

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

**DIRECTIONS HEARING**

At John Maddison Tower, Court 8B  
88 Goulburn Street, Sydney, New South Wales

On Monday, 22 April 2013 at 9.15am

Before Commissioner: Ms Margaret Cunneen SC

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

1 THE COMMISSIONER: Good morning, ladies and gentlemen.

2

3 MS J LONERGAN SC: Good morning, Commissioner, I appear  
4 to assist you, together with Mr Hunt and Mr Kell.

5

6 This morning we are going to deal with some directions  
7 to assist with the conduct of the public hearing on term of  
8 reference 1, which, as everyone is aware, who is present in  
9 court, deals with:

10

11 *The circumstances in which Detective Chief*  
12 *Inspector Peter Fox was asked to cease*  
13 *investigating relevant matters and whether*  
14 *it was appropriate to do so.*

15

16 Commissioner, I will allow the others at the Bar table  
17 to announce their appearances and then I will come back to  
18 outlining matters.

19

20 MR W ROSER SC: May it please the Commission, my name is  
21 Roser - R-O-S-E-R - with Mr Saidi. I appear for the  
22 Commissioner of Police and a number of other police  
23 officers. I can read those out to you, Commissioner, or  
24 I can identify those witnesses if that is suitable.

25

26 THE COMMISSIONER: Yes, thank you, Mr Roser, that would be  
27 helpful.

28

29 MR ROSER: They are numbers 2, 4, 5, 7, 8, 10, 11, 12, 13,  
30 14 and 15.

31

32 THE COMMISSIONER: Thank you, Mr Roser.

33

34 MR ROSER: We appear for all those witnesses, thank you,  
35 Commissioner.

36

37 MR L GYLES SC: May it please the Commission, my name is  
38 Gyles, G-Y-L-E-S. I appear for the diocese of  
39 Maitland-Newcastle.

40

41 THE COMMISSIONER: Thank you, Mr Gyles.

42

43 Yes, Mr Cohen?

44

45 MR M COHEN: May it please the Commission, I appear for  
46 Detective Chief Inspective Fox.

47

1 MR P SKINNER: May it please the Commission, I appear for  
2 Father Brian Lucas.

3  
4 THE COMMISSIONER: Thank you, Mr Skinner.

5  
6 MR R McILWAINE SC: May it please, Commissioner, my name  
7 is McIlwaine. I seek the authority for leave to appear for  
8 Mr Brad Tayler and Mr Justin Quinn, former NSW Police  
9 officers.

10  
11 THE COMMISSIONER: Yes, Mr McIlwaine, I grant that  
12 authorisation.

13  
14 MR McILWAINE: Thank you, Commissioner.

15  
16 MS N EVANS: Commissioner, Ms Evans on behalf of  
17 Helen Keevers.

18  
19 THE COMMISSIONER: Thank you, Ms Evans.

20  
21 MR G DOHERTY: May it please the Commissioner, my name is  
22 Doherty. I appear for Archbishop Wilson; however, we don't  
23 seek leave in relation to terms of reference 1. I am just  
24 announcing my appearance for the record.

25  
26 THE COMMISSIONER: Thank you, Mr Doherty.

27  
28 MS LONERGAN: Thank you, Commissioner.

29  
30 The structure for this morning's direction is as  
31 follows:

32 First, we will deal with any variations in the  
33 authorisation to appear relating to various parties  
34 regarding term of reference 1;

35 Second, we will deal briefly with the plan regarding  
36 service of material. That comprises witness statements  
37 relating to term of reference 1 as well as an evidentiary  
38 bundle, but I will come back to that, Commissioner.

39 The third matter we will deal with, if necessary, is  
40 the question of the witness list, which was circulated last  
41 Friday;

42 The fourth matter is a procedural matter regarding  
43 the way in which the public hearings will be conducted  
44 as against the background in which the Special Commission  
45 was announced, namely, an extant current police  
46 investigation, and also to deal with the sensitivities and  
47 confidentiality of various victims of Father McAlinden and

1 Father Fletcher.

2

3 I understand Mr Skinner and Mr Gyles have applications  
4 to make in relation to the first matter; namely,  
5 authorisation to appear.

6

7 THE COMMISSIONER: Thank you.

8

9 MR GYLES: Commissioner, I seek leave to appear at the  
10 hearing in respect of term of reference 1 on behalf of the  
11 diocese of Maitland-Newcastle. I would not want to give  
12 the impression that we anticipate being there for the whole  
13 of the hearing, but there are two witnesses who I expect  
14 that we will be in attendance for.

