on to the record, but what
14 remains to be done with many of the ERISPs is for them to
15 be signed by the witness. But this happens every day; it's
16 merely a matter of the officer in charge going back to see
17 the witness and asking for them to sign the first page of
18 the transcript.
19

20 Q. Can you explain what a jurat is?

21 A. A jurat is that introductory statement found in the
22 first few paragraphs of any witness statement where the
23 witness says, "This is a true and correct statement of my
24 evidence and I give it knowing that if I say anything
25 false, I can be prosecuted."
26

27 Q. In paragraph 13 you deal with the question of
28 obtaining documentation from the relevant parts of the
29 Catholic Church. Are you able to proffer a view regarding
30 the expected holdings of documents in terms of the
31 Maitland-Newcastle diocese from which the particular
32 priests came?

33 A. Yes. A search warrant was served at an early stage
34 upon a person or a body known as Zimmerman House, where it
35 was expected that all relevant holdings of the Catholic
36 Church in relation to the complainants the subject of the
37 investigation and the priests, living or dead, former or
38 alive, would be found. From reading the brief, it became
39 apparent that if a complaint was made against a priest, it
40 didn't really matter how high the complaint went; it all
41 went back to the bishop of the diocese. So the place where
42 one would expect all relevant holdings to be is in the
43 Newcastle-Maitland diocese and at Zimmerman House.
44

45 Q. You offer an opinion about the thoroughness of the
46 investigation conducted and in paragraph 14 of your report
47 you refer to a 255-page covering report prepared by

1 Detective Sergeant Little. Can you outline your view as to
2 whether that covering report was (a) an appropriate step to
3 be taken; and (b) properly reflected the material within
4 the larger substantive brief.

5 A. In all my years of prosecuting crime, which is
6 approaching 35, 37 years now, the covering report was as
7 thorough as I have ever seen. Stepping back, I suppose you
8 should look at the objects of a covering report. The
9 covering report is directed to senior police for forwarding
10 to the DPP to obtain the DPP's opinion on the sufficiency
11 of evidence to lay criminal charges.
12

13 Obviously in order for the DPP to be assisted, one
14 needs a summary of the evidence, the relevant evidence; one
15 needs an outline of the elements of the offence that the
16 police were investigating, and one would hope for useful
17 comments by the police along the way. Given that's the
18 task of a covering report and given the mountain of
19 evidence comprising some 12 volumes that Detective Sergeant
20 Little compiled, I think the covering report is as good as
21 I've seen.
22

23 Q. In paragraph 16 you make a comment regarding the
24 interviewing process and in the second sentence you say
25 this, and I want to make sure it's clear:
26

27 *A perusal of just some of the transcripts*
28 *of the recorded interviews shows that the*
29 *interviews were both thorough and fair to*
30 *the interviewee.*
31

32 Does that mean you read only some of the transcripts or do
33 you mean something else by that comment?

34 A. No. I suppose, when looking at that with hindsight,
35 I perhaps could have worded it better. What I was trying
36 to convey is this: I read all the transcripts. I think
37 I was trying to highlight by that sentence that one only
38 needs to read but a few to see that the methodologies have
39 been the same throughout. They are extremely thorough and
40 fair.
41

42 Q. In paragraph 17 you make an observation regarding
43 appropriate measures being undertaken to safeguard the
44 integrity of the investigation and the confidentiality of
45 the evidence and information gathered during the course of
46 the investigation. Would you mind expanding on what you
47 mean by that comment and why safeguarding the integrity of

1 the investigation and confidentiality of the evidence is an
2 important matter in investigations of this nature?

3 A. I think in any police investigation the integrity of
4 the investigation is paramount. Of course, one does not
5 want the product of an investigation leaked in any shape or
6 form, either by the police or through the press or through
7 any backdoor means because, if leaks do occur, the
8 integrity of the investigation is broken down because
9 persons of interest, suspects, will be forewarned as to the
10 fact of an investigation and its product and likely
11 conclusion and it gives rise to the possible destruction of
12 inculpatory documents on the part of persons of interest.
13

14 Q. In relation to this particular investigation, I ask
15 you to assume that there was some provision of the first
16 round of documents, if I can call them that, actually by a
17 journalist to the police. In those circumstances, do you
18 see any particular duty on the part of the police to keep
19 that particular journalist informed of progress of
20 investigations given the observation you have just made?

21 A. No, I would hope the provision of information by the
22 press to the police is always motivated by the object of
23 ensuring that possible wrongdoing is investigated. In my
24 experience, for an integrity of an investigation to work
25 properly, that transfer of information is usual and
26 properly one way; that is, by the press to the police.
27 Once the police obtain the information, perhaps very
28 gratefully from the press, as to the possible commission of
29 offences, the police are under no duty, and it would be
30 clearly unwise, to make it a two-fold flow back because
31 although course one hopes that the press use information
32 appropriately, sometimes they don't, because the objects of
33 the press and the police are not always the same. So once
34 the police get the information from the press, it is for
35 the police to do with it as they see fit.
36

37 Q. You make a comment in paragraph 18, firstly, along the
38 lines of the investigation having spanned some 22 months
39 from late 2010 to late 2012. Are you able to proffer an
40 opinion as to what you considered on your reading of the
41 material to be the most active aspect of the investigation
42 in terms of its parameters of work by Detective Sergeant
43 Little in particular?

44 A. From memory on reading the brief, Detective Sergeant
45 Little was appointed to his role on the strike force on
46 31 or 30 December 2010 and he effectively completed his
47 investigations by April 2011 and then spent --

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Q. I'm going to stop you there. I think you mean April 2012?

A. Sorry, April 2012, so we're looking there at a 16-month period of active investigation, which, looking at the mountain of evidence he uncovered, I would have thought he must have been working day and night.

Q. Is it fair to make this observation, that after April 2012 there were still other matters of tidying up and crosschecking and matters of that nature being attended to that led to the further period of work on the brief?

A. Oh, indeed. Without giving too much away --

Q. I'll stop you there. There is no need to expand. You make the observation that the strike force had a relatively small size. Was that a problem, an advantage, not one way or other matter, or what's your opinion on that?

A. I think in this case it was an advantage for several reasons. Firstly, there had been concerns of suspicions of leakage from police sources to the press. I think it was important, in order to minimise future concerns whilst the strike force did its work, that the number of police were kept to a minimum. That is not to say that the efficiency of the strike force was affected.

Then the other concern, and we see from the history of the strike force this statement borne out, was that whoever did the questioning of witnesses had to form a rapport with them, and that was done by Detective Little at an early stage and continued through to the end.

Q. Are you able to give a summary of your opinion about the thoroughness and appropriateness of the investigation carried out that became the Lantle brief that you reviewed?

A. The brief of evidence I've seen is as good as I've ever seen in many countries.

MS LONERGAN: Commissioner, can I correct a situation relating to the tender and MFI6, the qualifying letter to Mr Lloyd can rejoin exhibit 23.

THE COMMISSIONER: MFI6 now becomes part of exhibit 23.

EXHIBIT #23 ADDITION OF DOCUMENT FORMERLY MARKED MFI6

MS LONERGAN: There has been a request from the media for

1 Mr Lloyd's report to be released. I will take some
2 instructions as to whether that course is agreeable to all
3 those at the bar table. I apprehend that the qualifying
4 letter may well not comprise part of that release for
5 reasons which no doubt are obvious to all in court. If
6 anyone at the bar table could communicate to me their views
7 as to the release of Mr Lloyd's report in the next half
8 hour, that would be appreciated. If that is a convenient
9 time for a 15-minute adjournment.

10
11 THE COMMISSIONER: Is there no cross-examination of
12 Mr Lloyd?

13
14 MS LONERGAN: Pending cross-examination by others.
15 I apprehend there may well not be.

16
17 THE COMMISSIONER: But you'd like to take an adjournment
18 now?

19
20 MS LONERGAN: First of all, could we see if any parties
21 are wishing to cross-examine Mr Lloyd. I apprehended that
22 no other parties wished to cross-examine Mr Lloyd, but
23 Commissioner you should perhaps ask.

24
25 MR SAIDI: For what it is worth, I have no questions.

26
27 **<EXAMINATION BY MR COHEN:**

28
29 MR COHEN: Q. I have one question. In terms of the
30 overall nature and effect of the strike force and the
31 materials that were the platform that became the brief of
32 evidence, having regard to all you've seen, history and
33 content, do you regard it as a complex investigation or a
34 simple one?

35 A. No, I do regard it as a complex investigation.

36
37 THE COMMISSIONER: Mr Rush?

38
39 MR RUSH: No questions, thank you.

40
41 MR PERRIGNON: No questions.

42
43 THE COMMISSIONER: In that case, Mr Lloyd, thank you for
44 your evidence and you are excused.

45
46 **THE WITNESS WITHDREW**

47

1 scan through that letter, please.

2 A. Yes.

3

4 Q. I'll ask you to turn to the page behind it, which
5 appears to be a letter from you dated September 2010, in
6 reply to that letter?

7 A. That's right.

8

9 Q. Does that assist with your recollection as to what you
10 did in response to that communication?

11 A. It does, and just for clarity, when this letter would
12 have been received initially on 13 September, I was on
13 annual leave, but certainly I have responded in this file
14 as the Acting Assisting Commissioner Northern Region.

15

16 Q. So you were acting in Assistant Commissioner York's
17 role at that point?

18 A. Correct.

19

20 Q. Your letter is dated September 2010 but no actual
21 number or date before the month September. Is that because
22 you had a particular practice of handwriting a date on a
23 letter, or why is that?

24 A. No, this letter would have been produced for myself to
25 sign off, more than likely by unsworn administrative staff
26 in Northern Region office and it could be nothing more than
27 a simple typo.

28

29 Q. Is that your signature on the letter?

30 A. It is.

31

32 Q. Having had a look at the letter from Dr Morrison and
33 your reply, are you able to assist with whether you
34 deliberately did not provide detail about what was
35 happening with the investigation in the circumstances, or
36 what your intention was in the way you replied, which was,
37 in effect, "Thank you for your concern and it will be
38 receiving appropriate consideration and because of the
39 investigation's current status, I am unable to make any
40 comment." Was that a deliberate keeping of information?

41 A. Well, it was, and I think, at that particular point in
42 time, I wasn't well across the information and the matter
43 that subsequently formed Lantle.

44

45 Q. Can you turn to the next page and there appears to be
46 a follow-up letter from Dr Morrison stating that he is of
47 the view that your letter does not deal with the matters of

1 substance he has raised.
2 A. That's right.
3
4 Q. Just quickly read that letter to yourself and the
5 letter on the following page where you seem to have
6 responded again.
7 A. Yes.
8
9 Q. Can I ask you this: at the time that you sent your
10 reply, which again is dated October but without a
11 particular date next to it, did you have any personal
12 knowledge as to the progress of the Lantle investigations
13 at the point of time you sent that letter or signed that
14 letter?
15 A. Not to my knowledge, no. My knowledge would have been
16 that Newcastle City Local Area Command had initial
17 documents and it was to be investigated, as I've written
18 there, and that's all I can really assist with at this
19 point in time.
20
21 Q. Would you mind looking at the front page of that
22 bundle of material. First of all, before you do, there are
23 two documents at the end that appear to be an email from
24 and to Inspector Tony Townsend?
25 A. That's right.
26
27 Q. May I ask if you've seen those documents before or did
28 you have any role in their creation or any discussion about
29 them?
30 A. I believe the email dated 12 October 2010 from Tony
31 Townsend and it commences, "Good afternoon, Joanne",
32 I believe that was in reference to a media question and at
33 the time I was absent from the region out at Dubbo. I was
34 provided basically this line and suggestion for
35 transference to the media.
36
37 Q. You authorised a particular response to be given to
38 the media --
39 A. Correct.
40
41 Q. -- that related to this investigation?
42 A. Yes.
43
44 Q. Are you able to say whether the content of the
45 response was dictated by considerations of keeping what
46 investigations were proceeding or to be pursued
47 confidential?

1 A. Exactly, yes.

2

3 Q. On the front page of that bundle of material, there is
4 a document that refers to ministerial representations from
5 Dr Morrison; do you see that?

6 A. Yes.

7

8 Q. Annexed to that form are various letters I've just
9 taken you to.

10 A. Yes.

11

12 Q. As well as a letter on Police Force letterhead
13 referring to matters relevant to the police minister
14 authored by Roger Kershaw from the Ministerial Liaison
15 Unit. It's on that next page there?

16 A. Yes.

17

18 Q. Do these papers comprise the type of file that had to
19 be responded about to the police minister?

20 A. That's right.

21

22 Q. Did you have any role in processing that ministerial
23 response?

24 A. In terms of the signatures below, no, I did not. It's
25 actually signed off - at point 1, region commander, is
26 signed off by Carlene York. It's then gone to the Deputy
27 Commissioner's office and the Commissioner's office.

28

29 MS LONERGAN: Commissioner, I tender that bundle of
30 material and perhaps it could be titled "Material relating
31 to ministerial representations" by Dr Morrison.

32

33 THE COMMISSIONER: Thank you. The bundle of documents
34 titled "Material relating to ministerial representations"
35 from Andrew Morrison formerly MFI4 will be admitted and
36 marked exhibit 24.

37

38 **EXHIBIT #24 BUNDLE OF DOCUMENTS TITLED "MATERIAL RELATING**
39 **TO MINISTERIAL REPRESENTATIONS" BY DR ANDREW MORRISON,**
40 **FORMERLY MFI4**

41

42 MS LONERGAN: Thank you, Commissioner.

43

44 Q. Assistant Commissioner Mitchell, would you mind
45 looking at paragraph 18 of your statement, which I'll
46 arrange to have provided to you immediately and that was
47 exhibit 22. Yesterday you gave some evidence to the effect

1 that you thought that the representations or comments to
2 you that there had been some difficulties being encountered
3 in obtaining material from Detective Chief Inspector Fox
4 was quite close to the meeting of 2 December. Do you
5 recall you gave that evidence yesterday?

6 A. Yes.

7
8 Q. There is no trick in this. I just stopped there
9 because that's where we got to. Would you mind looking at
10 annexure D and paragraph 18 of your statement where you
11 appear to suggest that the email that is annexure D from
12 Detective Inspector Wayne Humphrey actually led you to
13 believe there had been difficulties obtaining necessary
14 documents from Detective Chief Inspector Fox at that time.
15 Just read that paragraph and annexure D to yourself.

16 A. Yes.

17
18 Q. You gave evidence yesterday to the effect that you had
19 an expectation that if Detective Chief Inspector Humphrey
20 was having difficulty getting material, he would discuss
21 that with you. Does looking at that annexure D assist you
22 in your recollection as to you in fact being told there
23 were some difficulties being encountered at least
24 in October 2010?

25 A. Yes. To be honest, having gone home last night and
26 just reflected on what was discussed yesterday, on
27 returning from my time at Dubbo, I would have picked up
28 this email perhaps a few days later.

29
30 Q. I'm going to ask you to reach to your right and put
31 your hands on volume 2 of 3 of the evidentiary material
32 there and turn to tab 67. That's a situation report or
33 SITREP?

