# SPECIAL COMMISSION OF INQUIRY <br> 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 Wednesday, 24 July 2013 at 10.20am (Day 15)

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting:
Ms Julia Lonergan SC
Mr David Kel1
Mr Warwick Hunt

Crown Solicitor's Office: Ms Emma Sullivan,

MS LONERGAN: Commissioner, I apologise for the late start this morning. Although our wonderful transcript reporters have boundless energy, the batteries that they use for their equipment do not. Hence the need to have a short delay this morning. I call Father Brian Joseph Lucas.
<BRIAN JOSEPH LUCAS, sworn:
[10.20am]
MR SKINNER: Commissioner, my client claims protection under section 23(2) of the Act.

THE COMMISSIONER: Thank you, Mr Skinner. That is noted.
<EXAMINATION BY MS LONERGAN:
MS LONERGAN: Q. Your full name is Father Brian Joseph Lucas?
A. Yes.
Q. You're a Catholic priest?
A. Yes.
Q. You are incardinated to the Archdiocese of Sydney?
A. Yes.
Q. You were ordained in August 1980?
A. Yes.
Q. Prior to being ordained as a Catholic priest, you completed a law degree?
A. Yes.
Q. You completed that in 1974?
A. Yes.
Q. You practised as a legal practitioner for a period, did you?
A. Yes.
Q. Could you outline what kind of work you did as a legal practitioner?
A. I spent two years as an articled clerk doing general commercial work for a firm in Phillip Street, in Sydney. I then stayed with that firm as a solicitor for another year doing general commercial and property law. At the end of 1974, or beginning of 1975, I then retired from that work and went to the seminary at St Columba's College,

Springwood. I maintained my practising certificate, which at that stage was an unrestricted practising certificate, with a view during the seminary holidays of doing some part-time practice. Towards the middle, I think, of 1975, the New South Wales Law Society then established a legal aid scheme in the Sydney Childrens Courts, and I participated as a duty solicitor in that scheme through the summer holidays and occasionally the mid-year holidays from the seminary through until the end of 1979 . I was then ordained a deacon. At that time I asked that my name be struck from the roll of solicitors and I was admitted as a non-practising barrister.
Q. After the time you were admitted as a non-practising barrister, did you carry out any more legal practice?
A. No.
Q. I'm going to ask you questions about the Sydney Childrens Court duty solicitor work you did. At that time the Childrens Court dealt with children who were in trouble with the law; is that the position?
A. Yes.
Q. Or children who were having difficulties with placement in terms of where they were living?
A. Yes.
Q. In your time in that role, did you deal with children who had been victims of sexual abuse?
A. Many occasions, yes.
Q. That gave you some insight into the sorts of troubles that can be associated with children who have gone through that experience?
A. Yes.
Q. Father, in your study as a lawyer, you would have taken notes during lectures?
A. Yes .
Q. And you would have taken notes during study?
A. Yes.
Q. That's because it's important to keep notes so you can remember things?
A. For exam purposes, yes.
Q. For exam questions?
A. For exam purposes, yes.
Q. While you were a lawyer, you would have taken notes from your clients?
A. Yes.
Q. That's so that you could present their cases at court?
A. Yes.
Q. And so that you could remember important things related to those clients?
A. Yes.
Q. That's a discipline you learned as a legal student?
A. Yes.
Q. And as a lawyer?
A. Yes.
Q. That's a discipline that stays with you for your lifetime, isn't it?
A. Not necessarily, because there are some circumstances when one is a priest and no longer a lawyer when it can be quite counterproductive to take notes in conversations with people. One does not take notes, for example, in hearing someone's confession.
Q. Oh, one would never expect that to happen, because, as you know and as probably everyone in this court knows, priests cannot disclose what happens in the confessional. A. Yes.
Q. But in situations where you are, as part of your execution of duties, an official of the Catholic Church and independent of confessionals and sacraments and private conferences, you had as an aspect to your role an important disciplinary aspect, didn't you?
A. I'm not quite sure $I$ understand that question.
Q. You were retained by the Australian Catholic Bishops Conference to assist in structuring protocols for the Catholic bishops to follow when they were dealing with priests who got themselves into trouble?
A. Yes, I was part of a committee for that purpose.
Q. I'm not suggesting you did it on your own, but in that
role you were recognising, were you not, that important rights of priests may be affected by the way in which the protocol was structured?
A. Yes.
Q. Important rights being their being allowed to continue practising as priests?
A. Yes.
Q. It's the position, isn't it, that a priest is a priest for life; is that the way the ordination process works?
A. Well, that's the theological concept. Whether he's allowed ever to practise as a priest for life depends on circumstances.
Q. So circumstances may arise where a priest is deprived of his faculties because of things he has done?
A. Yes.
Q. That are thought to be wrong or against the teachings of the church?
A. Yes.
Q. And you had a role on occasion to be part of that process where priests had their faculties removed?
A. Sadly, yes.
Q. I will hand you up a copy of your curriculum vitae, which is in the statement bundles that have already been served on parties at the Bar table, and also a copy for the Commissioner. I'm going to ask you a few more questions about some matters in your curriculum vitae. Would you agree with me that having a good memory is very helpful for the study of law?
A. Yes.
Q. You completed a Master of Laws by course work?
A. No, by thesis.
Q. By thesis, in 1978. You also completed a Master of General Studies at the University of New South Wales?
A. Yes.
Q. And that was about the Good Shepherd Sisters and the adolescent girl in need of care?
A. Yes.
Q. Did any aspect of that thesis deal with the effects of or the relevance at all of sexual abuse of children?
A. Yes, it certainly did.
Q. That featured in the thesis, did it?
A. Most of the study at that particular time focused on other issues related to adolescent girls who were in need of care. The child welfare legislation at the time used to contain the expression "exposed to moral danger" and the like. What we were probably much less aware of at the time I did that thesis was the internal sexual abuse of girls, particularly in the familial situation. But the program that I did the study on, conducted by the Good Shepherd Sisters, developed particularly through the early 1980s to have quite a specialist part that related to dealing with young people who had been the victims of sexual abuse.
Q. You also completed a Bachelor of Theology at the Catholic Institute of Sydney in 1980?
A. Yes.
Q. A Graduate Diploma of Religious Education in 1986 ?
A. Yes.
Q. And a Diploma of Jurisprudence through the University of Sydney and you received a particular award for that? A. Yes .
Q. You also completed a Licentiate in Sacred Theology featuring a thesis on the secrecy of the confessional and civil law and related to a case study there?
A. Yes.
Q. So is it fair to say you have a particular interest in the questions of the way in which confidential matters relating to church business should be dealt with?
A. Yes.
Q. You also have a Certificate in Pastoral Communication from the Pontifical Gregorian University in Rome in 2002?
A. Yes.
Q. What was that about?
A. It was a course related to the way in which church agencies would deal with media. It was part of a Churchill fellowship that I had been awarded, and I undertook that short course.
Q. You have been the official media spokesman for the archdiocese of Sydney between 1985 and 2002?
A. Yes .
Q. And also a columnist for the Catholic Weekly from 1983 to 2002?
A. Yes.
Q. The time frame to which I'm going to direct your mind shortly is 1988 to 1993 inclusive.
A. Yes.
Q. Before I do that, from 1988 to 1999 you were a member of the Australian Catholic Bishops Conference committee for professional standards?
A. Yes.
Q. Can you outline for the benefit of those present what the work of that particular committee was?
A. Yes. That committee was established, I'm not sure of the precise date it was formally established, but I think in early 1989. The purpose of that committee was to prepare a protocol to assist bishops and congregational leaders in dealing with allegations of criminal behaviour by members of the church.
Q. Do you recall now what, if any, particular events prompted the commencement of that committee in 1988?
A. There had been some publicity relating to some cases, I think particularly in Melbourne, but also there had been some publicity relating to these matters in the United States and in Canada.
Q. Are you able to say who, if any individual indeed did this, prompted the establishment or recognition of the need for a committee of this nature to help advise the Catholic bishops and Catholic community?
A. I'm not sure what you're asking me, which particular bishop?
Q. How did it happen? Did somebody prompt it? Did you prompt it? Did a number of bishops get together and say that this was an issue or how was it born?
A. To the best of my recollection, there must have been some conversation among the bishops. I recall - and my memory on this is fragile, whether it was at the end of

1987 or 1988, the document attached to my statement refers to April 1988, but I have always had a feeling that we had a call from Cardinal Clancy. I say "we" - it was either a call by Cardinal Clancy to Father John Usher and he spoke to me or a call by Cardinal Clancy to me and I spoke to John Usher, but the two of us went out one evening to Kensington to the plenary meeting of the Australian Catholic Bishops Conference and gave a short presentation.
As I said, my recollection has always been that that was at the end of 1987, but when I came upon that document in April 1988, perhaps that recollection is mistaken. It may have been in April 1988 that we made a presentation to the bishops. In that presentation, I made a recommendation that they needed to study these issues in more depth and that they should establish a committee for that purpose
Q. I will show you some documents shortly that might assist further with those time frames that you have just given evidence about. At the time you made these recommendations and gave this information to the Catholic Bishops Conference, you understood, didn't you, the effect of sexual abuse on children could manifest itself way into their adult years?
A. I don't know that, to be honest, in 1988 the understanding was as good as it is some 25 years later, but there was certainly some understanding.
Q. Did you have an understanding that it could affect children who had been abused as children into their adult years?
A. Yes.
Q. You had discussions with Father Usher about those matters?
A. That was more his area of expertise.
Q. He was a psychologist, was he?
A. No, he was a social worker.
Q. Father, I'11 have you shown a copy of your affidavit that you prepared for the benefit of this Commission. It's dated 11 March 2013. You'll see that the affidavit has had some pseudonyms slotted into it, and that is because various persons have been given pseudonyms in these proceedings. There are also a couple of parts that have been redacted for relevance - relevance in terms of the terms of reference for this Special Commission. You have
annexed some documents to it that you consider to be helpful in outlining the matters about which your evidence had been sought?
A. Yes.
Q. Is the affidavit true and correct?
A. Yes.
Q. Is there anything that you wish to change in there?
A. Not that I'm aware of.

MS LONERGAN: I tender the affidavit, Commissioner.
THE COMMISSIONER: The affidavit of Father Brian Lucas dated 11 March 2013 will be admitted and marked exhibit 142.

EXHIBIT \#142 AFFIDAVIT OF FATHER BRIAN LUCAS DATED 11/03/2013

MS LONERGAN: Q. Keep that affidavit with you, and I will show you some documents from our materials collected for the benefit of the exploration of issues for the Special Commission. On your right, there's a number of volumes. I want you to reach for volume 2, please, and go to tab 138.

MS LONERGAN: Commissioner, I should tender the curriculum vitae of Father Lucas as well.

THE COMMISSIONER: That will be marked exhibit 143.
EXHIBIT \#143 CURRICULUM VITAE OF FATHER BRIAN LUCAS
MS LONERGAN: Q. Tab 138, Father Lucas.
A. Is that a letter dated October 26 ?
Q. That's right.
A. Yes.
Q. That's a letter from Father Usher - was he Father Usher then or Monsignor?
A. Father.
Q. Father Usher, to you?
A. Yes.
Q. And it suggests or confirms that there will be a child sexual assault seminar that you and he were planning together?
A. Yes.
Q. From reading that letter, was that seminar something you were going to present to the Catholic Bishops
Conference or was it something else?
A. No, I think that seminar was for clergy.
Q. For which diocese or dioceses?
A. It would have been clergy of the archdiocese of Sydney.

MS LONERGAN: I tender that letter, Commissioner, on Centacare 1etterhead dated 26 October 1987.

THE COMMISSIONER: The letter from Father Usher to Father Lucas dated 26 October 1987 that will be admitted and marked exhibit 144.

## EXHIBIT \#144 LETTER FROM FATHER USHER TO FATHER LUCAS DATED 26/10/1987

MS LONERGAN: Q. If you wouldn't mind turning to tab 142 in the same volume, please. Father, you'll see that's a document headed "When clergy are accused of criminal acts". Before I ask you some questions about the document, there was no doubt in your mind, was there, in 1988 that sexual abuse of a child was a criminal offence?
A. Certainly not.
Q. No doubt?
A. No doubt.
Q. Did you have sufficient knowledge in terms of your legal background to differentiate between what abuses of children, sexual abuses of children, were felonies and which were not?
A. I wouldn't know that now, and I'm not sure that I would have known that then. I knew the distinction, that there - I'll perhaps explain it more clearly. I knew there was a distinction in the law between a misdemeanour and a felony, but I don't know that I knew precisely which types of offences would have fallen into which category.
Q. Is it fair to say you would have certainly had the
skills to make the relevant inquiry quickly if you needed to distinguish between misdemeanours and felonies?
A. I would have taken some advice from someone, yes.
Q. But you would have had the skills to look it up yourself given that you had completed a law degree? A. I would have been able to eventually do the research. How quickly and how accurately I would have done it at that time, I'm not sure.
Q. "When clergy are accused of criminal acts" - that document, would you mind just leafing through that. Do you recall having any role in dispersing this document to bishops or other church officials?
A. No, I don't recall having any involvement with this document. This is a document prepared by Father Kevin Matthews, who I know. I know it to be a commentary on I think the Canadian protocol, and I think I have seen the Canadian protocol that has the general outline of this document without the commentary. And I think at some stage, from what I've been told, that Canadian protocol had been distributed to the bishops, but that would have been done by the Bishops Conference secretariat.
Q. You weren't party to that dissemination yourself?
A. Not that I can recall.
Q. If you wouldn't mind turning to the last page of the document, which is page 10 of the document, page 223 of the bundle. Do you see the paragraph there under the "Conclusion" paragraphs, which appears to be a commentary:

This Canadian document is a fine attempt to provide guidelines ...

Et cetera?
A. Yes.
Q. Is it your evidence you didn't write that commentary; Father Matthews did, to your understanding?
A. Oh, yes.
Q. Is there any way of distinguishing by looking at the document what's commentary and what's the initial Canadian document, or is that a task you just wouldn't be able to assist with?
A. Having compared this document with the other document,

I think what is in bold is the Canadian document, and what is in a lighter font, I think is Father Matthews' commentary.
Q. Are you able to give any evidence confidently that this particular document was in fact disseminated to Australian Catholic bishops for their information and assistance?
A. That I'm not sure.
Q. So you would be guessing in terms of its
dissemination?
A. Yes.
Q. Did you use any parts of this document to assist in preparation of any other protocol or procedure documents for the assistance of the Catholic Bishops Conference? A. Yes, I think when the bishops committee began working on a protocol, the general structure of the Canadian document I think formed a basis for reflection and consideration. I think it was in 1991 that a fairly brief document was prepared for consideration and discussion and consultation for about a year that led to a more mature document in 1992.
Q. I'm going to stop you there. Thank you for that history. Did you prepare that document you've just out 1 ined?
A. Not personally. I was part of a committee that prepared the document.
Q. You had a role in preparing the document?
A. Yes.
Q. In preparing the document, was this document we're looking at now, "When clergy are accused of criminal acts", used in any way to prepare the subsequent 1991 draft? A. I don't recall.
Q. You don't recall?
A. No. I presume it was available, but I have no recollection as to the extent to which Father Matthews' commentary was significant or not.
Q. At the time you prepared or assisted in preparing the 1991 draft document, you had read this 1988 document we're looking at?
A. I presume so, but I don't recall.
Q. You presume so. Why would you presume so?
A. Well, I presume that if this document was available to the committee, I would have received a copy of it and read it.
Q. And that is a perfectly reasonable assumption, is it not?
A. Certainly.
Q. So you can comfortably state that the likelihood of you having read this document before you assisted in preparing the 1991 document is high?
A. Yes.

MS LONERGAN: Commissioner, I tender the 1988 document.
THE COMMISSIONER: That's tab 142?
MS LONERGAN: Yes, Commissioner.
THE COMMISSIONER: The material behind tab 142 entitled "When clergy are accused of criminal acts", by Father Kevin Matthews, will be admitted and marked exhibit 145.

EXHIBIT \#145 DOCUMENT ENTITLED "WHEN CLERGY ARE ACCUSED OF CRIMINAL ACTS", BY FATHER KEVIN MATTHEWS (TAB 142)

MS LONERGAN: Q. Father Lucas, did you agree broadly with the matters set out in this draft document that we're looking at, "When clergy are accused of criminal acts", in terms of it being a reasonable approach for bishops in Australia to manage? Did you have a view as to whether this was a reasonable approach, as set out in this document, for bishops to approach the difficulties they faced when clergy were accused of criminal offences?
A. I find it hard to answer that in those general terms. Obviously there would be some aspects of this document that were more significant than others with which I would have had a more sort of central - where my agreement would be more significant. I'd have to reread the document now to see if there were aspects of it where I may have taken a different opinion.
Q. I might ask you to do that later in the morning. If you wouldn't mind turning to page 9 of the document, which
is tab 222 of the bundle. Do you see under the paragraph next to number 2 - it's talking about return to ministry of a cleric who had been accused of criminal behaviour, Father Lucas - this observation is noted:

> This is one area where all bishops in Australia should arrive at a common policy. The damage, contradiction and seeming injustice possible where one bishop could advocate dismissal from the clerical state, while another pushes for a quick return to the ministry and yet another imposes precepts of taking certain medication for life need to be weighed up carefully.
A. Yes.
Q. You agree with that as a proposition, that there needed to be a consistency amongst bishops in Australia? A. Yes .
Q. Part of your role on the committee that we have been discussing was to assist in structuring a protocol or policy so that there could be consistency?
A. Yes.
Q. At the bottom of that same page under the heading "Other factors to be noted", there is this comment:

In contemplation of litigation and for the benefit of the legal counsel of the diocese, it is recommended that a written record be kept of all steps taken at the diocesan level from the moment the denunciation was first received. Care should be taken to protect the confidentiality of such documentation, depending to a large extent on the prevailing civil legislation.

Then it goes on to say:
The written record shall be endorsed as being prepared for the benefit of and assistance of the diocesan counsel.

Are you able to say whether this is part of

Father Matthews' suggestions or it was in the original document, or you can't say?
A. I think this was part of the Canadian document, just by - use of the language suggests it. For example "assistance of diocesan counsel" would not be an Australian expression, so I think that paragraph is also involved was the Canadian document.
Q. What's your view about the recommendation or the suggestion that it is a good idea to keep a written record of steps taken at a diocesan level about when clergy are accused of criminal behaviour?
A. I think that's too simplistic as it's presented there.

