

## Statutory Declaration

I, Malcolm Arthur Lanyon do solemnly and sincerely declare:

1. My substantive position is the Director of the Organised Crime Directorate of the NSW Police Force. I hold the rank of Detective Chief Superintendent of the NSW Police Force.
2. On 12 April 2013 I signed and produced a statement in answer to a summons for production issued on 5 April 2013 by the Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle. I note that page 1 of the statement indicates that the statement was signed on 8 April 2013. This is in error. The statement was signed on 12 April 2013.
3. Annexed to this statutory declaration at page 2 and marked "A" is a copy of that statement.
4. The statement which appears at Annexure "A" to this statutory declaration is true and correct (with the exception of the typographical error noted at paragraph 2 above regarding the date on which the statement was signed).
5. This statutory declaration is made on the same basis as set out in paragraph 3 of my statement dated 12 April 2013 which appears at Annexure A to this statutory declaration.
6. I make this solemn declaration conscientiously believing it to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at Sydney on 3 July 2013  
Signature of declarant

Signed

### Certificate of witness

I certify the following matters concerning the person who made this statutory declaration (the declarant):

(\* please strike out the option in each paragraph that does not apply)

1. \* I saw the face of the declarant OR ~~\* I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering; and~~
2. ~~\* I have known the declarant for at least 12 months~~ OR \* I have confirmed the declarant's identity using the following identification document: DRIVERS LICENCE

Signature of witness  
Signed

Identification document relied on (may be original or certified copy)

Justice of the Peace

THERESA ROSE DIAS  
Name

Registration No

179346

**Statement of Detective Chief Superintendent Malcolm Lanyon**

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

On 8 April 2013, I say:

**Preliminary matters**

1. My full name is Malcolm Arthur Lanyon and I hold the rank of Detective Chief Superintendent with the NSW Police Force (NSWPF).
2. My position currently is that of Director at the Organised Crime Directorate (OCD).
3. This statement is prepared by me for the sole purpose of responding to a summons dated 5 April 2013 issued on 5 April 2013 by the Special Commission of Inquiry (established by way of letters patent dated 21 November 2012 and varied by letters patent dated 11 January 2013) for me to produce a statement in relation to a number of defined issues. This statement is produced by me to the Special Commission of Inquiry pursuant to the said issued summons unwillingly and only on the basis that, without exception, section 23(2) of the Special Commissions of Inquiry Act 1983 applies to restrict the use of this statement and the documents referred in it, and attached to it. Pursuant to section 23(2) of the Special Commissions of Inquiry Act 1983 I object to the information contained within this statement, and the attachments to the statement, being used in any criminal, civil or other proceedings or inquiries or investigations of any kind.

**Background**

4. I joined NSWPF in March 1987. I have been involved in the investigations of major crime since 1991. I became a Detective Chief Superintendent within NSWPF in January 2011. I have occupied the position of Director at the OCD, firstly in an acting capacity from about May 2010 until my position became substantive in January 2011.
5. The State Crime Command has within its organisation two different crime directorates. One directorate, the Serious Crime Directorate relates to the serious crime squads and the second directorate, the Organised Crime Directorate relates to the organised crime squads. As of 2010, the Director of the Serious Crime Directorate was Detective Chief Superintendent Geoff Beresford.
6. In terms of the State Crime Command providing assistance to Local Area Commands or other bodies within NSWPF with respect to the investigation of crime, the options available to the directorates are along the following lines and are governed by a request for assistance process:
  - (a) The State Crime Command can itself commence or assume complete control of an investigation and with its own resources can undertake whatever investigation is necessary.
  - (b) The State Crime Command can engage in a State Crime Command led, joint investigation with Local Area Command staff involved in the investigation.

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- (c) The Local Area Command can have the responsibility for the investigation with specialist assistance being provided by way of consultancy or specialist support through the directorate involved.
  - (d) The Local Area Command can lead a joint investigation with State Crime Command, with investigators being allocated to the local area command to assist with the investigation. However, of the four options involved, this option is the one that is least utilised.

#### Strike Force Lantle

- 7. I refer to a document dated 10 December 2010 prepared by Detective Inspector Paul Jacob. Annexed to this statement and marked with the letter "A" is a true copy of the document. At the time of the preparation of the document, Detective Inspector Jacob held the position of Manager, Investigations with the Sex Crimes Squad. In terms of hierarchical structure, Detective Inspector Jacob was accountable to Detective Superintendent John Kerlatec, Commander of the Sex Crimes Squad, who in turn was accountable to Detective Chief Superintendent Beresford.
- 8. I confirm that I signed off on the document prepared by Detective Inspector Jacob and dated 10 December 2010, on 13 December 2010. At the time of my signing the document, I held the position of Director of the Organised Crime Directorate and in terms of my signing the document, I did it on behalf of the Director of the Serious Crime Directorate who was unavailable on that occasion to sign off on the recommendation made by Detective Inspector Jacob. However, at the time of signing off on the document, I felt that I had sufficient information in order to make the necessary determination. The entry made by myself was as follows:

"Approved. It is appropriate for DI Jacob to provide a consultancy to this investigation."
- 9. In terms of the decision made by myself, I relied on the information that was contained within the body of the document prepared by Detective Inspector Jacob. Whilst I do not have an independent recollection at this time of having sighted the document, it may also have been the case that I had available to me a document prepared by the Operations Manager of the Northern Region, Inspector Anthony Townsend, on 12 July 2010. Further, at the time of my signing off on the document prepared by Detective Inspector Jacob, I was aware that the assistance which had been specifically requested by the Newcastle City Local Area Command was the provision of a specialist consultant to assist with the investigation. This request was of the type described by me at paragraph 6(c) above and I considered it to be appropriate in the circumstances. It was also my understanding that the request did not encompass any further demands upon the Serious Crime Directorate for assistance. Annexed to this statement and marked with the letter "B" is a true copy of the formal request for assistance that had been made by Detective Chief Inspector Brad Tayler. The request itself was dated 10 December 2010.
- 10. After the request for a specialist consultant was approved, an email was forwarded by Detective Senior Constable Jodie Archer to Detective Sergeant Kirren Steel and others, advising that a determination had been made by myself that Detective Inspector Jacob be allocated as a specialist consultant. Annexed to this statement and marked with the letter "C" is a true copy of the said email.

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11. In terms of Detective Inspector Paul Jacob of the Sex Crimes Squad being allocated as the specialist consultant, I can indicate that in my view such an appointment was an appropriate one in the circumstances. Detective Inspector Jacob was in my opinion a very experienced investigator, with a great deal of expertise so as to assist the strike force that had been set up within the Newcastle Local Area Command. Given his level of experience and his expertise, I had faith in Detective Inspector Jacob's recommendation and complete confidence that such recommendation was sound in the circumstances.
  12. In terms of the progression of the strike force that was set up by the Newcastle Local Area Command, at the time of my approving the recommendation made by Detective Inspector Jacob, I was aware that a witness had come forward who I understood was to provide material and significant information to the investigators. To the best of my recollection, the name of such witness was Helen Keevers. I also understood from information provided to me that Ms Keevers was to be interviewed and information was to be obtained from her as to what knowledge she had in terms of the subject matter of the investigation. If it transpired that Ms Keevers provided significant information leading to either the investigation itself becoming broadened, or more complex than initially believed, then in those circumstances the extent of assistance provided by our directorate could have been reviewed in accordance with normal protocol.
  13. From my knowledge and experience as to the operation of the State Crime Command, and the directorates which operate under that command, in terms of the provision of specialist consultancy to investigations, any determination made at an initial stage as to what scale of assistance is appropriate can always be reviewed. For example, should a determination be made that all that was required at the initial stages of an investigation is by way of provision of a specialist consultant and, once a matter progresses, further information comes to hand or determination is made that the matter has become too complex for a local area command to handle, other options can then be looked at. In the case of the provision of a specialist consultant by way of Detective Inspector Jacob to Strike Force Lantle, one would also expect that if Detective Inspector Jacob in his capacity as a consultant were to form a belief that further assistance would be required from the Serious Crime Directorate, then he would report his opinion to his immediate superior.
  14. In terms of the provision of any progress reports during the course of Detective Inspector Jacob's consultancy with Strike Force Lantle, as indicated previously in my statement, I was not the Director of the Serious Crime Directorate at the time. My involvement in the matter was effectively only to approve Detective Inspector Jacob's recommendation on 13 December 2010, and thereafter matters such as progress reports and other feedback would go from Detective Inspector Jacob to Detective Superintendent Kerlateo. I was not privy to any such communications.

Signed

Signature of Malcolm Arthur Lanyon

12th Day Of April 2013  
Date

" A "

D/2010/82506

**ISSUE:**

Request for Sex Crimes Squad Specialist Consultancy by Newcastle LAC - Strike Force Lantle. Investigation into the alleged concealment by

**REDACTED** Bishop Michael Malone and others of sexual assaults committed by Dennis McAllinden (deceased).

**Background:**

It has been alleged that in 1995 members of the Maitland Newcastle Diocese of the Catholic Church became aware of serious allegations of sexual abuse on children by one of its priests, Father Dennis McAllinden (now deceased), and that they failed to report that information to police. Rather action was taken to have McAllinden removed as a priest under Canon Law. There has been considerable local media attention by one particular journalist with the Newcastle Herald who has reported on this alleged 'conspiracy'. A detailed report on this matter, by Detective Inspector Anthony Townsend Operations Manager Northern Region, dated 12 July 2010 is attached for information, if required.