34 A. Yes, that's correct.

35
36 Q. Created by the Newcastle Local Area Command on
37 12 October 2010.

38 A. That's right.

39
40 Q. Have you seen that SITREP before?

41 A. I can't say I have.

42
43 Q. Were you aware that Detective Sergeant Steel was on
44 leave from 19 September until 12 October 2010 at the time?

45 A. Look, if you suggest that, I will accept it, but
46 I have no recollection of a person's annual leave.

47

1 Q. Is it usual practice in the police force for you, in
2 your role as commander of that local area command, to see
3 SITREPs like this as part of the normal business day or not
4 always?

5 A. Not always. Again on 12 October I was absent from the
6 region in Dubbo.

7
8 Q. At 12 October 2010?

9 A. Yes.

10

11 Q. In paragraph 20 of your statement you make the
12 following observation:

13

14 *It was obvious to me prior to 2 December*
15 *2010, based on the information that was*
16 *being received, that there was leakage of*
17 *information contained in police holdings to*
18 *Ms McCarthy.*

19

20 What is the basis of that statement on your recollection?

21 A. Two issues - firstly, discussions with DCI Tayler, but
22 probably more important, discussions or a discussion with
23 Ms McCarthy on the phone.

24

25 Q. You were aware at that stage, were you not, that
26 various documents had been provided by Ms McCarthy to the
27 police?

28 A. Yes, I have a vague recollection.

29

30 Q. Are you able to state whether your understanding at
31 the time included an understanding that what was thought
32 perhaps to be leakage of information may well have just
33 been Ms McCarthy reporting on information she had obtained
34 and given to the police?

35 A. I would say no.

36

37 Q. You'd say you didn't form an understanding of that or
38 that wasn't the position?

39 A. That was part of the position, certainly I had an
40 awareness because Ms McCarthy informed me of that, but
41 there was other conversation, brief but certainly
42 conversation, that drew my attention to DCI Fox.

43

44 Q. What was that other information that drew your
45 attention to that particular police officer?

46 A. Basically that Ms McCarthy was certainly an advocate
47 for DCI Fox in terms of his background and experience and

1 so forth. I found that conversation just to be unusual.

2

3 Q. Unusual that she knew that information about DCI Fox
4 or unusual that she communicated to you a particularly
5 positive aspect about that?

6 A. Probably both, and I guess in terms of what was
7 discussed and in terms of my discussions with DCI Tayler
8 I certainly formed a suspicion and the rest is then
9 discussed on 2 December.

10

11 Q. Now, you are aware, are you, that DCI Tayler wanted to
12 maintain the position of the media not being aware that the
13 investigation was to proceed?

14 A. I was, yes.

15

16 Q. And the reasons for that are, as you understand it,
17 what?

18 A. Sorry?

19

20 Q. What are the reasons for that, as you understood it?

21 A. To protect the integrity of the investigation. I know
22 DCI Tayler has provided evidence to the Commission in terms
23 of ensuring that whether offenders, victims, possible
24 witnesses, and so forth, weren't alerted to our
25 investigation.

26

27 Q. Moving now to the meeting on 2 December 2010, did you
28 convene that meeting?

29 A. I did.

30

31 Q. Did you personally phone Detective Chief Inspector Fox
32 to advise about the meeting or what he needed to do?

33 A. No, I did not.

34

35 Q. Did you task someone to do that for you?

36 A. Yes. I asked DCI Tayler to arrange the meeting.

37

38 Q. Did you ask DCI Tayler to make any particular requests
39 of DCI Fox in relation to material he had?

40 A. No.

41

42 Q. Do you know whether any officers did that?

43 A. My vague recollection was that, just out of respect
44 for the position, I spoke to Superintendent Haggett, my
45 counterpart at Port Stephens, explaining that I wished to
46 hold a meeting, and I was aware I didn't have to go into
47 any great depth with both DCI Fox and documents coming to

1 Newcastle for the purpose of exchanging and discussion.

2

3 Q. Up to that time, the conversation you had with
4 Superintendent Haggett, did you have any reason to suspect
5 or be concerned that DCI Fox wouldn't cooperate with such a
6 request?

7 A. None whatsoever.

8

9 Q. I'm sorry if I asked you this yesterday, but just to
10 check, were you aware of any investigations being currently
11 carried out by DCI Fox into this subject matter at that
12 time?

13 A. No, I was not.

14

15 Q. When did you first become aware that there were in
16 fact some active investigative steps being taken by DCI Fox
17 in 2010?

18 A. Probably by listening to DCI Fox at the meeting on
19 2 December.

20

21 Q. Do you have a recollection of the meeting on
22 2 December?

23 A. I have a vague recollection. Certainly my
24 recollection has been enhanced by going over the case
25 conference notes.

26

27 Q. Can I ask you this about the case conference notes
28 since you have raised them: is it the usual procedure for
29 those present at the meeting to check the conference notes
30 to see if it accords with each person's present
31 recollection?

32 A. Are you asking for all police or just --

33

34 Q. Firstly, all police who were present?

35 A. No.

36

37 Q. The most senior officer, would he or she normally do
38 so?

39 A. Certainly.

40

41 Q. The fact that it was entered into the e@gl.i system,
42 does that in fact suggest that you in fact read the case
43 conference notes and okayed them?

44 A. Yes, I did.

45

46 Q. Do you recollect whether you made any changes to the
47 contents?

1 A. I certainly did not.
2
3 Q. In your view was the meeting conducted in a cordial
4 fashion?
5 A. Certainly it was.
6
7 Q. Do you remember any heated moments or moments of
8 irritation or annoyance being expressed, firstly, by you?
9 A. None whatsoever.
10
11 Q. What about other officers present at the meeting; were
12 there any moments of heated exchanges or annoyance being
13 expressed?
14 A. The meeting was very cordial and there was no
15 aggressiveness or outburst by anyone.
16
17 Q. In paragraph 23 of your statement you make the
18 observation that Detective Chief Inspector Fox indicated
19 that he had mistakenly left the documents he'd been asked
20 to bring behind?
21 A. Yes.
22
23 Q. Were you surprised by that mistake?
24 A. Look, at that particular point in time, no, I wasn't.
25
26 Q. Did you doubt whether he had in fact mistakenly left
27 the documents behind at that point?
28 A. At that particular point in time, I formed no opinion
29 outside of the fact that I probably was just simply
30 disappointed that the documents weren't brought forward for
31 the purpose of what we were to discuss.
32
33 Q. Were you angry about him having not brought the
34 documents?
35 A. No. I think if I was angry, I think it would have
36 been fair to say I would have probably asked him to return
37 to Port Stephens and return with the documents.
38
39 Q. Port Stephens to Waratah, how far would that have been
40 in terms of a round trip?
41 A. In a round trip, traffic and so forth, say, roughly
42 40 minutes.
43
44 Q. May we take it you would have had no hesitation in
45 asking for that to be done if that was a concern to you?
46 A. That's right.
47

1 Q. Did you have an understanding of what documents he in
2 fact had at that time that could be produced?
3 A. No, I did not.
4
5 Q. Did any officers junior to you intimate to you their
6 understanding of what documents he had?
7 A. I think DCI Tayler had some discussion with me in
8 terms of documentation and certainly Ms McCarthy probably
9 outlined in some brief detail documents held by DCI Fox.
10
11 Q. Do you have any independent recollection now, to the
12 extent it can be independent, given you've prepared your
13 statement and looked at that investigator's note, of what
14 you asked Detective Chief Inspector Fox to do or not do in
15 that meeting?
16 A. Yes.
17
18 Q. Can you state for the Commissioner's benefit what your
19 recollection is?
20 A. Certainly. I think the purpose of this meeting was
21 for DCI Fox to attend and provide documents or an
22 overview --
23
24 Q. I'm going to stop you there because I actually want
25 you to try to use the specific language of what you said to
26 him, as opposed to the background matters if you possibly
27 can?
28 A. At the meeting?
29
30 Q. At the meeting. I just want to focus on what you said
31 at the meeting at this point.
32 A. Look, I think the meeting was opened by myself.
33
34 Q. But in terms of directions or requests that you
35 verbalised to DCI Fox?
36 A. Can I say this? I never use the word "direction",
37 I never use the phraseology, "I am directing". My
38 discussions initially were around DCI's Fox's background
39 and bringing documents to the meeting. I can't give you
40 any better description of how I verbalised outside --
41
42 Q. Are you confident you didn't use the word "direction"
43 to DCI Fox in relation to any activity?
44 A. That's right.
45
46 Q. Would you agree with me that the word "direction" has
47 a particular meaning and connotation in NSW Police Force

1 operations?

2 A. Yes.

3

4 Q. What does that mean, for the benefit of those in
5 court?

6 A. Look, in my personal view, when a junior member is
7 directed, if that person fails to adhere to that direction,
8 it could well lead to disciplinary action being undertaken.

9

10 Q. Given the background up to that time of an email being
11 provided to you dated mid October 2010 and some information
12 being conveyed by DCI Tayler to you to the effect that
13 Detective Chief Inspector Fox was not cooperating by
14 handing over information that was requested, does that
15 inform the question of whether you used a stronger term
16 than "request" and moved to the area of "direct"?

17 A. No.

18

19 Q. Do you agree that there was an instruction at least -
20 not something higher - to those present about media,
21 speaking to the media?

22 A. I certainly do.

23

24 Q. Can you assist with your understanding of what it is
25 that you said about those present or individuals present
26 speaking to the media?

27 A. My conversation with everyone present, all were
28 informed by myself that they were not to speak with the
29 press, to speak with Joanne McCarthy, without first raising
30 the issue with myself and seeking permission. Now, that
31 was clearly articulated to all present at that meeting and
32 it was not directed to one individual who was in that room.

33

34 Q. By that you mean it wasn't directed to one individual
35 person only; it was directed to everybody?

36 A. That's right.

37

38 Q. You understand that Detective Chief Inspector Fox's
39 recollection of the meeting is somewhat different to yours?

40 A. Yes.

41

42 Q. I will leave it to his counsel to put those particular
43 propositions to you.

44 A. Yes.

45

46 Q. You say in paragraph 27 of your statement that at no
47 time did DCI Fox directly or indirectly raise with you the

1 fact that he wanted to pay a more active role in Strike
2 Force Lantle than what you had already said he could?

3 A. That's right.

4

5 Q. You then go on to say that it was your belief at that
6 time that he was content to pass on the documentation and
7 information.

8 A. By all indications and what was said, yes.

9

10 Q. Was there anything in particular that you recollect
11 him saying that led you to that view?

12 A. You know, without verbatim, in listening to DCI Fox at
13 that meeting, he appeared to be quite satisfied with
14 supplying documents to investigators.

15

16 Q. Are you aware that three officers who had been
17 allocated the Lantle investigation all went off on sick
18 leave reasonably close to each other about mid December?

19 A. Yes, I do.

20

21 Q. In relation to, firstly, to Detective Kirren Steel,
22 you gave evidence yesterday you were shocked when she went
23 off on leave?

24 A. Yes, I was.

25

26 Q. Can I ask you: did you make a number of phone calls
27 to her after she didn't report for work?

28 A. Yes, that would have been the normal routine.

29

30 Q. Why was that?

31 A. Because sick leave and trying to manage a police
32 officer's welfare and so forth, it was a requirement
33 required by the then region commander, Assistant
34 Commissioner York, and before her, other region commanders.
35 It's best practice, if an officer reports off sick, that
36 the commander is to make contact and make attempts to
37 ensure that every available strategy, ensuring welfare,
38 anything that could be done was done to best support that
39 officer.

40

41 Q. Is it fair to say that you made a number of phone
42 calls in an attempt to contact that officer?

43 A. Yes, I did.

44

45 Q. In relation to Justin Quinn, did you know prior to the
46 time that he went off on sick leave that that was something
47 that was a possibility?

1 A. I didn't know that he - I didn't know his intention at
2 that particular point in time. However, I was aware
3 through private conversations with Detective Senior
4 Sergeant Quinn, I knew that he was struggling.
5
6 Q. In relation to Detective Chief Inspector Tayler, did
7 you have any idea he was struggling and about to go off on
8 leave?
9 A. Similar, private conversations that were raised by DCI
10 Tayler with myself.
11
12 Q. In terms of timing of both those officers -- -
13 A. No.
14
15 Q. -- did you have an expectation they would leave in
16 mid December 2010?
17 A. No.
18
19 Q. You are aware that it's been suggested that Strike
20 Force Lantle was set up to fail by picking officers who
21 were not not fit for the job but not able to complete the
22 task?
23 A. Yes.
24
25 Q. What do you say about that?
26 A. It's totally incorrect and I believe this Commissioner
27 has heard evidence which supports my decision, along with
28 DCI Tayler, who was in the selection of personnel in the
29 initial stages of Lantle - they were, in my view, very
30 competent, professional police officers.
31
32 Q. I am going to go back to the meeting on 2 December.
33 May we take it from your evidence that it is your assertion
34 that you gave no formal direction to DCI Fox in that
35 meeting?
36 A. That's correct.
37
38 Q. You are aware, are you not, that there was a complaint
39 made against DCI Fox that he breached a direction given by
40 you in that meeting on 2 December 2010?
41 A. Yes.
42
43 Q. You were consulted in relation to that complaint?
44 A. Yes, early 2011.
45
46 Q. I'll ask you to turn to tab 96, which is this volume 2
47 of the materials, at page 415. First of all, if you

1 wouldn't mind explaining by way of background for those
2 present in court --
3 A. Sorry, Ms Lonergan.
4
5 Q. I'll withdraw that question and go about it
6 differently. Turn to page 415?
7 A. Which tab was it again?
8
9 Q. Tab 96. Have a look at page 414 first, which is
10 headed "Complaint investigation chronology"; do you see
11 that?
12 A. Yes.
13
14 Q. In the usual course, when a complaint is investigated,
15 an officer prepares an outline of the steps taken to
16 complete the investigation?
17 A. That's right.
18
19 Q. Turn to page 415 and you'll see there that there is a
20 mention of, on 12 April 2011 --
21
22 A. Yes.
23
24 Q. -- an officer making this notation:
25
26 *Speak with Superintendent Mitchell.*
27
28 Do you see that?
29 A. That's right.
30
31 Q. Do you recollect having a conversation with an
32 investigating officer in April 2011 regarding a complaint
33 made by DCI Fox about breaching a direction made by you?
34 A. Yes.
35
36 Q. You have notes independently of that conversation?
37 A. No, I do not.
38
39 Q. What do you say was the relevant content of that
40 conversation?
41 A. Basically, seeking two issues - one was a copy of the
42 case conference notes and, also, in terms of a direction
43 for police not to speak with the media about the
44 investigation.
45
46 Q. Turning to the first matter you mentioned, the case
47 conference notes, if those case conference notes were

1 entered on e@gl.i, wouldn't that be able to be seen by all
2 police officers?

3 A. Only those who would have been attached to the Strike
4 Force Lantle investigation.

5
6 Q. So there is a confidential aspect to the e@gl.i
7 holdings?