15

16 THE COMMISSIONER: All right, thank you, Mr Gyles.  
17 I think that is reasonable and leave is granted.

18

19 MR GYLES: May it please the Commission.

20

21 MR SKINNER: Commissioner, I renew my application made on  
22 the last occasion to appear for Father Brian Lucas in this  
23 first tranche of hearings. Again our position is much the  
24 same as my learned friend has just announced - we may not  
25 be there for the whole two weeks, but we would certainly  
26 seek to be there for at least the first two or three days.

27

28 THE COMMISSIONER: Thank you, Mr Skinner. I understand  
29 your position and leave is granted for you to appear.

30

31 MR SKINNER: Thank you, Commissioner.

32

33 MS LONERGAN: Commissioner, these directions today relate  
34 specifically to term of reference 1. I note, for the  
35 record, that it is proposed there will be a further  
36 directions hearing regarding term of reference 2 and this  
37 has been noted on the website.

38

39 Prior to that directions hearing, a proposed witness  
40 list relating to term of reference 2 will be circulated and  
41 it is expected that that directions hearing will take place  
42 in June with a date to be notified as soon as is  
43 practicable.

44

45 I move now to the second matter on the agenda, which  
46 is service of material. I note, for the record, that the  
47 Commission is currently in discussions with, in particular,

1 Police, regarding public interest immunity aspects of some  
2 of the statements and some of the documents that will be  
3 included in the evidentiary bundle.  
4

5 There have also been some discussions between the  
6 parties - and there will be further discussions today, in  
7 particular with Detective Chief Inspector Fox's legal  
8 counsel - to tailor as closely as possible relevance and to  
9 ensure that matters that are ventilated in term of  
10 reference 1 comply with the rules of evidence, as we are  
11 required to, and relate closely, and relevantly, to term of  
12 reference 1 as read on to the record today.  
13

14 Commissioner, it is expected that those negotiations  
15 should result in service of statements and a bundle of  
16 evidence by close of business this Wednesday, 24 April. If  
17 there remain any matters that were unable to be agreed  
18 between the parties in terms of relevant immunity, public  
19 interest immunity claims or any relevance issues, it is  
20 proposed that those matters be dealt with in a further  
21 directions hearing this Friday at 10am, but it is expected  
22 that such matters would be within a very small compass,  
23 Commissioner.  
24

25 It is proposed that the statements and evidentiary  
26 bundle be served on primary parties. It is not proposed  
27 that they be given to parties who have no significant  
28 interest in the subject matter of them. Decisions will  
29 be made as to whether individual statements need to be  
30 provided to other parties and it is not proposed that  
31 this material will be made available to the press at this  
32 stage.  
33

34 As matters are tendered at the private hearing and as  
35 statements are tendered, they will become available in the  
36 usual way, subject, of course, to redactions protecting the  
37 names and addresses of persons and other appropriate  
38 objections and limitations as to publication.  
39

40 Commissioner, the third matter is --  
41

42 MR ROSER: Commissioner, may I raise one issue in relation  
43 to that issue before my friend continues?  
44

45 THE COMMISSIONER: Yes, Mr Roser.  
46

47 MR ROSER: Our clients are very concerned about where any

1 material that is handed over may finish up. My learned  
2 friend intimates that the material will only be given to  
3 the relevant parties in these proceedings. What we would  
4 be seeking, Commissioner, is an order from you in relation  
5 to that and also that there be no publication of any  
6 material that is handed over to any party.

7  
8 Our concern, particularly from a number of our  
9 clients, is that they do not want to read about their  
10 statements in the Herald, or somewhere else, prior to  
11 public hearings occurring. There is a potential for that  
12 to occur, so we would be seeking some order from you,  
13 Commissioner, in relation to both those aspects.

14  
15 THE COMMISSIONER: Yes, thank you, Mr Roser, that is  
16 understandable.

17  
18 Ms Lonergan?

19  
20 MS LONERGAN: Yes, Commissioner, I agree with Mr Roser  
21 that that would be an appropriate matter to be dealt with  
22 by way of specific order. It would be expected that the  
23 statements and evidentiary material not be circulated  
24 outside the legal team and the person concerned.

25  
26 I will give some thought to the wording of such an  
27 order in consultation with Mr Roser, Commissioner, and  
28 perhaps we could adjourn shortly at the end of these  
29 directions and prepare a form of order.

30  
31 THE COMMISSIONER: Yes, Ms Lonergan. I gather that suits  
32 you, Mr Roser?

33  
34 MR ROSER: Yes, thank you, Commissioner.

35  
36 MS LONERGAN: In relation to the witness list, the  
37 proposed witness list was circulated last Friday. The list  
38 consists of persons who are proposed to be called as  
39 opposed to including every witness whose statement may well  
40 be put before you, Commissioner.

