

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

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

On Thursday, 9 May 2013 at 10.16am
(Day 4)

Before Commissioner: Ms Margaret Cunneen SC

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

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

1 THE COMMISSIONER: Ladies and gentlemen, the question
2 which was raised late yesterday afternoon in relation to
3 the possible excusing of former Superintendent Charles
4 Haggett will be returned to later on today, but it is
5 considered more important to try to progress through the
6 witnesses and in particular to get through Detective Chief
7 Inspector Fox as soon as possible, and go on to other
8 witnesses. So that is what we will do.
9
10 MS LONERGAN: Commissioner, would it be convenient to deal
11 quickly with a couple of transcript corrections, in case
12 they become significant during the evidence today.
13
14 THE COMMISSIONER: Yes.
15
16 MS LONERGAN: The first is page 209 line 44 and 45. There
17 are two years mentioned there. Those years should read
18 "2002 or 2003".
19
20 THE COMMISSIONER: Is that agreed by all other counsel?
21 Yes, thank you. That change will be made.
22
23 MS LONERGAN: The next is on page 229, line 9. The
24 question, as I recollect it, was:
25
26 *Inspector Townsend then said she had in the*
27 *context of Joanne McCarthy being involved*
28 *in the matters.*
29
30 THE COMMISSIONER: Yes. Is that agreed?
31
32 MR ROSER: Yes.
33
34 MS LONERGAN: At page 259, line 46, Mr Cohen assisted me
35 with this transcript correction:
36
37 *Did you deliberately mislead Detective*
38 *Parker and/or Sergeant Little?*
39
40 THE COMMISSIONER: Yes, that word should be there in line
41 46.
42
43 MS LONERGAN: Those are the corrections. Thank you,
44 Commissioner.
45
46 THE COMMISSIONER: Thank you, Ms Lonergan.
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MR ROSER: I'm not sure what's going on, Commissioner. There seems to be a private discussion.

MS LONERGAN: There is just a seating arrangement that needs to be attended to in the short term. I think Detective Chief Inspector Fox can take the witness box, I do not think that is a problem. There is a seating arrangement that will be adjusted now.

(Commissioner confers with DCI Fox)

Commissioner, if the evidence could proceed.

THE COMMISSIONER: Yes, thank you.

<PETER RAYMOND FOX, resworn: [10.18am]

<EXAMINATION BY MR ROSER CONTINUING:

MR ROSER: Q. Mr Fox, you were in court yesterday afternoon when the Commissioner made certain orders in relation to non-publication, weren't you?

A. Yes.

Q. And you knew what those orders were about, didn't you?

A. Yes.

Q. And that was not to say anything to anyone in relation to the application and what transpired in that application; correct?

A. Yes.

Q. Why did you intentionally, after you left this court, make a tweet identifying three police officers who would not be giving evidence in these proceedings?

MR COHEN: I object. Two problems: one, the material that is being cross-examined on is not before the court. The second problem, as I understand the material, it doesn't say what has been suggested. So it should be produced if it is to be examined on properly.

MR ROSER: Commissioner, in relation to cross-examination, the witness does not have to be shown a document before questions are asked of it.

1 THE COMMISSIONER: Could you establish first whether the
2 witness agrees that what you are putting as a fact indeed
3 happened?
4

5 MR ROSER: I asked the question and I think my friend
6 objected before the witness answered it.
7

8 THE COMMISSIONER: I will allow you, Mr Roser, to lay the
9 basis that such a thing in fact occurred.
10

11 MR ROSER: Thank you.
12

13 Q. Did you, after you left this courthouse last night,
14 make a tweet at 5.14 pm in relation to three police
15 officers?
16

17 A. Yes.
18

19 Q. Did you make a tweet in relation to those three police
20 officers who are crucial to these proceedings?
21

22 MR COHEN: I object. There is no way of answering the
23 question without the relevant text being put to the
24 witness, in my respectful submission.
25

26 MR ROSER: This is --
27

28 MR COHEN: May I finish. Under section 135, this question
29 is entirely unfair because its probative value must be
30 outweighed by its prejudicial effect.
31

32 THE COMMISSIONER: I will allow it.
33

34 MR ROSER: Q. Would you answer the question?
35

36 A. It said that three officers will not be appearing. It
37 did not identify them in any way, shape or form.
38

39 Q. Did you say "three crucial police"?
40

41 A. I don't recall, because Mr Cullen explained that
42 I should not even have put it in that context and I deleted
43 it shortly after.
44

45 Q. What was the tweet that you gave?
46

47 A. I think it said, "Just finished my third day in the
witness box. A fourth day tomorrow. Three police" -
I don't know whether I said "critical" - I said, "Three
police may not be appearing to give evidence for health
reasons," or something like that.

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Q. You said, "Three crucial police saying they are too sick to give evidence"?

A. Yes, something along that line, yes.

Q. And you did that intentionally to identify three persons, didn't you?

A. It was my intention just to simply state that - and I believe I had actually read articles in newspapers a week ago that a number of police wouldn't be giving evidence. They weren't identified then. I did not identify them in the tweet I sent yesterday, and for that reason I did not feel that it would be breaching anything. But obviously Mr Cullen advised me a few minutes later that it may be inappropriate and I deleted it immediately.

Q. It is not only inappropriate, it was against the orders of this Commission.

A. Well, my understanding was the order was that they weren't to be named or identified, and I didn't go anywhere near that.

* Q. Who is the three crucial police that you were referring to?

MR COHEN: I object. That will defeat the very purpose this line of questioning is designed to elicit, which is to avoid identification of these people. It is going around in circles and in fact it must be contrary to what the order for publication addresses.

THE COMMISSIONER: Yes, I won't allow that.

* MR ROSER: Q. When you say "police", do you mean to say "serving police"?

MR COHEN: I object. The tweet is what it is. If there is a problem with it, it should be demonstrated to be the text exactly and then examined upon.

MR ROSER: This person is the author of the document, Commissioner. He knows what he's done.

THE COMMISSIONER: Mr Roser, if the tweet says "police", it just says "police"; it doesn't distinguish between serving, former, retired, on sick leave.

1 MR ROSER: That is correct. But the Commissioner's order
2 was in relation to three identifiable people and my
3 submission is this tweet referred to those three people.
4 It could not refer to anyone else. This was an application
5 last night by myself and counsel assisting in relation to
6 three people.

7
8 THE COMMISSIONER: I am just going to check my order,
9 Mr Roser.

10
11 MR ROSER: It wasn't in the transcript because it was
12 redacted last night, so I couldn't check.

13
14 THE COMMISSIONER: Mr Roser, would you repeat your
15 question, please?

16
17 MR ROSER: Which one?

18
19 THE COMMISSIONER: The last one.

20
21 MR ROSER: I forget. If it could be read.

22
23 (Questions marked * read)

24
25 MR ROSER: The first question was: who were these three
26 people he was referring to as crucial police?

27
28 THE COMMISSIONER: Then your next question, I think was,
29 "When you say police, do you mean to say serving police?"

30
31 MR ROSER: Yes.

32
33 THE COMMISSIONER: I won't allow it in that form, Mr Roser
34 I think you can ask about the tweet.

35
36 MR ROSER: Thank you.

37
38 Q. Why did you intentionally put this on your tweet soon
39 after you left this court complex?

40 A. As with a lot of people using social media --

41
42 Q. Can the witness answer the question, thank you.

43
44 MR COHEN: Commissioner, this witness --

45
46 MR ROSER: Do you mind.