**Comment:**

Although this matter has not been the subject of a previous formal SOC Request for Assistance, Detective Inspector Jacob, Sex Crimes Squad, has on a number of occasions had verbal conversations with Det Insp Brad Taylor and others of Newcastle/North Region relating to this matter. A meeting was recently held by the Northern Region and Newcastle LAC Command and as a result Detective Jacob was contacted and requested to attend a meeting.

On Thursday 9 December 2010, Detective Jacob attended a meeting at the Newcastle LAC with the Operations Managers Northern Region Detective Inspector Parker and Townsend, Crime Manager Newcastle Detective Chief Inspector Taylor and Detective Sergeant Kirren Steel the OIC.

An investigation plan was developed to approach the specific allegations made. Detective Jacob assisted in developing the strategy to be used. And on Friday 10 December 2010 Jacob attended for the interview (expected to be lengthy) of a witness who was employed by the Catholic Diocese in the Newcastle area for 30 years and assisted in developing an interview plan for this witness. The course of this investigation will be dependent on the information/evidence provided by this witness.

Whilst this investigation will remain a Newcastle LAC led one it is appropriate that consideration be given to allocating Detective Jacob to Strike Force Lantle as a specialist consultant to assist Detective Sergeant Kirren Steel in her investigation. I have discussed this aspect with Detective Chief Inspector Taylor who agrees that this course will be beneficial to this investigation.

The investigation is being managed on e@gle.l - Newcastle LAC Strike Force Lantle.

THIS IS THE ANNEXURE MARKED " A "  
ANNEXED TO STATEMENT OF Malcom Lanyon  
SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

**Recommendation:**

It is recommended this RFA be accepted and Detective Jacob be allocated as specialist consultant to Newcastle LAC Strike Force Lantle.

Signed

*Paul Jacob*  
Detective Inspector  
Manager, Investigations  
Sex Crimes Squad  
10 December 2010

1. Commander Sex Crimes Squad

Supported. Det Insp Jacob is the most appropriate member of this Squad to provide consultancy support.

Signed

*KERLATEC* 10-12-10  
Deputy Superintendent

2. Director Serious Crime Directorate

Approved. It is appropriate for *D/S Jacob* to provide a consultancy to this investigation.

Signed

*M. A. LANYON*  
Detective Superintendent  
13/12 Per Director  
Serious Crime Directorate

THIS IS THE ANNEXURE MARKED " B " ANNEXED TO STATEMENT OF Malcolm Lanyon SIGNED THIS DAY OF



New South Wales Police Force

Request for State Crime Command Assistance

NOTE: If requesting specialist advice ONLY please contact State Crime Command switch on 02 8835 8599 or 28599 to be transferred to the appropriate Squad. THERE IS NO NEED TO COMPLETE THIS FORM. If requesting assistance from JIRT fax request directly to Co-ordinator JIRT on 02 8835 8599 or 28599.

DETAILS OF REQUESTING AGENCY

Command/Agency: Newcastle LAC

Date: 10/12/2010

Case Officer: Det Sgt Kiren Steel

Phone: 70008

Fax: 70694

NATURE OF REQUEST

1. Type of Offence/Incident: Allegations that Catholic Church has covered up evidence of Child SA Time/Date of Incident: From incident in 1995 COPS No: Nil

2. Reason for Request:

- [X] This matter requires investigative expertise available only within SCC. [ ] There are reasonable grounds for suspecting the involvement of crime organised. [ ] Does the matter otherwise warrant SCC involvement? eg Cat 1 Homicide, kidnapping

A detailed report MUST be attached to enable a risk assessment to be completed. (attached)

3. Has this matter previously been the subject of a SCC Investigation Agreement?

- [ ] Yes - If yes, indicate CAC number. [X] No

4. Which Command do you propose lead the investigation:

- [X] Region / LAC [ ] State Crime Command

5. Proposed Level of assistance: (Please specify what resources can be provided from your Region/LAC for the proposed investigation)

- [X] Staff from Region/LAC (state below) Det Sgt Kiren Steel [ ] Resources (eg motor vehicles and/or equipment)

6. Proposed location of Investigative Team: Newcastle LAC

7. Proposed Level of State Crime Command Involvement:

- [ ] Full State Crime Command Investigation [X] Joint Investigation - SPECIALIST CONSULTANCY

Table with 2 columns: Approval by Local Area Commander, Signature. Includes fields for Name, Phone, Date and a signature.

Case Officers should complete this form and fax to 02 8835 8599 / 28365. For help in completing form contact 02 8835 8599 / 28365 Version - 25/1/03

0/2010/82506

0/2010/4966

ISSUE

Allegations of conceal serious offence by clergy formerly and currently attached to the Maitland Newcastle Diocese of the Catholic Church.