I think there are a number of different circumstances and different sorts of conversations where sometimes it's appropriate to have a written record and other times where it's not.
Q. What about in circumstances where evidence is being taken with a view to that evidence being used to strip a priest of his faculties?
A. If there's a formal canonical trial, then the very nature of church canonical trials requires that they be documented.
Q. Putting aside formal canonical trials, what is your view about the wisdom or otherwise of keeping a written record of evidence related to, or that's going to be used for, stripping a priest of his faculties?
A. Again, that would depend very much on the circumstances. There are some circumstances where, for example, in a conversation with a priest where one is trying to persuade him to resign his ministry, it would be counterproductive to write that down because that would send a signal to him that would suggest he not say anything to anyone, and that could be counterproductive. So much depends on the circumstances and the type of action one is trying to take.
Q. What about taking notes after the cleric left the room?
A. Well, if you take notes after the cleric left the room, in fairness to him he ought to see them and endorse them as being accurate, and then you're back to where you were if you had taken the notes in front of him.
Q. Surely a set of notes taken endorsed or not endorsed
by a cleric about whom they are recorded is better than having no notes whatsoever, isn't it?
A. It depends on the circumstances. Generally speaking I would agree, but it would depend sometimes on the circumstances of what else was done by way of reporting the nature of that conversation.
Q. Let's address ourselves to the situation where an interview is had with a cleric at which he is presented with information to the effect that he had sexually abused a number of children.
A. Yes.
Q. And the interviewer is somebody who has been retained to find out from the perpetrator what happened and/or encourage him to remove himself from ministry?
A. Yes .
Q. Or allow himself to be removed from ministry?
A. Yes.
Q. Wouldn't you agree it would be very beneficial for notes to be taken of that conference by the person conducting the interview?
A. As I said, if you're sitting in front of him taking notes, he will not say anything. That was my experience.
Q. That was your experience, all right. We weren't necessarily talking about you in the example, but happy to talk about you if you would prefer. Wouldn't the position be far stronger in terms of confronting the alleged perpetrator with information if he was presented with notes of accounts that had been given about him?
A. If such notes existed.
Q. Wouldn't it be much easier to present to an accused cleric the case against him if there were notes?
A. That would again depend on some circumstances. It may be that in a particular situation, you may not wish to identify a particular victim to the particular cleric. There are issues of relationship, risk of reprisal. And the other aspect of this sort of conversation is that simply presenting a set of facts with a particular victim simply leads to a denial. Sometimes that conversation needs to work around the cleric's own perception of who might be making such allegations with a view to confronting him with his need to resign.
Q. Sometimes presenting a cleric with some facts about their sexually abusive behaviour leads to an admission, doesn't it?
A. It can do.
Q. And it has, hasn't it, in cases where you've confronted clerics with allegations of sexual abuse of children?
A. It has.
Q. It would be most useful, wouldn't it, to note that the cleric had admitted to certain offences, wouldn't it?
A. If that was the situation in the particular case, but depending on the nature of that conversation, it may be simply a matter of reporting the event back to the bishop, if that was what was requested.
Q. But would you agree with me that for the person who was sitting there while Father $X$ said, "I interfered with X sexually when she was nine", it would be much more valuable for that person who took that admission, who heard it with their own ears, to write it down and then convey a note of it to the relevant bishop or superior?
A. Not necessarily. The priest, whatever we think about the law, has his right to silence. There has to be some fairness to him, and the circumstances could be such that if he thought that there was going to be some permanent record, he would simply not speak in the first place, and that was the real dilemma, and I absolutely accept, counsel, what you're putting to me, and I found that a constant dilemma.
Q. But, Father Lucas, wasn't that the position, and let's go straight to you - in a role you completed for the assistance of various bishops in New South Wales, you had the role of persuading a priest to leave ministry?
A. Yes.
Q. That's the position, isn't it?
A. Yes.
Q. When a priest had been accused of sexually abusing children and probably other circumstances as well; is that right?
A. Yes.
Q. So you would, after these chats with the priests, make a phone call to the bishop or the superior, would you? A. Yes.
Q. Did you ever on any occasion provide to the bishop or superior notes of your discussion with the alleged perpetrator?
A. If the bishop wanted some written letter as to the outcome, I would do that.
Q. Did you ever provide to the bishop or superior notes of complaints of the victims?
A. That may have been the case. I don't recall
a specific instance. And I'm not quite sure - I don't want to misrepresent my answer.
Q. I'm asking a very general question.
A. Yes.
Q. Did you ever provide to bishops or superiors notes of complaints by complainants that you had taken yourself, let me confine the question a little?
A. There would have been some instances I'm sure where a victim presented a written statement and I would have passed it on to a bishop.
Q. And in some circumstances you actually took complaints from complainants yourself, didn't you?
A. On some occasions. Very rarely. Mostly the complainants were dealt with by Father John Usher.
Q. But you did on at least some occasions take complaints?
A. Yes.
Q. And at the time you made notes about what the complaints were?
A. There could have been some instances of that, yes.
Q. Why only some instances of that?
A. It depends very much on the circumstances and what a particular complainant wants to do. If a complainant came with a written statement, for instance, and wanted that written statement passed on to a bishop, it may be that there were some aspects of that statement to clarify. In other instances, depending again on the circumstances, it would be counterproductive to sit in front of
a complainant and take notes. This is a more pastoral conversation and, again - this is my experience - it is extraordinarily difficult for victims of sexual assault to speak about that experience. And to have a very formal structured interview where you're taking notes while they're talking, in some circumstances, depending on what they might be, it may not necessarily be in that victim's best interests.
Q. One thing that is absolutely common to all
complainants is that they're complaining; that's right, isn't it?
A. Yes.
Q. They want a complaint conveyed and dealt with?
A. Yes.
Q. For a complaint to be accurately conveyed, wouldn't you agree with me that it would be proper to take a note of it so that it can be conveyed accurately if you do not have a written note of it provided to you already?
A. My experience would be if a victim wanted some formal conveyance of a complaint - in most of the cases I dealt with, the victim had already made a complaint to the church authority. That's why the matter was referred to me. They had already made that complaint. I'd be very cautious of wanting them to restate again what they had already stated.
Q. Didn't you need to evaluate what they were saying so you could present that material to the alleged perpetrator? A. Only in the most general terms.
Q. It needed to be more than general terms, didn't it, so that you could confront the alleged perpetrator with what was being alleged about him?
A. Not in specific detail. That was generally not necessary. It was enough to confront him with the fact that there had been allegations made against him. The precise detail of those allegations, generally speaking, were not necessary.
Q. You wouldn't be able to encourage a priest to leave ministry just saying, "There have been allegations made against you." Wouldn't you at least need some detail about what those complaints were, that is, they were of a sexual nature in relation to a child or they were of an inappropriate nature in relation to a grown adult, or at
least that level of specificity?
A. Certainly at that level, yes.
Q. Wouldn't you need to have made some determination in your mind as to whether these allegations were so fanciful that you shouldn't even be confronting the priest about them?
A. I think the question of whether they were fanciful was probably already determined by the person they made the original complaint to. That's not absolutely the case in every instance, but the sorts of cases - I can recall one specific case where there was a very fanciful conversation, and that conversation took place in the presence of the complainant's solicitor.
Q. Yes. And that was one fanciful account out of how many that you dealt with in your career?
A. Oh, that would be one out of - I don't know, but very rare.
Q. One out of - I'm going to ask you to make a stab, an educated stab, at how many of these types of matters you've dealt with?
A. When I was asked that question before, I took the opportunity to then try to refresh my memory by looking at a website where there was a list of names of perpetrators, and I would think it would probably be of the order of somewhere around 35 , give or take a view. There are some where my memory is fading.
Q. Thirty-five give or take a few over what time period?
A. This would be over the period from about 1990 through to 1995 or 1996.
Q. And you stopped that particular special role you had at 1995/1996; is that your evidence?
A. Around then, when the Professional Standards Office was established in Sydney.
Q. Can I ask you some questions about this special role. Who suggested to you that you should fulfil this particular task in dealing with clerics who had been accused of particular conduct?
A. The protocol that was established in 1992 established a resource group in each province, and there were several of us appointed to that resource group in Sydney.
Q. Your particular role - was it duplicated by anybody else, to your knowledge?
A. Generally the cases I dealt with, I dealt with in company with Father John Usher.
Q. So to that extent he didn't duplicate your role; he accompanied you?
A. Yes .
Q. Do you know if anybody duplicated your role?
A. I expect that he dealt with some instances on his own and I expect that there may have been others who dealt with instances on their own.
Q. Which others?
A. I'd need to check who were members of the committee at the particular time. I know that Father Bob McGuckin was a member of the committee at one stage. Father Bill Burston was a member of the committee at one stage. Sister Evelyn Woodward was a member of the committee at some stage, but I can't be sure of the precise times.
Q. I should make the question more specific. I'm dealing with people from that particular group or committee who had the role of confronting perpetrators or alleged perpetrators of sexual abuse with the allegations of abuse with a view to persuading them out of ministry?
A. Yes.
Q. That was the role you performed, wasn't it?
A. Generally in conjunction with Father John Usher, yes.
Q. I'm sorry, I didn't mean to leave him out of the equation. Do you know whether Father Burston or Father McGuckin performed that role, as well as you, during the same period you did it?
A. I don't have any specific examples, no.
Q. By that answer, are you suggesting they didn't do it or you just don't know?
A. I just don't know.
Q. You would be contacted by various bishops around New South Wales, would you, to assist with that particular task where they had a priest who had been accused of sexually abusive behaviour?
A. Yes.
Q. Were you also asked to do that task in relation to priests who had been accused of other kinds of inappropriate behaviour, or was it only the sexual abuse? A. No, other behaviour, but the other behaviour would have probably been confined to the archdiocese of Sydney. Other types of behaviour were probably dealt with locally by the bishops.
Q. You're not a canon lawyer?
A. No.
Q. As part of your fulfilling this particular role that had been allocated to you as part of the group you've described, did you on occasion take canon law advice?
A. There was certainly canon law advice -

Father Matthews' document would be part of that. There were a number of canon lawyers who had views on various aspects of the procedure.
Q. Did you take advice from them on occasion regarding the way in which you went about your particular tasks? A. I don't recall that $I$ was ever involved in a canonical process that would have required canon law advice.
Q. That's a little different to the question I'm asking you.
A. Sorry.
Q. Let me ask some preliminary questions. Do you see the role that you were carrying out as having absolutely no need to comply with any canon law processes?
A. It depends on what the canon law processes were.

I think the general view at the time, and a view certainly that I had at that time, was that the canon law processes, the formal structured canon law processes, were unworkable and we needed to find a different way of dealing with these allegations.
Q. So are we to understand your answer as suggesting that your process was outside any canon law processes?
A. That would be a general observation of which many canon lawyers have been very critical.
Q. Is that an accurate observation, though?
A. I think so.
Q. Were your processes outside canon law processes?
A. I don't think they were - well, I'll put it this way. There were some canon lawyers who took the view that the manner of dealing with a priest in soliciting from him a willingness to resign his ministry did not do justice to his canonical rights. I understand that view. I don't accept it. But that was certainly a view that was expressed strongly by some canon lawyers.
Q. What about in circumstances where the alleged perpetrator admitted that he had engaged in criminal conduct - would not notes of that admission or those admissions have been useful to pass on to those who thought a canon law process would be an appropriate further way to deal with the priest?
A. I'm not sure - once he had agreed to resign his ministry, there generally wasn't any need for a canonical process.
Q. An agreement to resign ministry is not a laicisation, is it?
A. No, there's a distinction between agreeing to resign ministry and formally being deprived of the clerical state.
In my view, that is more a theological issue than a practical issue.
Q. Did you hold the view, or do you hold the view, that laicisation is appropriate for priests who sexually abuse children?
A. That would depend on some circumstances, for a younger priest who wants to leave the clerical state and make a secular life. But there is also an instance,
particularly for an older priest, where you certainly - and remembering the first priority in all of this is to ensure that he's not a risk to children - whether or not he is laicised may not make much difference to that particular issue, again, depending on the circumstances. Sometimes it's more advantageous that he not be laicised, which gives the bishops some leverage over his living circumstances and some better control over him. So a lot depends on the particular circumstances.
Q. How does removal of faculties provide safety for children in the vicinity of the priest?
A. Once the priest is not functioning as a priest, he's been removed from ministry, his faculties have been taken from him, he can't hold himself out as a priest, he can't
form the sorts of trusting relationships that tragically are the basis of much of this behaviour, then that - whilst it's never absolute - goes a long way towards ensuring that children are better protected.
Q. Is it your understanding that when faculties are removed, a priest is not permitted to wear his cross or his collar?
A. That would be the normal expectation, and generally that would be part of the arrangement the bishop made with him.
Q. If a priest is not compliant with that arrangement and continues to wear his priestly outfit, what power does the bishop have to do anything further about that?
A. Well, the bishop can have some canonical process, but even if at the end of that canonical process the sentence that is imposed is laicisation, that still doesn't stop a man wearing clerical dress.
Q. You mentioned that there is a pastoral aspect to taking complaints from victims of sexual abuse. Was it your practice when you were in the position of taking these particular complaints to only do them in person, that is, you sitting with the alleged victim?
A. In taking a complaint?
Q. Yes.
A. I rarely would take a formal complaint from a victim, but you would do that, obviously, in some form of meeting with that victim.
Q. I suggest to you in relation to two particular complainants regarding McAlinden, who's the priest we're dealing with in the main today, that you took the complaints over the phone. Do you recollect that? A. I'm aware of those comments. I would not say that I took complaints. The complaints had already been made, and I don't recall the specifics of conversations, but my understanding and my best recollection - and I'm very conscious of not turning a recollection into some self-serving reconstruction, but my best understanding of that was simply to pass on a message as to what was happening, not to take details of the complaint. My understanding is complaints had already been made el sewhere.
Q. I suggest to you that in relation to McAlinden, you phoned a particular person who we're referring to in these proceedings as [AJ]. There's a list of pseudonyms in the witness box with you if you --
A. I'm aware of who [AJ] is, yes.
Q. And you phoned her and actually asked her to tell you what happened in relation to McAlinden over the phone. What do you say about that?
A. Well, I don't recall any specifics, but when you say "tell what happened", it probably would have gone no further than something euphemistic, "I understand" - from whoever told me to ring her - "that you were a victim of sexual molestation" - or "inappropriate touching" or some euphemistic word - "I just want to tell you that this is what we're doing, we're seeing", or whatever the message was. I would certainly never, ever take - firstly, I would very rarely take details of sexual assault from a victim. There's issues there about the risk of contaminating evidence that I was always conscious of, but I would certainly never do it over the phone.
Q. Presuming that you had no statement from this particular person already, how would you be able to confront the priest, in this case McAlinden, with the information if you didn't phone the alleged complainant? A. I would have received from - whoever asked me to telephone [AJ] would have told me whatever [AJ] had told that person.
Q. And you'd write that down?
A. Not necessarily.
Q. You'd just rely on your memory to be able to have the phone number of this person in your mind?
A. Oh, no, I would have written down the phone number for sure.
Q. You would have written down the name?
A. Yes.
Q. And wouldn't you have written down something about what it was that you were going to pursue in relation to that person?
A. Not necessarily in any detail, no.
Q. I'm not talking about in any detail. Would you have
written anything?
A. Well, I might have written the name of McAlinden next to the person in my workbook, but that wouldn't have gone any further than a name and a phone number.
Q. Can we take it from your evidence that you have no recollection of ringing an alleged victim of McAlinden's and talking to her over the phone about the alleged abuse? A. No, I can't recall that directly. Obviously from all of this material, that certainly happened. I don't resile from the fact that that happened. As I said, I'm very conscious of not wanting to in some way reconstruct what might have occurred in that telephone conversation. I'm sorry, $I$ just don't recall that conversation.
Q. But your usual practice is to not phone complainants? A. I would have been asked by somebody - if I phoned that person --
Q. I'm going to stop you.
A. Sorry.
Q. I'm just asking about usual practice. I'm not delving back into recollection. Your usual practice as at 1993 would have been not to phone victims and talk to them on the phone about their abuse?
A. I would have telephoned them to make an appointment if that was what was being asked of me. But I would not talk over the phone with a victim about the details of the allegation at all.
Q. That wouldn't have been your usual practice?
A. Never.
Q. You were based in Sydney at that time?
A. Yes.
Q. Let's focus on late 1992 and early 1993. Would you on occasion travel away from Sydney to interview complainants regarding sexual abuse?
A. Yes.
Q. And you would on occasion travel to other locations to interview priests?
A. Yes.
Q. And present accusations to them?
A. Yes.
Q. In relation to any interviews that you carried out with priests where you presented accusations to them, in 1992 or 1993, did you make any notes?
A. Of a conversation with a priest?
Q. Yes.
A. There were some instances where I, after the event, wrote to the bishop giving a report, yes.
Q. So you would prepare that report or write that report just after the interview with the priest, would you?
A. Yes, within a few days.
Q. Do you know how many occasions you did that in 1992 and 1993?
A. I'm sorry, I don't.
Q. More than one occasion or you can't say?
A. I can't say, sorry.
Q. In relation to cases where you didn't make notes, you conveyed the information to the bishop, did you?
A. Yes, or the vicar general, depending on who I was dealing with.
Q. You would do that immediately after your contact with a particular alleged perpetrator?
A. Generally the same day, or if the bishop or the vicar general wasn't available, as soon as they were available.
Q. You took care to ensure the information you conveyed to them about what the perpetrator had said was accurate?
A. Not so much what the perpetrator had said. Again remembering the circumstances of that conversation, certainly what the agreed outcome was.
Q. You'd want to convey what the perpetrator said as well as part of that outcome, wouldn't you?
A. Again, this is difficult. If one has entered into the conversation with the perpetrator on the basis of some confidentiality, if the confidentiality extended, of course, to reporting to the bishop and he agreed with that, I'd report whatever level of detail the bishop would want.
Q. You were the bishop's delegate, in effect, in carrying out this particular conversation with the alleged perpetrator, weren't you?
A. Not exactly. The bishop was looking for somebody to achieve an outcome.
Q. You were effectively his delegate, weren't you?
A. I don't think we ever used the word "delegate".