47

1 MR COHEN: I object. I object.
2
3 THE COMMISSIONER; I will permit the witness to continue
4 the response he was giving, Mr Roser.
5
6 MR ROSER: Thank you.
7
8 THE WITNESS: A. Like a lot of people, I use social
9 media. It was just simply stating where the matter was up
10 to. I was saying, I had finished my third day, I was
11 coming back tomorrow and that three police weren't well
12 enough to give evidence. I did not identify them in any
13 way, shape or form and I'm not certain as to whether they
14 are still serving or whether they are ex.
15
16 MR ROSER: Q. That is a lie, isn't it, what you just
17 said?
18 A. No.
19
20 Q. Shaun McLeod, isn't he a friend of yours?
21 A. He's an associate. I've kept in contact. I don't
22 know if his papers have been finalised. You may be able to
23 enlighten me, Mr Roser.
24
25 Q. You're not telling the truth, are you?
26 A. About?
27
28 Q. You're not telling the truth about that?
29 A. No, he --
30
31 Q. You know Shaw McLeod has left the police force years
32 ago.
33 A. He stopped going to work, but that doesn't mean that -
34 until his discharge papers are completed, and I know that
35 sometimes that takes years. I actually haven't asked him
36 whether that's actually occurred, and I don't know.
37
38 Q. I suggest to you that your intention with this tweet
39 was to not accept the authority of the Commissioner by --
40 A. No --
41
42 Q. May I finish? By the non-publication order in
43 relation to the three people mentioned in this court
44 yesterday?
45
46 MR COHEN: I object. It has not been established that,
47 one, these people were identified; and, two, that there has

1 been a breach of the order. That is an unfair question.

2

3 MR ROSER: The question was his intent.

4

5 MR COHEN: I maintain my objection. The basis of that
6 very question, even as prefaced with the question about
7 intention, must be a fair footing upon which it is put,
8 otherwise the intention is meaningless.

9

10 THE COMMISSIONER: Mr Roser, without turning to whether or
11 not my order was breached by the tweet, would you just ask
12 about the tweet and the general intention without turning
13 to whether or not it was a breach of the order at the
14 moment?

15

16 MR ROSER: Q. What was your general intention in naming
17 three crucial police saying, "They are too sick to give
18 evidence"?

19

20 MR COHEN: I object. There was no naming. The evidence
21 is clearly to the contrary. The question is fundamentally
22 unfair.

23

24 THE COMMISSIONER: That is right, Mr Cohen.

25

26 Would you ask it again, please.

27

28 MR ROSER: Q. You knew what the order was yesterday,
29 didn't you?

30 A. My understanding of the order was that the names of
31 the officers were not to be raised outside of this
32 Commission, and the reason behind their non-attendance
33 stated. So that was my understanding, whether it was
34 mistaken, but I elected to delete it on advice a short time
35 later.

36

37 Q. You deleted it a few minutes after you posted it,
38 didn't you?

39 A. Yes.

40

41 Q. I suggest to you the reason why you deleted it, you
42 knew that it was contrary to the non-publication order
43 which was granted by the Commissioner yesterday?

44 A. I deleted it on advice from Mr Cullen, who said he
45 wasn't sure whether it was covered and it would be a safer
46 option not to have it out there in any case, and I didn't
47 hesitate in following that advice and deleted it

1 immediately.
2
3 Q. Who were the police that you were thinking of when you
4 made this tweet?
5
6 MR COHEN: I object.
7
8 THE COMMISSIONER: I will allow it, Mr Cohen.
9
10 THE WITNESS: The three that I was thinking of were Shaun
11 McLeod, Charlie Haggett and Kirren Steel.
12
13 MR ROSER: Q. The intent was to publicise that fact in
14 this tweet?
15
16 MR COHEN: I object.
17
18 THE COMMISSIONER: No, I will allow that, Mr Cohen. .
19
20 THE WITNESS: No.
21
22 MR ROSER: Q. Well, what was your intention?
23 A. Just simply - you know, I've said a number of things
24 about the proceedings as it's run its course, and I suppose
25 just a mild commentary on how I see the day's events.
26
27 Q. You see, I suggest to you that this is another example
28 of you not accepting authority and doing your own thing.
29 A. No.
30
31 Q. It falls into the same category where you could never
32 accept that you were not the officer in charge of Strike
33 Force Lantle?
34 A. I disagree with both those propositions.
35
36 Q. And when you were directed not to speak to the media,
37 also you would not accept that from a person in authority
38 to tell you to do something?
39 A. I think I've articulated that answer a number of times
40 here, and I'm not changing my response in relation to that.
41 It remains the same.
42
43 Q. And to cover up that aspect, you would lie to anyone
44 that asked you any questions about those breaches?
45 A. Mr Roser, to cover that up, the simple way would have
46 been for me to keep my mouth shut, accept everything that
47 was going on and not draw attention to it. The day I spoke

1 out about it, I realised from that moment that I would have
2 to speak completely and honestly about the whole situation
3 exactly as it was. I did so with that full knowledge.
4

5 Q. You see, I suggest to you that that from about July
6 2010, right to the present day, you have used every
7 endeavour to undermine Strike Force Lantle?

8 A. I have used every endeavour to try to investigate the
9 matter and try to assist the investigators wherever
10 I could. I would like my attention drawn to where you say
11 that I undermined it, so that I can explain it to you where
12 you have misunderstood.
13

14 Q. I suggest you did this by not only leaking information
15 on an ongoing process to the media but also generating
16 publicity to undermine that strike force?
17

18 MR COHEN: I object. That is too wide a question. We
19 need to have particularity for such a serious accusation of
20 this type.
21

22 THE COMMISSIONER: Would you break it up into components,
23 please?
24

25 MR ROSER: Commissioner, this is just a global. I will be
26 taking him to specifics soon. I withdraw that.
27

28 Q. You undermined this strike force continuously from
29 about July 2010 until recently by leaking information about
30 that strike force to the media?
31

32 MR COHEN: I object and it is the same objection. It is
33 too global. This requires, in my respectful submission,
34 particularity. These very significant serious allegations
35 that are being put should be properly founded on the basis
36 that it directs attention to what is said are the
37 particulars that are being undermined, not by a global - as
38 my friend puts it - allegation of naughtiness.
39

40 THE COMMISSIONER: Mr Cohen, Mr Roser can put a general
41 question about whether the witness intended to undermine
42 the strike force over that period by his actions and I will
43 allow it.
44

45 MR COHEN: But by what actions is what I'm putting,
46 Commissioner.
47

1 MR ROSER: If my friend reads the brief that has been
2 served on him, he will find out.

3

4 THE COMMISSIONER: Mr Roser, those comments by counsel are
5 not going to be of assistance.

6

7 I will allow you to put the general proposition that
8 the witness intended to undermine Strike Force Lantle over
9 that period by the conduct which you have described. Would
10 you put it again, Mr Roser.

11

12 MR ROSER: Yes, thank you.

13

14 Q. From about July 2010 until presently you have
15 attempted to undermine the strike force by leaking
16 information about that strike force?

17 A. Quite the reverse, Mr Roser. My understanding is
18 operation Lantle never existed at the time you are
19 suggesting, number 1. Number 2, I was very enthusiastic
20 and keen to support it and I actually would suggest that if
21 the victims are available, that they be actually asked as
22 to my encouragement to have them talk to the investigators
23 from operation Lantle. Thirdly, I felt that the
24 investigators that were working on the operation were in
25 fact the ones that were undermining the investigation as
26 such.

27

28 Q. Also I suggest to you that you sought to continue to
29 undermine that investigation by generating adverse
30 publicity in relation to the merits of that particular
31 investigation?

32

33 MR COHEN: I object. This again is too global. There
34 is no specificity at any time, and this must offend section
35 135 of the Evidence Act.

36

37 THE COMMISSIONER: Mr Roser, would you kindly move on to
38 the specific matters.

39

40 MR ROSER: Yes. I will go to another issue at this time
41 and come back to that. Thank you.

42

43 Q. I suggest also that you, between the period of
44 June/July 2010 until 6 December 2010, concealed relevant
45 evidence from the strike force?