8 A. Yes.

9

10 Q. While on that point, are you able to say at what point
11 Strike Force Lantle became annotated as "highly
12 confidential"?

13 A. No, I don't.

14

15 Q. "Highly protected"?

16 A. No, I was not aware until sitting in this court.

17

18 Q. Just turning back to this document on page 415, you
19 see under the heading, which you can see on page 414 for
20 that second column, is the word "Summary" and then in the
21 relevant box we're looking at relating to the conversation
22 with you, the summary referred to is:

23

24 *Information obtained verbally in relation*
25 *to Issues of Strike Force Lantle and*
26 *directions given to officers involved and*
27 *to Detective Chief Inspector Fox.*

28

29 Do you see that? The investigator refers to having
30 received documents from you?

31 A. Yes - well, can I just clarify that?

32

33 Q. Yes.

34 A. I could not access the e@gl.i investigation, and I do
35 recall explaining to the inspector who was investigating
36 this to make contact with the relevant investigators to
37 obtain that document.

38

39 Q. There was a summary document with the four directions
40 issued to officers pertaining to Strike Force Lantle; do
41 you see that as being mentioned there?

42 A. Yes.

43

44 Q. That suggests, does it not, that information conveyed
45 to this particular officer was that there were four
46 directions issued at that meeting. Would you not agree?

47 A. No, I wouldn't agree. I --

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Q. So that information is inaccurate, is it?
A. Look, I think the issue that I have is the fact that I didn't use the word "direction". However, my instructions I think were very clear at that meeting.

Q. So are you able to assist with explaining why it is that this particular investigating officer, in the context of recording a conversation with you, refers to four directions being given?

A. I have no recollection of saying that.

Q. You see in the next column, which is headed "Observations/findings/further action", one of the matters noted in particular of relevance to this disciplinary matter is:

Summary of directions identifies that all officers were directed "Not to speak with media about this investigation without the knowledge of Superintendent Mitchell."

My question is: do you deny you gave a direction to that effect?

A. Well, I think the conference notes articulate that I instructed. What I'm saying is I didn't use the word, "I'm directing". I think this is where the difficulty is. However, my instructions were very, very clear in terms of not speaking with the media without my knowledge and permission. Now, that can be construed as a direction.

Q. Well, it's more than that, isn't it? What we have here is a document that suggests that an officer, in this case Detective Chief Inspector Fox, is to be potentially disciplined about breaching a direction.

A. That's right.

Q. And there is no police procedure for a complaint being considered and findings made for breach of an instruction, is there?

A. Look, I think that the instruction is still a lawful order, so if a lawful order is breached, what I would suggest is that action could still be undertaken.

Q. Action could still be undertaken in this sort of way with a formal complaint being investigated in the way it has been relating to allegations of breaching your

1 direction?
2 A. Yes.
3
4 Q. Exactly the same sort of process, interviewing, could
5 take place if it was merely an instruction that was
6 breached?
7 A. That's right.
8
9 Q. The term "direction" you've given evidence has certain
10 magic in the police parlance and that's because of
11 provisions in the police regulations, isn't it?
12 A. That's right.
13
14 Q. And breaching a direction is referred to in police
15 regulations as being something that can lead to
16 disciplinary action --
17 A. Yes.
18
19 Q. -- but breaching an instruction is not something
20 mentioned in the police regulations as being able to lead
21 to disciplinary action?
22 A. I think the regulations actually stipulate that a
23 lawful order - a junior officer must comply with lawful
24 orders.
25
26 Q. This might be hard for you to answer given it was a
27 couple of years ago. Do you have any recollection of
28 correcting this officer and saying, "Look, you're talking
29 about directions here, but I didn't actually give any
30 directions"?
31 A. When I was contacted, certainly I drew the
32 investigating officer's attention to the case conference
33 notes, because my recollection was somewhat vague in terms
34 of exactly what was said.
35
36 Q. Can you look at tab 111, please, in that same volume.
37 You see there is a report there and I might ask you this
38 question: the complaint actually wasn't sustained in the
39 end result, was it?
40 A. No.
41
42 Q. But the complaint is expressed to be in terms of
43 "disobey reasonable direction", isn't it?
44 A. Yes.
45
46 Q. Did you have a role, as commander of the region, in
47 reviewing this complaint and its processing - this specific

1 complaint?
2 A. In 2011?
3
4 Q. Yes.
5 A. No.
6
7 Q. In the normal course, as commander of the region,
8 would you look at complaints of this nature, or not
9 necessarily?
10 A. Look, I would, on the advice of the professional
11 standards manager, but I was not the commander of Northern
12 Region.
13
14 Q. At that time?
15 A. No.
16
17 Q. Did you not think it was important, however, to draw
18 to the attention of the investigating officer that they
19 were proceeding on the basis of a disobedience of a
20 reasonable direction by you when the position you maintain
21 was that you didn't give a direction?
22 A. Yes, because I believe the instruction was very clear
23 to all police.
24
25 Q. So you take the view that, despite the fact that the
26 complaint being on the basis of "disobey reasonable
27 direction", there was no need for you to advise the
28 investigating officer that, in your opinion, it wasn't a
29 direction; it was simply an instruction?
30 A. At the time, no, I did not.
31
32 Q. Do you think now that you have created a problem by
33 not clearing the record in relation to that?
34 A. I'm sorry, I think my instruction was very clear to
35 all police officers, and I think the investigation was
36 reasonable.
37
38 Q. In saying that, do you agree that the exonerative
39 findings were also reasonable?
40 A. Yes.
41
42 Q. Let me ask you this question: did you at any time in
43 the meeting on 2 December direct, instruct or request
44 Detective Chief Inspector Fox to cease investigating
45 matters relating to allegations of church paedophilia or
46 concealment of any such matters?
47 A. I can say that I never said any words to that effect.

1
2 Q. Given that, by the meeting of 2 December 2010, you had
3 been made aware that Detective Chief Inspector Fox had been
4 carrying out some investigations into those types of
5 matters, were you content for him to continue doing so?
6 A. Yes. In my view, having listened to DCI Fox at that
7 meeting, I had - I made no real decision in terms of what
8 he was doing. I was only concerned about the investigation
9 and Strike Force Lantle proceeding within Newcastle for
10 conceal serious offence.
11
12 Q. I have one more matter. If you go to tab 111 in
13 volume 2, page 542, you'll see that is an investigator's
14 note dated 14 April 2011 but referring to a phone
15 conversation with you of 12 April 2011.
16 A. That's correct.
17
18 Q. Have you seen this investigator's note before?
19 A. No, I have not.
20
21 Q. Could you just read it to yourself. Just let me know
22 when you've finished reading that.
23 A. Yes.
24
25 Q. You see the language used in that investigator's note
26 is repeatedly a reference to a direction having been given?
27 A. Yes.
28
29 Q. And would you agree with me that it appears from this
30 note that you did not correct that particular officer in
31 terms of his use of the word "direction"?
32 A. That's right.
33
34 Q. I know you've explained your take on the matter.
35 A. Yes.
36
37 Q. But can I ask you this question: in the second
38 paragraph there is a reference to an email having been
39 received by that officer sent by Tracey Ward on your
40 behalf?
41 A. Yes.
42
43 Q. Who was Tracey Ward?
44 A. At that particular point in time I believe Tracey
45 Ward, she's an unsworn administrative officer, probably at
46 that particular date carrying out relieving duties as the
47 executive officer.

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Q. Do you have a recollection of what material you asked her to send?

A. It would have been to capture the case conference notes to send to the investigating officer.

Q. The direction that the complaint was directed to was a suggestion that, in the end, wasn't supported by the findings of the investigation; that is, Detective Chief Inspector Fox had been directed by Superintendent Mitchell not to discuss with anyone?

A. Mmm.

Q. On that basis, the complaint was not made out.

A. Yes.

Q. But this case note, would you not agree with me, this investigator's note, suggests that you agreed that you had at least given a direction that no officer is to speak with the media about the investigation without your knowledge?

A. That's right.

Q. And your position, just to make sure I understand it, is that that was only an instruction?

A. An instruction/direction, I know it's caused difficulties, but that's right.

Q. After December 2010, did you have any involvement in relation to the progress of Strike Force Lantle?

A. No, not in any particular way, shape or form. I continued on in my position as commander dealing with other local area command issues that I was required to attend to, and late December I went on annual leave. I then went direct to an acting position as the traffic commander in Sydney before returning in early February.

I was only back in the LAC for a couple of weeks before I was asked to go to Christchurch, where I took police to Christchurch. Following Christchurch, I returned to the LAC, and again I was only in the LAC for perhaps a couple of weeks before the Commissioner asked me to go to Melbourne on a secondment to a policing agency.

Q. So given those particular events, may we take it that you had no particular regular reporting to you of the progress of Strike Force Lantle?

A. That is correct.

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MS LONERGAN: Can the witness please be shown exhibits 14, 15 and 16, please.

Q. Just see if you can assist with your knowledge or otherwise of this particular matter. First of all, look at exhibit 16, which might give some guide as to whether you were involved or not. It's a command complaint triage form relating to a complaint made about the way in which interviews were conducted and a suggestion of inadequate investigation regarding [AL].

A. Yes.

Q. If you turn to the second-last page of exhibit 16, your name appears next to the words "Commander approving action"; do you see that?

A. Yes.

Q. Do you recall seeing this complaint or actioning it in any way?

A. I can tell you that I recall receiving the investigation - sorry, not the investigation, it's actually referred to --

Q. The complaint letter?

A. No, no. It's actually referred to as a resolution management file by Tayler in terms of what he reviewed and his findings, and attached to that were specific documents, which he's brought to my attention as the commander. I would have read the file for the purpose of ensuring that I was satisfied with the outcomes of what Tayler had placed in that file.

Q. Is there any location within the material and/or the file where you annotate your opinion that it has been appropriately managed or otherwise?

A. Other than - can I refer to the other exhibits?

Q. Please do, and if you would not mind assisting with stating for the record which document you are looking at in terms of the exhibit marking on the front of it?

A. Exhibit 14, which is the report by Tayler, which is unsigned, generally what I would have done after receiving this report, and the attached file, I would have read it and my general outcome is to sign off below Tayler's signature, satisfying myself.

1 Q. Do you have a copy that doesn't have signatures on it?

2 A. Yes.

3

4 MS LONERGAN: I have a copy with signatures on it. I'm
5 not sure why that is. If it is convenient, Commissioner,
6 may I show the witness my copy of exhibit 14.

7

8 THE COMMISSIONER: Yes, Ms Lonergan.

9

10 MS LONERGAN: Q. This may have been one that was
11 actually, after a request, provided to us by the police on
12 the day before yesterday.

13 A. Yes.

14

15 Q. Is that your signature appearing under that of
16 Brad Tayler?

17 A. It is.

18

19 MS LONERGAN: Commissioner, I will make arrangements for
20 copies of this particular document to be provided to all
21 those at the bar table. May I state for the record how
22 this event has arisen. Mr Hunt dealt with the fact, while
23 former Detective Chief Inspector Tayler was in the witness
24 box, that he had given to Mr Hunt a document that had not
25 been provided to us by the Police Force. Another copy was
26 provided, on request by those who assist you, when it came
27 to our attention that there was this relevant material that
28 we hadn't yet seen. So I'll ensure everyone has a correct
29 and complete copy of the exhibit 14.

30

31 THE COMMISSIONER: The copy containing the signatures
32 ought to become the exhibit.

33

34 MS LONERGAN: Exhibit 14, yes, and we'll make arrangements
35 accordingly.

36

37 Q. Is there anything in exhibit 16, which seems to be the
38 command complaint triage form, that reveals what role you
39 had other than the bit I've already drawn your attention
40 to - "Commander approving action"?

41 A. On page 2, if you can call it 2 - I'm not sure whether
42 it's documented on it or not - Brad Slarks PSD0, 2 December
43 2012.

44

45 Q. 2010?

46 A. Sorry, 2010, and above Slarks's signature is my
47 signature.

1
2 Q. So that means you've signed the action as being taken?
3 A. I'm satisfied with the action to be undertaken.
4
5 Q. Just turning to exhibit 15, which is a letter, you see
6 it was stated as CC-ed to you amongst other people.
7 A. Yes.
8
9 Q. Are you able to state whether you received a hard copy
10 of this document yourself directly, or you can't say?
11 A. Look, I can't say. When information comes into the
12 command, something of this nature would go direct to the
13 executive officer.
14
15 Q. It wouldn't necessarily reach your desk at all?
16 A. No.
17
18 Q. Did you recall this particular complaint and
19 associated documentation at the time you prepared your
20 statement for this Commission?
21 A. No, I did not.
22
23 Q. Assistant commissioner, did you have any discussions
24 with Ms Joanne McCarthy after this complaint being
25 received, on your recollection?
26 A. After it was received? What's the date?
27
28 Q. About the subject matter raised. 9 November is the
29 complaint and the processing appears to span the next week
30 or so.
31 A. My recollection was that I was contacted perhaps
32 midway through November by Ms McCarthy where she was upset
33 and --
34
35 Q. "She", Ms McCarthy?
36 A. Ms McCarthy was upset in regards to the handling of a
37 victim. I listened to her issues. We discussed, in
38 brief - it wasn't a lengthy discussion, but certainly she
39 raised issues. As a result of that, I spoke to DCI Tayler
40 asking for him to intervene and have someone other than
41 [Detective X] take up this issue with the victim to see if
42 we could obtain a statement.
43
44 Q. Any other interchanges with Joanne McCarthy regarding
45 the matters we are looking at with the Special Commission
46 of Inquiry that you consider are relevant to advise about?
47 A. The one issue that I recall, and I was upset at, was

1 the fact that Ms McCarthy asked me what experience
2 [Detective X] had in investigating --

3

4 Q. You can use her name now - Detective Steel?

5 A. -- Detective Steel had investigating child abuse
6 within the Catholic Church. My response to that was - and
7 I wasn't going to mislead Ms McCarthy - she had no
8 experience of investigating child abuse within the Catholic
9 Church.

10

11 Q. And that was reported?

12 A. That was reported in a conversation between Steel and
13 Ms McCarthy to my knowledge.

14

15 Q. Not reported in terms of publication?

16 A. No, it wasn't, not in publication.

17

18 Q. Do you recall Kirren Steel asking to be taken off the
19 investigation in relation to these matters, given
20 difficulties she had with [AL] in statement taking?

21 A. No, I do not.

22

23 Q. From your answer can we take it that you don't recall
24 any such discussions, or do you deny that there were any
25 such discussions that took place?

26 A. There were certainly no discussions that
27 I participated in with Detective Steel in regards to being
28 taken off the investigation.

29

30 Q. Not even expressions of doubt on her part as to how
31 she was going to progress the matter, given some
32 difficulties that had been encountered?

33 A. No.

34

35 Q. Did Brad Tayler convey to you that there'd been any
36 discussions between Detective Steel and him regarding that
37 matter?