1. Investigation of these allegations by the NSW Police Force.
2. Public interest considerations in the decision to initiate investigations and/or criminal proceedings in relation to these allegations.

BACKGROUND

Overview

The file principally relates to allegations that in 1995 members of the Maitland Newcastle Diocese of the Catholic Church became aware of serious allegations of sexual abuse on children by one of its priests Father Dennis McAlinden (now deceased) and failed to report that information to police. Instead they took action to have McAlinden removed as a priest (referred to as defrocking but a complex procedure pursuant to Canon Law).

REDACTED

The file also identifies other clergy who may be involved in concealing serious offences including Redacted at Commissioner's direction, Father Brian Lucas, Allan Hart, former nun Paula Redgrave (or Redgrave) and former W Hurston. The principal allegations also disclose significant involvement by the former Bishop of the Maitland Newcastle Diocese, Bishop Leo Clarke, who is now deceased.

At the same time this information in relation to McAlinden's conduct was disclosed to the principal clergy implicated above police were conducting a high profile investigation and prosecution of another member of the same Diocese Father Vince Ryan and investigating Monsignor Patrick Cotter, for concealing that offence.

Documentation in the file in relation to another victim also makes allegations that he was sexually assaulted by Father James Fletcher in 1975 and as a result Fletcher was moved to a remote parish in Diocese. REDACTED

There is wide on going public interest in the issue which has received extensive media coverage and comment by the Newcastle Herald and the ABC. Overarching this is a positive change in the manner in which the Catholic Church deals with allegations of Sexual Abuse since the principal allegations in this file came to light in 1995.

Most of the documents in this file have been forwarded to Lake Macquarie LAC by Newcastle Herald Journalist Joanne McCarthy apparently on behalf of three victims who are calling for an investigation. I say apparently as their letters of complaint are unsigned. Lake Macquarie LAC conducted a long running investigation, Strike Force Georgiana, into allegations of sexual assault by members of the Catholic Church. The allegations in this file do not come within the terms of reference of that investigation which is now closed.



Principal Allegations Relating to Father Dennis McAlinden

REDACTED

REDACTED

On 19 October 1995 Bishop Clarke drafted a declaration that he was satisfied from evidence that Father McAlinden was impeded to exercise holy orders pursuant to Canon Law. The declaration indicated that McAlinden had been made aware of the evidence and had presented a defence. This had not occurred therefore the declaration was in draft form only.

Also on 19 October 1995 a letter was sent to McAlinden at Joffmont in Western Australia from Bishop Clarke indicating that after discussing the issues with Bishop Malone and the Deans, and in light of his admission to Father Brian Lucas he would begin the process to declare that he had an impediment to the exercise of orders. In other words his removal as a priest. The process was outlined and in particular McAlinden was informed that his good name would be protected by the confidential nature of the process and he would be given appropriate support by the Diocese of Maitland Newcastle. Bishop urges McAlinden for the "sake of souls" and "the good of the church" to cooperate in the process to enable it to be speedily resolved as some people were threatening seriously to take the whole matter to the police.

On 26 October 1995 a handwritten letter was forwarded from McAlinden to Bishop Clarke acknowledging the letter of 19 October 1995. He indicates in the letter that he had just returned from hospital after surgery and that he was not mentally or physically fit to respond. He indicates the contents of the letter was in conflict with early correspondence received when he was in the Philippines to live as a retired priest, that it is a continuation of a vendetta to have him removed by Allan Hart, that the information he had disclosed to Brian Lucas was confidential and had been disclosed. He seeks further time to respond.

On 2 November 1995 Bishop Michael Malone forwarded a letter to McAlinden indicating that Bishop Clarke had resigned from his position and that he had become the Bishop of the Maitland Newcastle Diocese. He refers to McAlinden's letter of 26 October 1995 (above). He states because of the gravity of the allegations, the evidence supporting those allegations and after a full consultation with Bishop Clarke over many months that he would continue the process to have him removed. He states the evidence supporting the decision would be forwarded to him and that he would have 15 days make a response. He emphasises the seriousness of the allegations and the real possibility of police intervention.

It is apparent that McAlinden does not respond and the process stalls. On 10 August 1999 a letter is sent to McAlinden by the Vicar General W Burston to an address in England urging him to get in contact with him on his return to Australia. On the same date Burston also writes to Mr John Davoren of the Professional Standards Group of

the Catholic Church notifying him that McAlinden has been accused of child sexual assault by relatives of the children. He expresses the belief that there are other victims however there is no indication they wish to take the matter to the police. He refers to a letter disclosing a court case in Perth. He suggests the matter should be reported to police as intelligence. He also indicates a belief that McAlinden was in England celebrating his golden jubilee despite the fact his faculties had been removed in 1993 and that he may return to the Bunbury Region of Western Australia late in that month.