46 A. The strike force didn't exist in July, and I handed
47 the brief over on 2 December, not the 6th.

1
2 Q. I suggest to you that you handed over, not a brief but
3 some statements that you had taken, on 6 December to the
4 Lantle team?
5 A. I don't know what you are talking about, sir.
6
7 Q. Which aspect don't you understand?
8 A. What I handed over on 6 December.
9
10 Q. You handed over the statements, didn't you, to
11 Metcalfe?
12 A. I did nothing on 6 December.
13
14 Q. When did you hand those over?
15 A. On 2 December.
16
17 Q. So what did you hand over at that particular time? ?
18 A. I handed over three statements and a large number of
19 documents that had been forwarded to me by Joanne McCarthy.
20
21 Q. What statements did you hand over?
22 A. The statement of [AK], the statement of [AJ] - I'm
23 just being safe that the last person isn't - and the
24 statement of Mr Stanwell.
25
26 Q. What about [AL], why didn't you hand that over?
27 A. I didn't have it.
28
29 Q. You didn't have any statement from [AL]?
30 A. No.
31
32 Q. Didn't you take a statement from [AL] prior to
33 2 December 2010?
34 A. No.
35
36 Q. Just in relation to Mr Stanwell's statement, when did
37 you take that?
38 A. The date that is on that statement.
39
40 Q. What date was that?
41 A. If I could have access to that document I would be
42 able to enlighten you.
43
44 Q. Don't you remember? Don't you remember?
45 A. I can give you an approximate date. I don't remember
46 off the top of my head.
47

1 Q. You've given evidence that you are a very experienced
2 investigator, many years experience?
3 A. You put to that me, sir, and I think my answer was
4 that I have.
5
6 Q. I think it was put to you by Ms Lonergan and you said
7 the number of years experience you have had, didn't you?
8 A. I've been in the police force 35 years, yes.
9
10 Q. And you're saying what a good investigator you are?
11 A. Did I?
12
13 Q. Have you said that?
14 A. Are you putting it to me that do I --
15
16 Q. No, I'm not putting it to you. I put the contrary to
17 you, Mr Fox, but what do you say about yourself? ?
18 A. I don't think I've said that I'm a good investigator.
19 I haven't used those words, sir.
20
21 Q. What are you, as an investigator, in your opinion?
22 A. I think I'm experienced.
23
24 Q. When you take a statement from someone in relation to
25 a complaint, you investigate that complaint, don't you?
26 A. Not always, no.
27
28 Q. You don't?
29 A. No.
30
31 Q. If someone put forward a complaint that they have been
32 sexually abused by a priest, you wouldn't follow that up?
33 Is that what you're saying?
34 A. No, that's not what I'm saying, sir. I'm answering
35 your question, but that's not what I'm saying.
36
37 Q. What are you saying?
38 A. What I'm saying is you take statements for many
39 purposes. Sometimes it may be a statement that you are
40 taking for a colleague. In that case, I would not
41 personally be following that up. Other occasions it may be
42 a witness or it may be in relation to another incident, but
43 in the case that you are now suggesting, where I take a
44 statement from a victim alleging sexual abuse, yes, I would
45 follow that up and investigate it.
46
47 Q. So you took Mr Stanwell's statement?

1 A. Yes.
2
3 Q. Why did you take his statement?
4 A. Because I felt that by speaking to Mr Stanwell it may
5 corroborate the evidence of [AJ].
6
7 Q. He didn't mention [AJ], did he?
8 A. No.
9
10 Q. He mentioned another person, didn't he?
11 A. Yes.
12
13 Q. Did you go and investigate and ask questions of that
14 particular person, after he made a complaint that he
15 observed certain things?
16 A. No.
17
18 Q. Isn't that incompetence by an investigator?
19 A. No.
20
21 Q. So a person makes a complaint that he observes certain
22 things that a priest is doing to a young child, and you
23 don't even go and investigate or ask that victim that she's
24 been assaulted? Is that what you're saying?
25 A. What I'm saying, sir, is that the purpose of me
26 taking that statement was to corroborate aspects of
27 [AJ]'s statement. I haven't suggested that the two
28 knew each other, but evidence in his statement was
29 able to corroborate aspects of [AJ]'s statement.
30 and --
31
32 Q. It's [AJ], for a start.
33 A. Sorry.
34
35 THE COMMISSIONER: Yes, Mr Fox, if we can be careful
36 about that.
37
38 MS LONERGAN: Commissioner, I ask for an order for
39 non-publication order.
40
41 THE COMMISSIONER: There will be no publication of the
42 name that has just been uttered by the witness in the
43 witness box.
44
45 THE WITNESS: Sorry, Commissioner.
46
47 And the intention, down the track, would have been for

1 me to make further inquiries. But, as has already been
2 explained, before I had that opportunity, I was directed to
3 cease my inquiries on the matter.
4

5 MR ROSER: Q. You see, [AJ]'s, statement, I suggest to
6 you, hadn't been complete at the time when you spoke to
7 Stanwell?

8 A. I'm not certain of that. I think the vast majority of
9 it had been, and I was certainly aware of the aspect in
10 [AJ]'s statement that would be able to be corroborated by
11 talking to Mr Stanwell.
12

13 Q. Why didn't you go and speak to the alleged victim that
14 he identified quite plainly that she had been sexually
15 abused by McAlinden?

16 A. Because, at that stage, to my knowledge, I did not
17 know what her name was, nor did Mr Stanwell, because
18 obviously the young child had grown and we assumed had
19 probably married, changed her surname. There would have
20 obviously been a lot more inquiries to be done, and it
21 would have been my intention at some point of time to speak
22 to her, but --
23

24 Q. Did you make any inquiries after Mr Stanwell's
25 statement to speak to that particular person?

26 A. I don't remember.
27

28 MS LONERGAN: Excuse me, Mr Roser, I just want to clarify
29 the non-publication order I requested in relation to a
30 name. Just for absolute clarity, the name mentioned is not
31 to be uttered in any context at all.
32

33 THE COMMISSIONER: Yes, I make that order. Thank you,
34 Ms Lonergan.
35

36 MR ROSER: Q. In relation to [AJ], was that in relation
37 to allegations around the Maitland-Newcastle diocese?

38 A. Yes.
39

40 Q. In relation to Stanwell, was that in relation to
41 allegations which occurred at Merriwa?

42 A. Yes.
43

44 Q. Not around Maitland or Newcastle?

45 A. Merriwa, sir, is in the Maitland-Newcastle diocese.
46

47 Q. It is some distance from here, isn't it?

1 A. So is Perth, but it's still in Australia.
2
3 MR ROSER: Commissioner, could you ask the witness to
4 answer the questions.
5
6 THE WITNESS: Sorry, it is some distance, but, yes, it's
7 still in the diocese.
8
9 MR ROSER: Q. In relation to [AJ], the first time you
10 disclosed her existence was on 2 December 2010, wasn't it?
11 A. Yes.
12
13 Q. Why did you conceal her identity to the strike force
14 to that date?
15 A. Because she had asked me to keep her identity
16 confidential.
17
18 Q. You've got a clear recollection of that, have you?
19 A. Oh, yes.
20
21 Q. As you have a clear recollection that she consented to
22 you giving her statement to a journalist?
23 A. She did.
24
25 Q. And I suggest to you that is just a total lie.
26 A. No.
27
28 Q. I suggest to you that Ms McCarthy, over a long period
29 of time, tried to get [AJ] to give her her statement --
30 A. I don't know.
31
32 Q. -- you know that, don't you?
33 A. I don't know.
34
35 Q. You know nothing about that at all? Is that what
36 you're saying?
37 A. I explained yesterday that Ms McCarthy --
38
39 Q. No, can you answer the question.
40 A. I'm trying to, sir.
41
42 Q. Well, answer it.
43 A. Yesterday I said that I had declined Ms McCarthy's
44 request much earlier. She was in constant contact with
45 [AJ]. I know that from speaking to both individuals, and
46 I'm quite confident in that fact. And it was down the
47 track when I actually said, "Joanne McCarthy has asked for

1 a copy of your statement. Do you want to have me forward a
2 copy of that?" And she consented.