38 A. No, he did not.

39

40 Q. If an approach to that effect had been made to you
41 that Detective Steel felt concerned about continuing the
42 investigation because of that matter that had come up with
43 [AL], what would your position have been?

44 A. I would have raised the issue if she had raised it
45 with myself with DCI Tayler.

46

47 Q. And discussed it to come to a solution?

1 A. Yes.
2
3 Q. What if Detective Steel had raised this as a problem
4 on multiple occasions; what would your position have been?
5 A. It wouldn't have changed.
6
7 Q. It wouldn't have changed - in what respect?
8 A. I'm not quite sure what you are asking because there
9 were never multiple occasions with me.
10
11 Q. I'm asking you to consider a hypothetical situation
12 where an officer who had been allocated a particular
13 investigation expressed doubts to you as to whether she was
14 going to be able to further it - doubts about her own
15 working relationship with a particular key witness. Given
16 that we're talking about Detective Steel, what would have
17 been your response had this been raised with you?
18 A. I would have raised the matter - whether it was
19 multiple occasions - with DCI Tayler seeking --
20
21 Q. And --
22 A. It's up to Tayler, really, to manage Steel as the
23 investigating lead.
24
25 Q. And you would have taken his advice and his attitude
26 about what the proper course to follow would have been?
27 A. Yes.
28
29 Q. Would you have considered allocating a different
30 investigator?
31 A. If Tayler felt that was necessary, yes.
32
33 Q. And now following the lodgment and your review of the
34 material that you've just had a look at, that is, exhibits
35 14, 15 and 16, did you have any further conversations with
36 Detective Chief Inspector Tayler about the matters that are
37 covered in that complaint, to your recollection -
38 I shouldn't say further discussion. Did you have any
39 discussion with Brad Tayler about the matters raised in
40 that complaint?
41 A. I don't believe I did.
42
43 MS LONERGAN: Those are my questions, Commissioner.
44
45 <EXAMINATION BY MR COHEN:
46
47 MR COHEN: Q. Assistant commissioner, your evidence to

1 this Commission is that your view was Detective Sergeant
2 Steel was the officer with the necessary skills and able
3 adequately to deal with and appropriately meet with and
4 form a rapport with victims in this situation with the
5 Strike Force Lantle; is that so?

6 A. Yes, I came to that conclusion with DCI Tayler.

7

8 Q. If that was so, why did you communicate to Ms McCarthy
9 it was your view that she had no skills at all with child
10 sexual assault?

11

12 MR RUSH: I object.

13

14 THE COMMISSIONER: No, that's not the evidence, Mr Cohen.

15

16 MR SAIDI: I object. That's not his evidence. A very
17 important qualification has been left out of that question.

18

19 THE COMMISSIONER: Yes, I understand it, Mr Saidi,

20

21 MS LONERGAN: For the record, the evidence, to assist my
22 learned friend, was that she didn't have any experience of
23 investigating child abuse --

24

25 THE COMMISSIONER: Investigating child abuse within the
26 Catholic Church.

27

28 MR COHEN: Let's put it that way.

29

30 Q. Given that this matter involved the Catholic Church,
31 that was an important qualification for you, surely, wasn't
32 it?

33

34 A. It was a consideration but it certainly wasn't a
35 qualification.

35

36 Q. When you were confronted with the facts of the
37 complaint about the conduct of Detective Sergeant Steel by
38 the witness [AL] - I'm sorry, I think my friend --

39

40 MS LONERGAN: Commissioner, it's just that Mr Cohen's
41 voice has got very, very soft again. I'm actually in the
42 row in front of him and I'm having trouble hearing him.

43

44 MR COHEN: I must say the technology problems are becoming
45 acute and I don't know how to deal with them.

46

47 MS LONERGAN: Commissioner, in my respectful submission,

1 I am sitting five feet from Mr Cohen and I cannot hear him.
2 It is not entirely fair to say there are technological
3 problems. There are certainly projection problems and
4 I have found that when Mr Cohen keeps his voice up,
5 everything seems to be a lot easier and I'd ask my learned
6 friend to do so.

7

8 THE COMMISSIONER: Please try to keep your voice up
9 Mr Cohen. We're in a very big courtroom and everyone has
10 to hear you.

11

12 MR COHEN: Q. Assistant commissioner, you must have been
13 shaken when you received the particulars of the complaint
14 about the conduct of Detective Sergeant Steel by witness
15 [AL] in that respect?

16 A. Are you asking me was I shaken?

17

18 Q. Your confidence in her when you received that
19 complaint?

20 A. No, I was not.

21

22 Q. Did you review the complaint that you saw at the time
23 you received it?

24 A. Yes, as I've said.

25

26 Q. Did you understand that the complaint was being
27 resolved or the relevant manager who received it was
28 Detective Chief Inspector Tayler?

29 A. Yes.

30

31 Q. Did you understand that there was, in those
32 circumstances of Detective Chief Inspector Tayler reviewing
33 the conduct of one of his direct reports, in the
34 circumstances of the complaint, a real potential for a
35 conflict of his personal interest over a team member and
36 his duty as the reviewing officer?

37 A. Can I just explain something, and this may assist you.

38

39 Q. Well, I'd like you to answer that question, if you
40 would. Did you consider that proposition?

41 A. No, because I didn't have to. It was a customer
42 service complaint. Customer service complaints are
43 considered minor within the New South Wales police
44 complaint management holdings.

45

46 Q. Who determined that it was a customer service
47 complaint?

1 A. The professional standards duty officer.
2
3 Q. On what information was that determination made?
4 A. He would have determined that based upon the letter
5 that was received.
6
7 Q. Having been determined as a customer service
8 complaint, did that take it outside the realm of any
9 oversight or further review by the ombudsman?
10 A. No.
11
12 Q. And it could not possibly be hidden from the ombudsman
13 in those circumstances?
14 A. No.
15
16 Q. When you considered that complaint - I'll come back to
17 my question - did you believe that there was any concern
18 about a conflict of interest and duty of any type?
19 A. I was not concerned whatsoever.
20
21 Q. Did Chief Inspector Tayler direct any comments to you
22 of that type?
23 A. I have no recollection of that ever occurring.
24
25 Q. Did Detective Sergeant Steel direct any comments to
26 you of that type?
27 A. No.
28
29 Q. Not ever?
30 A. No.
31
32 Q. She didn't say to you at any stage, "This is a
33 difficulty. I need to step back from it and perhaps
34 somebody else should be used to investigate this matter"?
35 A. That never occurred.
36
37 Q. You organised a meeting between the strike force team
38 known as Lantle and Ms McCarthy, did you not?
39 A. That's right.
40
41 Q. And you did that after a discussion with Ms McCarthy,
42 did you not?
43 A. That's right.
44
45 Q. Did not that occur after that discussion in which you
46 communicated to Ms McCarthy your view about Detective
47 Sergeant Steel's ability?

1 A. That's right.
2
3 Q. Did you tell Ms McCarthy at this time, "Steel does not
4 have experience in child sex cases"?
5 A. I think I've already explained what I said.
6
7 Q. I'll repeat my question. Did you say to Ms McCarthy
8 at the time of this discussion, "Steel does not have
9 experience in child sex cases"?
10 A. No, I did not.
11
12 Q. The meeting occurred with your concurrence and indeed
13 your encouragement to Detective Chief Inspector Tayler, did
14 it not?
15 A. Yes.
16
17 Q. Did you have a doctrinal opposition to communications
18 with members of the media?
19 A. Would you like to explain "doctrinal" to me?
20
21 Q. An absolute principled opposition ever to having
22 communication with the media?
23 A. No, and I think my history shows that I've had quite a
24 good background with the media.
25
26 Q. Did Detective Chief Inspector Tayler have such a
27 doctrinal opposition, to your understanding?
28 A. Not to my understanding.
29
30 Q. Is it the case then that when you communicated to him
31 what you intended to occur, he was quite happy for it to
32 proceed?
33 A. Yes.
34
35 Q. And he was quite accepting of the idea of sitting down
36 in a meeting with a journalist and having an exchange of
37 views, was he?
38 A. It wasn't so much an exchange of views. I was told on
39 the phone by Ms McCarthy that she had documents and, also,
40 that she could provide advice and background to the
41 investigation team and I thought that, at the time, was
42 appropriate.
43
44 Q. Is that not an exchange of views?
45 A. That's fine.
46
47 Q. I'm sorry?

1 A. Yes.

2

3 Q. Were you surprised when Detective Chief Inspector
4 Tayler took the view that no such exchange of views was
5 ever to be accommodated or occur?

6 A. I was surprised.

7

8 Q. Did you suggest to him that perhaps in the
9 circumstances it would be a good idea for the meeting to be
10 reconvened and there be such an exchange of views?

11 A. No, I did not.

12

13 Q. Why did you not do that?

14

15 MR SAIDI: Can I object to the use of the phrase "exchange
16 of views". We've gone from the witness referring to
17 specifics as to what he believed was to occur. We've moved
18 it now to an "exchange of views", which is, with respect,
19 an uncertain phrase, and it's unfair and misleading to
20 allow this to continue in the context of the questions.

21

22 MR COHEN: Commissioner, might I be heard? I understood
23 that the witness had no difficulty with the way I was
24 putting it.

25

26 THE COMMISSIONER: He may have had a difficulty, but he
27 acknowledged that an exchange of views was one way of
28 putting it, I think.

29

30 MR COHEN: I was proceeding on that footing. I didn't
31 perceive any unfairness, but it's a matter for you.

32

33 THE COMMISSIONER: Ask the question, please, Mr Cohen.

34

35 MR COHEN: Q. Did you suggest to Detective Chief
36 Inspector Tayler that it might be a good idea for the
37 meeting to be reconvened so there could be such a
38 discussion and an exchange of views?

39 A. No, I did not.

40

41 Q. Why didn't you think it was not a good idea in the
42 circumstances where the first meeting terminated very
43 quickly?

44 A. Because, based upon what I was told by DCI Tayler
45 I formed a view that there was - that was going to take us
46 nowhere, and that was basically how I decided. I saw no
47 reason to continue down that track.

1
2 Q. You remember, I take it, the circumstances of the
3 meeting that occurred on 2 December 2010 at the Waratah
4 station.
5 A. Yes.
6
7 Q. It's the case, isn't it, that on that day there were a
8 number of meetings that occurred at the Waratah station?
9 A. You'll have to clarify when you speak about a number
10 of meetings.
11
12 Q. About Lantle?
13 A. No, there was only one meeting --
14
15 Q. Only one?
16 A. I hadn't finished the answer.
17
18 Q. I beg your pardon.
19 A. There was only one meeting on 2 December that I was
20 aware of in terms of documenting and meeting with
21 investigation staff for Lantle.
22
23 Q. What time of the day, to your recollection, did that
24 meeting commence?
25 A. My recollection was it was around midday.
26
27 Q. Not before?
28 A. Not to my recollection. It was around midday.
29
30 Q. Probably after midday some time?
31 A. Slightly.
32
33 Q. Maybe 12.30?
34 A. Could have been.
35
36 Q. So your recollection is that there was no meeting at
37 11.30 about Lantle?
38 A. That I was involved in?
39
40 Q. Yes.
41 A. No.
42
43 Q. So you would tell the Commission that there was no
44 discussion between yourself and Detective Chief Inspector
45 Tayler, Detective Senior Constable Quinn, and another
46 officer about the initial investigation?
47

1 MS LONERGAN: I object. The previous questions were about
2 whether there was a meeting. I think the witness should be
3 asked whether there was any other discussion just so
4 there's no confusion.
5
6 MR COHEN: I thought I had done that. I apologise.
7 I thought I had asked that very question.
8
9 Q. Was there a prior discussion about Lantle before the
10 one you identified --
11 A. There may have been certainly prior discussion.
12
13 Q. Was it a prior meeting that was separately recorded by
14 way of a case note or some other method of recording?
15 A. Look, the investigation team may well have created a
16 case note. I'm unaware, but certainly there would have
17 more than likely have been discussion.
18
19 Q. Involving yourself?
20 A. It may have. I don't recall.
21
22 Q. And if you were there, what were likely to be - what
23 was likely to be the content of that discussion?
24 A. The likelihood would have been just the fact that we
25 were meeting to discuss the scope and where we were going
26 with Lantle.
27
28 Q. With whom do you envisage that would occur? Do you
29 have a recollection independently of any such meeting?
30 A. No.
31
32 Q. If you had attended one, who would you have expected
33 to discuss the matters with?
34 A. Tayler, Steel and Quinn.
35
36 Q. You recall, as well, the commencement of the meeting
37 that is the subject of a case note you've identified in
38 your evidence?
39 A. Yes.
40
41 Q. And you think that particular session - let's call it
42 session for the sake of a distinction - occurred after
43 midday?
44 A. As I said, it occurred around midday.
45
46 Q. And it occurred where in the Waratah station?
47 A. It occurred in a conference room towards the rear of

1 Waratah police station on the second level.
2
3 Q. Big enough to hold half a dozen or more people
4 presumably?
5 A. That's right.
6
7 Q. Were you, in effect, the chairman of the meeting?
8 A. Yes, I was.
9
10 Q. How, in your understanding, was the meeting called
11 together for this time?
12 A. Through discussion with DCI Tayler.
13
14 Q. That means that you communicated to him your
15 requirement that a meeting happen - was it?
16 A. To arrange a meeting with those present.
17
18 Q. And the instruction you gave as a consequence of that
19 was for him to communicate, was it, with each of the other
20 proposed attendees at the meeting?
21 A. I left it open, but that's what I would have assumed.
22
23 Q. But you didn't do it yourself?
24 A. No.
25
26 Q. And you didn't check that it happened. You just asked
27 that it occur in that way?
28 A. Well, I think he's a very competent - and he's a
29 senior officer.
30
31 Q. The long and the short of it is you told him --
32 A. To arrange a meeting.
33
34 Q. For 2 December after midday?
35 A. Yes. There was no - when you say "after midday",
36 I don't think I gave any specific time frame.
37
38 Q. That's why I'm checking with you. I just want to be
39 sure. What was your intention on the day? Did you have
40 any view when you asked Detective Chief Inspector Tayler to
41 go ahead and make arrangements for this? This, of course,
42 required a number of people got together presumably with
43 busy diaries. What did you have in mind for a time of day
44 for particular parties? Did you have a particular time
45 that you wanted?
46 A. Not to my recollection, no, there was no particular
47 time. It was certainly just a case of coming together to

1 progress what needed to be progressed for the purposes of
2 Lantle.

3

4 Q. Do you recall getting a note back from somebody,
5 whether it be Tayler himself or some other person, perhaps
6 your assistant, to the effect, "Look this is all on for a
7 certain time. This is all arranged. Does that work for
8 you?" - something like that?