Information Report I7885027 relating to information apparently received on 18 November 1999 is consistent with the information disclosed above. It was received from the Professional Standards Office of the Catholic Church, that McAlinden is residing in England but will be returning to the Bunbury area in Western Australia that he was a former Catholic Priest removed in 1993.

**Redacted at Commissioner's direction**  
No details of victims, times and dates or offences were supplied. The information was apparently from an anonymous informant who was not wishing to make a formal complaint. It was marked for information only and to be forwarded to Bunbury Police in Western Australia.

On 4 March 2003 in an email John Davoren notifies Bishop Michael Malone that on that day he has notified the police of the complaints received against McAlinden.

Information Report I17256624 dated 15 March 2003 indicates that information was received that McAlinden was involved in child sexual assaults at the Merriwa Parish on an unknown date in the 1980's and that Catholic Church authorities were made aware of the allegations and as a result he was relocated. The victim's family were told not to bother the police with these matters and that they (the church) would take care of it. It was noted that McAlinden was permitted to continue preaching until 1993 when he was removed from the church in 1993. It is also noted that the POL has a first instance warrant has been issued for an offence committed in 1951 which was issued in 1999. The report further indicates two other cases involving different victims makes the report accurate. The report details his ties in the community, description, that he is a habitual child sex offender and that he has been charged in Western Australia.

Joanne McCarthy in compiling her news reports has sought comment from Bishop Michael Malone, **REDACTED** and Father Brian Lucas. She also has documented the contents of a statement made by Bishop Malone in 2007 acknowledging all victims of abuse by church personnel including Father Dennis McAlinden.

Bishop Malone forwarded a letter to Joanne McCarthy on 13 April 2010 where he states "I am on record with your paper and others, saying that I could have handled earlier matters of historical sexual assault better..... Mistakes were made but we have moved forward" He also outlines efforts have undertaken to improve its response including the "Towards Healing Protocols", the establishment of Zimmerman House a specialist child protection unit and his cooperation with Strike Force Georgiana.

**REDACTED**

Father Lucas indicates he has no memory of discussions with McAlinden.

**Background of McAllinden**

The alleged perpetrator of these offences was former Priest Denis McAllinden who passed away on 30 November 2005 in Western Australia. McAllinden is the subject of 2 Events, 2 Cases and 8 Information Reports in New South Wales related to the sexual assault of children over many years.

In 1999 a warrant was issued for his arrest for an allegation of Sexual Assault upon an 11 year old child in 1953 while he was serving as the assistant Parish Priest at Raymond Terrace. The offence was reported the same year.

The warrant was never executed and was later revoked on 8/1/2008 after the death of the deceased. Case file information indicates that McAllinden left Australia and travelled overseas to England to live. An information report, referred to below, indicates that he returned to Western Australia in 1999. A case note indicates that the warrant was not progressed by way of extradition because McAllinden's ill health as he was suffering from and subsequently died of cancer in 2005.

Check of COPs records pertaining to Western Australia indicates that McAllinden was charged and acquitted with child sexual assault in 1991.

A report Newcastle Herald on 28 April 2010 sets out the background of McAllinden;

- Aged 26 arrives in Australia from Ireland and is sent to Parishes in the Maitland Newcastle Diocese
- 1969 works in Papua New Guinea till 1974.
- Sent to Western Australia Pilbara Region in 1982 and New Zealand in 1984.
- 1988 returns to Bunbury area in Western Australia.
- 1992 charged with Sexual Assault on a 10 year old girl and is acquitted.
- 1993 is not allowed to act as a Priest.
- 1995 spends time in the Philippines.
- 1999 travels to England.
- 2005 dies in Western Australia in a church hospice.

REDACTED

REDACTED

REDACTED

REDACTED

Information Report 117255624 as indicated above records allegations that Father McAllinden had been involved in the sexual assault of young females over a period of time while he was a priest at Merrivale and that he had been relocated as a result of the allegations and the victims were discouraged from reporting the matters to police and it would be dealt with by the church. The report indicates that he was permitted to continue in his role as a priest despite the existence of the allegations to 1993.

#### COMMENT

##### General Comment

The attached file makes a number of allegations that known persons who are still alive have concealed the commission on serious offences. The allegations relate to the conduct of the now deceased priests Dennis McAllinden and James Hatcher. Three of the alleged victims urge police to conduct an investigation into the matter. This review of these allegations can be distinguished in terms of the apparent evidence available against each person named and the principal offender.