I think --
Q. But you were doing this for the bishop, weren't you?
A. Well, I was assisting the bishop in doing something he asked me to do, certainly.
Q. And it was important to convey accurately to the bishop what had occurred during the conference with the alleged perpetrator?
A. No, it was important to convey to the bishop the agreed outcome that the bishop was looking for.
Q. If part of the outcome that the bishop was looking for was to get a particular alleged perpetrator out of ministry, the fact that the alleged perpetrator had admitted to offending against children in your conversation with him would have been a really important thing to convey back to the bishop, wouldn't it?
A. It would depend on how general those admissions were and how specific they were and what was necessary for the purposes of reporting back to the bishop.
Q. If they were made, you would have reported them to the bishop, wouldn't you?
A. That would depend on the circumstances. I wouldn't be confident that I would have given every bishop all of the detail of particular parts of a conversation.
Q. But if the alleged perpetrator denied any of the acts he had been accused of, you would have told the bishop that, wouldn't you?
A. It would depend on the nature of the conversation. Many perpetrators would obfuscate and minimise, and at the end of the day you weren't quite sure what they were agreeing with or not agreeing with, and I would have conveyed that to the bishop in terms of, "Look, we've had this conversation. He's all over the place. I can't be sure of what's happened or hasn't happened. But at the end of the day he has agreed to resign".
Q. That was more the norm, wasn't it, that the alleged perpetrator would deny or obfuscate in terms of the accusations?
A. Yes .
Q. It was very unusual in your experience, wasn't it, particularly in 1992 and 1993, for an alleged perpetrator to admit they had carried out any illegal conduct with children?
A. There are --
Q. It was unusual, wasn't it?
A. Not necessarily. There were various grades of admitting or not admitting or agreeing or not agreeing from the perpetrator who would see his whole life come to an end and - and I can think of one particular example of a priest who spent most of the conversation absolutely sobbing his heart out --
Q. I'm going to stop you there. Was that priest McAlinden?
A. No.
Q. Then we don't need to hear that evidence. In relation to your evidence along the lines that there were graded types of admissions, in your experience, it was very unusual, wasn't it, for a priest to say, "Yes, I abused Ms $X$ or Ms Y"?
A. It's hard to evaluate what's usual or unusual but --
Q. You're the one who was doing this job?
A. No, no, in terms of trying to remember all the particular instances to work out how many fell into which category, I don't want to mislead you and I'm not quite sure what number constitutes unusual.
Q. If you do 35 , 1 ess than 10 may be thought to be unusual. Let's just use that as a working basis. Did you have more than 10 priests admit to particular instances of sexual abuse of particular people, broadly?
A. Thinking of those that I persuaded to plead guilty, yes, there probably were.
Q. More than 10 ?
A. Could well be, yes. I'm not sure exactly.
Q. In relation to those, did you tell the bishops that they had admitted to particular instances of abuse against particular people?
A. I would have given a general report in whatever terms the bishop asked for.
Q. The bishop would have been interested in whether admissions were made about particular people and particular abuse, would he not, as a general proposition for a bishop in this circumstance?
A. That's if we were dealing with particular individuals and particular fact situations, yes.
Q. Making your own note about what happened in your conversation with an accused priest doesn't breach any confidentiality with the perpetrator, does it, because you're just making your own note?
A. I think fairness would suggest to him that if I'm going to write down something, some fairness to him would suggest that if I'm going to create some permanent record, that that permanent record, given it's so adverse to his interests, ought to be seen by him and regarded as being accurate. That would be my understanding.
Q. That's not what I'm asking you.
A. Sorry.
Q. What I'm suggesting to you is you making a note of your conversation with this person isn't per se a breach of his confidentiality, is it? It's what you do with it where it gets messier, but just actually the act of taking the note?
A. Certain7y not the act of taking the note.
Q. So there's no reason on the confidentiality basis as to why you could not have taken a note of your conversation with him? That's the position, isn't it?
A. Sorry?
Q. It's a proposition I'm putting to you; you could have accepted it or rejected it. There's no reason why your taking a note of your conversation with a perpetrator would have breached his confidentiality, would it?
A. I think that would be a matter some people would argue about, to be honest.
Q. I don't want to know what some people would argue
about. I'm asking you.
A. I would be cautious of doing that.
Q. Cautious of taking any note?
A. Yes.
Q. Is the real position as to why you didn't want to take any note that you didn't want it to have to be disclosed in any subsequent legal process?
A. I think that would be a reasonable comment.
Q. And you have on occasion published advice and your thoughts on that particular subject, that it is wise on occasion not to have notes so that they can't be compelled to be disclosed in later legal proceedings?
A. That would be a position in some instances, given the circumstances of duress in which a perpetrator has made some statements, yes.
Q. What I'm asking about, though, is your writings, independent of any particular notes you did or didn't take in these types of conversations we've been talking about, where you have published views for the benefit of other clergy to the effect that it's a good idea not to take notes, so that a subsequent legal process that would compel production of them cannot be successful?
A. In some instances that would be accurate, yes.
Q. You published to that effect?
A. Yes.
Q. And it's a view you hold?
A. Yes.
Q. And it's a view you held in 1992/1993?
A. Yes.
Q. What I want to suggest to you is that you deliberately didn't take notes of these events because you did not want any paper trail relating to the types of matters you were discussing with priests?
A. I think that's, with due respect, not quite the position I was adopting.
Q. All right. Explain what the position was that you were adopting?
A. We're dealing with a person who has his right to
silence. We're putting extreme pressure and duress upon him. Probably anything he said would not be admissible subsequently, anyway. But to sit in front of him and take notes would mean he wouldn't say anything. If you are going to take a note, and there are good reasons for taking that note, I think fairness and procedural fairness to him suggests that he should see that note so that it's accurate.
Q. So one solution would have been for you to take a note and show it to the perpetrator so he could ensure it was accurate?
A. Yes.
Q. Did you do that?
A. No.
Q. Never did that?
A. No.
Q. That would have been a fairer process, wouldn't it, because then that would have been a memo of your discussion with the priest, your conversation, and his acknowledgment that it was accurate?
A. And probably create significant disturbance in his mind about the consequences of that from his perspective.
Q. But he knew you were going to convey information to the bishop, such as to allow the bishop to make that final definitive step of removing the faculties of the priest, didn't he?
A. Yes, yes.
Q. So the fact that there's documentation about it or not is really not a particularly important matter to that particular priest when he knows he is not going to be allowed to practise as a priest any more if the conversation goes the way the bishop would like it to go; is that a fair summary?
A. That would be a fair summary.
Q. Why do you say that notes made in those circumstances of the conversation with you would not be admissible?
A. Oh, look, I think you're talking about a person who and as I understand the general procedures, people have a right to be silent. Whether we agree with that being the law or not is a different question. Generally people are
cautioned before they make comments adverse to their interests. The practicalities of dealing with these priests were that one had to, in a sense, seduce them into agreeing to resign. And I understand the unfairness of that, but that was the practical outcome.
Q. Did you receive legal advice to the effect that any handwritten or typed statement by you of your conversation with any alleged perpetrator would be inadmissible in any court proceedings?
A. No.
Q. That was just your own view?
A. Yes.
Q. That view may be wrong; do you agree?
A. It may be wrong.
Q. It's a very important matter, since you were attending to these types of tasks in relation to a number of priests, to have received some accurate advice about that particular issue; od you agree?

MR SKINNER: I object, Commissioner.
MS LONERGAN: I withdraw the question. I'11 move to something else.

THE COMMISSIONER: Thank you, Ms Lonergan.
MS LONERGAN: Q. Father, did you have any meetings with Father James Fletcher of the nature we've been discussing? A. No.
Q. Did you at any time to your recollection take any complaints from any alleged victims of James Fletcher?
A. No.
Q. You're aware, aren't you, that the other priest with which this Commission is particularly concerned is Father McAlinden?
A. Yes.
Q. And you did have a conversation with Father McAlinden in early 1993?
A. Yes.
Q. Do you recall that particular meeting - was there more than one meeting?
A. So far as I'm aware, there was only one meeting, but I don't recall it.
Q. You say so far as you're aware. How do you know there was a meeting if you don't recall it?
A. Well, all of the evidence suggests that there was
a meeting. I don't recall the detail of that meeting and I can't, in my mind's eye, construct where it was, what he looked like, or what he said.
Q. I suggest to you that the meeting was around about February 1993?
A. Yes.
Q. Would you agree with me that the material you've read suggests that's probably accurate?
A. Yes .
Q. Please, these propositions I'm putting to you, if you don't agree with them, please say so. Have you looked for any records, diaries or other information that could assist you in identifying the date the meeting with McAlinden occurred and/or the location?
A. Yes.
Q. Have you turned anything up that has assisted in pinpointing either of those things?
A. No.
Q. At that stage, February 1993, are you able to say how many priests you had had these particular special meetings with?
A. I can't. There would be a number, but $I$ can't recall.
Q. Are you able to say when you started - I think I've already asked you this question, but just to pinpoint it going backwards - doing these sorts of meetings with alleged perpetrators?
A. It would be some time around 1989/1990.
Q. You stopped around about 1995/1996 when the Professional Standards Office was set up; is that the position?
A. Yes.
Q. Are you able to say what month of which of those years, or not?
A. Sorry?
Q. That you stopped doing these sorts of tasks.
A. I think the Professional Standards Office was set up at the end of 1996.
Q. So once that office was up and running, you no longer performed these tasks for the archdiocese; is that the position?
A. It wasn't just the archdiocese. It was the province of New South Wales.
Q. The whole of New South Wales including the ACT?
A. Yes.
Q. Do you remember physically attending the Maitland-Newcastle bishop's house to conduct an interview or a meeting with an alleged victim of McAlinden?
A. I recall having a meeting with an alleged - well,
a victim, but as far as I --
Q. A lady?
A. A lady who was a victim of McAlinden. I'm not sure where it was. I don't, in my recollection, recall where it was.
Q. It was up here somewhere, though, in the Newcastle area?
A. That's my understanding, yes.
Q. It's your understanding or your recollection?
A. I think I'd have to put it that it's my understanding. I simply don't recall the place. I'm almost certain it was in Newcastle, in all of the circumstances, but I don't recal 1.
Q. You recall it was a meeting with an alleged victim of McAlinden's?
A. Yes.
Q. Do you remember where it occurred in relation to your meeting that must have taken place with McAlinden, whether it was before or after?
A. My recollection would be that the meeting with the victim was before the meeting with McAlinden.
Q. I appreciate you don't have a memory of your actual meeting with McAlinden, but do you have sufficient memory to recall that the meeting with McAlinden's victim was information upon which you relied in your meeting with McAlinden or not?
A. What I do remember very clearly - and I'm guided, counsel, by some circumstances of non-publication and confidentiality relating to the particular person we're speaking about and I'm in your hands as to how I should deal with that, because one aspect of that I have a clear recollection about.
Q. We'11 have to come back to that in another setting. Now, [AJ], who I've already asked you some questions about - it's the position, isn't it, that you have no recollection of ever meeting her in person, [AJ]?
A. Yes.
Q. That's the position?
A. Yes, certainly.
Q. You say you don't remember having a phone conversation with her where you asked her to detail the abuse that she suffered at the hands of McAlinden?
A. I don't recall a phone conversation but I would be confident that I would not, over the phone, have asked somebody to detail the abuse.
Q. You've given evidence that you expect you would have spoken to [AJ] about what was planned to happen in relation to McAlinden?
A. Yes .
Q. I want to suggest to you that in your first phone contact with [AJ], you said, "Tell me what happened. How old were you? What did he do to you?"
A. While I cannot remember, I would have to refute that. It would not be in character for me ever over the phone to ask other than in the most broad sense, "We understand that there has been some allegation" or "You're making an allegation of sexual molestation" or some euphemism like that. I would never, ever over the phone ask a victim for any detail of that, for various reasons. First, as I've said before, it is very, very difficult for victims to speak about this, in any event. It is even worse to talk about it over the phone. In any event, I would be very
cautious of getting into detail with victims lest at some stage there be some contamination or alleged contamination of what they've said.
Q. If it's suggested that you asked these questions in a cold and insensitive manner and with a brusque tone? A. I understand that's what has been alleged and I can say this, and I will say this very publicly in this courtroom, if I did that, I'm very sorry.
Q. It's suggested that in that same phone call you asked that particular person, [AJ], about another alleged victim of McAlinden's, [AI], who's on that pseudonym list. Would that have been part of your usual approach as at early 1993, to do that?
A. I don't think I would have asked about another victim. This is again possibly reconstruction.
Q. Reconstruction by you, at this stage, relying on your usual practice?
A. That in fact [AJ] had told me about the other person and perhaps suggested I ring the other person. But I put it no higher than a possible reconstruction.
Q. By that, you are relying on the way you would have gone about things at that time as opposed to having any actual recollection about what happened?
A. Yes.
Q. In relation to either [AJ] or any other victim of McAlinden that you had any contact with, are you able to recall whether you had any conversations with the bishop at the time, Bishop Clarke, about McAlinden?
A. Certainly.
Q. You certainly had the conversations?
A. Oh, I'm sure there were a number of conversations.

I can't pinpoint which conversations would have been with Bishop Clarke and which would have been with his vicar general.
Q. And his vicar general was Monsignor Hart?
A. Yes.
Q. Are you able to assist with which of those two gentlemen, if it was one of those two, who first retained your assistance in relation to McAlinden?
A. I can't recall.
Q. It could have been either?
A. Could have been.
Q. It's your recollection you had conversations with both of them about the matter?
A. Yes.
Q. And did you have conversations with both of them in early 1993?
A. If that was the occasion, yes, certainly.
Q. You're aware, aren't you, that there's also an entry in your 1995 diary to the effect that you were to ring Monsignor Hart regarding McAlinden?
A. Yes .
Q. I just want to pinpoint involvement at that time. Do you recollect whether you in fact rang Father Hart at that time or do you have any recollection of those matters?
A. I don't have any recollection of the phone call, but I understand from this material that shortly after the date of that entry, which I think was in the middle of June, a letter was written to the apostolic nuncio making reference to that letter being written partly on my advice. So I'm presuming that the conversation with Monsignor Hart was about the construct of that letter or the strategy that that letter involved.
Q. You have put that memory together from looking at various documents with the assistance of your legal representatives?
A. Yes.
Q. I'm not being critical about that at all. Do you have any recollection of having dealt with the McAlinden issue in early 1993 and looking at that diary entry in 1995, having any ongoing role in relation to McAlinden's ministry and/or advising the bishop of the diocese or anybody else in the diocese about what to do with him?
A. No, no.
Q. Did you make any plan with Bishop Clarke, to your recollection, as to what should happen with McAlinden after your particular involvement?
A. I presume there was some conversation about that, but
my best recollection, insofar as it's a recollection at all, is that decisions about what happened to him after I persuaded him to resign rested with the bishop and his advisers.
Q. In giving that answer, you're relying on your usual practice, are you, as opposed to a recollection about your involvement or otherwise with plans made for the management of McAlinden after he had been persuaded to give up his ministry?
A. Yes. The usual practice would have been once the priest had been persuaded to resign, that the ongoing management of all of that was a matter for his bishop.
Q. You say there would have been conversations with [AJ] or at least a conversation with [AJ] in which you dealt with the subject matter of what was going to happen with McAlinden?
A. Yes.
Q. I just want to get some more clarity on that.

MR SKINNER: Well, Commissioner --
MS LONERGAN: I'm using that term very loosely. Let me just clarify it. I understand Mr Skinner's concern.

MR SKINNER: If my friend rephrases it rather than perhaps "you say that you accept". He accepts some other evidence that he had a conversation.

THE COMMISSIONER: Yes.
MS LONERGAN: I will tidy it up, Commissioner. Mr Skinner's point is well taken.
Q. I'm not suggesting by the questions I am now going to ask you that you had a particular role in arranging where McAlinden would go or to what country he would be sent or where he would live after your particular conversation with him. What I want to ask you about is any conversations you had with [AJ] where you discussed what your role would be or what the processes would be in relation to you speaking to McAlinden or having anything to do with McAlinden?
A. Again this is a reconstruction because I don't recall the conversation, but it would have been - the suggestion is there are two conversations. My reconstruction would be
that the first conversation was to tell her that I'd received this message from whoever it was who asked me to ring her, that we would be dealing with McAlinden and moving towards him being removed from ministry. And I suspect that the second conversation was a report back to her that that outcome had been achieved.
Q. Are you able to state now where McAlinden was located at the time you were first retained to assist?
A. The timing of this is confusing in my mind. I know that he had been in Western Australia, he'd been acquitted of charges in Western Australia. At what point the bishop brought him back and the timing in relation to when $I$ then spoke to him, I'm not clear about.
Q. And you're not clear about that because you have no notes that were made by you at the time to assist you?
A. That's right.
Q. Would you agree with me it would have been helpful if you had some so that you could pinpoint times when things occurred?
A. If 20 years later I needed to have that information, it would have been helpful, but at the time I didn't need to know that.
Q. You have an idea that McAlinden was recalled by his bishop - was that your evidence? - or called by his bishop from Western Australia?
A. That's my understanding.
Q. It's an understanding you've reached from looking at material now as opposed to recalling the situation then? A. Yes.
Q. Either way, the bishop was able to request or demand that McAlinden return to a certain location; was that the way it worked in the 1990s?
A. Yes.
Q. I suggest to you that in a call after your conversation with McAlinden, you said to [AJ] that McAlinden had made admissions to you about his behaviour; does that ring a bell?
A. I don't think I would have said that.
Q. Why wouldn't you have told an alleged victim of

McAlinden's that admissions had been made by him?
A. I'm not sure what admissions he made or what detail he gave me.
Q. I'm not asking you that. I'm asking you a more general question. Why wouldn't you have told an alleged victim if admissions had in fact been made by McAlinden in your conversation with him?
A. Well, that's a matter between myself and McAlinden, but I would have told the victim that we had arrived at the outcome the victim wanted, which was his dismissal from priesthood.
Q. But don't you think acknowledgment on the part of the alleged perpetrator that he had in fact done to her what she said he had done was an important part of her pastoral care?
A. That's assuming that he had made that admission about her.
Q. I want you to assume he made that admission for the purposes of my question. I'm not asking you to acknowledge that that was in fact what occurred or did not occur in the interview. I'm asking you a more theoretical question. Don't you agree that it would have been helpful from a pastoral point of view for the victim to have that acknowledgment that the perpetrator had done to her what she said he had?
A. That would be in the normal case, yes.
Q. What do you mean "That would be in the normal case"?
A. Well, if in fact the victim was looking for that acknowledgment, and if in fact the perpetrator had acknowledged the particular allegations of that particular victim.
Q. Putting aside whether the perpetrator in fact acknowledged it or not, isn't it the case, in your experience, that one thing that victims of sexual abuse crave is an acknowledgment of the truth of what happened to them?
A. Yes.

MS LONERGAN: Would that be a convenient time,
Commissioner?
THE COMMISSIONER: Yes. Just before we rise, Ms Lonergan.
Q. Father Lucas, you mentioned one of the reasons that you didn't take notes of your interviews with these errant priests as being that priests have a right to silence and right to be cautioned, and so on. But that right exists, doesn't it, just in order to protect people from the possibility of oppression by the state? In other words, that's when you're being spoken to by police officers. That's your understanding, isn't it?
A. Yes, but it also applies in canon law.
Q. I see. And you thought that this was a procedure that, in some way, had canon law applicable to it?
A. I think the general principle is relevant, while this was not a formal canonical process.
Q. It wasn't something in the nature of an employer speaking to an employee? Even though I know that that is not an accurate analogy, one wouldn't expect to have a right to silence in those circumstances, would one?
A. The canon law does speak about not being able to administer an oath to a priest and not being able, in a sense, to force some admission out of him.
I acknowledge that that was the process we did adopt and were criticised for it by canon lawyers, but it was to get to the practical outcome of getting him to agree. It was his agreement, if I can explain it this way, to resign from ministry that gave the bishop the wherewithal to be able to deal with it. Otherwise we would be back to where we were before 1988 with an allegation and a denial and an impasse. Particularly - and this is only ever in the context of victims who have chosen not to take the matter to the authorities. That was always the best outcome - if they would take the matter to the authorities. But we're talking in the context where they chose for whatever reason not to do that.

THE COMMISSIONER: Thank you, Father Lucas. I will adjourn for 20 minutes.

## SHORT ADJOURNMENT

MS LONERGAN: Commissioner, there has been a request from the media for access to various exhibits 132 through 145 inclusive. If those at the Bar table can let those who assist you know by 1.15 whether there is any objection to the release of those documents.

THE COMMISSIONER: Yes, Ms Lonergan.
MS LONERGAN: Q. Father I was asking you some questions regarding phone calls that you had with [AJ]. I appreciate your position is that you don't recollect any specifics of such phone calls, but judging by your usual practice you would have had such phone calls, given that she was a complainant about McAlinden. Are you comfortable with that as the position of the evidence this morning? A. I certainly don't resile from the fact there were phone calls, yes, certainly.
Q. I suggest to you that you phoned [AJ] after you had spoken to McAlinden and said words to the effect that, "I am just calling to let you know that I've interviewed McAlinden and he has been removed". Does that sound like the sort of thing, judging by your usual practice, you would have advised complainants about McAlinden who you were aware of?
A. Yes.
Q. I suggest to you that you also went on to say, "He has made admissions to me about his behaviour and that he sexually abused [AL] and [AK]" - and a lady who is on the pseudonym list as [AI]?
A. I don't think that would accord with my usual practice, to speak to one victim about the names of other victims.
Q. What about disclosing to a particular victim that the perpetrator had made admissions about his behaviour?
A. Again, that would depend on what exactly the admission was or how specific it was.
Q. If it was a specific admission, would you, judged by your usual practice at the time, tell a victim that admissions had been made?
A. I'd have been cautious about doing that.
Q. You might have been cautious about it, but would you have done it?
A. It would turn on the sort of language I would have used in conveying that. On the one hand you certainly want the victim to feel affirmed. On the other hand specific statements by a perpetrator really belong to that perpetrator. I wouldn't have conveyed those specific
statements.
Q. I'm not talking about specific statements. I'm talking about the effect of what you were told in that meeting by the perpetrator. You understand what an admission is, don't you?
A. No.
Q. You don't understand what an admission is?
A. An admission can be a whole range of different sorts of statements.
Q. Let me help you focus on the word "admission". You have legal training, background legal training?
A. Yes.
Q. You have a degree in law?
A. Yes.
Q. You practised for some years?
A. Yes.
Q. Including attending to some criminal matters?
A. Not too many criminal matters, no. I tended in the Childrens Court to prefer to deal with the welfare matters than the criminal matters.
Q. You studied criminal law at university?
A. Yes.
Q. You understand that you can admit, "I did X"; you understand that as a general proposition?
A. Yes .
Q. And you understand that that is different to, "I deny I did X"?
A. Yes.
Q. In the context of talking to a priest about sexual abuse, it's your position, isn't it, and your experience as at early 1993 that people who have engaged in paedophilic behaviour often deny it, don't they?
A. They will either say, "This absolutely never happened", or, "I've never known that person", or, "I was never in that place where that person says something happened", or they might say, "We11, look, actually I do know that person, but I didn't do anything", or, "Something
happened that has been misinterpreted by that person as a sexual assault", so you get a whole range of different sorts of statements.
Q. That range you've just gone through - none of those are admissions of sexually abusing a child, are they, none of those?
A. Well, they certainly can lead to some inferences.
Q. Sure, but none of those are admissions that they sexually abused a child?
A. Not in the legal sense.
Q. But if a priest says, "I admit that I interfered with Miss $X^{\prime \prime}$, that's an admission, isn't it?
A. If that's what he said, yes.
Q. If that's what he said. I'm asking you to just bear with me.
A. Sorry.
Q. We're examining the word "admission" because you seem to have some difficulty managing or answering questions about that concept, and I understand --

MR SKINNER: I object. Commissioner, this line of questioning arose when my friend asked something about admissions. The witness paused and said "no", and wasn't allowed to finish the answer, and we've gone from there. In my submission, it is not well founded on the evidence at this point of time that he is having difficulty. My friend can ask about it, but she is not entitled, in my submission, to feed into her question in that way a submission. It is not fair.