3
4 Q. That is an absolute, as you use the term, lie.

5
6 MR COHEN: I object. The basis for that proposition needs
7 to be founded on more than just counsel's flourish from the
8 Bar table. If the evidence is to the contrary, it should
9 be identified properly.

10
11 THE COMMISSIONER: Not necessarily, Mr Cohen. The
12 question is, "Isn't that a lie?"

13
14 MR ROSER: That's correct, Commissioner.

15
16 THE WITNESS: My response to that is if that is not a lie
17 and I intended to do that without the consent of [AJ],
18 I would have done so much earlier when I was asked much
19 earlier, and the very reason I declined to do that was for
20 that specific reason. I would not have done so without
21 that consent.

22
23 MR ROSER: Q. You did it to assist Ms McCarthy, didn't
24 you?

25 A. I actually did it just as much to assist me.

26
27 Q. Yes, that's correct, isn't it?

28 A. Yes.

29
30 Q. To keep your friendship with Ms McCarthy on foot for
31 you to gain publicity?

32 A. No, sir, you've misunderstood what I said.

33
34 Q. I don't think so, Mr Fox

35 A. Sir, I said - I think I know what I said more than
36 you, Mr Roser. What I was saying --

37
38 Q. I don't think so, Mr Fox.

39 A. Mr Roser, I beg to differ. What I was saying was that
40 Joanne McCarthy, when she originally organised for me to be
41 in contact with [AJ], relayed to me everything virtually
42 that I later on typed in her statement, and was rattling
43 off a lot more, and I actually checked with a number of
44 aspects to make sure I did not omit any. Part of the
45 purpose - the purpose of me forwarding a copy of that was
46 to ensure that everything that was able to be linked into
47 that statement, and other individuals that Ms McCarthy had

1 spoken to, were able to be connected with it.
2
3 Q. When you took the statement from [AJ], did you type
4 that onto a computer?
5 A. Yes.
6
7 Q. Did you keep that on the computer system?
8 A. Yes.
9
10 Q. And being a statement, as you as an investigator of
11 the police force, that was the property of the NSW Police
12 Service; correct?
13 A. In the way I viewed it, [AJ] as well, yes.
14
15 Q. You left the police service as an active person on
16 sick leave in about June 2012, was it?
17
18 MR COHEN: I object. That misstates the basis - he didn't
19 leave anything.
20
21 MR ROSER: I am just trying to frame it. I will withdraw
22 the question.
23
24 THE COMMISSIONER: Could you put it in an inoffensive way.
25
26 MR ROSER: Q. I am led to believe you left the active
27 service, as such, of the police service in about June 2012
28 or July 2012; correct?
29 A. A bit like the individuals we mentioned earlier, I'm
30 still an active serving police officer, although I have not
31 been going to work, yes.
32
33 Q. When you left that active service at that time, did
34 you take this particular statement with you?
35 A. I have the statement at home, because I had it on a
36 memory stick. It was my personal one that I had taken the
37 statement on originally, and I had a number of other work
38 documents and various other items on, and that was already
39 at home way before I stopped going to work.
40
41 Q. That was the property of the NSW Police Service,
42 wasn't it?
43 A. The memory stick, I purchased myself personally.
44
45 Q. The information on there?
46 A. Oh, the information? It was partly the property of
47 the NSW Police Service, yes.

1
2 Q. And did you print the copy that you sent to
3 Ms McCarthy from that memory stick?
4 A. I did not print it.
5
6 Q. Did you send it by email as an attachment from your
7 memory stick at home?
8 A. Yes, sir.
9
10 Q. Subsequently, did you download that statement again
11 around November 2012?
12 A. Yes.
13
14 Q. Did you get the consent of [AJ] to have her statement
15 before the national cameras on Lateline on 8 November 2012?
16 A. When did they have that, sir?
17
18 Q. I beg your pardon?
19 A. When did they have that? I don't know what you're
20 talking about.
21
22 Q. You had her statement when you gave the interview on
23 8 November 2012, didn't you?
24 A. I did not, no. If someone has told you that, sir,
25 it's incorrect.
26
27 Q. What statement did you have with you when you were
28 being interviewed by Mr Jones?
29 A. None.
30
31 Q. So if he said during the broadcast that you had the
32 explosive statement of the whistleblower with you, that
33 would be totally wrong, would it?
34 A. It would.
35
36 * Q. I suggest to you also that in 2008 you attempted to
37 undermine the investigations of Strike Force Georgiana?
38
39 MR COHEN: I object.
40
41 THE COMMISSIONER: Perhaps the question isn't finished yet,
42 is it, Mr Roser?
43
44 MR ROSER: It is at this stage.
45
46 MR COHEN: How can this be relevant to this matter before
47 you, Commissioner? It doesn't touch even remotely on

1 anything to do with the terms of reference, I would have
2 thought.
3
4 THE COMMISSIONER: I don't believe that necessarily to be
5 the case, Mr Cohen. I would be assisted by some reference
6 to what went on at that time.
7
8 MR COHEN: Then, in my submission the question needs to be
9 very carefully framed, not a broad, global enunciation.
10
11 THE COMMISSIONER: Would you put the precise mode of --
12
13 MR ROSER: I certainly will, Commissioner. It is
14 interesting my friend objects before the question is asked
15 but I will do my best to --
16
17 THE COMMISSIONER: Mr Roser, I thought you said you had
18 finished the question.
19
20 MR ROSER: I had finished the question, yes.
21
22 MS LONERGAN: Commissioner, I hesitate to interrupt, but
23 may I rise to say, as I think I did the day before
24 yesterday, that personal comments from counsel don't assist
25 the process.
26
27 THE COMMISSIONER: Yes. Thank you, Ms Lonergan.
28
29 That is correct, gentlemen, and we will try to run a
30 civil inquiry if we can possibly manage it.
31
32 MR ROSER: Thank you, Commissioner.
33
34 Q. Have you answered the question?
35 A. The question again, sir?
36
37 MR ROSER: Could that be read back to the witness,
38 Commissioner?
39
40 (Question marked * read)
41
42 MR COHEN: I maintain my objection.
43
44 THE COMMISSIONER: Yes. I think you undertook, Mr Roser,
45 to be more specific.
46
47 MR ROSER: Yes, I did, yes.

1
2 Q. Have you answered that question?
3
4 THE COMMISSIONER: No, Mr Roser, you were going to be
5 specific.
6
7 MR ROSER: Okay.
8
9 Q. You see, I suggest to you that on 30 May 2008, you
10 spoke to Ms McCarthy in relation to Strike Force Georgiana?
11 A. No.
12
13 Q. You never spoke to her on that day?
14 A. Yes.
15
16 Q. Did you speak to her around that date in relation to
17 Strike Force Georgiana?
18 A. No.
19
20 Q. So it would be wrong to suggest to you that you
21 communicated with her and informed her that Strike Force
22 Georgiana were just investigating [NP]?
23 A. I can explain that situation, if you would like,
24 Mr Roser.
25
26 Q. You just said you didn't have any communication with
27 her, did you?
28 A. Not in relation to Strike Force Georgiana, that's
29 correct. I did not say that I didn't have any contact with
30 her. If you would like to play that back, I actually said
31 I had contact with her, but your specific question was, did
32 I speak to her about operation Georgiana. My response to
33 that was and still is, "No."
34
35 Q. You had a conversation with her in relation to the
36 investigation of [NP], didn't you?
37 A. The conversation was --
38
39 Q. Didn't you?
40 A. Yes.
41
42 Q. And you knew that was being conducted by Strike Force
43 Georgiana at Lake Macquarie local command?
44 A. No.
45
46 Q. I suggest to you that you referred Ms McCarthy to
47 Lake Macquarie to speak to the officer in charge there in

1 relation to [NP] and whether they were investigating that
2 particular person?