##### Defrocking of McAllinden

In relation to the allegations raised by the sisters AK and AL there appears to be evidence readily available in the form of their direct evidence and other documentation contained within this file that in 1995 REDACTED and Bishop Michael Malone had direct knowledge that Father Dennis McAllinden had committed offences of child sexual assault. Whilst the gathering of and corroboration of this evidence may be problematic it would seem relatively straight forward.

REDACTED has taken the statements from the sisters and has administered the process of removing McAllinden as a priest on behalf of the late Bishop Leo Clark. It is apparent that activities of McAllinden were at least suspected before the statements were made because Bishop Clarke authorises REDACTED's role in the matter before they were taken. Bishop Michael Malone has continued the process after Bishop Clarke's resignation shortly after the process began and a review of the documentation in the file leads to the inevitable conclusion he had detailed knowledge of the allegations raised by the sisters and McAllinden's background. He is also apparently aware and concerned that the allegations could be taken to the police. It is apparent that the allegations against McAllinden were not reported by the Catholic Church to police until the informal report in 1999 and the more formal report in 2003.

There is also evidence that Father Brian Lucas had knowledge of McAllinden's offences by reference in the documentation that McAllinden had made admissions to him. There is no direct admissible evidence in relation to this allegation and this would require further investigation. Other persons are implicated in the file in relation to allegations that relate directly to McAllinden, including Allan Hart, W Hurston and Paula Redgrove, by reference to the fact they had some knowledge of his offences.

However like the allegations against Lucas they would need considerable further investigation.

REDACTED

**Section 316 of the Crimes Act (NSW) 1900**

In making argument in relation to the applicability of this Section I will substantially confine my discussion to the disclosures made by *AL* and *AK* as those facts are readily evident. The facts in relation to the other allegations are not as discernable.

It is important to note that the Section 316 was enacted in 1990 and replaced the previous common law offence of "Misprision of Felony" which was made redundant by the same legislation. This is an important consideration as some elements of the allegations made in the file pre-date this date.

REDACTED

However an argument could be raised that any person with knowledge of a serious indictable offence would have a continuing obligation to disclose it to the police. This would make any prosecution problematic.

Clearly the events of 1995 would come within the ambit of the section. There is no clear indication when Father Brian Lucas may have taken the admissions from McAlinden (assuming this could be proven) though it appears they were taken 1995.

Section 316(1) states;

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

The Section requires proof of 4 conjunctive elements to satisfy its threshold requirements. These elements include elements of *actus reus* and *mens rea*.

1. That another person has committed a serious indictable offence;
2. The accused person knows or believes such offence was committed and
3. The accused person has information which might be of material assistance in securing the apprehension, or the prosecution or conviction of that other person, and
4. The accused person has failed to bring such information to the attention of a member of the Police Force or other appropriate authority.

The first issue that will require consideration is the commission of a serious indictable offence. A serious indictable offence is an offence that is punishable by imprisonment of 5 years or more or life. This is important because the offences disclosed in 1995 were historical. This relevant because the Crimes Act has undergone a series of amendments and the penalties and sections that were applicable over the years have changed. It could be argued that penalty that was applicable when the offence occurred should be used to determine whether it was a serious indictable offence within the meaning of the section. Alternately it may be argued that penalty applicable at the time the accused person knew or believed the offence occurred should be applied.

To determine this further clarification from the alleged victims will be necessary to determine when the offences occurred and the nature of allegations. A review of the statements that were made by AL and AK in 1995 would only appear to disclose Indecent Assaults upon a child under 15 years of age. Prior to 14 July 1981 the applicable offence would be Section 76 "Indecent Assault of Female" which carried a penalty of 6 years. Between 17 July 1981 and 17 March 1991 the applicable offence would be Section 61E "Sexual Assault Category 4, Indecent Assault" which carried a penalty of 6 years if the victim was under the age of 16 years and is under the authority of that person. After 17 March 1991 the applicable offence would be Section 61M "Aggravated (Victim under 16 years) Indecent Assault" which carries a penalty of 7 years.

It would seem that on either basis the offences disclosed by AL and AK in 1995 would be a serious indictable offences.

Any prosecution would have to establish that the accused person knew or believed that an offence had occurred. This requires evidence of state of mind. The contents of both AL's and AK's statements speak from themselves

REDACTED

A further requirement is the information would have to be of material assistance. This is an objective test and a clear statement that a sexual assault had occurred would on any assessment meet this requirement.

Finally there must be a failure to bring this information to the attention of a member of a Police Force or other appropriate authority. The information became known in 1995 in the form of statements about actual events involving the commission of offences by McAllinden. It is not clear whether the contents of the statements were ever brought to the attention of the NSW Police Force before they were forwarded to Detective Inspector Waddell. There is some evidence that some information in relation to McAllinden was supplied to police in 1999 and 2003. This aspect would require further investigation and clarification.