9 A. It may have.

10

11 Q. But, in any event, you went to the meeting?

12 A. That's right.

13

14 Q. When the meeting commenced, isn't it the case that
15 Detective Chief Inspector Fox said this, amongst other
16 things - isn't it the case that he said this:

17

18 *The only reason we are here having this*
19 *meeting is because of the contacts and*
20 *information Joanne McCarthy has turned up.*
21 *It is not a case of me giving her*
22 *information but more a case of her giving*
23 *us information. She's all over this better*
24 *than anyone. I know it's unusual but you*
25 *have to stop working against her and bring*
26 *her on board. She has more information on*
27 *this investigation than the rest of this*
28 *room put together.*

29

30 He said that, didn't he?

31 A. No, he did not.

32

33 Q. What I'll do in fairness to you, assistant
34 commissioner, so you can understand this, I'll give you a
35 block of statements and then ask you to comment.

36 A. I understand.

37

38 Q. And then your response, and you become visibly angry,
39 was:

40

41 *She's not running this investigation.*
42 *She's to be cut out of this from here on.*
43 *I'll be the only one dealing with her from*
44 *here on. Any inquiries by her are to go*
45 *through me.*

46

47 You said that, didn't you?

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MR SAIDI: I object. That contains two very important components - very visibly angry and the contents of the conversation.

THE COMMISSIONER: Yes.

MR COHEN: Q. Were you angry at this time?

A. No, I was not.

Q. Do you want me to repeat that commentary attributed to you?

A. Yes, please.

Q. I put it that your comment in response to what Detective Chief Inspector Fox said was:

*She's not running this investigation.
She's to be cut out of this from here on.
I'll be the only one dealing with her from here on. Any inquiries by her are to go through me.*

You said that, did you not?

A. No, I did not.

Q. And then Detective Chief Inspector Fox responded:

That's madness. She knows a lot more witnesses, contact numbers and has access to information we don't. Victims trust her. They ring Joanne McCarthy and the Herald before they ring us. If it means you get her to sign a confidentiality agreement until the investigation is over so be it. I know that we don't normally do that but this is isn't a normal investigation. You have to have her in the loop.

That was said, wasn't it, by Detective Chief Inspector Fox?

A. No, it was not.

Q. Your response was:

That's not how we operate. Region had decided this will be investigated by

1 *Newcastle.*

2

3 You said those words, didn't you?

4 A. No, I did not.

5

6 Q. Then there was further discussion. You went on to say
7 directed to DCI Fox, being in the company of everyone
8 present in the conference room:

9

10 *Where are the statements you were told to*
11 *bring down?*

12

13 You remember saying that, don't you?

14 A. No.

15

16 Q. And the response from DCI Fox was:

17

18 *I just explained to Brad that they are on*
19 *my desk and I forgot to grab them.*

20

21 You recall him saying that, don't you?

22 A. No, I do not.

23

24 Q. And you then responded:

25

26 *You are directed to bring them down and*
27 *hand them over to Brad Tayler. He will be*
28 *running this investigation from Newcastle*
29 *with Justin Quinn and Kirren Steel is that*
30 *clear?*

31

32 You said that to him, didn't you?

33 A. No, did I not.

34

35 Q. Detective Chief Inspector Fox responded:

36

37 *You can't do that to these people. The*
38 *main witness [AJ] refused to speak to any*
39 *police other than me. The only reason she*
40 *came forward to give her statement is that*
41 *I assured her I would remain with this*
42 *investigation. I gave her my word. I am*
43 *not building myself up. If you don't*
44 *believe me you can ring her or Joanne*
45 *McCarthy now. It is a similar situation*
46 *with McAlinden's ... It took a lot of*
47 *convincing to get them to come in. You*

1 *can't just pass these people around like*
2 *numbers. They have been through enough.*

3

4 Detective Chief Inspector Fox said that, didn't he?

5 A. No, he did not.

6

7 Q. Your response to that was:

8

9 *The decision has already been made at*
10 *region. You will give those statements to*
11 *Brad and that's final.*

12

13 Do you remember speaking those words?

14 A. I did not.

15

16 Q. You accept, don't you, that you gave a direction to
17 DCI Fox to bring documents down, don't you?

18 A. I gave --

19

20 Q. A direction to DCI Fox to bring documents down?

21 A. I never spoke to DCI Fox to bring documents down.

22

23 Q. And then DCI Fox made this response:

24

25 *Max I know more about how the church*
26 *operates than most. I have been studying*
27 *them for years and most of it is in my*
28 *head. I put together tendency and*
29 *coincidence evidence in the Father Fletcher*
30 *trial that was upheld in the High Court and*
31 *is now cited as a test case. With all*
32 *respect to Brad, he has only overlooked*
33 *these sorts of investigations; I've been in*
34 *the middle of them.*

35

36 He said that, didn't he?

37 A. He did not.

38

39 Q. Your response to him was:

40

41 *You are to hand everything over. I don't*
42 *want you interfering or contacting any of*
43 *the witnesses from today.*

44

45 Did you say that?

46 A. No, I did not.

47

1 Q. DCI Fox said:

2

3 *I have to call them to let them know what*
4 *is going on. I am not prepared to treat*
5 *them like dirt and just cut them off.*
6 *These people have been hurt enough.*

7

8 That was said, wasn't it?

9 A. No, it was not.

10

11 Q. And you responded:

12

13 *All right you can ring them to let them*
14 *know that Brad Tayler's team will be*
15 *dealing with them from now on and that's*
16 *it.*

17

18 Those were your words, weren't they?

19 A. No, they were not.

20

21 Q. You went on to say:

22

23 *I am formally directing you to stop all*
24 *contact with Joanne McCarthy. Any contact*
25 *from her I am directing you to report it to*
26 *me immediately in writing. Is that*
27 *understood?*

28

29 You said those words, didn't you?

30 A. No, I did not.

31

32 Q. DCI Fox said:

33

34 *I can't understand why. She has done*
35 *nothing but help. I will have to let her*
36 *know what's going on.*

37

38 That was said, wasn't it?

39 A. No, it was not.

40

41 Q. Your response was:

42

43 *Did you hear what I said? You are to stop*
44 *all contact with her from now. That is a*
45 *formal direction and it will be recorded in*
46 *the minutes.*

47

1 That's what occurred, wasn't it?

2 A. No.

3

4 Q. You indicate in your statement that this was not a
5 direction; it was an instruction. That's right, isn't it?

6 A. Yes.

7

8 Q. But you have given evidence before the Commissioner in
9 response to questions from my learned friend Ms Lonergan to
10 the effect that, on a number of occasions, in a formal
11 capacity when a recording was made in writing for
12 disciplinary purposes, you did refer to it as a direction.
13 That's right, isn't it?

14 A. In the complaint file that's the way it was recorded.

15

16 Q. It was recorded in the complaint file at the time of
17 the investigation by the complaint officer because you did
18 make the direction, didn't you?

19 A. My instructions I believe were very, very clear.

20

21 Q. And you recanting from that in the way you do in your
22 statement is not a true representation of the position, is
23 it?

24 A. Yes, it is.

25

26 Q. Indeed, in the way that you characterise your position
27 in your statement, it's apt to mislead this Commission,
28 isn't it?

29 A. No.

30

31 Q. It is the case, is it not, that other parties charged
32 with formal procedural steps under the police regulations
33 have recorded you at the time of the investigation in May
34 2011 as indicating that there was a direction made, have
35 they not?

36 A. According to the paperwork, that's correct.

37

38 Q. Well, you don't suggest that that paperwork is other
39 than correct, do you?

40

41 MR SAIDI: I object to this line of questioning. This is
42 really a play with words. What is taking place in terms of
43 cross-examination shows, with respect, a remarkable
44 ignorance of police procedure and police practice. A
45 direction - it's a matter in part for you, but more
46 importantly the disciplinary tribunal or disciplinary
47 bodies responsible for the police service as to whether or

1 not a police officer has breached a direction. It is no
2 more than a term of phrase. If any police officer at any
3 police station in New South Wales is asked by a superior
4 officer to get in a car and go down the street and
5 investigate a motor vehicle accident and he refuses to, no
6 matter how it's expressed, that refusal itself is seen as
7 disobeying a direction. A simple request can be a
8 direction and a failure to abide by a simple request can be
9 a direction.

10
11 With respect, why is one going down this line of
12 questioning along the lines of what is the difference
13 between a direction or an instruction in the context of
14 what is not a question - in reality, a question of fact -
15 but what is police parlance, police culture, and police
16 procedure. The police regulations do not require a person
17 to say, or a security officer to say, "I direct you." The
18 example I've given is a correct example. It is if a
19 superior police officer asks for something to be done by a
20 junior officer, in whatever capacity, as long as it's a
21 lawful demand and if there's a refusal to comply with the
22 request, however phrased, that is a subject of disciplinary
23 action.

24
25 THE COMMISSIONER: If someone makes a complaint.

26
27 MR SAIDI: If someone makes a complaint.

28
29 MS LONERGAN: Commissioner, in my respectful submission,
30 the line of questioning Mr Cohen is pursuing is appropriate
31 given there seems to be a distinction made in this
32 officer's statement as opposed to what contemporaneous
33 documents state in relation to the word "direction" being
34 used. I went down a similar line of inquiry with this
35 witness, perhaps not quite the same style. In my
36 respectful submission, it ought to be allowed.

37
38 MR SAIDI: I have one more, Commissioner.

39
40 THE COMMISSIONER: Yes, Mr Saidi.

41
42 MR SAIDI: In the internal affairs complaint file, as
43 I understand it, and I stand to be corrected, Detective
44 Chief Inspector Fox himself does not dispute that he was
45 under a lawful obligation to produce the material. Whether
46 the word "direction" is used by him or whether the word
47 "instruction" or however used, he was under no difficulties

1 in knowing what he was required to attend to.

2

3 THE COMMISSIONER: It is significant, is it not, that
4 Assistant Commissioner Mitchell did not make the complaint
5 about his request, instruction, direction, having been
6 breached? It was made by someone else.

7

8 MR SAIDI: Exactly, and someone else who had a view that
9 there was an obligation by a junior officer to comply with
10 it. We know how it all went, and that's why I come back to
11 the issue of relevance. We know how it all went.
12 Detective Chief Inspector Fox was asked questions in terms
13 of his involvement with the media. He was under no doubt
14 why he was being asked those questions and we have clear
15 evidence before this Special Commission that Detective
16 Chief Inspector Fox, when dealing with a complaint and an
17 interview or a memorandum situation in a complaint,
18 conceded on his own evidence he deliberately misled the
19 person asking the question.

20

21 In the context of that, why are we spending so much
22 time in relation to what Assistant Commissioner Mitchell's
23 view of the matter may be? We know. The overall context
24 is we know. A complaint proceeding was brought. Detective
25 Chief Inspector Fox failed to comply with the request, the
26 instruction, the order, the direction, however you
27 categorise it, and he deliberately misled the investigator
28 and it wasn't this officer's complaint.

29

30 THE COMMISSIONER: I note that, Mr Saidi.

31

32 MS LONERGAN: Can I raise one matter, Commissioner. This
33 is for the assistance of my learned friend Mr Cohen and to
34 clarify something. I asked a question of Assistant
35 Commissioner Mitchell to the effect of: "In the police
36 regulations isn't there a distinction between direction and
37 instruction?" Assistant Commissioner Mitchell gave a
38 certain answer to the effect of not as far as he was
39 concerned, if I may paraphrase.

40

41 I should read on to the record the relevant police
42 regulation, because I don't want my question to be read as
43 suggesting in any way Assistant Commissioner Mitchell's
44 answer was wrong. I will read police regulation 8 on to
45 the record to be of assistance to those in court so they
46 can understand. "Performance of duties by police officers"
47 is the heading and it provides in subsection (1):

1
2 *Police officers are to comply strictly with*
3 *the Act and this Regulation and promptly*
4 *comply with all lawful orders from those in*
5 *authority over them.*

6
7 *(2) In particular, a police officer is*
8 *required:*

9
10 *(a) to serve wherever the officer is duly*
11 *directed, and*

12
13 *(b) to perform such police duty as may be*
14 *duly directed, whether or not during the*
15 *officer's rostered hours of duty.*

16
17 In my respectful submission, there are two aspects to that
18 regulation and I'll sit down.

19
20 THE COMMISSIONER: Ms Lonergan, isn't it the case, though,
21 that something can be a direction, even if a senior officer
22 doesn't say, "I direct you" or "You are directed"?

23
24 MS LONERGAN: I accept that proposition, Commissioner, and
25 I accepted that evidence from the witness and did not cavil
26 with it by any further questioning.

27
28 THE COMMISSIONER: Thank you, Ms Lonergan.

29
30 MR COHEN: May I be heard, Commissioner?

31
32 THE COMMISSIONER: Yes, Mr Cohen.

33
34 MR COHEN: What I was testing was not this elongated issue
35 that my learned friend Mr Saidi raised. I was testing the
36 simple proposition that we have a witness statement now
37 that has been adopted in the witness box which is now an
38 exhibit before you. It does make that distinction in a way
39 that is not consistent with what was put orally in the
40 witness box --

41
42 THE COMMISSIONER: To which witness statement are you
43 referring?

44
45 MR COHEN: Paragraph 24.

46
47 THE COMMISSIONER: Of Assistant Commissioner Mitchell's

1 statement.

2

3 MR COHEN: I'm sorry, it is paragraph 23. Indeed, what
4 needs to happen is that 23 and 24 be read conjointly so
5 that one can make sense of the approach that is taken by
6 the witness in his statement. Before we go back to it, to
7 enable you to be fully informed and to be able to rule what
8 the competing considerations are, my proposition is a
9 simple one: in the statement, particularly paragraph 24,
10 is quite a considered discussion that identifies, on any
11 view in my respectful submission, a distinction between
12 these matters that does not admit of the approach taken by
13 the assistant commissioner in the witness box where he
14 identified, not by number but by reference to the police
15 regulation, that it's any lawful order, which is the form
16 of the regulation. There is a distinction posited here
17 meaningfully made in this way and I'm seeking to test it.

18

19 THE COMMISSIONER: All right, then, Mr Cohen, I'll permit
20 you to, but the tenor of the evidence from Assistant
21 Commissioner Mitchell is more that there was no need for
22 any of these formal-type things if he's talking to a
23 commissioned officer. There are very senior members of the
24 Police Force in the room and it doesn't necessarily have to
25 come down to a direction - a formal direction in those
26 terms when he's simply asking other senior officers to do
27 something that he wants them to do.

28

29 MR COHEN: Let me test it this way.

30

31 Q. Assistant commissioner, the matter you identified in
32 paragraph 24 of your statement, which is now admitted as an
33 exhibit, you posit a meaningful distinction in that
34 paragraph between two concepts, don't you?

35

36 A. To assist, my view is I probably haven't articulated
37 it clearly enough, but what I was trying to articulate was
38 the fact that I didn't use the word or the phraseology
39 referring to a "direction".

39

40 Q. Could that be for the simple reason that these really
41 aren't your words; they were just slapped down in front of
42 you and you said, "Where do I sign"?