MS LONERGAN: The difficulty arose from not the answer "no", but the fact that the question seemed to be a very simple one regarding admissions, in my respectful submission, and the witness was taking some care in dealing with that particular word, and no doubt, partly related to his legal background, wants things to be very clear in terms of what he is admitting to, if I can put things that way.

In my respectful submission, it is proper for me to further examine, and the answer did indicate a difficulty I don't mean an intellectual difficulty; I mean
a hesitation in adopting "admission" as a word that could be generally used - and I'm trying to drill down to a particular context to assist.

THE COMMISSIONER: The context was: did you consider "I interfered with Miss X" to be an admission?

MS LONERGAN: That's right.
Q. So the question is if a priest says to you, "I did interfere with Miss $X^{\prime \prime}$, that's an admission, isn't it?
A. It's an admission, yes.
Q. So you would not have told a bishop of a priest who you had interviewed that the priest admitted to having interfered with a particular person unless that priest had in fact made those admissions, would you?
A. Certainly not.
Q. I beg your pardon?
A. Certainly not.
Q. It was your practice to convey as soon as possible after any conversations you had had with an accused priest, to the bishop, the result of your conversation?
A. Yes.
Q. Was it also part of your practice, soon after your conversation with a particular priest accused of these matters, to phone the complainants and tell them the results of your interview?
A. Yes.
Q. From an earlier answer you gave, can we take it that it wasn't your practice to tell certain complainants about other complainants?
A. That's correct.
Q. If it's suggested by [AJ] that you mentioned that admissions had been made by McAlinden - I'm going to the specifics now - about his behaviour and that he had sexually abused [AL], [AK] and [AI], do you deny that you would have done that?
A. That would not be my normal practice.
Q. That would not be your normal practice, but is it possible that you did it on this occasion?
A. I have no recollection.
Q. I understand you have no recollection, but would you acknowledge that it's possible that you did it on this occasion?
A. I'd have to say that if you're asking me on the balance whether I would have said it or would not have said it, I'd have to say I would not have said it.
Q. I'm not asking you on the balance. I'm asking you whether it's possible?
A. I don't think it's possible. I can't put it any higher than that, because I don't recall.
Q. I suggest to you that you also told [AJ], "McAlinden was puzzled when I put forward your name as he didn't know your name and proceeded to name other people with the same first name"?
A. Yes .
Q. I know you don't recollect the particular
conversation; that's your evidence, but what about that as something you would have said to a complainant?
A. I don't think I would have mentioned the names of other complainants.
Q. I suggest to you that [AJ] then said, "You've given him the wrong surname. I have a different name and you didn't give him my maiden name." What do you say about that exchange having taken place?
A. I have no recollection of that exchange and if that exchange had have taken place and I was so foolish as to have used the wrong name, that might have been something that would have prompted me, but I don't recall the conversation.
Q. Do you recall a Mercy nun, Sister Paula Redgrove?
A. Yes.
Q. Do you recall you had some discussions with her about McAlinden in and around 1993?
A. She was present at an interview.
Q. That was the interview with [AL]?
A. Yes.
Q. Did you talk to Sister Redgrove before the interview
with [AL] or only as part of that --
A. I have no recollection of that.
Q. No recollection of the interview with [AL]?
A. No, I have some; some aspects of the interview with [A1], I have an absolutely crystal clear recollection of.
Q. But no specifics of any conversation you had with Sister Redgrove?
A. No.
Q. The crystal clear recollection in relation to [AL] does that relate to the meeting that you had with her at which Sister Paula was present?
A. Yes.
Q. What were those crystal clear aspects of your recollection?
A. Am I able to mention the relationship?
Q. No.
A. Well, that was a critical aspect. The reason why she told me she didn't want any police aspect was connected with that, and that is a crystal clear recollection.
Q. And that's to do with the willingness or otherwise to report the matter to the police?
A. And the reason she gave me.
Q. And the reason, all right. Any other aspects of the interview, such as do you recall whether [AL] outlined the abuse that had happened to her in any physical terms or you're not able to say?
A. I don't recall that, and I would have been very cautious of allowing her to do that.
Q. For the reasons you've already outlined?
A. And this may have been misguided on my part, but I was always very concerned not to get into detail with victims, partly for the fact of the pain of them having to restate a story, but mostly on the question of putting words in their mouth or running the risk of contaminating what they might say if there were subsequent proceedings.
Q. So if I suggest to you that [AL] actually described the abuse in physical terms of what McAlinden did to her when she was a little girl, would you say that did not
occur or you're just not able to say, given that you have a partial recollection of the meeting?
A. I think if there was a detailed description given to me and if, contrary to my practice, I allowed her to do that, that would have been something I would recall.
Q. If a complainant wishes to describe the abuse, can we take it you wouldn't cut them off and say, "I don't want to hear about that"?
A. I probably would have and I would have explained, "I don't need to know from you; you don't have to go into the detail. I don't wish to embarrass you." Particularly with a female victim, who's at the time approximately my own age, I just think it's foolish to allow a victim to go into detail. It's enough for them to acknowledge that they were sexually abused, in euphemistic and plain and general terms. That was enough for my purposes. I would have been very cautious about going into detail because I wouldn't want them to be put in a position of somebody subsequently alleging that when she gave the detail, perhaps in a police interview, that having discussed it with me, some of what she was saying might have been words I put in her mouth.
Q. You're surmising all of this, aren't you?
A. I am surmising that, according to my usual practice, yes.
Q. You recall Sister Redgrove was present?
A. I do. And that was a very unusual event. I'd never had a situation where a support person for a victim was a religious sister and I do recall she was present.
Q. Did you know Sister Redgrove independent of this? A. No.
Q. Would you expect a religious sister to tell the truth about what happened in a meeting such as that?
A. I'd expect that she would tell the truth to the best of her ability. To what extent her memory is accurate many years later, I have no capacity to comment.
Q. I'm not suggesting that you would. Euphemisms - you say that you would have expected euphemisms to be used. What do you mean by that?
A. I think generally it was enough for a person to say they were sexually molested or they were interfered with or they were inappropriately touched, without going into the
precise nature of that activity.
Q. What was the purpose of your meeting with [AL]?
A. I think it was to hear what she wanted done with respect to McAlinden, particularly given the matter I can't speak about.
Q. If you take an account without interjection or interference from you, there's no risk of contamination of her version of events, is there?
A. Well, that would depend on whether that's what's related later on.
Q. You would take care not to interject, wouldn't you?
A. I would, but I wouldn't want someone to draw an inference subsequently that I might have or I might have put words in her mouth. It's best not to go down that road of her giving detail. That was my personal view at the time.
Q. The fact that you met with this lady at all could lead to suggestions that things were said which, in your view, weren't said, couldn't it?
A. It could, but I would like to be put in a position, if someone asks me "Did she go into detail with you?", to be able to say, "No, I didn't allow that to happen."
Q. One way of dealing with any possible mistake about what occurred in the meeting would have been to take notes of the meeting?
A. No, if we needed to have a record of what she said, I would have asked her to write it out in her own handwriting.
Q. One way to avoid any confusion or difference of account about what happened in the meeting would have been to take notes of what occurred in the meeting, wouldn't it? A. That's one way, but the circumstances of that meeting wouldn't have been conducive to sitting there with a pad open taking notes while a victim of child sexual abuse is saying whatever she's saying.
Q. We have been across this territory already. You would have been able to make notes after the meeting, wouldn't you, as to what was discussed, in broad terms?
A. I would have if I had needed to.
Q. You decided you didn't need to?
A. Yes.
Q. And why didn't you need to?
A. I was reporting back to the bishop and preparing myself to talk to McAlinden.
Q. You know that a felony is a more serious type of offence than a misdemeanour?
A. Yes .
Q. And you knew that in 1993?
A. Yes.
Q. Taking your mind back to 1993, did you have a view that in terms of sexual abuse, skin-on-skin type of offences were of a more serious or different nature to those that occurred, for example, through clothing?
A. Certainly.
Q. They were of a more serious nature?
A. Of course.
Q. And you knew that from your knowledge of criminal law or from your --
A. It's commonsense.
Q. In terms of the type of sexual abuse conduct with which you were dealing, you knew, didn't you, that the conduct was in the nature of criminal conduct?
A. Yes.
Q. You agree with me, do you, that if you make notes recording allegations of criminal conduct and those notes are kept by you and seen by others later, it could be suggested that those notes amounted to evidence that you knew about criminal conduct, wouldn't they?
A. Yes.
Q. Is that a reason why you didn't keep notes of those matters?
A. No.
Q. Not at all?
A. No.
Q. So you would have been comfortable, would you, having
notes of allegations of criminal conduct even though they could have been later accessed by, for example, legal authorities or the police and a suggestion put to you that you had notes recording allegations of criminal conduct?
A. Yes.
Q. You had no difficulty with that?
A. No.
Q. Was any part of your managing of these matters directed by any concern on your part of possible liability on your part for misprision?
A. Yes.
Q. And how did you manage those considerations when dealing with these matters?
A. That was a risk we took.
Q. A risk you took?
A. Yes.
Q. Did you say you took or we took?
A. We took.
Q. Who else took that risk?
A. I think Father John Usher, who was part of it, but also this was within the context of broad legal advice about misprision of felony and the circumstances were known to lawyers and this was an issue; it was a well-known and well-understood issue and a predicament. It was a real and serious predicament, on the one hand, to get someone out of ministry, and if it came to the choice of respecting what a victim wanted with respect to police action and a charge of misprision of felony, my view would have been then, and it would be my view today, I'd respect what the victim wanted done.
Q. One way of managing the risk was to report the matter to the police yourself, wasn't it?
A. Not if the victim specifically and for good reason didn't want that done.
Q. That's a different issue. One way of managing the risk would have been for you to report what you knew to the police, wouldn't it?
A. If that involved betraying a victim, I wouldn't do that.
Q. I'm not asking you that. One way of managing the risk would have been for you to report the matter to the police? A. I could report the matter to the police, but if that involved betraying a victim, that would not be something I would do.
Q. Putting aside your scruples about betraying a victim, you could have phoned the police and said, "This has been alleged about Father X", couldn't you?
A. That was certainly possible, but not practical, in my view.
Q. You had received legal advice by early 1993, had you, as to the law in relation to misprision?
A. There was a formal legal advice given subsequently, but certainly at the time there was informal advice, and certainly given the number of lawyers who had pored over the protocols and who understood the procedure and what was being done, the question of misprision of felony was known about but was not regarded as an issue that affected the way the cases were managed.
Q. In relation to the times where lawyers were poring over protocols, what time frame are you talking about? A. From early 1991, probably even when the committee was first established.
Q. Did any part of those discussions, to your knowledge, include the suggestion that if the Catholic Church knew about these allegations, they ought to be reported to the police?
A. That was not the understanding at that time in circumstances where a victim specifically didn't want the matter reported.
Q. What I'm asking is a broader question. Putting aside whether the victim wanted it reported or not, was there discussion amongst those lawyers and others who looked at these protocols about the subject of reporting these matters to the police by the clergy, by the people who received these complaints?
A. Generally speaking, the complaints only came to the church, because the victim had chosen not to go to the police. The situation really didn't arise. If a victim wanted the matter to go to the police, the victim would have gone to the police. It was only in circumstances
where a victim didn't want to go to the police and came to the church that this dilemma - and it was a serious and well-understood dilemma - arose.
Q. Would you agree with me that on occasion victims came to the church for support in terms of their own Catholic faith?
A. Yes.
Q. And it's the position, isn't it, that a number of victims came to the church because they considered the church would have immediate power over the priest to do something about what had happened?
A. Yes .
Q. Would you agree with me that prior to the 1996 Towards Healing protocol, there was significant confusion as to obligations or otherwise on the part of bishops or other clergy as to what they should do when these people came forward with these allegations?
A. I wouldn't put it as confusion, but there were dilemmas that were difficult to resolve.
Q. So you see dilemmas as different to confusion?
A. Yes.
Q. Dilemmas being people knew what the options were but didn't know which one to choose?
A. They knew what the options were, but would have struggled as to which was the better course of action.
Q. And in terms of confusion, you understand that to mean they didn't know what to do at all generally?
A. Yes.
Q. Would you agree with me that you were probably in a better position than a number of bishops, because you'd helped to establish the protocols and had your legal background, to understand what the various dilemmas were? A. Yes.
Q. Would you agree that because the victims of sexual abuse with whom you were dealing were those practising the Catholic faith, they were more likely to go to the police if they had the support of church people?
A. That could be the case in some instances, yes.
Q. Why do you only say it could be the case in some instances?
A. It depends whether or not they had a different reason for not going to the police. There would be some for whom some involvement in the church - perhaps embarrassment about revealing something that a priest had done. There would be others who would have different reasons for not wanting to go to the police. My view which I took at the time was to be fairly neutral about that. For a victim to go to the police is a very serious issue that can have quite sometimes adverse consequences for them. I neither encouraged nor discouraged and tended to go along with what the victim indicated was the outcome they were after.
Q. You recognised at a later point in time that it was more appropriate to encourage rather than be neutral about the issue of going to the police?
A. A number of situations arose around about 1995, particularly when there was significant agitation by some victims groups agitating for prosecution for concealment of offences, and then the situation arose as to disputation about what the victim wanted or didn't want. Then the practice arose, which I think is the current practice, requiring victims, very explicitly and in their own handwriting, to indicate if they didn't wish the matter to go to the police, that that's what they wanted.
Q. I'm asking you a different question. Was it the position that your view altered towards the wisdom or otherwise of encouraging victims of sexual abuse to go to the police as opposed to remaining neutral about it? A. Yes, that would be true.
Q. That was part of the Towards Healing protocol?
A. Yes.
Q. So you would agree with me that prior to that particular view, the practice or policy of the church was to remain neutral about the question of reporting to the police or not?
A. When you say "neutral about reporting to the police", neutral about whether to put pressure on or discourage or encourage a victim to go to the police.
Q. Yes, yes. You yourself have published at least one paper on the question of how concealing offences might be dealt with in terms of the criminal law, haven't you?
A. I'm not able to recall the specific article to which you're referring.
Q. You agree with me that you have written at least one article on the subject?
A. Specifically on --
Q. That addresses misprision of felony as a crime?
A. I didn't know that it was a specific article on that particular topic. It may have been, but I don't recall that, I'm sorry.
Q. Sorry, I should say within an article that you prepared, there is an addressing of the issue of misprision of felony?
A. Oh, yes, I'm sure I would have addressed - yes.
Q. Including an analysis of section 316 of the Crimes Act which creates an offence if a person who has knowledge of a serious crime fails to disclose this to the authorities without lawful excuse?
A. Yes.
Q. Is it your position now - and then I'11 go back to earlier in time - that lawful excuse in the context of that particular offence includes whether or not the victim wants to go to the police?
A. Yes.
Q. So it's your view that if the victim doesn't want to go to the police, that gives a lawful excuse to you, for example, to not report the matter to the police?
A. Yes.
Q. Have you taken advice from others that that's the effect of that particular section of the Crimes Act?
A. That's my understanding was the common view of the various lawyers who had discussed this at various times, yes.
Q. So you discussed that particular view with other lawyers?
A. Yes.
Q. It's your impression that they adhere to that view? A. Yes.
Q. They're lawyers retained by the Catholic Church, are they?
A. And also in other informal situations. These matters were often dealt with in seminars and I think it was a matter probably dealt with at the church law forum in Sydney, which was a group of lawyers who act for churches. I don't have a specific recollection of a specific instance, but certainly in informal conversations with various lawyers, that was my understanding of the position.
Q. Was that your understanding in 1993 as well or do you have a more sophisticated understanding now?
A. I'd have a more sophisticated understanding now. I'm not quite sure when I became explicitly aware of the introduction of section 316. I think it was introduced in 1990. When particularly my mind focused on that, I can't recall.
Q. You agree that you have written that there is a mood in society that failure to report on the part of the Catholic Church when these types of allegations were made to it could well be considered to be an active covering-up of such offences?
A. Certainly.
Q. You gave evidence to the effect that you had a concern in relation to reporting sexual abuse allegations to the police that such a report might have adverse consequences for the victim?
A. Yes.
Q. By that, do you mean having to go through the legal processes?
A. I think in 1992/1993 the prosecutorial process was nowhere near as victim sensitive as it is today, in my understanding, and I think there were real issues about the trauma to a victim of prosecutions.
Q. What about the questions of safety of children from criminal conduct by paedophile priests - was that a consideration?
A. That was the number one consideration.
Q. If that was the number one consideration, wouldn't that have militated more towards reporting the matter to the police rather than not reporting?
A. Not necessarily. Even a reporting to the police
doesn't necessarily carry through to the safety of children. McAlinden had been reported to the police in Western Australia and had been acquitted. These were parts of the dilemmas we always faced.
Q. The fact he had been reported for sexual abuse of a child in Western Australia and beat the charge suggests, doesn't it, that there were more than the reports you knew about out there about his behaviour with children?
A. I'm not quite sure exactly when I became aware of the Western Australia matter. I think it was in the context of the phone calls with Bishop Clarke, but it certainly aroused my suspicion that the substance of what [AL] may have said and what [AJ] may have said had some basis to it.
Q. You talk about adverse consequences for the victim. There would have been adverse consequences for the priest and the church as well if the matter was reported to the police, wouldn't there?
A. I'm not so much interested in adverse consequences to the church. Obviously there are adverse consequences to the perpetrator, which he deserves.
Q. There are adverse consequences to the church, because it would bring the reputation of the church into some disrepute, wouldn't it?
A. I've heard that, and that is the prevailing narrative. My view, and it's consistent in everything I've written on this subject, is that the reputation of the church is trashed not by some sort of protection of the perpetrator; it is trashed by failing to deal properly and decisively with these allegations and remove the person from harm's way.
Q. The priest is a representative of the church, isn't he, even one who has been accused of sexually abusing children?
A. In my view - and I can only express my personal view I couldn't care less about the reputation of the priest. My concern was always to ensure that priests who offended against children were removed from that opportunity, and my view on the reputation of the church was that it was precisely the failure to do that that would do most damage to the reputation of the church.
Q. How is the removal of a priest from ministry pub1ished?
A. It may or may not be published. Again there's issues of privacy both to him and to his victim, but he would be and this is a matter still of some contention as to whether his name is put in the official directory of the Catholic Church and in what category. If he was removed from ministry, he would probably be in the list that has "no appointment" or "retired".
Q. This is some private church list, is it, "no appointment" or "retired"?
A. No, there's a published book, the official --
Q. A published church list?
A. Yes, there is a published book, the official directory of the Catholic Church in Australia, and a priest who has had his faculties removed and has been removed from all ministry probably would not appear there.
Q. Would not appear?
A. He may. This is a matter of some contention as to whether he appears as "living privately" or whether he appears as "retired".
Q. So if it says that he's retired, that would be untrue, wouldn't it, because he had been removed from ministry and had his faculties stripped for being a paedophile? Is that the position?
A. He may well have been described as being "retired".
Q. Unlikely it would have described him as "retired paedophile"?
A. We don't generally put labels on people so they walk around saying, "I'm a retired paedophile".
Q. How are the children protected in terms of this information that appears to remain private to the Catholic Church from somebody who, not long ago or maybe a long time ago, was Father X?
A. The answer to that is the fact that he has no parochial appointment. He would be forbidden to engage in any parochial appointment. He ought then to be living somewhere where he is not known as Father $X$. The difficulty of him living too close to where he is known as Father $X$ is that people will put pressure on him and ask him to do a wedding or funeral or, worse still, he will still have friendships and ingratiate himself with those families.
Q. You know, don't you, that McAlinden walked around in his priest's outfit for some time after his faculties were removed?
A. I understood that and I understood the bishop reprimanded him about that.
Q. Do you know that he celebrated his golden jubilee in the United Kingdom some years after he had had his faculties removed?
A. Yes. He would have done that, of course, quite unlawfully.
Q. Unlawfully?
A. Yes.
Q. Again, what steps, as you understood it, did the church put in place to ensure that people knew that this person had had his faculties removed and should not be performing any trusted accesses as a priest?
A. Sorry, are you asking me what circumstances would have arisen to prevent him acting as a priest?
Q. I'll withdraw that question.
A. Sorry.
Q. I will try again. How would it become publicly known that this person who had had his faculties removed for paedophile behaviour - how would it be published to members outside the church, people outside the church, that this man was no longer a priest and known to have committed paedophile acts?
A. I think it goes the other way. It's not that you tell the entire world that he's a paedophile, but you make sure he is not in a position where someone can think that he is a priest.
Q. But he could go to a playground and hand out lollies and continue to be a risk to the community, couldn't he? A. Theoretically that's possible, but it's the relationship of being a priest that generally is the biggest risk.
Q. The relationship, or the fact of a person being a priest gives him more access in a trusted situation to children, doesn't it?
A. Yes.
Q. But it doesn't prevent him accessing other children in the community outside of that priestly relationship, does it?
A. No.
Q. Do you agree with me from your criminal law training and knowledge from your law degree that one of the aims of the criminal law is to punish?
A. Yes.
Q. And it's to prevent crimes of the same nature being committed by others?
A. Yes .
Q. By way of making examples of persons who engage in such crimes being publicly put on trial for them and publicly punished?
A. Yes.
Q. You mentioned in one of your answers to one of my questions that there was a theoretical risk in terms of a priest having been removed from ministry being able to access children in the community not as a priest. But the risk is more than theoretical, isn't it, because the risk associated with this person is that he is a paedophile; the risk isn't associated with him being a priest?
A. I think the substantial risk is precisely that he's a priest, that he's trusted, that he can ingratiate himself with families, that he's working in situations where he has intimate contact with children. Otherwise, he's like any member of the public, and the risk is no different. He can come out of gaol and the same predicament can exist.
Q. Would you agree with me that if a priest is put on trial for paedophile offences, it would attract a significant amount of publicity?
A. It would.
Q. And that publicity has the effect of warning people that a particular priest has been accused of paedophilia? A. Oh, only in the most broad sense.
Q. What do you mean "only in the most broad sense"?
A. Well, people who see the trial in one place may know something, but on the other side of the country, they may not know anything about that trial.
Q. Yes, and isn't that always the more reason why a priest shouldn't be cut loose and sent to another location where he can find a fresh batch of children to interfere with?
A. No, I wouldn't agree with that proposition at all. I understand the point of the question. It's the nature of the relationship that, in our mind, was most significant. Ideally, you would certainly want the priest to be prosecuted, but when you have a situation of victims who explicitly and for good reason don't want that to happen, we have this very dilemma, and that dilemma ultimately was able to be resolved in our conversations with the NSW Police that came a few years later.
Q. Let's just study that. You didn't have any conversations with the NSW Police regarding McAlinden going to gaol, did you?
A. No.