Another important consideration is the requirements of Section 316(4) which states the approval of the Attorney General must given before a prosecution can be commenced against a person of a prescribed profession, calling or vocation for this

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offence. The Crimes (General) Regulation 2005 Clause 6(f) proscribes a member of the clergy of any church or religious denomination for the purpose of Section 316(4) as people practising relevant professions, calling or vocations. It is clear that the Attorney General would have to sanction any prosecution against **REDACTED** Bishop Malone or other clergy identified in any investigation for an offence pursuant to Section 316.

In summary it could be said that there does appear to be some evidence available in relation to the disclosures by **AL** and **AK** in 1995 concerning McAulden that members of the Catholic Church have concealed serious offences. There is some suggestion that some of these known persons have awareness of other offences committed by other priests which were not brought to the attention of the NSW Police Force. All matters require further investigation. If any investigation discloses evidence where it could be said a properly instructed jury is likely to be satisfied beyond a reasonable doubt then approval would have to be obtained from the Attorney General before any prosecution could be commenced.

#### Public Interest.

However the real question that has to be decided is whether it is in the public interest that there is an investigation into the matter or after an investigation, assuming sufficient evidence is identified to establish an offence against a member of the Catholic Church for concealing a serious offence and the Attorney General approves a prosecution, whether criminal proceedings are instituted.

Guidance in relation to this matter can be found in the NSW Police Force withdrawal policy which has adopted guidelines for "The decision to Prosecute" from the DPP as attached. It is clear the public interest is the dominant consideration in making that decision.

The first two considerations are whether there is sufficient admissible evidence available and that there is a reasonable prospect of securing a conviction. The third consideration is whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

The third consideration takes into account 23 factors which are attached. I have highlighted a number of those factors that I feel are important in making a decision in relation to whether or not the NSW Police Force should expend its finite resources to undertake an investigation into this matter and if so assuming there is sufficient evidence whether it should institute criminal proceedings.

#### Discretionary Factors that would Favour Proceeding

- o The seriousness as opposed to the triviality of the offence.
- o Whether the offence is of considerable general public concern.
- o The necessity to maintain public confidence in such basic institutions as the Parliament and the Courts.
- o The prevalence of the alleged offence and need for deterrence, both personal and general.
- o The attitude of the victim's to the prosecution.

### Discretionary Factors that would Favour Not Proceeding

- Whether or not the prosecution would be perceived as counter-productive; for example, by bringing the law into disrepute.
- Special circumstances that would prevent a fair trial from being conducted.
- The staleness of the alleged offence.
- The availability and efficacy of any alternatives to prosecution.
- The likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court.
- Whether or not the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive.
- The degree of culpability of the alleged offender in connection with the offence.
- Any mitigating factor.
- The alleged offender's antecedents and background.
- The attitude of the alleged victim.
- Any entitlement or liability of a victim or other person or body to criminal compensation, reparation or forfeiture if a prosecution is undertaken.
- Whether or not the Attorney General's consent is required to prosecute.

The guidelines also indicate that a decision whether or not to proceed must not be influenced by:

- (i) *The race, religion, sex, national origin, social affiliation or political associations, activities or beliefs of the alleged offender or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account objectively)*
- (ii) *Personal feelings of the prosecutor concerning the offence, the alleged offender, or a victim;*
- (iii) *Possible political advantage or disadvantage to the government of any political party, group or individual;*
- (iv) *The possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution or otherwise involved in its conduct; or*
- (v) *Possible media or community reaction to the decision.*

*It is recognised that the resources available for prosecuting are finite and should not be expended pursuing inappropriate cases. Alternatives to prosecution, including diversionary procedures, should always be considered.*

It should be said at the outset that there would be enormous media and public interest in any investigation and/or prosecution. The news print stories in this file are self-evident of that. This arises because of the involvement of the Catholic Church and more so because two of the person's identified are leaders in that church. This of itself raises issues of advantage and/or disadvantage to groups, impact upon the personal and professional circumstances of those responsible for the prosecution and wide media and community reaction. These factors of themselves are not relevant.



**Comment on Factors Favouring an Investigation/Prosecution**  
The concealing of offences relating to child sexual assault is particularly serious where the offences are alleged to have been committed by persons who are in a position of trust. There is a strong public interest that these matters are reported to the police in a timely manner to ensure they are properly and fairly investigated. Delay creates a forensic disadvantage to the investigators; General deterrence against persons who fail to report is an important factor. There is little doubt that there is wide general public concern about the Catholic Church covering up allegations of sexual abuse by priests. This would arise because it could allow the alleged offender to continue their offending behaviour and the reputation of the church could be seen as having greater importance than the rights of the victims. The seriousness of the allegations is aggravated by the fact that police were conducting investigations into the concealment of offences by another member of the church about the same time clear evidence of the conduct of McAlinden was disclosed. It is also apparent that some of those involved were well aware and concerned that the matter could be referred to the police. It now appears that the victim's would strongly favour and urge an investigation and/or prosecution to occur.