3 A. Yes.

4

5 Q. Yes what? Did you do that?

6 A. Yes.

7

8 Q. You weren't connected with Strike Force Georgiana,
9 were you?

10 A. No.

11

12 Q. You had no relevance to that investigation, did you?

13 A. No.

14

15 Q. And you had just found out that Georgiana, or the
16 officer in charge, Detective Sergeant Faber, was conducting
17 or beginning to conduct an investigation of [NP]?

18 A. No.

19

20 Q. You referred Ms McCarthy to Detective Faber at Lake
21 Macquarie, didn't you?

22 A. Yes.

23

24 Q. To ascertain whether they were investigating this
25 particular person?

26 A. Yes.

27

28 Q. Why did you do that?

29 A. My memory of it is I was at Newcastle police station,
30 Ms McCarthy rang me - the first time I think I'd had
31 contact with her for many years - explaining she was
32 Joanne McCarthy from the Newcastle Herald, and asked if we
33 were investigating [AJ][sic], who she had just been told by
34 a source, I don't know, within the Catholic Church had just
35 been stood down because police were investigating, and she
36 asked if I was investigating. I explained, "No, we're
37 not." And she said, "Do you know who might be?" I said,
38 no, I can only suggest that you ring around. I know
39 they've been doing that work at Lake Macquarie. I said,
40 "Give Charlestown a ring and see if they know anything
41 about it."

42

43 That was the extent of the call. I knew nothing of
44 the matter. I did not know that they were investigating;
45 it was simple, "We're not doing it here. Give them a
46 buss."

47

1 MS LONERGAN: Commissioner, can I correct something for
2 the record. The witness said "[AJ]" --

3

4 THE COMMISSIONER: Q. I think [AJ] has been used when you
5 perhaps meant to say, Mr Fox, [NP].

6 A. Sorry, I did indeed.

7

8 Q. So [AJ] has no relevance to your answer?

9 A. No.

10

11 THE COMMISSIONER: Thank you.

12

13 MR ROSER: Q. I suggest to you that you informed
14 Ms McCarthy, that this particular person, [NP], had just
15 become a suspect and for her to contact the strike force to
16 ascertain what they were doing in relation to that suspect?

17 A. I have no knowledge whatsoever of [NP]. I actually
18 had no idea that he was in fact being investigated until
19 Joanne McCarthy told me that that was her belief, and
20 I simply referred her to ring another station. I had no
21 knowledge whatsoever in any way, shape or form that that
22 person was even under investigation at that time.

23

24 Q. I suggest to you also around this period you informed
25 Ms McCarthy that Strike Force Georgiana was investigating a
26 Father Peter Brock?

27 A. I know nothing of the Brock matter, other than what
28 I've read in the media.

29

30 Q. I suggest to you that you told her that, that they
31 were investigating?

32 A. I don't know what they are investigating, if they
33 were. I don't know. I've read in the newspapers that
34 that's the case, but that is the only knowledge I had on
35 the matter. I have no knowledge of it that I could have
36 imparted then because I still don't know the details of
37 that particular matter. So it's an impossibility for me to
38 have told her anything about either of those two
39 individuals.

40

41 Q. I suggest to you that that's a total lie. That's a
42 lie.

43 A. No. I still am confused as to why you think that
44 I was involved in that investigation or why I would have
45 knowledge of it or how I would have knowledge of it,
46 because, sir, I can assure you I did not.

47

1 Q. Did you ever look at an intel which was created in
2 relation to these matters?

3 A. I don't know, sir. The police system would have a
4 record of what intel I've looked at, at what periods of
5 time.
6

7 Q. I suggest to you that you informed Ms McCarthy in
8 relation to Brock and that at the same time that you knew
9 Father Brock was related to a person who was in authority
10 at Ms McCarthy's establishment?

11 A. No.
12

13 Q. You didn't know that Father Brock's brother was the
14 editor of the Newcastle Herald?

15 A. I have learnt that since, but I definitely didn't know
16 that at that time.
17

18 Q. I suggest to you that you gave her information in
19 relation to this investigation.

20 A. Sir, I did not know about the investigation. I had no
21 knowledge of any of the particulars of it whatsoever, and
22 if you've been told otherwise, you've been told wrong.
23 I have no knowledge of it. The phone call was quite
24 innocent. It was a reporter - as has happened many a time,
25 asking about a particular crime. I've had it for murders,
26 armed robberies or whatever - saying, "Are you
27 investigating this"? "No, we're not. Ring the next
28 command." And that is the total extent of that phone call.
29 That was it in its entirety.
30

31 Q. And I suggest to you that were spoken to by the crime
32 manager at Lake Macquarie in relation to your interference
33 in Strike Force Georgiana in relation to these matters?

34 A. He rang me up, Brad Tayler --
35

36 Q. Is that correct or not? Were you spoken to by the
37 crime manager at Lake Macquarie local command in relation
38 to your interference in Strike Force Georgiana?

39 A. I had a conversation.
40

41 Q. The answer is yes, is it?

42 A. "Spoken to" seems that it's a one-way commentary. I a
43 had conversation and I've explained what I just explained
44 to you, sir, and that was the end of it. Had obviously the
45 matter been more than that, I would have imagined that, by
46 now, I well and truly would have had an internal
47 investigation and a complaint issued. That's never

1 happened, sir. So obviously the officer you are suggesting
2 was satisfied that what I had told him - and I have told
3 this court here today - was in fact the truth and took the
4 matter no further, end of story.

5
6 Q. The same as the investigator took your - at face value
7 as the truth when they conducted the complaint in relation
8 to not speaking to Ms McCarthy after the meeting on
9 2 December 2010, when you told a pack of lies?

10 A. That, sir, is a totally different matter. I'm saying
11 that there was no complaint generated by Brad Tayler or
12 anybody else because I explained to Brad Tayler very
13 clearly that it was simply an inquiry. I didn't know for a
14 fact that they were investigating it there. I said, "Give
15 them a ring." He rang up to see what I did know, and
16 I satisfied him, and he had no concerns about it. Quite
17 clearly he didn't check because the matter has never been
18 raised with me again until today, sir.

19
20 Q. And that would be the same situation, wouldn't it, in
21 relation to the answers you gave in the record of interview
22 plus your statement in relation to the complaint of
23 2 December 2010, until emails were produced to this
24 Commission?

25
26 MR COHEN: I object. There are three propositions rolled
27 up in that question.

28
29 THE COMMISSIONER: Yes, it is rather hard to understand,
30 Mr Roser. Would you put it more precisely.

31
32 MR ROSER: Yes. Thank you.

33
34 Q. You would agree, wouldn't you, that in relation to the
35 complaint that was made against you in March 2011 in
36 relation to not speaking to the media - do you remember
37 that investigation? And the complaint?

38 A. March 2011? No, sir, I don't.

39
40 Q. Wasn't there an investigation in relation to you of
41 not speaking to the media - May 2011?

42 A. Yes, there was, sir.

43
44 Q. And you lied, as you have given evidence, in relation
45 to that investigation?