41  
42 I have had some short discussions with Mr Cohen  
43 regarding that witness list, and we will continue those  
44 discussions after the directions hearing today. If any  
45 persons have any concerns that there ought to be a  
46 particular witness caught in term of reference 1, it would  
47 be helpful that that be raised today so that it can be

1 discussed as to why witnesses are being called and whether  
2 there is a particular concern regarding any person who  
3 ought to be on the witness list who is not.  
4

5 The final matter, Commissioner, is addressing  
6 particular arrangements that will need to be made regarding  
7 the conduct of the public hearings. Commissioner, it is  
8 expected that parts of the hearing in May and in June  
9 and July and the evidence of particular witnesses will be  
10 taken in camera; that is, without access to them by the  
11 media or the general public. This will take place where  
12 the Commissioner considers it desirable to do so including  
13 so as not to prejudice by pre-trial publicity any potential  
14 future criminal proceedings or influence any evidence  
15 witnesses might give at any such proceedings.  
16

17 It is proposed, Commissioner, that evidence of sexual  
18 abuse victims and certain other relevant witnesses is  
19 likely to be given in camera and subject to non-publication  
20 orders.  
21

22 The necessity for this arises primarily due to the  
23 fact that the inquiry was set up against a background of an  
24 existing police investigation into alleged concealment of  
25 offences by officials of the Maitland-Newcastle diocese,  
26 and also to look after the sensitivities of victims of  
27 sexual abuse, Commissioner.  
28

29 THE COMMISSIONER: Of course, thank you, Ms Lonergan.  
30

31 MS LONERGAN: Those are the matters for directions today,  
32 Commissioner.  
33

34 THE COMMISSIONER: Thank you, Ms Lonergan.  
35

36 MS LONERGAN: I am proposing maybe a 10-minute adjournment  
37 to allow that order to be discussed with Mr Roser if that  
38 is suitable, Commissioner, and then we can reconvene.  
39

40 THE COMMISSIONER: All right.  
41

42 MR COHEN: Before you rise, Commissioner, could I raise a  
43 matter generally so that perhaps it could be contemplated  
44 by the parties? At the time of the hearing, as opposed to  
45 prior to the hearing, will there be any procedural  
46 mechanism contemplated for the dissemination of materials  
47 electronically because that certainly would be of some

1 assistance? Is that a possibility that could be  
2 contemplated? Do resources permit it?

3  
4 THE COMMISSIONER: It may have been contemplated.

5  
6 Ms Lonergan?

7  
8 MS LONERGAN: I will discuss that with my learned friend  
9 in the short adjournment so I can understand exactly what  
10 material he has in mind. I understand the plan is that a  
11 transcript of the evidence taken at the public hearings is  
12 to be posted on the Commission's website each evening,  
13 subject, of course, to redactions and other matters that  
14 need to be attended to before it is posted. Other than  
15 that, I will discuss with Mr Cohen what he has in mind.

16  
17 THE COMMISSIONER: Yes, thank you, Ms Lonergan. I will  
18 adjourn for 10 minutes.

19  
20 **SHORT ADJOURNMENT**

21  
22 MS LONERGAN: Commissioner, thank you for that time. We  
23 have agreed with Mr Roser and his team as to the form that  
24 the relevant order should take and, Commissioner, you have  
25 the agreed wording to read onto the record.

26  
27 THE COMMISSIONER: Thank you, Ms Lonergan.

28  
29 In reference to the issue raised by Mr Roser, I direct  
30 that until further direction any witness statement,  
31 affidavit, statutory declaration, and all documents within  
32 the tender bundle served on a party, whether in hard copy  
33 or electronically, is:

34 (a) to be treated as confidential to and by that party  
35 and its legal advisers and not to be shown, circulated or  
36 published to any other person; and

37 (b) not to be used for any purpose other than the  
38 proceedings of this Special Commission of Inquiry.

39  
40 MS LONERGAN: Commissioner, there is just one final thing,  
41 for abundant clarity. The primary parties in relation to  
42 term of reference 1 are the NSW Police and Detective Chief  
43 Inspector Fox, and in relation to other secondary parties,  
44 they will be provided with copies of any statement or  
45 document that is directly relevant to their interests, not  
46 the entire evidentiary bundle or the entire list and the  
47 contents of the statements.



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THE COMMISSIONER: Thank you, Ms Lonergan, I so direct.

MS LONERGAN: Those are the only matters, thank you, Commissioner.

THE COMMISSIONER: Thank you, Ms Lonergan.

I shall adjourn. Thank you, ladies and gentlemen.

**AT 10.09AM THE COMMISSION WAS ADJOURNED ACCORDINGLY**

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