43

44 A. No.

44

45 Q. If I can come back to this series of propositions that
46 I was putting to you, there is one more that I have to put
47 to you in fairness. This is what I'm putting to you:

1 after you indicated that there will be a formal direction,
2 Detective Chief Inspector Fox - and this again is of course
3 at the meeting of 2 December at Waratah station to assist
4 you - indicated:

5
6 *The statement from [AJ] took me a month to*
7 *type. She is terribly traumatised by it*
8 *all which is why I spent so much time with*
9 *her. I have never described any statement*
10 *before like this, but her statement is*
11 *nothing short of "explosive". There is*
12 *already enough to charge ...*

13
14 I need to pause here. Excuse me, assistant commissioner.

15
16 There was some difficulty yesterday, Commissioner,
17 with references to a number of names. I want to be careful
18 about whether or not there is a subsisting non-publication
19 order and how I should deal with this. May I just discuss
20 this with Ms Lonergan?

21
22 THE COMMISSIONER: Yes, Mr Cohen.

23
24 MR COHEN: Q. I will make reference to certain persons,
25 if that helps you. They are certain persons to do with a
26 religious organisation, and we're endeavouring to be
27 careful about reputation here, so I will refer to it that
28 way. I'll start again and refer to it this way:

29
30 *There is already enough to charge [three*
31 *certain persons] on her evidence alone.*

32
33 That is [AJ]'s evidence:

34
35 *[AK] and [AL] and Mike Stanwell ...*

36
37 This is verbatim --

38
39 *only make it more damning. She gives a*
40 *brilliant insight as to how the church*
41 *operates. I have organised for a nun Paula*
42 *Redgrove to speak to me. Another woman who*
43 *worked for the Church at Zimmerman House,*
44 *Helen Keevers also has monumental evidence*
45 *of cover ups. This needs more than a local*
46 *investigation with a strike force name.*
47 *This has the potential to go interstate if*

1 *you're serious.*

2

3 Detective Chief Inspector Fox said those words, didn't he?

4 A. No, he did not.

5

6 Q. Your response was, in response:

7

8 *Just make sure you get the statements and*
9 *anything else to Brad and Justin*
10 *immediately. Anyone you have contact just*
11 *give them the numbers. That also includes*
12 *anything Joanne McCarthy gave you. They*
13 *will be running the investigation from here*
14 *on.*

15

16 That's right, isn't it?

17 A. No, it is not.

18

19 Q. To your knowledge, that same day Detective Chief
20 Inspector Fox, having left the meeting and returned to his
21 office at Raymond Terrace, arranged for the very documents
22 you were contemplating to be put into an interoffice
23 memorandum and filed that memorandum and sent to Waratah
24 station, did he not?

25 A. I don't know.

26

27 Q. Isn't it the case that Sergeant Metcalfe took those
28 materials from Raymond Terrace up to Waratah and delivered
29 them up to the custody of one or other of Detective Chief
30 Inspector Tayler or Detective Senior Sergeant Quinn?

31 A. That was never brought to my attention.

32

33 Q. But you understood, didn't you, that the documents
34 that were sought were provided - don't you?

35 A. No.

36

37 Q. You've never found out to that effect?

38 A. I've only been told by DCI Tayler that there was one
39 four-page perhaps statement unsigned. That's all I've ever
40 been told.

41

42 Q. You've heard the evidence - you've been here for many
43 days in this Commission - and you know that not to be
44 correct, don't you?

45 A. I disagree with that.

46

47 MR SAIDI: What was not correct that DCI Tayler told him?

1
2 MR COHEN: That there were only four pages unsigned.
3
4 MR SAIDI: How would this witness know, other than what he
5 was told by Tayler? That's what he's saying "I was told by
6 Tayler X." He's now told that's not correct. What is not
7 correct? Is it what Tayler told him is not correct or
8 what --
9
10 THE COMMISSIONER: Mr Cohen, would you put to Assistant
11 Commissioner Mitchell what it is you say was provided.
12
13 MR COHEN: Q. You know what was asserted by Detective
14 Chief Inspector Tayler about that fact was incorrect, don't
15 you?
16 A. No, I do not.
17
18 Q. And the minute of the meeting of the investigator's
19 note - it's annexure E to your statement - has been, to use
20 the phrase, sanitised before it's been put on the system,
21 hasn't it?
22 A. It was never sanitised to my knowledge, no.
23
24 Q. It's been rendered free of any of the contentious
25 material that I've just taken you to, hasn't it?
26 A. No, it has not.
27
28 Q. If you look at your annexure E, the investigator's
29 note, and this is at page - if your pages are numbered,
30 E is pages 306 to 309?
31 A. What do you want me to look at?
32
33 Q. Do you see annexure E to your statement. Is that with
34 you in the bundle you have in the witness box?
35 A. Annexure E? Yes, I have it.
36
37 Q. It should be 306, do you have that?
38 A. Yes.
39
40 Q. You are familiar with the terms of that investigator's
41 note, aren't you?
42 A. Yes.
43
44 Q. To assist the Commissioner, do you see anywhere on
45 that document the designation "highly protected"?
46 A. No.
47

1 Q. Can you explain to the Commissioner why that might be
2 A. No.
3
4 Q. But you tell the Commissioner, don't you, that that
5 was the status of this matter at the time?
6 A. I think I've stated to the Commission in earlier
7 evidence I was not made aware that it became highly
8 protected.
9
10 Q. Not ever?
11 A. Only from what I've heard now in this hearing.
12
13 Q. Do you recall indicating during the course of this
14 case conference at Waratah on 2 December that the
15 investigations presented a high level of risk to the
16 organisation?
17 A. That's right.
18
19 Q. Is it not the case that you're meaning by employing
20 that phrase is a high level of embarrassment to the
21 organisation if the media gets hold of it?
22 A. No.
23
24 Q. Wasn't the real issue in relation to Strike Force
25 Lantle at this time, that is to say, in December 2010,
26 keeping it and any mention of it off the front page of the
27 Newcastle Herald?
28 A. Do you want to ask that question again, please?
29
30 Q. Sure. Wasn't the real concern by you and others in
31 the command at the time in 2010 about Lantle - that is,
32 what you describe as risk to the organisation - the risk of
33 this appearing on the front page of the Newcastle Herald?
34 A. No.
35
36 Q. Wasn't the real concern that the Newcastle Herald had
37 identified an issue that internally to the command what had
38 been given the label Strike Force Lantle was simply going
39 nowhere fast?
40 A. No.
41
42 Q. Wasn't the issue that the holdings of Lantle at this
43 time were capable of being identified as subject to abysmal
44 management; isn't that right?
45 A. Abysmal management?
46
47 Q. Yes.

1 A. I've never heard that, no.
2
3 Q. You've never seen it in a document?
4 A. No.
5
6 Q. Never been discussed at a meeting with the then region
7 commander, Ms York?
8 A. No.
9
10 Q. Never been discussed with the crime manager who, from
11 time to time, relieved in your position, Detective Chief
12 Inspector Humphrey?
13 A. I have no recollection of that being raised by
14 Detective Humphrey with myself.
15
16 Q. Could you look at annexure D to your statement, which
17 is at page 305. Do you recall reading that document?
18 A. I think I've already explained that I more than likely
19 would have read this perhaps days after the event.
20
21 Q. Is it your practice to carry what might be called in
22 shorthand a BlackBerry?
23 A. Yes.
24
25 Q. Is it a BlackBerry you use or some similar device
26 known as a smart phone?
27 A. It's a BlackBerry.
28
29 Q. It has the ability to obtain email traffic from it
30 wherever you happen to be assuming you are within some sort
31 of coverage zone for the provider?
32 A. That's right.
33
34 Q. Isn't it likely that you actually saw this memorandum
35 on the day it was transmitted by virtue of the medium of
36 your BlackBerry?
37 A. I think on the day I was driving back from Dubbo.
38
39 Q. What time of the day was that?
40 A. My best recollection would have been probably after
41 breakfast for a period of however long it takes to drive
42 from Dubbo.
43
44 Q. What's your recollection of how long that journey was?
45 A. I think around six hours.
46
47 Q. Breakfast was, what, about 7 o'clock roughly?

1 A. No, probably around 8.30-ish.
2
3 Q. You think, all things being equal, you were likely to
4 be at your office by 3 in the afternoon?
5 A. I don't even know whether I returned to the office or
6 after travelling I went home.
7
8 Q. On a long journey like that, presumably you stop from
9 time to time just to stretch your legs and use the
10 conveniences and fill up the car with petrol; is that
11 right?
12 A. Look, that would make logic, but I can't recall
13 filling up the car or stretching my legs.
14
15 Q. Is that your practice when you are on a long journey
16 like that to take a break just to become less fatigued?
17
18 MR SAIDI: I object to this. As refreshing as it is to
19 all of us to know what he does on a long journey, I can't
20 see how this --
21
22 THE COMMISSIONER: Yes, could you get to the point,
23 please, Mr Cohen.
24
25 MR COHEN: Q. Isn't it likely that you stopped for a
26 break and read your BlackBerry on the journey back from
27 Dubbo?
28 A. No.
29
30 Q. And knew about this memorandum from Detective Chief
31 Inspector Humphrey on the day, on 13 October?
32 A. No.
33
34 Q. You tell the Commissioner, do you, that that just
35 didn't happen?
36 A. I have no recollection of reading it on the day, no, I
37 don't.
38
39 Q. But it's a possibility, isn't it?
40 A. I don't believe it is because I was driving, and I was
41 driving for a lengthy period of time and I believe I drove
42 home after returning from Dubbo.
43
44 Q. When you finally read the memorandum, - that is
45 annexure D to your statement, the email of 13 October
46 2010 - when you finally read it, did it occur to you that
47 the object of the memorandum, Detective Chief Inspector

1 Fox, was in fact not a recipient of it? Did that strike
2 you as strange?

3 A. No. To be honest, I didn't look at the recipients.
4

5 Q. Having regard to that fact now, as you sit in the
6 witness box, isn't it passing strange that the memorandum,
7 which is ostensibly all about DCI Fox, doesn't ever get to
8 him on the face of it?

9 A. No.
10

11 MR SAIDI: With respect, again I take an objection on the
12 basis of relevance. This is a document forwarded to the
13 commander of DCI Fox asking the commander to take certain
14 action. Why should DCI Fox get it?
15

16 THE COMMISSIONER: Yes. Are you ultimately going to
17 submit that he should have, Mr Cohen?
18

19 MR COHEN: I will, but --
20

21 THE COMMISSIONER: That he didn't - he may have, but he
22 wasn't copied in.
23

24 MR COHEN: If the Commission pleases.
25

26 Q. Did you become aware at any stage that, at the time
27 this memorandum was sent and distributed, Detective Chief
28 Inspector Fox was overseas?

29 A. I had no idea where DCI Fox was.
30

31 Q. So this was just a matter for Commander Haggett?

32 A. The best I can provide, I would have just read the
33 content and I'm satisfied with the content.
34

35 Q. Very well. You have, I believe, with you to your
36 right, just next to you in the witness box, the volumes of
37 materials in the tender bundle. Is that so. Can you see
38 volume 2 of the tender bundle nearby?

39 A. Volume 2, yes.
40

41 Q. I believe you've had a slight excursion to this
42 document previously with Ms Lonergan. Could you open it
43 and go again, if you would, kindly, assistant commissioner,
44 to tab 111. The first page is the cover for complaint
45 given the ID number P1100773. Am I correct in my
46 understanding that you are aware that this is a complaint
47 file about the asserted failure by DCI Fox to follow your

1 lawful direction?
2 A. I've become aware.
3
4 Q. Did you at any stage have any reason or opportunity to
5 review the holdings in that file?
6 A. No.
7
8 Q. Have you ever read any of the materials in the file?
9 A. No.
10
11 Q. Could I direct your attention, if I may, to page 483
12 in the bundle, which is a document on the file.
13 A. Yes.
14
15 Q. You've read that document now?
16 A. Yes.
17
18 Q. Do you tell the Commissioner that you accept what is
19 said in that about you?
20 A. No, I do not.
21
22 Q. Do you accept, also, that Detective Chief Inspector
23 Fox, from this memorandum at a reasonably contemporaneous
24 date, is indicating that he did provide all the materials
25 requested of him that you have told the Commissioner that
26 you were informed by DCI Tayler were not provided?
27
28 MR SAIDI: I object. I object to the use of the words "Do
29 you accept also". He never accepted the prior proposition.
30
31 THE COMMISSIONER: That's right, Mr Cohen.
32
33 MR COHEN: I'll put it this way.
34
35 Q. Do you accept that Detective Chief Inspector Fox has
36 at all times maintained that he provided those materials
37 that you were informed by DCI Tayler were not provided?
38 A. According to this file note, that's the material that
39 is contained in that file note.
40
41 Q. Do you accept that that is what always has been put
42 forward by DCI Fox?
43 A. No, I disagree.
44
45 Q. Have you ever asked DCI Fox that direct question - did
46 he provide all those materials?
47 A. No, I have not.

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Q. You are relying on assumption or hearsay; is that right?

A. I'm relying upon what I was told by Tayler.

Q. Which is no better than hearsay; is that right?

MR SAIDI: The original question was predicated on hearsay, "Have you ever been told by anyone?"

THE COMMISSIONER: He's been told by Mr Tayler.

MR COHEN: Thank you, Commissioner. There are a number of documents I need to review very quickly, I'm sorry, Commissioner. I'm conscious of the time.

THE COMMISSIONER: Yes, thank you, Mr Cohen.

MR COHEN: Q. Were you aware of who it was that was the complainant that commenced the complaint against DCI Fox, that there was a failure to obey a lawful order?

A. Without going through the documents, no.

Q. Do you have any understanding at all, or is that a mystery to you?

A. No, I can only give an assumption that I believe it may have been Superintendent Haggett.

Q. Could I ask you to look at page 511 in that respect. Indeed, there is a cover memorandum and then a subsidiary memorandum - the cover memorandum is 511 and the subsidiary memorandum is pages 512 to 514. Without going into the detail of them, but if you could briefly review the facts and circumstances, does that memorandum elicit any information to assist you to understand who was the complainant?

A. What do you want me to read?

Q. What I want you to understand is: does that document, on the face of it, assist you as to who the complainant was?

A. Which document?

Q. You are looking at 511, that's a cover memorandum which refers to an additional complaint.

MR SAIDI: Before the witness continues to read, could

1 I take an objection to the relevance of these questions.
2 This is not a complaint initiated by him, it is not a
3 complaint he was involved in whatsoever apparently other
4 than an inquiry made of him. The documents relate to
5 information about other persons, provided by other persons
6 and in relation to other persons. I query what the general
7 relevance of this line of questions may be.

8
9 MR COHEN: Really this, Commissioner: this gentleman is
10 evidently a senior commander now - and then. Having regard
11 to his background and understanding and this document in
12 particular, I'm simply trying to elicit from the witness
13 if, with regard to this document, he can identify who the
14 complainant was.

15
16 MS LONERGAN: The document appears to speak for itself as
17 to who the complainant is. Asking this witness to confirm
18 that doesn't seem to assist your role, Commissioner.

19
20 MR COHEN: There's one simple proposition I want to put.
21 There is a certain procedural element to this that is not
22 necessarily immediate obvious to non-police personnel such
23 as myself, or indeed, with great respect, yourself,
24 Commissioner. I want to make sure there's no underlying
25 complexity that we're missing.