MR SKINNER: I object. The witness clearly didn't mean his answer in that sense.

MS LONERGAN: The witness can answer my question, then.
Q. Did you have any conversations with the NSW Police to the effect that McAlinden had been accused of sexually abusing children?
A. I didn't, no.
Q. You've published a view that you held in 1988 and maybe subsequently as well that paedophiles are chronic liars?
A. Yes.
Q. Do you have any doubt in your mind that McAlinden was a paedophile?
A. No.
Q. While McAlinden was in gaol - this is a theoretical example - he would be no risk to children, would he?
A. That's true.
Q. The situation where - we'11 use McAlinden as the example - his faculties were removed would not prevent him from reinventing himself as a school teacher or assistant at a school?
A. I think we're talking about a 70-year-old man. I think we're past that.
Q. So are you saying men over 70 are past employment?
A. I would have thought that someone wanting to employ a person 70 years of age would make inquiries as to his background.
Q. You're hoping?
A. I think commonsense would suggest that's a prudent thing to do.
Q. Was that the position in 1993, that people would make inquiries as to people's background, working with children checks, and that sort of situation - was that in place in 1993?
A. The working with children checks weren't in place. But in terms of church law, if we simply focus on him wanting to practise as a priest somewhere else, one of the most fundamental principles of clergy management is that you have to be incardinated somewhere and you have to be in good standing and you can't work as a priest unless someone makes the appropriate inquiries.
Q. I understand that. My questions are based on the assumption that the priest has had his faculties removed and is thus holding himself out to be nothing more than a person and, for example, may be volunteering to do work around children. How would having removed his faculties protect children from that kind of behaviour potentially? A. As I said, in terms of him being a man in the community, like any other man in the community, that element of risk is there. Our focus was on the fact that, as a priest, it would give him greater access to children and that's what we wanted to remove.
Q. You've suggested that you personally didn't care about
a priest having his reputation damaged by going through a process where it was revealed that he was a paedophile. Is that the way I understand your evidence?
A. Certainly.
Q. This concept of bringing scandal on the church - you know that appears in various canon law edicts?
A. Yes.
Q. Is there an obligation on the part of you as
a representative of the archdiocese of Sydney to avoid bringing scandal on the church?
A. I would take the view that if something is done that's wrong, it's done and it's wrong, and the impact by way of scandal on the church is irrelevant.
Q. Irrelevant, so you don't see any obligation on anything you did in relation to McAlinden to have been governed by any requirement for you to avoid scandal being brought on the church?
A. No, my view of scandal on the church comes from the fact that if you don't deal with these people decisively and appropriately, that's what creates the scandal.
Q. Do you agree with me that a priest cut loose from the church norms and protection and supervision means that that person poses a greater risk to children than if he was being observed or supervised by other clergy?
A. The preference would be that he would be in some circumstance or situation of supervision or care to the extent to which that's possible.
Q. Would you agree with me that one of the aims of criminal law in relation to prosecuting offences of this nature is both specific and general deterrence to others? A. I have no quibble with the fact that the very best outcome for these complaints is that the person be prosecuted.
Q. And would you agree with me that a person can't be prosecuted if he is not reported to the police?
A. He can't be prosecuted if there's not a victim willing to go to the police.
Q. Well, he can't be prosecuted if he is not reported to the police. Don't worry about who reports.
A. That's true.
Q. He can't be prosecuted if the first step isn't taken and this person's conduct isn't referred to the police?
A. That's true.
Q. Do you have your affidavit in the witness box with you? Attached to your affidavit is, first of all, a 1988 document headed "Clergy and child sexual assault", and it's annexure B. I'm going to get you to pause when you get to it.
A. Yes.
Q. There's one other question I should have asked about your meeting with [AL] and Sister Redgrove.
A. Yes.
Q. Do you recall making a phone call to Sister Redgrove after your interview with McAlinden?
A. I don't recall it, but it's likely, yes.
Q. Why is it likely?
A. I would have reported back what the outcome was after I met with McAlinden.
Q. Why would you have reported it to Sister Redgrove?
A. I understood her to be the support person for [AL].

I would have passed the message to her to pass to [AL].
Q. You didn't ring [AL] yourself?
A. I don't recall that I did. I don't recall ringing Sister Paula, but that would be my practice.
Q. I appreciate you say you don't recall your conversation with Father McAlinden as he then was, but can I suggest to you that you stated to Sister Redgrove after your conversation with McAlinden that he had cracked and he was the hardest nut you had ever had to crack. Does that ring a bell?
A. It doesn't ring a bell, but that could well be the case.
Q. Is that the sort of language you may have used about priests at that time?
A. It doesn't sound like my sort of language, but not recalling, I don't deny it. It doesn't sound like the sort of language I would have used quite that crudely.
Q. But you don't deny that you may have said that?
A. I would have said something to that effect, possibly, yes.
Q. I'm just going to show you a photograph of McAlinden.

I only have one copy, Commissioner, to show to the witness at this stage. We can make copies for others at a later point in time.

Commissioner, you may well have seen this photograph.
THE COMMISSIONER: Yes.
MS LONERGAN: Q. I am instructed that that is a photo of McAlinden. Does looking at that photo assist you in terms of your recollection of having met the person that appears in that photo?
A. No, I've seen that photo on television for many weeks, and having seen that photo and the images of him, sorry, it doesn't jog my memory.

MS LONERGAN: I tender that photograph.
THE COMMISSIONER: The photocopy of a photograph of Denis McAlinden will be admitted and marked exhibit 146.

## EXHIBIT \#146 PHOTOCOPY OF PHOTOGRAPH OF DENIS MCALINDEN

MS LONERGAN: Q. I've asked you to have a look at annexure $B$ to your affidavit.
A. Yes.
Q. Have you read your affidavit and the material attached to it in preparation for giving evidence today?
A. I have, but not in the last day or so.
Q. Your lawyers were provided with seven volumes of material relevant to this part of the terms of reference of this Special Commission.
A. Yes.
Q. Did you review that material yourself?
A. Yes.
Q. All of the seven volumes?
A. I don't say that I read every word of every document, because some documents obviously were not relevant to me, but I did read a fair bit of the material.
Q. Did you take care to read documents that appeared to relate to your involvement in matters?
A. Yes.
Q. I'm not at all being critical: did you spend some time to ensure that you had read all the material that related to you?
A. Yes.
Q. Just looking at annexure B to your affidavit, do you see that's a note prepared by you?
A. Yes.
Q. In April 1988 for the Australian Catholic Bishops Conference?
A. Yes.
Q. It's marked confidential. Why is it marked confidential?
A. I think it would have been given to the bishops for their own personal use. It was a tentative opinion on my part. I wouldn't have wanted this published or to have gone beyond the bishops to whom it was circulated.
Q. You mention under the heading "1.1 Criminal Proceedings":

These may be instigated if the police have sufficient evidence. It is likely that the investigation will result from a complaint from a victim or victim's family.

You make that observation?
A. Yes.
Q. Down the bottom of that part of the document you make this observation:

Bishops and major superiors and other church officials must be careful not to hamper police inquiries, act as accessories or attempt to cover-up an offence.
A. Yes.
Q. What do you mean by "act as accessories"?
A. That would be to do something that - I'm trying to think of what an example would be in this context - somehow or another to - I'm trying to think of what an example would be. Presumably it would be some way in which you facilitated the offence or did something to destroy evidence or something of that sort, could have been what I think I would have had in mind, yes.
Q. When you say "or attempt to cover up an offence", would you agree with me that failing to take notes of an interview with a priest who has been accused of sexual abuse could be seen to be an attempt at covering up the offence?
A. That would never have been in my mind.
Q. I'm not saying that it was in your mind. I'm asking you theoretically, in a situation where a priest is interviewed and no notes taken of that particular interview, would you agree with me that that could be seen to be attempting to cover up the offence?

MR SKINNER: I object, Commissioner. By a fair-minded person or a malevolent person?

MS LONERGAN: By Father Lucas. I'm sorry, I should have made that absolutely clear.

THE WITNESS: No, I would never have regarded that as a cover-up.

MS LONERGAN: Q. And why not?
A. I think cover-up is to destroy evidence or hide some facts that need exposure in some circumstances where there's not some reasonable grounds for doing that.
Q. Facts that need exposure - would facts that need exposure include a priest having admitted to sexually abusing a child?
A. Again in the context in which this interview was taking place, you have these competing values. On the one hand, you are not going to get him to say anything if he thinks that what he says is going to be reported.
Q. I'm only talking theoretically or asking you theoretically, Father Lucas. Would you agree with me that a fact that would need exposure is the fact, or a fact, that a priest had admitted to sexually abusing a child? A. I don't think I can answer, with due respect, the question in that form, for this reason, that the circumstances in which that fact comes to be known are very relevant to the ability one has to reveal that fact to the authorities.
Q. So is it your position that if a priest makes an admission to having sexually abused a child in
a conversation with another official of the Catholic Church, there is no obligation to reveal that fact to anyone outside the two persons involved in the conversation?
A. That may well be the case, depending again on the particular situation in which that statement is made.
Q. Even if the admission made is an admission that a person has sexually abused a child?
A. If the person makes that statement in the context where there is some reasonable expectation on their part that, if they say that, it will be reported, then they won't say it.
Q. But what about a position where the person has in fact made the admission?
A. If they make the admission in some broad sense in which there is no issue about the circumstances of that particular meeting, that's a different set of circumstances. I mean, if a person has direct knowledge of some offence, that's obviously a matter to be reported. But in the context of the sorts of conversations we're talking about, if the perpetrator understood that anything that was going to be said was going to be reported to the police, the simple fact of the matter is that they wouldn't say anything, and then we're faced with this predicament, which was the impasse of the past, where there's an allegation and a denial. A better way forward, in my view, was to encourage the person to get engaged in conversation about what's happened and agree to resign.
Q. You say that it's your view that if you said to the alleged perpetrator that things are going to be reported to the police, they wouldn't say anything, but you don't know that that's the position of a particular individual, do you? You're just assuming that?
A. You know fairly quickly whether the person is coming along to make some full disclosure, and I gave an example where that happened in another case. They can sometimes do that, and then they will go to the court and they will plead guilty, and many that I dealt with did that.
Q. Is it your position that, because of the special nature of the conversations you had with, in this case McAlinden, you had no individual obligation to report any admissions he made to you, if he made them, to the police? A. There's two aspects to that. One is the relationship
with him, that the absolutely prevailing issue in that particular case, in my mind, was the desire of [AL] that the matter not go to the police, for the very good reasons that she gave me that we can't speak about.
Q. Did you tell [AL] that McAlinden had made admissions to you that he had sexually abused her?
A. I don't recall that I had such a conversation.
Q. You may well have told her if he had made such an admission, or you're not able to say?
A. I'm not sure whether, after I spoke with McAlinden, I spoke directly with [AL] or again or spoke to her through Sister Paula.
Q. In conducting your special issues interviews with priests in the way that you have outlined, you were prepared to take the risk of potentially committing the offence of misprision?
A. Yes.

MS LONERGAN: Is that a convenient time, Commissioner?
THE COMMISSIONER: Yes. 2 o'clock. Thank you.
LUNCHEON ADJOURNMENT

## UPON RESUMPTION

MS LONERGAN: Q. Father, just before the luncheon adjournment, $I$ was asking you some questions about misprision of felony. Do you recall that?
A. Yes.
Q. You agreed with the position that you were prepared to go about church business in such a way that there was a risk that you may be misprizing of a felony?
A. Yes.
Q. You've written papers on that particular subject matter, haven't you?
A. Yes.
Q. In those papers - and I'll show you an example of one shortly - you have floated the view that one way of avoiding any sort of accusation of misprision is not to acquire the knowledge in the first place?
A. Yes.
Q. One way of looking like the knowledge hasn't been acquired is to not make a record of it; isn't that right?
A. I wouldn't accept that as a proposition, as though that's some sort of deliberate attempt for that purpose.
The real reason for not taking notes comes back to the fact that the person talking to you simply won't talk to you.
Q. What I'm suggesting to you is a broader proposition, though, that one way of not being able to be accused of misprision of felony is not to make any record of any circumstances where such an accusation could arise; that's the position, isn't it?
A. I wouldn't accept that as something that I would ever want to deliberately do.
Q. I wasn't suggesting that you personally would do it. I'm speaking theoretically. In terms of your own particular practice, which we can move to now, you wouldn't, would you, pursue a policy of calculated ignorance so that you couldn't be accused of misprision?
A. The turning of the b1ind eye is not something that I would countenance as some form of deliberate strategy to pervert the course of justice or interfere in the processes of justice, but these dilemmas arose and we had these conflicting values, and that was always the dilemma and the
difficulty.
Q. Did you consider that the church's processes, in the way they dealt with priests who were accused of sexually abusing children, were more important than the criminal law processes in this state of dealing with persons accused of sexually abusing children?
A. Never.
Q. Given your answer is "never", did you on any occasion report personally a priest to the police for sexually abusing children?
A. Cases that I dealt with involved either victims not wanting to go to the police, or police involvement - on a number of occasions I encouraged priests to go to the police and they pleaded guilty.
Q. Did you, yourself, ever report a person accused of sexually abusing children to the police, yourself?
A. That situation never arose for me.
Q. You never did it?
A. No.
Q. When you say the situation never arose, you're not suggesting, are you, that you weren't party to information which, if reported to the police, may well have led to a police investigation for sexual abuse of children - are you?
A. That certainly could have happened, but it would have been against some conflictual situation where there would have been a good reason not to do that.
Q. A good reason in your mind for not doing that; is that the position?
A. Well, not simply as a subjective decision of mine. That would have been against the background of suitable advice.
Q. Have you on occasion taken legal advice specifically as to whether you should report a priest who had been accused of sexually abusing a child to the police?
A. On a specific instance, I have no recollection.
Q. So you don't recollect any occasion where you personally have sought legal advice as to whether you should report a particular person to the police or not for
sexually abusing children or allegations relating to sexually abusing children?
A. I don't have that recollection.
Q. When you say you don't have that recollection, are you suggesting that you may have done so, sought advice of that nature, but you just don't remember doing so?
A. My recollection is that there was very general advice on these dilemmas with respect to section 316 and misprision of felony. I can't recall specific advice on a specific instance.
Q. That you sought yourself?
A. Yes.
Q. Do you recall writing an article in 1996 for the Canon Law Society of Australia and New Zealand titled "Are our archives safe?"
A. Yes.
Q. You remember the article, do you?
A. Yes.
Q. I'11 give you a copy of it, because there's a few things in there that we will go to.
A. Yes.
Q. I'11 hand you a copy now just so that there's no unfairness to you. Have you read that again recently?
A. Not for some weeks, as far as I can recall.
Q. Not for some weeks?
A. Yes.
Q. When you say that, does that mean that you read it a few weeks ago?
A. Yes, I did.
Q. Did you read it in preparation for giving evidence at this Commission?
A. Yes.
Q. The title, "Are our archives safe?" - was that a title you designed?
A. Yes.
Q. Safe from what?
A. The subtitle is "an ecclesial view of search warrants".
Q. So is the question you are raising there - and correct me if this isn't the right interpretation - are our archives safe from being reviewed by members of the police force of New South Wales?
A. And also particularly issues to do with material that, for example, could involve the privacy of individuals.
This was - if I can perhaps explain the context --
Q. Actually, I will cut across you there and we'11 come to a broader explanation shortly. I am zeroing in on the question of, safe from what? The question $I$ posed to you is: safe from the New South Wales Police Force? You would agree with me that the only organisation that can execute search warrants is the police force?
A. That's true.
Q. So your article is directed at keeping --

MR SKINNER: I don't know if that's quite correct, actually.