46 A. Yes.

47

1 Q. Why did you have reluctance to answer that? What was
2 the difficulty with that question?
3 A. I was just running the question through my mind, when
4 you said, "You've lied in relation to giving evidence" and
5 I was applying it to whether the evidence I've given here
6 is what you are talking about or whether the evidence
7 I gave on that interview is relevant, and I was just
8 assessing it in my mind to make sure it was an accurate
9 answer. That was the reason for my hesitation and I would
10 hope, sir, if I do hesitate, to give the correct answer,
11 that it would be appreciated.
12
13 Q. The question was quite plain that I referred to --
14
15 MR COHEN: I object.
16
17 THE COMMISSIONER: Mr Roser, let's move on to something
18 else.
19
20 MR ROSER: Q. But you admit that you have lied in
21 relation to that interview?
22 A. I have, sir. I think I have said that quite a few
23 times.
24
25 Q. I suggest the only reason you have admitted that is
26 because certain emails have been produced to this
27 Commission that showed that you have broken that direction?
28 A. Sir, it was never my intention to mislead or lie to
29 this Commission at any stage. I have been more than happy
30 to acknowledge to this Commission that I have been speaking
31 to Joanne McCarthy and I had concealed that from the
32 police. It's as simple as that and I don't think that
33 that's complex. I have a clear understanding, sir, and
34 I would hope that you do too, sir.
35
36 * Q. In relation to giving information to Ms McCarthy in
37 relation to Strike Force Georgiana, [NP] and Peter Brock --
38
39 MR COHEN: I object. This must be, by now, exhausted in
40 terms of going to the bounds of relevance of this inquiry.
41
42 MR ROSER: I am referring to another matter.
43
44 MR COHEN: Georgiana cannot be relevant to this inquiry.
45
46 THE COMMISSIONER: I haven't heard the full question. So
47 I will listen to what's about to fall from Mr Roser.

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MR ROSER: Thank you, Commissioner.

* Q. In relation to your answers in giving information to Ms McCarthy in 2008, was that your policy all the way along --

MR COHEN: I object.

THE COMMISSIONER: It's still not finished, Mr Cohen.

MR ROSER: Q. In relation to dealing with the media?

THE COMMISSIONER: Don't answer until we have got the question, please, Mr Fox.

MR ROSER: Q. In relation to dealing with the media and Ms McCarthy?

MR COHEN: I object. That wasn't the evidence. That was not the evidence, Commissioner. That question is rolled up in a way that is entirely unfair. That is not what fell from this witness.

THE COMMISSIONER: Because it came out in three goes, I'm going to have to examine it. Could it be read back, please.

(Questions on marked * read)

THE COMMISSIONER: Mr Roser, that doesn't reflect the evidence and I won't allow that question.

MR ROSER: Thank you.

Q. Did you speak to Ms McCarthy in 2007 in relation to an investigation?

A. I spoke to many journalists. I don't recall whether I did or didn't.

MR ROSER: If the witness could turn up in bundle 2, number 81.

Q. Do you have that? Do you have that, witness?

A. I do, Mr Roser, yes.

Q. Page 333, second entry. Is that a case note that you

1 put in there?

2 A. It appears so, yes.

3

4 Q. That's how the media is to be dealt with, isn't it,
5 I suggest?

6 A. In what context, sir?

7

8 Q. When they ring up inquiring about suspects that are
9 being investigated?

10 A. I'll just read the entry, sir, and I'll be able to
11 give you a fuller response.

12

13 Sir, in all honesty, I don't recall if I was the one
14 who made that entry. I'm only making the assumption from
15 the handwriting over on the right. I don't know who has
16 written that; it's not my writing.

17

18 Q. Do you recollect speaking to Ms McCarthy in relation
19 to McAlinden?

20 A. I don't.

21

22 Q. At that particular time?

23 A. No.

24

25 Q. At that time in 2007 I was - the only reason I'm
26 hesitant - I may have said that, but I'm thinking, why
27 didn't I just simply say to her that he was dead, which
28 I full well knew? I don't know who's made that entry, sir
29 and if it is correct - I may have been the one that spoke
30 to her, and I'm not denying that I was, but I'm not certain
31 about it. I don't recall the conversation, but if that's
32 recorded there, someone obviously has spoken to her and
33 that's the only reason I'm hesitant in responding.

34

35 Q. I suggest to you that's the proper way of dealing with
36 the media when they inquire about suspects?

37 A. Sir, if we did that every time somebody from the media
38 rang the police station, I think we would have three
39 full-time staff doing it. You do that whenever the
40 opportunity presents or if you feel that there's some
41 relevance in why the inquiry is being made, but not each
42 and every single occasion that you get an inquiry from the
43 media, no.

44

45 Q. Yes, that can be returned.

46

47 From your recollection, when did you start

1 communicating on a regular basis with Ms McCarthy?
2 A. June 2010.
3
4 Q. And that continued to such a state that you sent your
5 own report to her to look at; is that correct?
6 A. Yes.
7
8 Q. Is that your normal practice, to send a report in
9 relation to the victims' allegations to a journalist?
10 A. No, sir, it is not, and that's - I believe I had never
11 done it before that occasion.
12
13 Q. Why did you do it on this particular occasion?
14 A. I believed that the conduct of police was to confine
15 the investigation of what formed the basis of task force or
16 Strike Force Lantle to exclude much other evidence and that
17 the reasons behind doing that were in all likelihood
18 corrupt.
19
20 Q. Prior to sending that report to her, if you turn up
21 tab 81 again, that's the case report in relation to [AE];
22 correct?
23 A. It may be. I'm unable to say definitively "Yes" or
24 "No" at this stage without going through it in more detail.
25
26 Q. The case title, you've only got to look at that page?
27 A. Yes.
28
29 Q. What does that say?
30 A. "Person of interest Denis McAlinden."
31
32 Q. Case title, do you have a problem with that?
33 A. "Sexual offence".
34
35 Q. Does it have a name before that?
36 A. It has a letter. I can't see what the name is, sir.
37
38 Q. I beg your pardon.
39 A. It has a letter [AE]
40
41 Q. Why don't you look at the pseudonyms?
42 A. Yes, sir, I can see who that is now, sir.
43
44 Q. This is the one that you said you were involved in in
45 this investigation, isn't it?
46 A. Yes.
47

1 Q. I suggest to you your only involvement was the
2 supervising sergeant of the actual investigator from 2009?
3 A. Sir, if you contact the --
4
5 Q. From 1999, I'm sorry.
6 A. If you contact the husband of [AE], I think you'll
7 find --
8
9 Q. Can you answer --
10 A. -- there has been much communication between us other
11 than.
12
13 MR ROSER: Could the witness answer the question, please,
14 Commissioner.
15
16 THE COMMISSIONER: The question was, was the witness the
17 supervising sergeant; is that right?
18
19 MR ROSER: Yes.
20
21 THE WITNESS: Initially, yes.
22
23 MR ROSER: Q. The person who was the investigator wasn't
24 you - was it?
25 A. I was not the primary investigator.
26
27 Q. I suggest you weren't even anything as an investigator
28 in relation to this matter; you were supervising another
29 police officer?
30 A. The answer to that is there isn't a defined line where
31 it sort of says supervision ends here and involvement in
32 the investigation commences at that point. I was present
33 when - nearby when Detective Watters obtained the
34 statement. I got, on that occasion, to meet [AE] and, over
35 a long period of time, I spoke to her over the telephone,
36 as I did her husband. You may define that as supervision,
37 sir, but I would also suggest that, even though it may be
38 partially supervision, it was also investigating.
39
40 Q. Did you take the complainant's statement?
41 A. Yes.
42
43 Q. Did you make any inquiries with the Bishop's chancery
44 in relation to the whereabouts of Mr McAlinden?
45 A. No.
46
47 Q. Did you make any inquiries with Centrelink in relation