26
27 THE COMMISSIONER: Would it be appropriate for you to put
28 it directly, Mr Cohen, if you can divine the identity of
29 the complainant

30
31 MR COHEN: Q. Was the complainant Detective Chief
32 Inspector Humphrey?

33 A. Yes, his name and signature is on this file.

34
35 Q. Can I go back to the circumstances of Sergeant Steel
36 leaving and not returning to duty. Did you have any
37 meeting with her before she departed on sick leave at any
38 time?

39 A. No.

40
41 Q. Neither personal or by telephone?

42 A. No.

43
44 Q. So there was no discussion with her at any stage about
45 the reasons for it?

46 A. For her going off sick?

47

1 Q. Yes.
2 A. No.
3
4 Q. Did you send her, for example, a text message by
5 mobile phone?
6 A. I may well have done.
7
8 Q. Do you recall what that text message was?
9 A. No idea - probably just to see how she was or to catch
10 up.
11
12 Q. You also gave evidence about being away from your post
13 because you were posted to Christchurch, presumably at the
14 time of the earthquake?
15 A. Yes.
16
17 Q. How long did that take you away from your role as
18 commander?
19 A. A month.
20
21 Q. When was that approximately?
22 A. From late February to basically the end of March.
23
24 Q. Of 2011?
25 A. Yes.
26
27 MR COHEN: Commissioner, in fairness to everybody, I'm
28 endeavouring to see if I can complete my cross-examination
29 before the luncheon adjournment. If I look somewhat
30 distracted or uncoordinated, it's because I'm trying to
31 ensure what little time available is used.
32
33 THE COMMISSIONER: No, you don't look like that at all,
34 Mr Cohen.
35
36 MR COHEN: Q. You gave some evidence to the
37 Commissioner, in response to a question from my learned
38 friend, Ms Lonergan, that at the meeting or rather that you
39 became aware at the meeting on 2 December 2010 at Waratah
40 station, only then, of Detective Chief Inspector Fox being
41 active with regard to investigating child sexual assault
42 offences. That was your evidence, wasn't it?
43 A. I think if you look at it, it's basically in the case
44 conference notes DCI Fox outlined some background and
45 basically informed myself and others that he was involved
46 in similar offences on and off over the years.
47

1 Q. And you heard this morning - I apprehend you were in
2 court at the time - Mr Lloyd of Queen's Counsel express the
3 opinion about DCI Fox's efforts in that respect?

4 A. Yes, I did.

5
6 Q. Did it occur to you in 2012 that it might be useful to
7 allow DCI Fox to continue with such a matter as the
8 ministerial file investigation? I am sorry my learned
9 friend challenged me. I gave you the wrong date. Did it
10 occur to you in December 2010 that it would be desirable
11 for DCI Fox to be permitted to continue on with
12 investigations that were arising from the initial provision
13 to him of the ministerial file in September of 2010?

14
15 MS LONERGAN: I object, Commissioner. I didn't ask this
16 witness whether he had any knowledge about the ministerial
17 file and I think some groundwork would need to be provided.

18
19 MR COHEN: Q. Were you aware, assistant commissioner,
20 that, in September 2010, DCI Fox was sent a ministerial
21 file?

22 A. In all honesty, unless I refer to files, no.

23
24 Q. And you had no knowledge then or now other than what
25 you've heard in the evidence; is that it?

26 A. I've heard in the evidence, yes.

27
28 MR COHEN: Commissioner, I'm grateful for being allowed to
29 check my papers. I have no further questions.

30
31 THE COMMISSIONER: Mr Rush?

32
33 MR RUSH: I was hoping to have five minutes to clarify a
34 few things with my client. I note the time. Is it a
35 convenient time?

36
37 THE COMMISSIONER: Very well.

38
39 **LUNCHEON ADJOURNMENT**

40
41 **UPON RESUMPTION:**

42
43 MR KELL: Commissioner could I mention one matter? There
44 has been a request by the media for access to exhibits 20
45 and 21, which were from yesterday, and also exhibit 24 this
46 morning. Over the lunch hour I've made inquiries with the
47 parties, who have no objection to the release of those

1 exhibits.

2

3 THE COMMISSIONER: Thank you, Mr Kell.

4

5 MS LONERGAN: While we're dealing with housekeeping
6 matters, in evidence on 16 May 2013, at page 943 of the
7 transcript, I was taking some evidence from Officer Tony
8 Townsend and Mr Perrignon stood up at line 30 and asked for
9 a non-publication order over the names of two clergy who
10 are mentioned in a part that was read on to the record at
11 lines 19 to 28.

12

13 Commissioner, you granted a non-publication and
14 I somehow managed to miss that whole transaction. In my
15 respectful submission, that material referred to had
16 already been out in the public domain and there's no
17 utility in a non-publication order so my application is
18 that that non-publication order be lifted.

19

20 THE COMMISSIONER: Insofar as it purported to be a
21 non-publication order, then it is lifted. Thank you,
22 Ms Lonergan.

23

24 <EXAMINATION BY MR RUSH:

25

26 MR RUSH: Q. In your examination-in-chief, learned
27 counsel assisting asked you some questions about what you
28 had characterised in your evidence as "leaks"; do you
29 recall that?

30 A. Yes.

31

32 Q. And particularly I think it was your evidence that you
33 had received some information from Chief Inspector Tayler?

34 A. That's right.

35

36 Q. Was any of that information first-hand insofar as your
37 knowledge of the material he told you about?

38 A. No.

39

40 Q. Did you have any other first-hand knowledge of
41 material that you would have characterised as a "leak"?

42 A. Only my suspicions from discussion with Ms McCarthy.

43

44 Q. And that discussion concerned, as I understood your
45 evidence, Ms McCarthy's awareness of Chief Inspector Fox's
46 history as a police officer and experience as an
47 investigator?

1 A. Yes, it was unusual.
2
3 Q. But were you in court when Ian Lloyd QC gave some
4 evidence earlier today?
5 A. Yes, I was.
6
7 MR RUSH: If the Commission will pardon me for a moment
8 while I go back through my notes.
9
10 THE COMMISSIONER: Yes, Mr Rush.
11
12 MR RUSH: Q. I think Ian Lloyd gave evidence that
13 Detective Chief Inspector Fox had done a very fine job
14 taking victim statements.
15 A. Yes.
16
17 Q. And that was your assessment also?
18 A. Yes.
19
20 Q. That the statements he had taken were of fundamental
21 importance?
22 A. From Mr Lloyd, yes.
23
24 Q. And that he had a good communication, empathy and
25 rapport with the victims the subject of these complaints?
26 A. That's what I heard from Mr Lloyd, yes.
27
28 Q. Shortly after a problem developed between Detective
29 Acting Inspector Steel and witness [AL], you had received a
30 telephone call from Joanne McCarthy?
31 A. That's right.
32
33 Q. In that call can I suggest to you that Joanne said to
34 you:
35
36 *Max I am very angry. [AL] had asked me if*
37 *she could trust the police and I said she*
38 *could. It appears that this interview has*
39 *gone very badly.*
40
41 Did she say either that or words to that effect?
42 A. Look, certainly she was angry about the interview, or
43 whatever was occurring with [AL], but the words around
44 that, I couldn't enhance any further.
45
46 Q. But it might have been those words?
47 A. Yes.

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Q. And that Joanne McCarthy had also said to you:

I don't understand why someone with Peter Fox's experience is not involved.

A. There certainly could have been words of that nature.

Q. Thank you. In response, you had said:

Joanne does not have experience in child sex cases.

Do you recall saying that?

A. No, and I think I clarified what I heard.

Q. Just for clarity, I think you indicate in Catholic Church child sex cases?

A. That's right, after I - or a statement was put to me by Ms McCarthy.

Q. But it might have been the words that I've indicated to you without the use of the words "Catholic Church"?

A. No.

Q. You've got a very clear memory then of the words "Catholic Church"?

A. Yes.

Q. After that you said to Joanne McCarthy:

Can we organise a meeting with Strike Force Lantle and you. We can work together on this and you can give the officers some tips on how to deal with victims of abuse.

A. That wasn't said.

Q. You have a very clear memory that that wasn't said?

A. The conversation was along the lines following Ms McCarthy outlining documents that she supposedly had and a wealth of information in terms of her background, that she was in a position to meet and provide advice to the investigation team.

Q. On how it might pursue its investigations in terms of eliciting this important evidence from victims?

1 A. My understanding was, and this is why the meeting was
2 arranged, that Ms McCarthy could provide documentation to
3 the investigation team and, also, advice based upon her
4 background to investigators.

5
6 Q. Thank you very much for that. I have one final
7 question. You may recall that an article was published in
8 the Newcastle Herald and it was published under a heading
9 "Strike farce"; do you remember that particular article?

10 A. I have a recollection of it, yes, I do.

11
12 Q. Do you recall a conversation with Joanne McCarthy
13 immediately prior to the publication of that article?

14 A. Yes, I do.

15
16 Q. Can I suggest to you in that conversation, you said
17 words to the effect to Joanne:

18
19 *They have all gone on sick leave. Tayler*
20 *and Quinn's was not unexpected but Steel's*
21 *was a shock.*

22
23 A. It wasn't said in those words, no.

24
25 Q. Was it said with that effect?

26 A. No.

27
28 Q. Can you recall what it is that you did say?

29 A. Ms McCarthy put to me the names of the officers. She
30 clearly knew who had gone off sick, and she put to me that
31 they were off sick and I agreed with her, yes, that is
32 correct, Tayler and Quinn was unexpected, but certainly
33 Steel was a shock.

34
35 Q. Just to clarify the comment that Joanne McCarthy
36 certainly knew the officers that had gone off sick, in the
37 lead-up to the article there were two further articles in
38 the Newcastle Herald by Dan Proudman, weren't there,
39 dealing with the sickness of officers in the local area
40 command?

41 A. I recall an item by Dan Proudman. I'm not quite sure
42 whether there was two, but certainly there was one.

43
44 Q. In one of those articles, do you recall that
45 Dan Proudman specifically referred to the sickness of
46 Tayler and Quinn?

47 A. No, I don't, I'm sorry.

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Q. Following the article's publication, did you, at any time, attempt to contact either a superior or the Newcastle Herald about requesting a retraction for the quote that had been attributed to you?

A. I'm not quite sure whether I did personally, but certainly there was - or the item of "strike farce" and the naming of the police officers was brought to the attention of the region commander, Carlene York, at the time.

MR RUSH: I'm obliged to the Commission.

<EXAMINATION BY MR SAIDI:

MR SAIDI: Q. In terms of the suspicion that persons associated or investigators associated with Strike Force Lantle as to the leaking of information to the media, that was brought to your attention, was it not?

A. Yes.

Q. And it was also brought to your attention from the evidence given earlier today by you that the suspected source was Detective Chief Inspector Fox; is that correct?

A. Yes, it is.

Q. Given any suspicions in relation to any police officer who is suspected of having leaked information to the media in relation to an investigation, do you have a view as to whether it is appropriate or not as to that officer being placed on a strike force or an investigation?

A. It would be totally inappropriate.

Q. Perhaps it's asking the obvious. Why do you say that?

A. Well, basically it places at risk the integrity of that investigation, as number 1. The whole direction of the investigation can be undermined, and certainly I would, as well as New South Wales police, would not want this investigation being placed at risk or jeopardised by it being in the public domain under the scrutiny of the media.

Q. At any time at all in your dealings with Detective Chief Inspector Fox, whether it be on 2 December 2010 or on any other occasion, did he ever bring to your attention the fact that he was indeed passing information on to the media?

A. No, he did not.

1 Q. To your knowledge, in your dealings with other
2 officers associated with Strike Force Lantle, did he bring
3 it to their attention, that is, to your knowledge, that he
4 was passing information on to the media?

5 A. No.

6
7 Q. Had you become aware that he was passing information
8 on to the media in an unauthorised manner what action, if
9 any, would you have taken?

10 A. There would have been a complaint generated for the
11 matter to have been investigated.

12
13 Q. In terms of the conversation that you were asked about
14 by Mr Rush and indeed earlier today, that is, the
15 conversation with Joanne McCarthy and specifically the
16 conversation relating to Kirren Steel and her investigation
17 of sex abuse cases within the Catholic Church, can you give
18 us the context, that is, what was said before then and
19 after then in terms of that statement?

20 A. Basically, Ms McCarthy commenced by outlining the
21 issues with [AL], that she wasn't happy, and I think [AL]
22 had brought that to her attention. But, importantly, prior
23 to, she - Ms McCarthy, that is - went into some
24 communication in regards to both DCI Fox's background in
25 terms of investigating child abuse matters within the
26 Catholic Church and that she had holdings that may assist
27 police and certainly from her background, she also had
28 information that she was willing to share with the
29 investigation team.

30
31 Q. During the course of that conversation, did it appear
32 to you that Ms McCarthy was advocating for Peter Fox to
33 come in on the investigation?

34 A. Certainly.

35
36 Q. In terms of the specific statement, however, in
37 relation to Detective Steel's experience, and what the
38 extent of that experience was, how did that come up in the
39 conversation?

40 A. Ms McCarthy put to me that Detective Sergeant Steel
41 had no investigative ability with child abuse matters
42 involving the Catholic Church and my response to that was
43 along the lines that, to my knowledge, she doesn't have any
44 experience investigating child abuse matters within the
45 Catholic Church.

46
47 Q. What was next said after that?

1 A. I think Ms McCarthy then went back on with DCI Fox,
2 but really the conversation was then manoeuvred for the
3 purpose of arranging for Ms McCarthy to meet with the
4 investigation team to discuss and exchange documents.
5
6 Q. In terms of the reference to Steel, not having
7 experience in terms of sex abuse cases in the Catholic
8 Church, were you intending by that statement to indicate
9 that she had no experience in investigating sex abuse
10 cases?
11 A. No. To my knowledge - my knowledge was I was unaware
12 of her having any prior investigations into child abuse
13 with the Catholic Church.
14
15 Q. But did you have knowledge in terms of her prior
16 experience of sex abuse cases generally?
17 A. No.
18
19 Q. The product produced by the investigation was
20 contained within the e@gl.i holdings - you're aware of
21 that?
22 A. Yes.
23
24 Q. The e@gl.i holdings in relation to Strike Force Lantle
25 were protected in the sense of one needed authorisation to
26 get in to the holdings; is that so?
27 A. That's correct.
28
29 Q. That's why the e@gl.i system?
30 A. Yes.
31
32 Q. As one understands it, the e@gl.i system ensures that
33 only authorised persons have access to the holdings?
34 A. That's correct.
35
36 Q. Did you have access throughout the period of Strike
37 Force Lantle to the e@gl.i holdings of Strike Force Lantle?
38 A. No, not until I believe I may have been placed on
39 read-only status perhaps some time in December, and I may
40 well have been taken off once I left the command.
41
42 Q. When you say when you left the command, when was that,
43 can you remind me?
44 A. Generally - well, in general terms, I left the command
45 in January of 2011 when I went to Sydney. I only returned
46 for a very short period of time before going to
47 Christchurch, again returning for a very short period of

1 time before then going to Melbourne for work.