THE COMMISSIONER: Yes, I don't know if it is.
MS LONERGAN: Q. Apparently that's not correct.
I withdraw the question. I'm terribly sorry, Father Lucas, I didn't mean to mislead you. That shows my ignorance. Excuse me. I should have put the question this way: the only organisations or persons that can execute search warrants are the police or other investigative agencies that operate outside the Catholic Church?
A. Yes.
Q. Father, in those circumstances, your article is directed at the question of keeping safe from seizure church records, and that is seizure by organisations or investigative bodies that operate outside the church? A. I think the way in which that word "safe" is used is not so much to seek to prevent the execution of a search warrant. I think perhaps the last paragraph of the article gives the proper context to what "safe" means as I used it.
Q. We'11 come to that. Under the heading "Introduction", you have raised as a rhetorical question, I suggest:

> To shred or not to shred - is that the question?
A. Yes. Could I perhaps just explain?
Q. I will let you explain in a minute. All right, I'll let you explain now.
A. This was a talk given rather than a written article, so obviously there were some elements of rhetoric involved in giving a talk to a group of people, to attract their attention. So, "To shred or not to shred", I said, "is that the question?"
Q. So it's a Shakespearean reference - that's right?
A. I'm not that familiar with Shakespeare, I'm sorry.
Q. It's from Hamlet.
A. Is it?
Q. Yes.
A. Can I say that I didn't know it was from Hamlet and I'm pleased that Shakespeare and I are able to be of one mind.
Q. "To be, or not to be, that is the question." You have no doubt, do you, that although a jocular reference, "To shred or not to shred", would pique the interest of those present at the paper you were giving, to raise in their mind whether documents should be kept or not?
A. And I think this article argues, as I recall it now, very persuasively that shredding is not a solution to anything.
Q. Does it say that in the article somewhere?
A. I'd have to go and reread it, but I think that was the general tenor, and I think I gave some examples that you might think you're destroying a document, but there will be some reference to it somewhere else.
Q. What about situations where no document is created at all; there's no need to shred then, is there?
A. I think that's a matter of general practical prudence, as people manage their affairs.
Q. Not to make notes or keep documents about certain subjects?
A. In circumstances where that's regarded as prudent and
appropriate, yes.
Q. Did you regard it as prudent and appropriate not to create documents regarding admissions obtained from priests regarding sexual abuse of children?
A. I think I've said it several times - to take such notes means that the person to whom you're speaking simply won't talk.
Q. I'm asking a slightly different question.

I appreciate we've covered that broader ground and you've given that answer to that effect a number of times today. What I'm asking is did you have a view that to not take notes of interviews conducted with priests who had been accused of sexually abusing children was prudent?
A. In some circumstances, it would be. There would be others when it wouldn't be .
Q. Who was this particular conference attended by? Was it only clerics?
A. No, this is the Canon Law Society of Australia and New Zealand. About 10 or 15 per cent would be clerics. The rest would be other laypeople members of that association.
Q. Do you recollect how many attended this particular conference, in broad terms? Are we talking about hundreds or a smaller group?
A. It would be a hundred or so, I think.
Q. Do you know whether this paper was provided to any Australian Catholic bishops?
A. I have no idea - it was then published in the proceedings. It would be available to anyone who wanted it.
Q. The views that you express in this paper - were they views that you held prior to the time at which the paper was presented, which is October 1996? I've asked that. Let me start again. The views expressed in this paper, which appears to have been published in October 1996 - were they views you had held for some period prior to preparing the paper, so did you hold those views in 1993, or were they newly minted views, or are you unable to say? A. I really couldn't say. I'd have to look at which particular view and whether this was a maturing of thinking or it was something I had a strong view on earlier.
Q. On the page of this paper that's numbered 52 down in the bottom-middle of the page, there's a heading number 3, "The Code of Canon Law".
A. Yes.
Q. Do you see you've outlined certain canon law provisions that relate to the requirement to keep documents and records?
A. Yes .
Q. And do you see on page 53 there is a comment about canon 489 requiring:

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... a secret archive where documents to be
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kept under secrecy are to be most carefully guarded.
A. Yes.
Q. Did you research this for the purposes of this particular paper - these provisions of canon law - or did you already know them?
A. I'm sorry, I can't answer that.
Q. That's fine, but you're not a canon law student?
A. No.
Q. But you were preparing this for the benefit of the Canon Law Society?
A. Yes. What this paper essentially was doing, and I think from my recollection the reason I was asked to present this was a circumstance that arose with respect to access in marriage tribunal cases, and I probably raised more questions than gave specific answers.
Q. You mentioned in the middle of the page:

Other canons specify documents to be deposited in the secret archive ...

Then you've set out a number of canons, one of which is canon 1719, which provides:
... for the acts relating to a penal investigation to be deposited in this archive if a penal process does not follow
the investigation.
A. Yes.
Q. Just directing your mind back to the tasks that you carried out for the archdiocese and your discussions with particular priests, did you consider them to be in any way a penal investigation?
A. No.
Q. And penal investigation means a particular canon law process that's a very formal process?
A. Yes, yes.
Q. Does it need a judge appointed and all those sorts of things?
A. Yes .
Q. You didn't see yourself as a judge at canon law?
A. Certainly not.
Q. On page 54, you have continued to outline various canons relating to documents. In the bottom two paragraphs on that page you deal with the question of admission of guilt. I had better let you read that whole page. In fact, I should probably let you read the whole section dealing with the canon law, because I don't want to be unfair to you.
A. No, I'm reasonably familiar. If you direct me to a particular paragraph, I'll do my best to deal with it.
Q. What I'm directing your attention to is the last two paragraphs on page 54 where you say this:

A greater risk is that admission of guilt of a criminal offence by a party, either in marriage cases or a canonical penal process, could be used in the civil forum.

Do you see that?
A. Yes.
Q.

This is of serious concern if the person felt induced to make the admission on the basis of a promise of confidentiality.
A. Yes.
Q. As I understand your evidence you are suggesting the processes you engaged in were not canonical processes?
A. No.
Q. But your evidence is to the effect that there should be some limit in the use of any admissions made to you, because you gave a promise of confidentiality in your meetings with various priests; is that your position?
A. Yes .
Q. Yes?
A. Yes.
Q. As I understand your evidence, you don't recollect your conversation with McAlinden?
A. True.
Q. You don't recollect McAlinden at all, the person?
A. In terms of a visual --
Q. The visual appearance?
A. No.
Q. But you recollect certain circumstances surrounding him?
A. Yes.
Q. You say you have a crystal clear recollection of one particular aspect of the meeting you had with [AL] about McAlinden?
A. A few aspects of that.
Q. One we have to leave to one side that's to do with her particular relationship --
A. Yes.
Q. -- to McAlinden. The other is that she did not want to go to the police?
A. Yes.
Q. And that's bound up with that relationship question?
A. And another very critical part of that is the reason why she didn't want to go to the police that she articulated to me.
Q. That's bound up with her particular relationship?
A. Yes, yes.
Q. Was there anything else that's crystal clear in terms of recollection from that meeting with [AL]?
A. That Sister Paula was present.
Q. That's the only other thing that you remember from that meeting?
A. That immediately comes to mind, yes.
Q. I'm sorry if I've asked you this question already, but it's your recollection, is it, that there was no other church official present at that meeting, or you're just not sure?
A. That was my initial recollection. I'm aware of suggestions to the contrary and it has caused doubt in my mind with respect to one of those suggestions, and I'm clearer with respect to the other suggestion.
Q. Father Usher was somebody that you often met other victims of sexual abuse in the company of?
A. Yes.
Q. You're aware that Father Usher is someone who is suggested as having been present at this meeting with [AL]? A. Yes.
Q. Is it the possible that you just don't recollect him being there, but he may have been there?
A. No, I'm more confident that he wasn't there, partly because in the context of some other inquiries that were made prior to this Commission, when I sought to refresh my memory, I asked him did he recall being present or having an involvement with McAlinden, and he didn't have that recollection.
Q. But he may be mistaken about that?
A. He may be, yes.
Q. In terms of Monsignor Hart, do you remember him having been present or not?
A. I didn't have a recollection that he was, but it's more likely perhaps that he was, as the person who introduced the meeting. I think I would form a view that to have three clerics present in that sort of interview would be contrary to my ordinary practice.
Q. But your ordinary practice, on occasion, involved two clerics being present?
A. Normally that would be with a conversation with an offender.
Q. Oh, I understand, you and the offender?
A. No, no. If there was a conversation with an offender,
it was very common that John Usher and I would deal with that together. But a conversation with a victim, I rarely was involved in. That tended to be something where John Usher was more skilled and more competent, and generally through Centacare would be where victims would engage with the church.
Q. So it is your evidence that you understanding is that John Usher would do them by himself, generally?
A. Or with a counsellor from Centacare or something of that sort.
Q. Did you see yourself, in relation to this paper that we have been looking at, as setting out some guidelines for any clergy present as to how they should manage documents? A. I think it was an academic paper raising questions for canon lawyers to further reflect on and discuss. It certainly had no authority to it. I was not in a position to make any authoritative recommendations other than to raise questions that $I$ thought were relevant for their further reflection.
Q. One of the questions that you raised was the question of destruction of documents in accordance with canon 489, and that's mentioned on page 53, where they were documents of criminal cases concerning moral matters. It's just below the halfway mark on page 53.
A. Yes, that sets out what that canon says.
Q. Did you have any experience yourself as to whether bishops that you were associated with followed that canon and destroyed documents of criminal cases concerning moral matters?
A. I'd have to reread the article, but I have a feeling that I might have queried the prudence of that particular canon.
Q. I'm sorry, I wasn't asking about your view about it but whether you had any experience, in a practical sense,
of knowing that any bishops that you worked with followed that particular canon in terms of destruction?
A. I've not had that experience.
Q. You raised the question of the wisdom or otherwise of creating documents in the first place that relate to church business, on pages 70 to 71 . I'11 just give you a moment to read that, from heading "5. Our policy for documents", in particular the material that occurs at the top of page 71.
A. Yes.
Q. You direct attention to the question of the appropriateness or otherwise of creation, retention and destruction of documents?
A. Yes.
Q. And you raise the question: why it is that we wish to create a particular document?
A. Yes.
Q. Is that a question that you posed to yourself on occasion when you were carrying out the business of the archdiocese, in particular relating to interviewing priests accused of sexual abuse?
A. I don't recall that $I$ directed my attention in that way.
Q. "Why do we wish to retain it?", is another question, and the third question is, "Why are we destroying it?"
A. Yes.
Q. Was this paper written to deal with any suggestion that documents relevant to church activities were being destroyed?
A. No.
Q. So why have you raised that particular question there?
A. The problem archivists have is the sheer size of the material and what sort of retention and destruction policy should exist. I think perhaps the third paragraph on that page may give some answer to that question.
Q. That's the "In practice, however"?
A. Yes.
Q. The bit about:

## ... the need for an historical archive

 would prohibit total destruction even after a period of time.A. Yes, and then the limits on space probably mean it's impractical that everything be kept, so you have to have some policy as to what's relevant, what's kept and what's not kept. And I set out then in the fifth paragraph that selection based on certain reasons could involve adverse inferences, and so on.
Q. But would you agree with me that if documents have been selected and destroyed, then they can't be gathered by a search warrant process?
A. And I think I've argued there that that's a very dangerous thing to do.
Q. You mention in your paper that selective culling of all the incriminating material will be likely to be discovered?
A. Yes .
Q. Have you had experience of that happening, that there has been selective culling of incriminating material and then it was subsequently discovered?
A. I've never had that experience.
Q. But you're just identifying that that may well happen?
A. I think I was expressing some caution that if you think you are going to get away with some sort of selective destruction, the sophistication of the process will mean that you will be caught.
Q. A higher level of sophistication would be, would it not, never to create documents in the first place?
A. That could be a policy decision, depending on the circumstances of whether it's prudent to create the document. One of the difficulties, of course, was documents that intrude upon the privacy of individuals, and in the context of marriage cases there were issues about that.
Q. Would you agree with me that in the context of marriage cases that have to go to the particular tribunals, there's a canon law requirement that certain documents are created?
A. Yes.
Q. So we're talking about documents not being created at a11, not documents that are created and have to be kept confidential?
A. Yes .
Q. On the next page, page 72, you deal with the question of documents that involve allegations of misconduct and the need for those to be considered as a separate category.
A. Sorry, which paragraph?
Q. I'm sorry, page 72, paragraph 6.
A. Yes.
Q. You make this observation:

If the allegations are admitted then the retention of the complaint is irrelevant. All that may need to be retained is the evidence of the admission, and then only if there is some further purpose for this.
A. Yes.
Q. Applying your statement there to your situation in 1993 with McAlinden if he made an admission, is this not suggesting that evidence of the admission ought to be kept? A. No, because I've said it many, many times: if I take notes of what he's saying to me, he will not talk to me, and if he thinks there's going to be some permanent record of what he says to me, he's not going to talk to me.
Q. In terms of canon law requirements, I think you've given evidence to the effect that a caution ought to be given if there's a canon law process going on?
A. If there's a canon law process, it's a whole different approach to documentation completely.
Q. And it includes requiring a caution of the particular person that you would be dealing with?
A. I'm not quite sure of the precise process of that.
Q. But you weren't following a canon law process, were you?
A. No.
Q. You don't have a recollection of your conversation with McAlinden, do you?
A. No.
Q. So you don't know whether you induced him to tell you things on the basis of a promise that you wouldn't reveal what he told you to anyone, do you?
A. I don't have a recollection of the context of the conversation.
Q. So you may well have not given him any inducement at a11?
A. I'd be very confident that there was a very serious inducement to persuade him to resign from priesthood.
Q. Oh, I understand that. I'm sorry, because you can't recollect any conversation with McAlinden, you couldn't give evidence to the effect that you told him that you wouldn't tell anybody what he told you?
A. I think I would have said to him, "Look, this conversation is between us and the bishop."
Q. You're surmising now, aren't you?
A. Yes.
Q. Because you don't recollect the conversation?
A. That's my surmising, yes. That would be my normal practice.
Q. But you may well not have engaged in your normal practice?
A. That's quite possible, but normally you do normally engage in your normal practice.
Q. Normally you do, but there's always an exception, isn't there, otherwise it would be your invariable practice?
A. Well, it might have been my invariable practice. If you put it to me in those terms, my practice was fairly consistent so far as I can recall it.
Q. Because you can't recollect your conversation with McAlinden, he may well have sat down and admitted to a number of abuses with no inducement whatsoever from you? A. I think I - if that was the case, because that's not so common, I'd have a recollection.
Q. But you don't have any recollection of your conversation with McAlinden at all, do you?
A. That's true.
Q. You don't even recollect where it was?
A. Yes.
Q. And you've reconstructed from other documents when it happened?
A. Yes.
Q. Otherwise, you have no memory of any kind that it had ever occurred; is that the position?
A. That's the position.
Q. A perpetrator would have no knowledge as to whether the bishop might make a permanent record of what you tell the bishop, would he?
A. That's probably the case, yes.
Q. Given that situation, from a confidentiality point of view, there is no reason why you ought not make a permanent record as well?
A. It's not so much from the confidentiality point of view; it's the conversation you're having with him would not take place if he believed that I was taking notes. And what he would understand, again according to the normal practice, would be that I would report back to the bishop the outcome but wouldn't need to go into whatever details of conversation he had with me.
Q. Given your child protection background, the fact that a priest made an admission to you regarding having sexually abused a number of children, if he did make that admission, was a significant one to bear in mind for child protection issues, wasn't it?
A. Certainly.
Q. And the bishop would need to know that a person accused of sexually abusing children admitted he'd done that, wouldn't he?
A. Not necessarily. All that the bishop needed to know was that he had agreed to resign from ministry and the bishop would draw his conclusions as to why that was, and then the child protection comes from the fact that he has been removed from ministry.
Q. But a priest agreeing to withdraw from ministry may have done that simply because he felt strong-armed; isn't that right?
A. He certainly felt strong-armed.
Q. That is a very different thing, feeling strong-armed out of priestly ministry, to admitting sexually abusing children, isn't it?
A. Well, some will make some admissions in varying degrees. I've had a situation of an absolute denial but still an agreement to withdraw from ministry.
Q. I understand that, but what I'm asking you to accept as a proposition is accepting a withdrawal from ministry, having been encouraged to do so by your particular processes, is a very different thing to saying, "Yes, I'11 get out of ministry", and, "Yes, I abused those three or four children sexually", isn't it?
A. It would depend on the context of the conversation.
Q. Why does it depend on the context of the conversation? I've just outlined a conversation for you. We've got a situation where a priest says, "Yes, I'll step out of ministry because I feel you've strong-armed me out of it", and a different priest saying, "I actually sexually abused children A, B, C and D, I'll get out of ministry." They're very different situations?
A. I'm sorry, I've misunderstood your question, I apologise.
Q. They are very different situations, aren't they?
A. Yes.
Q. Isn't it important for the bishop to know that the second priest we talked about has held up his hand and said, "Yes, and I sexually abused child A, B, C and D"? A. I don't think he needs to know A, B, C and D. I think he just needs to know that this is the circumstance of the agreement to resign from ministry.
Q. He needs to know that the priest has admitted engaging in that behaviour, doesn't he?
A. I don't think he does.
Q. Doesn't a bishop of a diocese need to know that a priest has engaged in that behaviour so that a priest who at that stage is still incardinated to his diocese is not
let have access to children, having admitted that he engaged in that kind of behaviour?
A. No. The bishop would know that he can't ever work as a priest again, on the basis of the agreement that he would resign. The details of names of particular victims or particular details, the bishop wouldn't necessarily need to know that to fulfil his child protection obligations.
Q. The important piece of information isn't the names of the children; it's the fact that a priest has admitted that he sexually abused children. Isn't that the important fact?
A. That was taken for granted in the entire context.
Q. It doesn't have to be taken for granted just because a priest holds up his hand and says, "All right I'11 withdraw from ministry"?
A. I think that's the inference in the context of these conversations.
Q. Would you agree with me "the inference" is a very different thing from a stated admission of conduct involving sexually abusing children?
A. It is.
Q. Were you trying to protect the bishop from a potential misprision of felony by shielding him from that particular specific information?
A. No, I'm sorry, this is the first time I've ever had that suggestion put to me. That never occurred to me.
Q. So can we take it from your answer that you weren't? A. No, certainly not.
Q. Doesn't the bishop need to know from a pastoral care point of view that a priest has admitted to having sexually abused A, B, C or D child?
A. From the point of view of the pastoral care of the priest?
Q. No, the pastoral care of the children who may now be adults?
A. Obviously, the pastoral care of the children. They had already made their contact with the diocese. The bishop knew who they were.
Q. But doesn't the bishop need to know that not only were
the complaints made but that the perpetrator admits he did it? Doesn't the bishop need to know that so he can have an appropriate pastoral engagement with those adults who were sexually abused as children?
A. In the sense of affirming those children's complaints.
Q. Yes.
A. I don't think there's any dispute about that.
Q. What is there no dispute about that?
A. The need to give proper pastoral care to the people who have been - who have made complaints and to affirm them in that situation.
Q. Don't you think part of a proper pastoral care in a situation where a priest has admitted that he sexually abused these people was to tell those people that that admission had been made?
A. On an individual basis.
Q. Yes, you're agreeing with me?
A. Certainly.
Q. For that to have been carried out, the bishop would need to know, wouldn't he?
A. Well, the bishop's delegate or the Centacare, or whoever is caring for those people, yes.
Q. You didn't always contact the complainants individually after you had spoken to a priest in question, did you?
A. Always.
Q. Oh, you always did?
A. Or some person on their behalf. As I said, with [AL], it may have been that I spoke to Sister Paula as her support person. I don't recall that. But it would certainly be my practice always to give feedback to a complainant about the outcome of the conversation with the priest.
Q. My question was, though, that you didn't always do it yourself direct to the complainant, did you?
A. Yes.
Q. You're saying yes, but you've just given an example where you didn't?
A. Sorry. No, no, there may have been an instance where there was a support person who the complainant wanted me to talk to instead of directly back to the complainant, yes.
Q. So in that case, you told Sister Redgrove certain things?
A. Yes .
Q. It was within the power of the bishop to report the perpetrator to the police, wasn't it?
A. It certainly would have been within his power, but we would have had this even worse dilemma with the victim, who doesn't want the matter to go to the police, being even further embarrassed by the bishop reporting it to the police.
Q. To be in a position to make the decision as to whether he ought to report this criminal conduct to the police that had been admitted to, the bishop would need to know the details, wouldn't he?
A. I don't think that situation ever arose, to be honest.
Q. A priest who admits to abusing 40 children as opposed to admitting one or two - does he pose a greater risk than the one who only admits to abusing one or two children? A. A greater risk into the future?
Q. A greater risk in terms of abusing, yes, into the future?
A. That would depend, again, on how long it was ago. I'd be more concerned about the priest who abused one child yesterday than a very, very elderly priest who hasn't abused a child for 20 years but did abuse 40 children before that.
Q. In terms of knowledge as to whether a priest hadn't abused a child for 20 or 30 years, you would be relying on that priest's information about that, wouldn't you?
A. And whatever other circumstances surrounded the situation, yes.
Q. But that would be one factor you would rely on?
A. Yes.
Q. You've published material to the effect that paedophiles are chronic liars, haven't you?
A. Yes.
Q. So how could you rely on a priest saying that?
A. You can't rely on anything the priest says. You've got to make some prudential judgment about the circumstances and the context of the conversation.
Q. So obtaining details of admitted activity by a priest suspected of paedophilia is important, isn't it?
A. If you can get it.
Q. Yes, if you can get it, and it's important in terms of risk evaluation?
A. Yes.
Q. And the risk being evaluated is the risk that that priest will sexually abuse other children?
A. Yes.
Q. The person with the responsibility of the relevant risk evaluation isn't you in these circumstances, is it? A. Ultimately the responsibility will be with the bishop.
Q. So that's why the bishop needs to know the details of what conduct has been acknowledged or admitted to and the details associated with that conduct?
A. I think the information that is most helpful to the bishop is the willingness of the priest to take himself out of ministry and after that - I mean, I think this is fairly black and white, in my mind. There are not really degrees of risk. If he has to be taken out of ministry, he has to be taken out of ministry, and --
Q. Isn't that a very small-minded approach to the problem, that is, focusing only on removal of this criminal person from ministry as opposed to keeping children safe from his paedophile behaviour?
A. The best way to keep children safe from the paedophile behaviour of a priest is to take him out of priestly ministry.
Q. What if a priest doesn't properly cooperate with the arrangement made that he is to extract himself from priestly ministry?
A. There's a limit to what you're able to do, depending on the constraints that are there with respect to taking further action.
Q. There's a limit to what you can do as a representative of the Catholic Church, isn't there?
A. Yes.
Q. And in terms of criminal behaviour, there is an obvious other step, isn't there, and that is reporting the perpetrator to the police?
A. Provided you're in a position where you are able to do that without other constraints upon you.
Q. The constraints you've outlined are your understanding that some people feel they don't want to go to the police; is that the position?
A. It's more than they feel they don't want to go to the police. There are some people who are just absolutely completely and utterly unwilling to go to the police.
Q. You would agree with me, wouldn't you, that on occasion people who are utterly and completely unwilling to go to the police change their mind and become willing to go to the police?
A. And that's a good idea and --
Q. And it happens, doesn't it?
A. Yes.
Q. And you've seen it? You've seen it happen?
A. I expect I have.
Q. After you had attended to your particular duties in relation to McAlinden in early 1993, you didn't have any ongoing role with management of him, did you?
A. Not that I'm aware of, other than the phone call in 1995.
Q. Put that to one side. Did you know that a plan had been made for him to go and live with a relative in the United Kingdom?
A. Yes .
Q. When did you become aware of that plan ?
A. I don't know.
Q. Were you part of making that plan for him?
A. No.
Q. Do you know who made that plan for him?
A. I expect that was the authorities in the diocese of Maitland.
Q. Have you on any other occasion made particular plans regarding where a priest should be physically located after he has had a conversation with you?
A. My general practice would be that he would go back to his bishop. I would have reported that he's now willing to resign from ministry, and then the circumstances and where he'd live or whatever would be taken up between himself and the bishop.
Q. That paper we've just been looking at, I have a couple more matters to raise with you about it. On page 74, which is the last page, you're still addressing the question of overall policy for documents, and you raise this question:

> If, through a tribunal process, it comes to light that a person is abusing children, might it not be argued that the greater good would be served by disclosing this concern to the authorities. Is this a higher value than the value of preserving the confidentiality of the church process? This is a matter that is at least worth discussing.

As at October 1996, what was your view on that question you posed: is reporting a matter to the authorities, outside the church, of higher value than preserving the confidentiality of the church process?
A. That will depend on the nature of the information and the circumstances of the confidentiality.
Q. Let's assume this: the nature of the information is that a priest is accused of sexually abusing a number of children.
A. Sorry, this is through a tribunal process.
Q. Sorry?
A. The context of this is a tribunal process.
Q. So are you saying that the process you performed has no relationship whatsoever with a tribunal process?
A. Yes.
Q. None whatsoever?
A. Yes.
Q. You're looking at and assessing accusations that a priest has sexually abused children, aren't you, in your process?
A. Yes.
Q. And you're confronting the perpetrator with the allegations in your process?
A. Yes .
Q. You're not making any notes about the process, though, are you?
A. No.
Q. Aren't there at least some parallels to the tribunal process you're referring to here?
A. There's a parallel, but the particular context of that paragraph is the general confidentiality of marriage cases and --
Q. We're not talking about marriage cases. You're talking there about it having come to light that a person is abusing children?
A. There is a marriage case, someone is giving evidence in the marriage case and making some allegation about some child abuse.
Q. I understand, all right.
A. Then the question is whether the greater good would be served by disclosing that concern to the authorities or preserving the confidentiality of the church process.
Q. Doesn't that question apply by way of a parallel to the situation where it comes to light that a priest is abusing children? Might it not be argued that the greater good would be served by disclosing this concern to the authorities? Don't you agree there is a parallel there? A. I'm sorry, I misunderstood where you're coming from. I apologise. There's a clear analogy because you've got the same dilemma.
Q. So you agree that the dilemma you're referring to there is the dilemma that arises in your processes with a conversation with a priest who has been accused of sexually abusing children?
A. It was a very clear, well known and well understood
and very difficult dilemma.
Q. What's your view about the dilemma? Is there a higher value than the value of preserving the confidentiality of sorry, is it a higher value, that is, disclosing to the outside authorities, than the value of preserving any church process, situation, status quo?
A. No, the situation I'm involved in is not preserving the confidentiality of the church process. It's preserving the confidentiality of the victim who doesn't want the matter taken to the police.
Q. So is it your position that the most important value in the equation of the matters that you have dealt with is a victim's request that the matter not be reported to the police?
A. I think that's a very significant value.
Q. Is that the most important value?
A. I don't think you can say that one is more important when you have conflicting values. That's the whole point of a dilemma. I don't think you can say one, in a sense, is more important or less important. You have a dilemma. Whatever you do is going to be a problem.
Q. It doesn't fix the problem, does it, to simply remove the man from ministry?
A. In terms of the total problem, there is no solution to that problem in any fashion. There are only really three outcomes of a complaint about child sexual assault. The first is the police process, and that has its limits. The second is a formal church process, and that has even more limits. And the third is some informal process to at least take him out of ministry, which goes a long way towards protecting children into the future.
Q. When did you become aware that McAlinden had been charged with sexually abusing a child in Western Australia? A. I presume at some stage after he had been acquitted in the context of these conversations.
Q. At the time you were having the conversation with him in early 1993, were you aware of that?
A. Yes, he had been acquitted already. That was partly what brought the whole matter to light.
Q. So you knew that at the time you were speaking to [AL]
and [AJ]?
A. Yes, that's what made them angry - that he had been acquitted.
Q. You don't recollect your conversations with [AJ] at a11, do you?
A. No.
Q. So you are unable to state what her attitude was regarding reporting her allegations to the police?
A. No, I think I came to the understanding that she didn't want the matter reported to the police, from the information I was given before I spoke to her.
Q. You say you don't recollect any conversation with [AJ]?
A. Yes.
Q. So the information can't have come from her?
A. No.
Q. Who do you say that information came from?
A. It would have been - and I don't recall now whether it was Bishop Clarke or Monsignor Hart who gave me the phone number to ring [AJ]. I don't recall which it was, but I'd be very confident that in the course of being told that it would be good to ring her to tell her what we're doing about McAlinden, it would have been certainly my understanding that there was no police process involved.
Q. Sorry, there was no police process involved?
A. Involved or contemplated, yes.
Q. Let's clarify that. There was no police process involved, so you knew the police hadn't been told yet? A. Yes.
Q. What information was conveyed to you that [AJ] did not want the police involved?
A. I don't remember any particular words, but if I'd been led to believe that she may have wanted to go to the police, I would have been very reluctant to engage with her at that time until after she had been to the police.
Q. So from that, you're assuming, are you, that [AJ] didn't want to go to the police?
A. Yes.
Q. Is there any reason why there couldn't be a combination of processes to deal with any particular paedophile, that is, the church process and the police also being informed?
A. That was eventually the solution we came to.
Q. Anonymised reporting to the police was an idea that was floated?
A. Yes.
Q. Are you able to say what year that came up?
A. I forget when the idea first came up. Certainly the implementation, in my conversations with various police officers in I think 1996 and into 1997, put in place that established anonymised reporting protocol.

MS LONERGAN: Commissioner, I tender the paper authored by Father Lucas to the Canon Law Society, dated October 1996.

THE COMMISSIONER: Father Lucas's paper will be admitted and marked exhibit 147.

EXHIBIT \#147 PAPER AUTHORED BY FATHER LUCAS TO THE CANON LAW SOCIETY, DATED OCTOBER 1996

MS LONERGAN: Q. Do you still have open in front of you volume 2 of the material? At tab 152, that's a document that looks like notes titled "Child Sexual Abuse"?
A. Yes .
Q. It's attributed to you and John Usher and dated 12 April 1988?
A. Yes.
Q. Did you prepare this document?
A. No, I think that's John Usher's document. That's not my typescript, and it's the same date as my document, which is in my statement.
Q. So is it your position that you prepared none of this material?
A. I have no recollection now whether I saw it or - this looks like, given the content of it, this would have been the presentation John Usher gave to the bishops on the same occasion that I gave my presentation.
Q. And you were present for it?
A. Yes.
Q. Could you turn to the second page of the document, headed "Confidentiality of Church Process".
A. Yes .
Q. There's a statement:

Secret archives may not be exempted from civil law.
A. Yes.
Q. You agree with that?
A. Yes.
Q. And:

Instruct the diocesan solicitor and give him the documentation which then becomes ...

And there's a word missing and inverted commas. Are you able to say what that was referring to and whether the word may well have been "privileged"?
A. Yes, that's likely. One of the issues that had arisen, and I think I make a reference to it also in my paper - in a canonical process, what can you do to preserve the confidentiality and privacy of witnesses? They're not privileged the way they would be privileged in the civil law system. A suggestion that had come from some canonists was that to protect those witnesses, victims or others who were giving evidence in a church process, it may be possible to construct it in a way that would give rise to legal professional privilege.

MS LONERGAN: Commissioner, did I tender the document behind tab 153, which was the witness's April 1988 notes?

THE COMMISSIONER: It is part of exhibit 142 , being annexure $B$ to Father Lucas's affidavit.

MS LONERGAN: Q. Father, you've given some evidence to the effect that you had some involvement in the structuring of a protocol for dealing with allegations of criminal behaviour for the benefit of the Australian Catholic

Bishops Conference?
A. Yes.
Q. You've annexed to your statement a protocol dated April 1992?
A. Yes.
Q. That's annexure $C$ to your statement. Is that the protocol that you are referring to?
A. Referring to where?
Q. Or were you referring to an earlier version of the same protocol?
A. Sorry, I'm not sure.
Q. Annexure $C$ to your affidavit.
A. Yes.
Q. My question is, in the text of your affidavit you've referred to annexure $C$ in the very long paragraph that appears on page 3, in the second paragraph on page 3, that this is a draft protocol dated Apri1 1992? Is that the way I should read that paragraph?
A. Yes.
Q. You had a role in drafting this particular protocol?
A. I was part of the committee, yes.
Q. In terms of the title "Special Issues", which is referred to in the definition section on page 3 , who came up with that title?
A. That was a title that came up with the - are you talking about the special issues resource group?
Q. Just the words "special issues".
A. It was a title that was used by the insurance company.
Q. Is it a reference to sexual abuse behaviour by clergy or something more wide?
A. It's wider than that. It would include - it's really a subcategory of public liability claims that were of the nature of molestation claims, perhaps orphanage claims, forced adoption claims, adult boundary violation claims that general broad category of misconduct.
Q. And misconduct that includes criminal misconduct?
A. Yes.
Q. On the second page of the document, under the heading "Preamble", it says in the fifth paragraph:

It is understood that this protocol in no way affects any rights and obligations, arising from canon law either universal or particular ...

Do you see that?
A. Yes.
Q. Is that a savings provision in relation to canon law requirements; is that the way that should be read?
A. I think this particular protocol was not intended to be a formal canonical process.
Q. What I'm asking you is something different, though. Is that paragraph there stating that canon law processes can still be conducted?
A. Yes.
Q. Is it your position that this protocol operates entirely outside canon law?
A. It can't operate entirely outside canon law, because there would be certain aspects of canon law that may be relevant to it, but this was not intended to be a canonical process.
Q. And it is not a substitution for canon law?
A. No.
Q. In terms of the protocol set out in this document and I'll give you a moment to read it again, if you need to, but I take it you're well across it in broad terms. A. I'm very happy for you to take me to a particular paragraph.
Q. I will if I need to, but did this protocol inform your activities in February 1993 with McAlinden?
A. Broadly, yes.
Q. What were you doing in reference to this protocol? Were you the preliminary investigation?
A. No.
Q. Where is the bit that refers to what you were doing?
A. I'm not quite sure you'd find it in those words. I think to some extent the protocol had been concertinaed into a conversation with McAlinden to induce his resignation from priesthood. The more elaborate processes here and all of the different policies and principles enunciated here to some extent were taken for granted and short-circuited.
Q. Why was it appropriate for you to short-circuit these documented processes and policies and go straight for the conversation?
A. Because that was the best outcome.
Q. Who told you that that's how it should be conducted?
A. This was not a common practice but a reasonable practice that John Usher and I had adopted within the spirit of this protocol but without necessarily going through every particular part of a process if the circumstances were such that you could induce his resignation from ministry.
Q. Doesn't this protocol talk about the need for documentation of different parts of the process?
A. If there is a process in place, yes.
Q. To that extent, your special conversation didn't follow that requirement, did it?
A. No, it wasn't possible to document it because he wouldn't talk to you if you documented it.
Q. You don't know that?
A. I do know that.
Q. How do you know that?
A. Because that was a very common practice and experience that a priest who's being talked to in that context is not going to talk if you pull out the notepad and say, "Now, I'm going to write down everything you say."
Q. But you didn't know McAlinden before your conversation?
A. I could be very confident that he would not speak to me if he knew that I was going to take notes of what he said.
Q. You are assuming that?
A. I am assuming it from experience.
Q. You don't know it?
A. I could never be a hundred per cent certain if he is the one exception who is prepared to speak frankly and openly, within reason, and have everything taken down. He might be the one exception. I never came across a priest who ever did that.
Q. Given the answer you have just provided, there is no reason, is there, that you couldn't have made notes after your discussion?
A. I've said many times there is no reason not to, but it wasn't necessary to.
Q. It wasn't necessary to because you were proceeding on the basis that you would always remember the conversation, were you?
A. No, I'd report the conversation immediately to the bishop.

THE COMMISSIONER: I'm sorry to interrupt, Ms Lonergan. It has just reminded me of something that I would like to clear up.
Q. Father, some time ago in your evidence, perhaps half an hour ago, you said that you would be very confident there was a very serious inducement to persuade McAlinden to resign from the priesthood. Although you don't remember the conversation, what was the nature of the inducement that you are likely to have offered him?
A. If he doesn't resign from priesthood, there are people making these accusations; they will continue to make those accusations. They don't want him to be a priest. And there's no future, given the circumstances and history of what seems to have happened, that the bishop will ever give him an appointment, so better for him and for everybody to formally resign from ministry.
Q. Might it ever have been an inducement that the police authorities would be advised if he didn't resign?
A. I think that would be taken as an obvious outcome. I should say, by the victims who perhaps - who were simply wanting him out, and if he refused to get out, they may well have changed their mind, which would have been the best outcome for everyone.

THE COMMISSIONER: Thank you, father. Thank you,

Ms Lonergan.

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* MS LONERGAN: Q. So is it fair to say that the
processes that you were engaged in were offered as an
inducement to avoid a situation where these crimes would be
reported to the police?
A. No, I think that's --
MR SKINNER: I object to that. The witness has just given an answer where he has made it quite plain that there were several steps to that end. It is not fair to put it like that.
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THE COMMISSIONER: Not directly stated.
MR SKINNER: Yes, night following day.
MS LONERGAN: I didn't say that night followed day. I didn't say it came from the question that you asked, Commissioner. I'm putting the proposition, which the witness can accept or reject, as a highly educated, clearly intelligent person.

THE COMMISSIONER: Yes.
MS LONERGAN: Q. You have rejected it, as I understand your answer?
A. I was about to answer the question when my counsel stood up. Perhaps if I could have the question again, I'd prefer to give a better answer?
Q. Thank you. Could the question be read, please?
A. I don't mean to make it difficult, but I don't now remember the question.
Q. No, it's not that you're being difficult. I should remember it, and I don't, I'm sorry.
(Question marked * read)
THE WITNESS: No, I would reject that because the reason these crimes weren't reported to the police was because of the desire of the victims that they not be reported to the police.

MS LONERGAN: Q. In the protocol document that $I$ have just taken you to, you say that your particular processes
didn't follow chapter and verse this protocol; that's the position, isn't it?
A. Yes.
Q. But did your processes at least follow in broad terms the values to be promoted?
A. Yes.
Q. The values to be promoted appear on page 5 of the document, and they are listed as:

In dealing with allegations of criminal behaviour against the accused, the competent ecclesial authority is obliged to take into account and preserve various values.
A. Yes.
Q. In the context of your particular process, you were the ecclesial authority, in effect, weren't you?
A. No.
Q. Not in the special terms as set out here but in terms of the requirement to act in a certain way consistent with the values of this protocol document?
A. I would have personally wanted to act according to those values, but I wasn't in any sense ever the competent church authority.
Q. But you were acting as a church authority in the sense that you were engaging in a process that was requiring another priest to cooperate with a particular interview that was going to have potentially a lasting effect on his ability to continue to practise as a priest?
A. Yes .
Q. As to the values - first is:

To act with justice, mercy and charity.
A. Yes.
Q. Second is:

To respect the civil law and not obstruct or pervert the process of justice.
A. Yes.
Q. Third:

To show pastoral solicitude for the welfare of any complainant, victim, victim's family or accused.
A. Yes.
Q. The fourth is:

To not call into question the good reputation of any person whether complainant, victim or accused and their right to privacy.
A. Yes.
Q. In relation to the one I've just read out, 4.1.4, can you assist the Commissioner with how it is that in interviewing a priest regarding allegations of sexual abuse, the good reputation of a priest would not be called into question?
A. That's about making that information public, and you wouldn't make public the fact that this interview occurred.
Q. That requirement to not call into question the good reputation of any person - does that include an embargo on reporting to the police that that person had been accused of sexually abusing children?
A. Nothing to do with reporting to the police.
Q. A later version of this particular protocol - and I'll take you to it because it's convenient to do so - is in volume 2 of the material. I'm sorry to have you jumping around, but it will save time in the long run. Tab 173.
A. Is this page 300?
Q. Yes, and if you wouldn't mind turning to page 304 ?
A. Yes.
Q. You'11 see from having a glance at the front page of this particular version of the protocol, it appears to be an earlier version than the one we've just been looking at? A. Yes.
Q. Do you see 4.1 .4 on page 304 mentions the need to:
... safeguard the good name of the Church as a whole and act to prevent or remedy scandal.