1 to his whereabouts?
2 A. No.
3
4 Q. Did you make any inquiries of Telstra as to his
5 whereabouts?
6 A. No.
7
8 Q. Did you take out the first instance warrant for the
9 arrest of McAlinden?
10 A. No.
11
12 Q. When the matter was resurrected, the outstanding
13 warrant, the officer in charge there was noted as the
14 proper investigator, not you. Do you agree with that?
15 A. Sorry, can you ask that question again, sir?
16
17 Q. Yes. When Strike Force Peregrine --
18 A. There was no strike force, sir.
19
20 Q. Operation Peregrine?
21 A. Yes. Sorry, the question?
22
23 Q. Were you involved in that?
24 A. Yes.
25
26 Q. What aspects did you have?
27 A. I was overlooking it.
28
29 Q. Of that actual operation?
30 A. Part of it yes.
31
32 Q. Wasn't that conducted by a person TL Nicholas, not
33 you?
34 A. Yes, Tristan Nicholas was one of my staff, yes.
35
36 Q. He was the one that was doing it, wasn't he?
37 A. I assigned him to do that, yes, I hope so.
38
39 Q. He noted there that the officer in charge of the
40 investigation was Detective Sergeant Mark Watters, didn't
41 he?
42 A. Yes.
43
44 Q. And he was the officer in charge of that
45 investigation?
46 A. The date of that, sir, was?
47

1 Q. 2005.

2 A. In 2005, Detective Watters was no longer there.

3

4 Q. He was still investigating this particular matter,
5 because he contacted Western Australia to ascertain the
6 whereabouts of McAlinden, didn't he?

7 A. We both did. I also contacted Western Australia and
8 spoke to --

9

10 Q. Who did you speak to in Western Australia that you say
11 you investigated or asked to investigate this? Can you
12 answer that question?

13 A. I'm reading, sir. I'm trying to find, to see if
14 there's a name recorded.

15

16 Q. I suggest that there's no name recorded because
17 I suggest you didn't do it. Sergeant Watters was the
18 person responsible for making inquiries in Western
19 Australia.

20 A. If you look at page 1 of that, it's actually a
21 narrative created by me which clearly says:

22

23 *Police spoke to Sergeant Peter Gilmore of*
24 *Subiaco Police, Western Australia.*

25

26 I can now tell you, sir, that I contacted Sergeant Peter
27 Gilmore from Subiaco police.

28

29 Q. In 2007, was it? Is that when you made the entry, in
30 2007? Is that when you made inquiries to see whether
31 McAlinden was still in Western Australia?

32 A. Sir, it doesn't indicate, other than the writing at
33 the side, whose writing - I don't know who that is.

34

35 Q. You see, I suggest it would be a bit hard to make
36 inquiries when the police service already knew in 2005 that
37 he had died?

38 A. No, sir, I was contacted by Helen Keevers from the
39 Maitland-Newcastle diocese prior to Father McAlinden dying.
40 She indicated to me where he was, in a health care facility
41 in Subiaco, Perth. As a result of her contacting me,
42 I didn't leave it go for two or two and a half years before
43 I made the inquiry. I contacted Subiaco police, had them
44 actually go out there, and I'm almost sure I spoke to
45 somebody at the hospital facility as well. There you go.

46

47 *... spoke to June Spargo of medical records*

1 *at St John of God Hospital who confirmed*
2 *that the priest had in fact died ... on 30*
3 *November 2005.*

4
5 So, no, sir, I don't believe that I did those inquiries two
6 years later.

7
8 Q. On the note there it's got that the entry was made in
9 2007.

10
11 MR COHEN: I object. That does not characterise it
12 properly. The entry, being the printed entry, and the
13 relevant narrative, that's what allows this to be fixed in
14 time, and on that basis somebody's manuscript entry is not
15 a basis of fact for that question, in my submission.

16
17 THE COMMISSIONER: Thank you, Mr Cohen.

18
19 Mr Roser, is there anything which reliably identifies
20 the date on which the entries were made into the COPS
21 system?

22
23 MR ROSER: Not by the document, except the entries on the
24 side, the handwritten notes.

25
26 THE WITNESS: Regardless of the note, sir, I can assure
27 you I made inquiries.

28
29 MR ROSER: You haven't been asked any question yet,
30 Mr Fox.

31
32 Q. In 2005 who do you say was the investigator?

33 A. Sir, what appears --

34
35 Q. Was it you?

36 A. I believe so.

37
38 Q. And I suppose that if you made inquiries, you would
39 have got an application for extradition for him?

40 A. No, because he was dying of cancer and we would never
41 have been given permission to move him at that late stage.

42
43 Q. So you were the officer in charge. Did you make an
44 application prior to that for extradition of him?

45 A. I didn't need to. One was already on file from when
46 Detective Watters did that, quite some time earlier.

47

1 Q. Some time - sorry, what was that?
2 A. Detective Watters, I believe, did that some time
3 earlier.
4
5 Q. What, much earlier than 2005?
6 A. I don't know when he did it. He did it before I made
7 those inquiries, yes.
8
9 Q. You are saying in 2005 you are the officer in charge
10 of the matter, aren't you? Are you saying that?
11 A. No, what I'm saying, sir, is --
12
13 Q. No, are you saying that? That you were the officer in
14 charge of this matter in 2005?
15 A. Yes.
16
17 Q. And where is Watters at that particular time?
18 A. Watters was no longer with the detectives' office
19 there. I spoke to Mark Watters during this process, and as
20 it turned out, he had come separately into the information
21 that McAlinden was dying. We spoke to each other and we
22 discovered that we had both been crossing over and making
23 inquiries in Western Australia, and I suppose had the
24 situation arisen, both of us - which is normally the
25 practice - two of us would have travelled to Western
26 Australia and brought him back. And Mark Watters and
27 I spoke about that and we would have been the two officers
28 attending. I realised he was no longer in the detectives'
29 office, but with his very good knowledge - and like
30 occurred to me later - I decided to avail myself of that
31 and utilise him, continuing on with that case with myself.
32
33 Q. You see, I suggest what you have just put forward is
34 just total fabrication.
35 A. No.
36
37 Q. Have a look at number 21 in the first volume. Do you
38 see that document?
39 A. Yes.
40
41 Q. An application for the extradition of Denis McAlinden?
42 A. Yes.
43
44 Q. Who signed that?
45 A. No.
46
47 Q. This order?

1 A. No.
2
3 Q. Sorry?
4 A. Did I sign it?
5
6 Q. No, I didn't ask you that.
7 A. Sorry, I misheard you, sir.
8
9 Q. I said, who signed it?
10 A. Mark Watters.
11
12 Q. And it went to the crime manager, Lower Hunter?
13 A. Yes.
14
15 Q. Who's that?
16 A. I don't know that signature.
17
18 Q. Don't you?
19 A. I'm not sure.
20
21 Q. It's not you?
22 A. No, no; no definitely not me.
23
24 Q. That's on 16 September 2005?
25 A. Yes.
26
27 Q. So this was an application by Sergeant Watters in
28 2005. Where is your name there that you are the officer in
29 charge --
30 A. It's not on there, sir.
31
32 Q. -- that made the application?
33 A. It's not on that application.
34
35 Q. Isn't it?
36 A. No.
37
38 Q. Then it goes to the commander Lower Hunter, on
39 19/9/2005?
40 A. Yes.
41
42 Q. Who is the signature there, do you know?
43 A. Charles Haggett.
44
45 Q. Then it goes back to the crime manager Lower Hunter,
46 then to Sergeant Watters?
47 A. Yes.

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Q. Where is your name there?