2

3 Q. If I could put the proposition this way: you, with
4 your rank, which is obviously a very senior rank with the
5 New South Wales police, were not permitted access to the
6 product of e@gl.i holdings during the major course of the
7 Strike Force Lantle; is that correct?

8 A. That's my understanding, yes.

9

10 Q. Is that a reflection of the confidentiality to which
11 Strike Force Lentil [sic] was held?

12 A. It certainly is.

13

14 THE COMMISSIONER: Mr Saidi, do forgive me, but this isn't
15 a Byron Bay barbecue. It is Strike Force Lantle -
16 L-A-N-T-L-E - not "lentil".

17

18 MR SAIDI: Am I using the food version rather than the
19 candle version?

20

21 THE COMMISSIONER: Yes, you are.

22

23 MR SAIDI: Thank you, Commissioner.

24

25 Q. Coming back to e@gl.i holdings, from your position and
26 from your rank, was it usual or unusual that someone such
27 as Detective Chief Inspector Fox would not have access to
28 accessing the Strike Force Lantle holdings?

29 A. It would be common practice that he would not be given
30 access.

31

32 Q. So, in that sense, there is nothing unusual about
33 that?

34 A. No, nothing at all.

35

36 Q. Also during the course of this inquiry, we've heard
37 the phrase "Catholic mafia". Had you heard that phrase
38 before December 2010?

39 A. No, I had not.

40

41 Q. Have you heard it since, and that is prior to the
42 commencement of this Special Commission of Inquiry?

43 A. I've heard it prior to the commencement of this
44 inquiry and during, which I must say, and I'd like it
45 stated very clearly: I am not Catholic to start with and
46 I find it offensive that there's this statement of a
47 Catholic mafia operating within senior police in the Hunter

1 area.

2

3 Q. During the course of your years of experience with the
4 New South Wales police have you struck a situation at any
5 time and, if so, when in terms of any police officer not
6 showing any enthusiasm or not wishing to investigate a
7 matter involving a member of the Catholic Church?

8 A. I've never come across any issue, I've never heard the
9 term, phraseology, ever discussed in any forum that I've
10 been a part of, and I think it needs to be quite clearly
11 stated that the police, under my command, and in general
12 the police in the Hunter region, have always, to the best
13 of my knowledge, worked extensively and professionally to
14 investigate child abuse or sexual assault matters
15 throughout this area. I've never known anything other than
16 that to occur.

17

18 Q. I want to bring you to another aspect of a
19 conversation with Joanne McCarthy and I'll just indicate
20 what it is. You are said to have said:

21

22 *Steel does not have experience in child sex*
23 *cases. Can we organise a meeting with*
24 *Strike Force Lantle and you. We can work*
25 *together on this and you can give the*
26 *officers some tips on how to deal with*
27 *victims of abuse.*

28

29 Part of that statement you agreed with, not all of it. In
30 the sense of making that statement to Joanne McCarthy, were
31 you intending to indicate that she could play any role in
32 the investigation itself?

33 A. No, I was not.

34

35 Q. The invitation of her giving officers tips on how to
36 deal with victims of abuse was that relating to the
37 investigation or was that relating to or other aspects?

38 A. It was relating to Ms McCarthy's so-called background
39 with some of these victims, perhaps witnesses. I certainly
40 never used the terminology "tips", and I think I've already
41 stated here that certainly Ms McCarthy, to my
42 understanding, was to provide advice and background to what
43 was, I guess, contained or undertaken by herself.

44

45 Q. Part of that statement which you disagree with, but
46 where it is suggested that you said, "Steel does not have
47 experience in child sex cases", you qualified that, as you

1 indicated in your evidence earlier today to the Roman
2 Catholic Church. You are aware that your comments were
3 then reported to Quinn, Tayler and Steel at a meeting?

4 A. Certainly to Steel, yes.

5
6 Q. Did that cause you any difficulties in terms of your
7 dealings with Strike Force Lantle or any aspects of it?

8 A. It angered me because it certainly impacted on Kirren
9 Steel and it was not an accurate statement made, and, look,
10 all I can say is that Kirren Steel, I held her in the
11 highest regard. I had been the sponsor of Kirren for
12 probably a good couple of years when I first came to
13 Newcastle City LAC and forming that command as a
14 superintendent. My confidence in her, I placed her in the
15 position of acting duty officer for an extensive period of
16 time. I was invited to her 40th birthday party. I had the
17 greatest respect for Kirren Steel, and it's now unfortunate
18 that these words have caused significant impact on Kirren
19 Steel, in my belief.

20
21 Q. Was that brought to your attention at the time?

22 A. It was brought to my attention shortly after the
23 meeting between Tayler, Steel, Quinn, McCarthy and
24 Morrison, who I'm aware of now.

25
26 Q. You were asked questions by learned counsel assisting
27 and also by Mr Cohen relating to an internal complaint that
28 was dealt with relating to Detective Chief Inspector Fox
29 and his alleged breach of a direction?

30 A. Yes.

31
32 Q. You were contacted by an investigator charged with the
33 responsibility of undertaking that investigation?

34 A. I was.

35
36 Q. You directed him to case conference notes in relation
37 to a meeting?

38 A. Yes.

39
40 Q. Was part of that directing him to the case conference
41 notes, the fact that you yourself thought that that was the
42 most accurate record of what occurred at the meeting?

43 A. That is exactly why I wanted that investigator to have
44 the case conference notes.

45
46 Q. I just want to ask you about questions that learned
47 counsel assisting asked you and again Mr Cohen in terms of

1 this concept of directions, instructions, requests, that
2 area, if I may.

3 A. Yes.

4

5 Q. Do you, in the course of your duties, with your rank,
6 go about, when you want something done, giving a formal
7 direction to officers, or do you approach it in another
8 way?

9 A. I approach it in another way and I think I tried to
10 articulate that.

11

12 Q. In terms of requesting a police officer to carry out a
13 function or duty, if it's expressed in terms of a request
14 with the word "please" attached to it, is that seen as
15 something that that officer must attend to?

16 A. Yes, that's right.

17

18 Q. Is that the general practice within the police
19 service?

20 A. Look, I think it is. I don't consider and nor have
21 I been privy to many circumstances where people have -
22 senior police, that is - used the word regularly as "I'm
23 directing you" or "You are directed to", or - generally
24 I think we are mature adults and that's the way I try to
25 approach a situation with other adults.

26

27 Q. And an officer of a senior rank such as yourself, a
28 rank you held in 2010 and onwards, given your rank and
29 given the request coming from someone of your rank, would
30 you expect any such request to be complied with?

31 A. Yes, I would.

32

33 MR SAIDI: Thank you, Commissioner.

34

35 <EXAMINATION BY MS LONERGAN:

36

37 MS LONERGAN: Q. Assistant commissioner, I want to ask
38 you a couple of questions about exhibits 14, 15 and 16
39 again. That was the series of documents relating to the
40 complaint made by [AL] about the management of her
41 statement taken by Detective Sergeant Steel. Can someone
42 provide those exhibits to the assistant commissioner so
43 I can ask him some questions about it.

44

45 Assistant commissioner, you will recall this was a
46 complaint that had two aspects to it - one was inadequate
47 customer service in terms of [AL] feeling she hadn't been

1 appropriately dealt with in the statement-taking process,
2 but there was also a second aspect that was an allegation
3 that there had been inadequate investigation. Let me have
4 these documents shown to you so you can see. I didn't deal
5 with it in chief and I think I should deal with it now for
6 completeness.

7 A. Which document would you like me to look at?
8

9 Q. I think the best source of it is exhibit 16, which
10 sets out in a bit more a methodical fashion the two issues.
11 You see in the box "Issues" next to it there is "Inadequate
12 customer service"; and 2 is "Inadequate investigation"?

13 A. Yes.
14

15 Q. I need your assistance with your perception looking at
16 the documents as to how the second aspect was dealt with,
17 that is, the inadequate investigation aspect, and also
18 direct your attention to exhibit 14, second page, where
19 there are some comments made by Detective Chief Inspector
20 Tayler. Look at both those spots in the documents. Can
21 you articulate for the benefit of those present how that
22 second aspect was dealt with in the complaint process?

23 I'll give you a moment to formulate a response to that.

24 A. Yes, thank you. Yes
25

26 Q. My question is: can you just articulate, first of
27 all, was the second part, "Inadequate investigation", dealt
28 with in the context of the report prepared by Brad Tayler?

29 A. I believe it is, yes.
30

31 Q. Given the time of this particular complaint and the
32 comments by Brad Tayler under the heading "Issue 2" can you
33 articulate how you perceived that aspect of the complaint
34 to have been dealt with?

35 A. I think Tayler is outlining the necessity to obtain a
36 statement from [AL] to progress the matter and, until that
37 is completed, I'm using the words from the document,
38 investigation cannot progress. Tayler then in his
39 "Comments" section underneath articulates that he contacted
40 [AL] in an attempt to discuss with her the complaint.
41

42 Q. And found some difficulties in relation to that.

43 A. Yes.
44

45 Q. Is it, in your opinion, a not unreasonable position to
46 put forward that in response to a complaint about
47 inadequate investigation, an assessment of what the

1 difficulties and holdups were is articulated in the report
2 by Brad Tayler? It's not unreasonable to have written what
3 he said there?

4 A. That's right.

5

6 Q. Do you see any problem with that being offered as a
7 response to the complaint that there had been inadequate
8 investigation?

9 A. I think that's more than appropriate.

10

11 Q. At that stage was it your understanding that the
12 investigation was far from complete?

13 A. That's right.

14

15 Q. You were asked some questions by my learned friend
16 Mr Cohen about this complaint and you started to say
17 something along the lines of, "Can I explain something that
18 can assist". Do you remember starting to answer in that
19 way and whether there's anything else additional in
20 relation to the complaint process that you feel has not
21 been adequately expressed in other answers you have given?

22 A. Ma'am, look, I think the real important issue here is
23 for people to understand that an issue such as these two
24 that have been dealt with under the local management issues
25 database are treated as very minor issues within New South
26 Wales police.

27

28 Q. Minor but important issues to manage through the next
29 process?

30 A. That's right, but at the same time there is no
31 necessity upon New South Wales police to actually come to
32 an agreement with the complainant.

33

34 Q. I understand. It was put to you by my learned friend
35 Mr Cohen that Detective Chief Inspector Fox said certain
36 things in the meeting on 2 December and one of those
37 assertions was to this effect:

38

39 *That's not how we operate. The matter will*
40 *be handled by Newcastle.*

41

42 You answered in the negative in terms of that proposition
43 being put. Can I ask you this: was it stated by you in
44 the meeting that the matter would be handled by Newcastle,
45 but not that first part of that assertion to the effect of,
46 "That's not how we operate"?

47 A. That's correct.

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Q. And you made it clear in that meeting, didn't you, that the matter was to be handled by certain officers in Newcastle and they were nominated within the context of the meeting?

A. Yes.

Q. You were asked some questions by Mr Rush regarding opinions given by Mr Lloyd QC this morning.

A. Yes.

Q. You were asked questions along the lines of whether you agreed with particular propositions that Mr Lloyd stated this morning to the effect that the witness statements obtained by Detective Chief Inspector Fox were useful and you agreed with that proposition?

A. I'm glad you picked that up. I was actually agreeing with the fact that Mr Lloyd said what he said in the witness box.

Q. So by way of background, did you yourself see the statements obtained by Detective Chief Inspector Fox?

A. No, I did not.

Q. So you're unable to --

A. That's correct.

Q. -- profess any opinion about them?

A. That's right.

Q. There are just a couple of matters to look at for abundant clarity, hopefully, your position is, is it, that at the 2 December 2010 meeting, you didn't give a direction to any officer present, including Detective Chief Inspector Fox?

A. That's right.

Q. Did you understand, however, that at that meeting you gave one or more lawful orders to the persons present, including Detective Chief Inspector Fox?

A. I agree with that, yes.

Q. Given your answer, what were those lawful orders given?

A. Well, the most important was the fact that DCI Fox was to supply statements or documents that he had, as initially requested. Second to that, all police were instructed not

1 to speak with the media or Joanne McCarthy without my
2 knowledge or permission, and I think the other thing I made
3 clear was the fact that Newcastle LAC was to investigate
4 this matter as required by the region commander.
5

6 Q. Did you understand, in giving those lawful orders,
7 that there might be potential adverse consequences for an
8 officer who did not comply with any instruction or lawful
9 order that you gave at that 2 December meeting?

10 A. Look, at the time the instructions were made very
11 clear what my expectations were. I didn't form an opinion
12 on what was going to arise at a later stage.
13

14 Q. You had no particular expectation there would be any
15 problem with the officers present complying with those
16 lawful orders given?

17 A. I think everyone who was present - no-one raised any
18 issues and my understanding was DCI Fox was in agreement to
19 bring the documents down or supply the documents to
20 Newcastle LAC.
21

22 Q. Finally, when you were spoken to by the investigator
23 in April 2011 about the complaint that had been laid
24 against DCI Fox for non-compliance with a direction given
25 by you, did you take no objection to the description of the
26 non-compliance with a direction because you equated this
27 non-compliance with non-compliance with a lawful order and
28 that you had in fact given DCI Fox a lawful order, in
29 effect?

30 A. That's correct, ma'am, yes.
31

32 MS LONERGAN: That's the re-examination. Might Assistant
33 Commissioner Mitchell be excused.
34

35 THE COMMISSIONER: Yes, thank you. Thank you very much
36 for your evidence, assistant commissioner, and you are
37 excused.
38

39 <THE WITNESS WITHDREW
40

41 MS LONERGAN: Given the late hour and it's been discussed
42 between the parties we are unlikely to finish any other
43 potential witnesses today, it is proposed that we adjourn
44 now and resume on 24 June. We have not completed the
45 witnesses for term of reference 1. There has been
46 discussion between the parties as to other practical ways
47 to manage that position and it appears that the best way or

1 the only practical way is to continue the witnesses within
2 the time set aside for term of reference 2 in this court,
3 commencing on 24 June and adding another week to the end of
4 the three-week period set aside to accommodate those
5 further witnesses.
6

7 Commissioner, it is proposed that on 24 June there
8 will still be a formal opening in relation to term of
9 reference 2 and it will revert to the outstanding witnesses
10 regarding this part of the terms of reference.
11

12 THE COMMISSIONER: Thank you, Ms Lonergan.
13

14 MS LONERGAN: There has been an application, Commissioner,
15 by the media for access to the statement of Assistant
16 Commissioner Mitchell and if the parties could let me know
17 their position in relation to that by 3.15, that would be
18 much appreciated.
19

20 THE COMMISSIONER: Is it appropriate that I adjourn then
21 until 24 June at 9.30?
22

23 MS LONERGAN: Yes, thank you, Commissioner.
24

25 **AT 2.45PM THE COMMISSION ADJOURNED UNTIL**
26 **MONDAY, 24 JUNE 2013 AT 9.30AM**
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