**Comment on Factors Not Favouring an Investigation/Prosecution**  
The offence is alleged to have occurred in 1995. Although it could be seen as continuing in nature that is almost 15 years ago and could be seen as stale. The wide media coverage and community debate that would flow from any prosecution could potentially prevent any alleged offender from receiving a fair trial. Having regard to the antecedents and position of the alleged offenders and the circumstances surrounding the commission of the offence it is probable that any penalty imposed would be minimal. On the other hand the resulting public scrutiny of the alleged offenders particularly should they be convicted having regard to their office could be seen as harsh and oppressive.

REDACTED

Bishop Malone was continuing a process begun by Bishop Clarke. Bishop Clarke in this sense had the authority to report the matters to police. He is now deceased. It would appear that the manner in which the Catholic Church deals with these matters has substantially changed since 1995. This includes the "Towards Healing" process and procedure, Bishop Malone's co-operation with *Strike Force Georgiana* and his involvement in *Zimmerman House*. The fact alleged offenders were in fact actually taking steps to remove him from the church could also be seen as a mitigating factor. Investigating and prosecuting persons with this background and in these circumstances could potentially bring the law into disrepute. It also appears that the victim's attitude in 1995 was that the matter should not be reported to police. This obviously needs to be clarified. In these circumstances an investigation and/or prosecution could be seen as harsh and oppressive. The fact that the victim's may have been already compensated by the Catholic Church and would have not lost their entitlement to criminal compensation could also be relevant. The fact the Attorney General has to authorise any prosecution is indicative of the caution that must be undertaken before one is commenced. Finally, the availability of an alternate to the criminal process via the "Towards Healing" process would mitigate against embarking on this course of action.

**Final Comment**

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

It would assist in making an informed decision that some preliminary matters are clarified with the principle complainants in this matter, AL and AK Lavelas, including their attitude to reporting the matters to the police in 1995 and when the offences by McAllinden occurred.

The options available are:

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

**RECOMMENDATION**

Forwarded for the information and attention of the Commander of Northern Region.

Signed

Anthony Townsend  
Inspector  
Operations Manager  
Northern Region  
12 July 2010

1. The Commander Northern Region

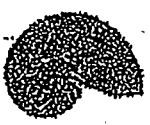
*Initial statements to be taken to ascertain the extent of the brief to then assess the appropriateness of potential involvement of SCC. Comments to identify an appropriately skilled investigator to undertake with a view to the file & report possible some comprehensive background consideration might be taken to utilising SCC as in an advisory capacity to assist the matter to transpire at appropriate level.*

2. Commander, Newcastle *left*

Signed *ALC 1/9/10.*

" C "

COPY



Jodie East/40173/Staff/NSWPolice  
13/12/2010 15:24

To: Kirren Steel/25458/Staff/NSWPolice@NSWPolice, Anthony Townsend/20978/Staff/NSWPolice@NSWPolice, Justin Quinn/25028/Staff/NSWPolice@NSWPolice  
cc: Paul Jacob/18752/Staff/NSWPolice@NSWPolice

bc  
Subject S/F LANTLE



OFFICE OF THE DIRECTOR  
State Crime Command  
Organised Crime Directorate  
NSW Police Headquarters  
Locked Bag 5102, Parramatta 2124 NSW  
Phone: (02) 8835 8350 EagleNet: 28350  
Facsimile: (02) 8835 8355 Eaglefax: 28355

MEMORANDUM

Good afternoon,

A request for assistance was submitted by Detective Sgt Kirren Steel to the Sex Crimes Squad, State Crime Command (SCC), in relation to S/F LANTLE. (Investigation into the alleged concealment by ~~REDACTED~~, Bishop Michael Malone and others of sexual assaults committed by Dennis McAllinden).

A determination has been made by Detective Acting Chief Superintendent Lanyon, that Detective Inspector Jacob of the Sex Crimes Squad be allocated as specialist consultant to Newcastle LAG- S/F LANTLE. Detective Inspector Jacob can be contacted on E/N 28700.

Thanking you,  
D/S/C Jodie Archer



Jodie East  
Detective Senior Constable | Serious Crime Directorate Operations Support Unit  
State Crime Command | NSW Police HQ Level B9, 1 Charles St, Parramatta 2150  
(02) 8885 8368 E/N 28358 | Fax (02) 8885 8355 E/Fax 28355 | e-mail - eastjod@police.nsw.gov.au

THIS IS THE ANNEXURE MARKED " C " \*  
ANNEXED TO STATEMENT OF Malcom Lanyon  
SIGNED THIS DAY OF