Do you see that?
A. Yes.
Q. So this one occurs about three years before the version we've just been looking at? The other one is April 1992.
A. I think, I'm not sure that that document - that would have been in May 1990. Two years.
Q. Say again?
A. I think this was two years before.
Q. Yes, I see, this one is late 1989.
A. No, it's in fact - yes, this was presented in May 1990, I'm sorry, yes.
Q. You get that date from?
A. From the covering note:
... proposes to move at the 1990 Conference
for the acceptance in principle of the strategy outlined in the protocol ...

So this, at this stage, is a draft document.
Q. The version that we were looking at before the one you currently have in front of you does not have that rider that they:
... must safeguard the good name of the
Church as a whole and act to prevent or remedy scandal.
A. Yes.
Q. Can you assist with the origin of that particular phrase, what it means and its importance or otherwise?
A. I can't, I'm sorry.
Q. You have no idea where it comes from?
A. The words - the words? I'm sorry, I'm not sure which words.
Q. The part I read about attempting to deal with the matter so as to avoid bringing --

THE COMMISSIONER: "To prevent or remedy scandal".
MS LONERGAN: Q. Yes.
A. "Prevent or remedy scandals" is a common canon law expression.
Q. Do you know why that was removed from the later version of the protocol?
A. No, it's in there. It's 4.1.5:

To act so as to prevent or remedy scandal.
Q. So why was that then moved to be a separate consideration, do you know?
A. I have no idea, I'm sorry.
Q. What does it mean?
A. It would be a situation, for example, where suppose somebody in a parish makes allegations about the priest. Let's hypothesise those allegations are unfounded. There's controversy and whatever in the parish. There would be the need to do something to remedy that and also to deal in a way that doesn't allow, for example, that sort of gossip around a parish that creates scandal.
Q. Do you agree that a bishop reporting a priest to the police for sexually abusing a child would create scandal? A. It would probably, to the contrary, prevent scandal, if that's the method used to prevent harm to people in the future.
Q. So there would be nothing in 4.1 .5 that would prevent a bishop reporting a priest to the police for sexually abusing a child?
A. No.
Q. You were asked to prepare an affidavit or a statutory declaration in relation to the activities of a company known as Encompass Australasia Limited?
A. Yes.
Q. You prepared a statutory declaration that addressed searches that had been made to see whether either Denis McAlinden or James Fletcher had been dealt with by the Encompass organisation?
A. Yes .
Q. I will provide to you a copy of your statutory declaration and ask you whether it's true and correct? Can you outline just in very general terms the operation of Encompass Australasia and the purpose of it being established?
A. Yes, in about 1996, from recollection, the bishops sought to put in place a therapy program to deal with people in the church who may benefit from some form of therapy connected with psychosexual disorders and other psychological problems - depression, anxiety, alcoholism and the like.
Q. It was wound up at some point?
A. It was.
Q. Why was it?
A. They ran out of customers.

MS LONERGAN: Commissioner, I tender the statutory declaration, which is dated 30 April 2013.

THE COMMISSIONER: The statutory declaration of Father Lucas will be admitted and marked exhibit 148.

## EXHIBIT \#148 STATUTORY DECLARATION OF FATHER LUCAS, DATED 30/04/2013

MS LONERGAN: Q. Did you satisfy yourself personally, Father Lucas, that there was no material within the records relating to Encompass that touched on Fathers McAlinden or Fletcher?
A. I did. Twice.
Q. What was the year that the Encompass organisation ceased operation? 2008 it ceased operation?
A. That sounds correct, yes.
Q. Are you suggesting from your answer that, as from 2008, no priest had any psychological or psychosexual or alcohol-related problem?
A. No, of course not. But this particular program, which
was a very expensive program, didn't have the critical mass to conduct that sort of program. The therapists who were engaged in it were then willing to continue in a private capacity and they dealt with what cases arose after the program was wound down, and the other matters were dealt with in other psychiatric facilities.
Q. As at February and March 1993, had you put together a particular way in which you would approach these particular conversations that you had with priests?
A. Between ourselves, John Usher and myself had a broad methodology, but it certainly wasn't documented.
Q. It wasn't documented as a procedure or a protocol that you and Father Usher used?
A. No.
Q. Prior to McAlinden - and I appreciate you don't remember your actual conversation with him - are you able to say how many of these conversations you had conducted? A. I wouldn't remember now, no.

MS LONERGAN: Commissioner, could I have a five-minute break to take some instructions on a particular matter?

THE COMMISSIONER: Yes, certainly.
SHORT ADJOURNMENT
MS LONERGAN: Thank you for that time, Commissioner. I was able to shortcut various other matters I was to go to.

THE COMMISSIONER: Very well, Ms Lonergan.
MS LONERGAN: Commissioner, there has been a request from the media for access to copies of exhibits 142 to 148. If those at the Bar table could let those who assist you know by 4.15 pm if there is any objection to the release of those documents.

THE COMMISSIONER: Yes.
MS LONERGAN: Q. Father Lucas, you've given evidence to the effect that you have a crystal clear recollection of certain things that happened in 1993.
A. Yes.
Q. One of those things is certain aspects of your meeting with [AL]?
A. Yes.
Q. The crystal clear recollection includes Sister Paula Redgrove being present as the support person?
A. Yes.
Q. And a crystal clear recollection that Ms [AL] didn't want to go to the police and the reasons associated with it?
A. Yes.
Q. But it's the situation, is it, that you cannot recall McAlinden at all?
A. Yes.
Q. And you cannot recall meeting with McAlinden in circumstances where he had escaped conviction in Western Australia for child sexual abuse allegations or charges?
A. I was aware of that.
Q. And you can't remember McAlinden, even though you saw him not that long after the establishment of the special issues group of which you were a member?
A. That's correct.
Q. He would have been one of your first half dozen, would he, priests that you interviewed?
A. I can't recall. And remember, not only were there priests involved, there were also religious brothers, and so forth, yes.
Q. You've said that over the period of about six to eight years, there were about 35 that you dealt with? A. And that's a figure $I$ can't stand by as - it was my best estimate from trying to be more accurate from a question put to me once before.
Q. I understand that. Once you were given this special role with the special issues group, was there a flood of incidents where you had to go and interview priests and persons associated with the Catholic Church for paedophile-related offences?
A. I'm not sure how we define what a "flood" is, but this was a time in 1992/1993 where there was significant
publicity.
Q. You suggested that you recollect or at least acknowledge that Sister Redgrove may well have been told by you that McAlinden was a hard nut to crack?
A. Yes, that doesn't sound like my language, but words to that effect is quite likely.
Q. You have also given evidence to the effect that a paedophile, to your experience, rarely admits that they had engaged in child sexual abuse?
A. Some do, but most don't.
Q. You still maintain the position, do you, that you have absolutely no recollection of your meeting with McAlinden? A. Yes.
Q. You're aware, aren't you, from reading the bundles of material prepared for this Commission, that McAlinden wrote to Bishop Clarke and, in his letters in 1995, mentioned his interface with you?
A. Yes.
Q. You have read those letters with some care, haven't you?
A. Yes.
Q. If I could show them to you again, the first is behind tab 264 in volume 3. It is also exhibit 68. You're aware, aren't you, father, that McAlinden, in this and at least one other letter, states that he had made admissions regarding his conduct with children to you?
A. Yes .
Q. The relevant part of this letter in terms of its reference to you is in the third paragraph on the first page, where he says:

> Incidentally, the word "confidential" has a very hollow ring as far as Maitland is concerned: Brian Lucas convinced me, against my better judgment, to accept that the information I gave him would be held in strict confidence by the Bishop; yet within a few weeks, the same as mentioned above, was able to repeated on the testimony of [a certain person].

Were you informed by Bishop Clarke about having received this particular letter?
A. No.
Q. Do you see in the paragraph above the one I've just read to you, it refers to McAlinden having received correspondence in the Philippines?
A. Yes .
Q. So it's clear, isn't it, that McAlinden went overseas and lived a life independent of the diocese in the Philippines?
A. I understand that's the case.
Q. Do you understand also that McAlinden, whilst he was in the Philippines, pretended to be a priest?
A. I've heard that suggestion. I find that quite extraordinary, that the bishops in the Philippines wouldn't have followed the most fundamental and basic of church rules and checked him out and allowed him to function as a priest.
Q. Did you find out whether those in the

Maitland-Newcastle diocese had bothered to inform the bishops in the Philippines about McAlinden's offending background?
A. The way things work, you don't need to inform them. There is nothing more fundamental than the rules about incardination of priests, that no-one should ever be allowed to minister without him producing his celebret, and there's no way in the world McAlinden would have had a celebret, and there's no way in the world a bishop should have ever allowed him to have worked as a priest without ensuring that he was a priest in good standing.
Q. Was that the position in 1995?
A. It has been the position since the day I was ordained, when I got my first celebret.
Q. What's a celebret?
A. A celebret is a document that priests will take with them when they travel, generally in Latin, signed by the bishop, sealed by the bishop, a fairly elaborate, fancy-looking document that you can use if you are travelling. For example, you may wish to join a priest in a parish for a Sunday mass. Prudence would dictate that he
would ask you for that. We had a number of instances, when I was on the staff at St Mary's Cathedral, where people would turn up, in a sense, pretending to be a priest, and that's the way of ensuring that no priest can function and the celebret is merely for the purposes of travelling. If someone is looking for a position by way of ministry that's beyond just something very casual, it's absolutely fundamental that the church authority would check that he is in good standing, which is done by a simple process.
Q. It wasn't done in this case, you assume?
A. Apparently not. I have no idea, but apparently not.
Q. You know, don't you, that McAlinden was able to, in pretending to be a priest, access children in the Philippines?
A. I have no knowledge of that.
Q. Could the witness be shown exhibit 78. Just before you have a look at that document, were you satisfied, after your role in dealing with McAlinden, that appropriate steps had been taken from a child protection point of view?
A. I think it was probably the best that was on offer at the time.
Q. Would you agree with me that the best that was on offer at the time wasn't very good, was it?
A. It's hard to put a value on that. As I said, I would never have foreseen in 1992 that any priest could work anywhere in the world without a local bishop checking him out. I would never have foreseen that. This is the most extraordinary behaviour by the Philippine bishop.
Q. Did you inquire of the bishop at Maitland-Newcastle what sort of background McAlinden had so that you could properly assess whether the job you were doing for the bishop was going to be enough to keep children safe from McAlinden?
A. I was confident, because I understood the church law and the policies and processes, that once he was taken out of ministry, that was as far as we could go. Ideally if the victims had wanted the matter prosecuted, and assuming a successful prosecution, that would have been a better outcome, but that wasn't the outcome that was available.
Q. Did you ask Bishop Clarke or anybody from the diocese what was known about McAlinden's history of offending, if
there was any, in addition to the particular people you were dealing with or had heard of?
A. I don't recall, I don't recall that. I think I took on face value whatever either Bishop Clarke or Monsignor Hart told me.
Q. At that time, did you have a practice as part of your processes to inquire as to whether there were any other historical complaints of sexual abuse by a particular priest you were having a conversation with?
A. I presumed what they told me was what they wanted to tell me.
Q. The question I'm asking is a little different. Did you have a practice where you actually asked them what else was known about a particular priest by way of historical complaint?
A. I would have wanted to know what was the general understanding of who this person was, what were the complaints and what was known, yes.
Q. You would have expected that to be conveyed to you without you asking?
A. Yes, certainly.
Q. Have a look at the first page of the letter. It's apparently a letter from McAlinden to Bishop Malone?
A. Yes.
Q. It's dated 5 December 1995. Have you seen this letter before today?
A. If it was in the bundle of papers, I may have read it. I don't specifically recall it, but --
Q. It wasn't in the bundle of papers. It was tendered later.
A. I've never seen the document.
Q. It commences with "To whom it may concern" on the following page, and then there are some handwritten notes under the heading "Canon 1044". Do you see that?
A. Yes.
Q. On numbered page 2, which has number 87 in the middle of the page, there is a reference, right down the bottom of the page, to some years in Papua New Guinea, where he had:
... no problems whatsoever, even though I was called on to do regular clinical work before we got a permanent nurse...
A. Yes.
Q. On the next page:

On the various occasions when things did go wrong, I never for a moment tried to minimise my guilt by blaming some uncontrollable tendency - always making sure of receiving the Sacrament of Penance before offering Mass.

Do you see that?
A. Yes.
Q. And:

Likewise when I visited a qualified psycho-analyst some years ago in Castle Hill, after 5 or 6 consultations, he assured me he found nothing in the nature of an aberration.

Do you see that?
A. Yes.
Q. Did you know anything about McAlinden having been psychoanalysed by someone in Castle Hill?
A. I don't think I was ever told that. I think that would be something I would remember.
Q. That would have been information that would have assisted you in your processes, or not?
A. Marginally, perhaps. I don't know.
Q. It would have been relevant for you to know, though, whether there was any psychological disorder?
A. Yes .
Q. Then on the next page, page 4, under "Canon 277", you get a mention in this statement:

Yes, here $I$ have failed miserably in observation of "perfect and perpetual
continence" ...

Do you see that?
A. Yes.
Q. You know that canon 277 is regarding perfect and perpetual continence, is it?
A. Yes.
Q. He goes on to say:
... in relation to my vow of Chastity in matters about which I have been accused and of which I have accused myself, though some of the individual cases mentioned by Father Lucas (1993) did not occur, most of all that concerning [AK] --

And then he goes on to make some comments about [AK] --
neither did the case happen that was brought to court in WA in 1992.

Do you agree with me that that paragraph indicates that
there has been some admission - I'm not saying to whom - on the part of McAlinden that some individual cases that he has been accused of did occur?
A. I don't know that that follows - the fact that he has said individual cases did not occur, one might assume that there were individual cases that did occur, but I don't know that.
Q. You don't draw that from that paragraph?
A. It's a possible inference.
Q. You don't draw that inference?
A. I haven't given the matter consideration.
Q. We might ask you to do so overnight. Now, two paragraphs down:

However, as I explained to ...
I'm sorry, I should let you read the intervening paragraph:
I have seen in these failures the fact that
I allowed my spiritual life to become

> weakened with the excuse of being too busy - barely "fitting in" prayers of obligation such as Divine Office, though managing a daily Rosary.

Do you see that?
A. Yes.
Q. Under that:

However, as I explained to Father Lucas in '93, that, by the grace of God and the help of Our Blessed Lady, I had already become completely free from all such wrong-doings, in fact regard such as an abomination.

Then he sets out a number of practices that "have been ever so effective". Do you see that?
A. Yes.
Q. From your knowledge of paedophilia, is it the position that paedophiles generally become completely free from that particular disorder?
A. Not of the type of paedophilia that I think we're associating with McAlinden.
Q. I will ask you to read this letter overnight to see if there are any other matters you could assist us with, but at the bottom paragraph on page 90 there is a reference again to you. The paragraph commences:

Fortunately, at a very early age, I'd been taught the power of prayer, and now feel I can claim to be a living example of that power. So much so, that when I spoke to Father Lucas, about 3 years ago, I assured him I had no worry or fear of falling back into the problems of the past. In fact, no way would I have opened up and confessed so freely to Father Lucas, admitting my past failings, had I not been convinced that this was a thing of the past.
A. Yes.
Q. Would you agree with me that that, read at face value, appears to be confirming that McAlinden admitted to you
incidences of past failings?
A. Assuming he's telling the truth there.
Q. Assuming he's telling the truth, that he admitted to you past failings?
A. Assuming he's telling the truth.
Q. Yes. And in the context of your conversation with him, "past failings" must be a reference to allegations of sexually abusing children?
A. Yes.
Q. Does that prompt a memory of McAlinden in your mind, given the references to prayer and the way in which he uses language or speaks about his particular predicament?
A. No.
Q. In the next paragraph, would you agree with me there is apparently an admission of failing miserably regarding canon 277, and that means a failing in relation to perpetual and perfect continence?
A. Yes.
Q. That's a reference to inappropriate sexual behaviour or sexual behaviour?
A. Yes, yes.
Q. Do you see on page 7, McAlinden refers to having had some months at San Pablo --
A. Yes.
Q. -- Colleges Complex. Do you see that?
A. Sorry, at the Cathedral of San Pablo, at the top.
Q. Thank you very much. Yes, he had been posted to the Cathedral of San Pablo. I'm sorry, we had better check that from the page before. McAlinden claims, in the last paragraph on page 91, that Bishop Bantigue had asked him to:

> ... undertake the position of Chaplain to the San Pablo Colleges Complex where there was an enrolment of over 7,500 pupils, ranging from kindergarten through primary, secondary, teachers college, University and including Medical College.

Do you see that?
A. Yes.
Q. McAlinden claims that he:
... made a point of explaining my situation and past history to the good Bishop, and advised him why my Faculties had been withdrawn.

And do you see that, on the next page, McAlinden refers to having heard "no less than 10 thousand Confessions"? Do you see that?
A. Yes .

THE COMMISSIONER: In six months, Ms Lonergan.
MS LONERGAN: Q. Yes, in six months - 10,000 confessions in six months. Would you agree that that must have entailed access to a number of children, in that statistic? A. As I read that, I think this is a fantasy.
Q. Albeit as a priest associated with a school that has children ranging from kindergarten, there is a high likelihood, is there not, that McAlinden accessed children, had access to children?
A. As I said, I am absolutely staggered and completely and utterly appalled that any bishop would allow anyone to work in that situation. I think, if you're asking me for an opinion on this on face value, he has dreamt up this fantasy for the purposes of justifying his canonical position.
Q. You know as a matter of fact that McAlinden did work in the diocese of San Pablo, don't you?
A. That seems to be the situation, yes. As I said, I find it extraordinary that he was allowed to do that.
Q. That he was able to go overseas, work in another diocese in a foreign country and conduct confessions with people, including children?
A. As I said, that staggers me and shocks me, that the bishops could have been so appallingly careless in following the fundamentals of church policy.
Q. What it shows, doesn't it --
A. Could I just say this: that's what he says he's
doing. I don't know the extent to which what he says he's doing in fact he did do.
Q. You know from documents you've read in the bundles that he did work in the diocese of San Pablo?
A. Yes.
Q. You know that?
A. Yes, but I don't know that that necessarily involved any misconduct.
Q. I'm not suggesting that, but you know that he worked as a priest in the San Pablo diocese from the documents you've read?
A. That's what I'm saying; that is what I find quite staggering.
Q. You were working on the basis that the processes that you had engaged in would mean that McAlinden would not have this privilege and this access, acting as a priest?
A. Certainly.
Q. By your "processes", I mean the conversation with McAlinden in 1993 where his removal of faculties was negotiated.
A. Yes.
Q. You understand that, don't you; that's the process I'm talking about?
A. Yes.
Q. So would you agree with me that the process failed in terms of preventing McAlinden from acting as a priest?
A. In this particular instance, it did, yes.

MS LONERGAN: Would that be a convenient time,
Commissioner?
THE COMMISSIONER: Yes, thank you very much, Ms Lonergan.
I will adjourn until 10 o'clock tomorrow.
AT 4PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 25 JULY 2013 AT 10AM

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