A. It's not on there, sir, it's not on the document at all.

Q. No, because you weren't investigating this particular matter in 2005, were you?

A. That document doesn't say that, sir.

Q. It shows that the original investigator, Detective Sergeant Watters, was the officer in charge?

A. Sir, it actually shows that - it was Sergeant Watters; Mark Watters had returned to general duties in a uniformed role. As I explained, it was a detective investigation, I was a detective sergeant and it was my intention to ask Mark to travel with me to Western Australia. When I contacted him, he had already started that, commencing those procedures, as he had received the information from a completely independent source. And, as I said, as you do in those situations, you go, "Well, jeez, I didn't know you knew that." He said, "I didn't know you were making the same inquiries." But I was able to assist him with the information that I had learnt and we spoke about it. But to suggest I wasn't involved whatsoever, sir, is wrong.

Q. I suggest that the reason why you are so strident in relation to this investigation is to give your false story that you had been involved in the investigation of McAlinden for over 10 years - that's correct, isn't it?

A. No.

Q. I suggest to you that you had no involvement in relation to this in investigating McAlinden in 1999, right through until you changed the records?

A. Sir, I think if you read those documents there, they speak for themselves.

Q. Yes, I think that's correct, Mr Fox.

THE COMMISSIONER: Mr Roser, is that a convenient time for a break?

MR ROSER: Yes, thank you.

SHORT ADJOURNMENT

THE COMMISSIONER: Ladies and gentlemen, before we

1 proceed, lest there be any curiosity about the brief
2 exchange I had with Detective Chief Inspector Fox just
3 before he began his evidence this morning, I was simply
4 asking him whether he was well, because I apprehended that
5 he may have suddenly become unwell. And then, when his
6 wife approached into the well of the court, I asked him if
7 she was all right, and he, of course, answered that
8 everything was all right, she was simply changing seats.
9 So I put that on the record so that there are no secrets.

10
11 Mr Roser.

12
13 MR ROSER: Thank you, Commissioner.

14
15 Q. Do you have number 21 there? I referred you to it
16 earlier. It is in bundle 1.

17 A. Yes.

18
19 Q. I have taken you to the application for the
20 extradition of Denis McAlinden.

21 A. Yes.

22
23 Q. I took you to page 66 and I took you to the report
24 submitted by MJ Watters, the sergeant?

25 A. Yes.

26
27 Q. I also took you to the crime manager Lower Hunter,
28 with the signature there --

29 A. You did.

30
31 Q. -- Detective Chief Inspector.

32 A. Yes.

33
34 Q. Dated 16/9/05? Do you see that?

35 A. Yes.

36
37 Q. And the commander Lower Hunter, who supports the
38 notation by the crime manager Lower Hunter?

39 A. Yes.

40
41 Q. That's dated 19 September 2005?

42 A. Yes.

43
44 Q. I think you acknowledged that that's Commander
45 Haggett?

46 A. Yes.

47

1 Q. Then it goes back to the crime manager at Lower
2 Hunter, then to Sergeant Watters?
3 A. Yes.
4
5 Q. I suggest to you that you know who the crime manager
6 Lower Hunter was on 16 September 2005, don't you?
7 A. I suspect I do, but I'm not certain of the signature.
8
9 Q. Who do you suspect it is?
10 A. I think it was Mr Humphrey.
11
12 Q. That's Detective Chief Inspector Wayne Humphrey?
13 A. Yes.
14
15 Q. The notation, would you read that to yourself?
16 A. Yes.
17
18 Q. That notation by Detective Chief Inspector
19 Wayne Humphrey states:
20
21 *The public interest in matters of this kind*
22 *is significant. The brief is consistent*
23 *with many briefs of this type and it would*
24 *ultimately be a matter for the jury in a*
25 *subsequent trial. The advanced age of the*
26 *POI should not be a consideration.*
27
28 That's the notation there?
29 A. It is.
30
31 Q. That's signed off, supported by the commander of Lower
32 Hunter, Commander Haggett?
33 A. Yes.
34
35 Q. Then it goes back to the crime manager, Detective
36 Chief Inspector Wayne Humphrey, and then to the officer in
37 charge; correct?
38 A. Yes.
39
40 Q. Just before the break, I think I was taking you to
41 number 81, which is in the second volume. That is a case
42 report in relation to [AE], as you acknowledged earlier on?
43 A. Yes.
44
45 Q. If I can take you to page 335 and the case history -
46 this is a computer-generated document, is it?
47 A. I believe so.

1
2 Q. You believe so because you've used it, haven't you?
3 A. Well, that's why I believe so, yes.
4
5 Q. If I can take you to that case history there, when you
6 go into this document, that puts in who goes in and the
7 authorisation and date; is that correct?
8 A. Yes.
9
10 Q. For a person to go into an investigation, you've got
11 to be authorised to go into it, to protect the integrity of
12 the investigation?
13 A. You've got to be allocated on that case, to be able to
14 go in and update an entry, yes.
15
16 Q. If I can take you to the first entry, that's when it
17 was initiated, 13 October 1999? Do you see that, the last
18 entry?
19 A. "Link initiate event" and "Add police employee role,"
20 yes.
21
22 Q. "Add police employee role," what does that mean? Is
23 that the investigators?
24 A. That's where you initially - you take the event and
25 basically you just click on the - there's a number of
26 fields you go through, but basically you just click on that
27 and you create a case which comes into being. And
28 generally speaking, that will allow you to enter the
29 person, in most cases, that created the original event, to
30 be added to that case.
31
32 Q. On 2 February 2000 the case was suspended. Do you see
33 that?
34 A. Yes.
35
36 Q. And that was authorised?
37 A. Yes.
38
39 Q. And the person who did that was Inspector Mark
40 Watters?
41 A. Yes, I had Mark relieving in that role for a while.
42 Sorry, I retract that. Where it says inspector, that's his
43 current rank when this would have been printed up.
44 Obviously that wouldn't have been his rank at the time.
45
46 Q. But he suspended the case?
47 A. Yes.

1
2 Q. You're not noted there as being the officer in charge
3 who suspended the case?
4 A. No.
5
6 Q. 26 September 2007, is the next entry, isn't it?
7 A. Yes.
8
9 Q. That's "Add police employee role"?
10 A. Yes.
11
12 Q. That's adding another person to the file; is that
13 right?
14 A. Yes.
15
16 Q. That's you?
17 A. Yes.
18
19 Q. That's the first time you had been entered into this
20 file?
21 A. In all likelihood, yes.
22
23 Q. You reopened the case on 26 September 2007?
24 A. Yes.
25
26 Q. At that time McAlinden was dead?
27 A. Yes.
28
29 Q. But you still opened it?
30 A. Yes, I did.
31
32 Q. Then the next entry, on the same day, "Investigation
33 complete case," that is an entry by you?
34 A. Yes. Well --
35
36 Q. Is that right?
37 A. Yes.
38
39 Q. On the same day also there's a notation "Finalise
40 case"?
41 A. Yes.
42
43 Q. The finalised case means you've gone out of the
44 system, and that occurred on 27 December 2007; correct?
45
46 MR COHEN: I object. It doesn't say that at all.
47

1 MR ROSER: It says, 27 December 2007, "Finalise case."
2
3 MR COHEN: It doesn't appear.
4
5 MR ROSER: I'm looking at the date and what's stated
6 there.
7
8 Q. On 27 December 2007, does it say after that, "Finalise
9 case"?
10 A. Yes.
11
12 Q. And that's authorised; correct?
13 A. Yes.
14
15 Q. It's you?
16 A. Yes.
17
18 Q. Then on 23 November is when you go into it again, and
19 you "transfer out case"?
20 A. Yes.
21
22 Q. Do you see that?
23 A. Yes.
24
25 Q. I suggest to you, what you did there, is you
26 transferred the case from where it was to your command, or
27 where you were at Port Stephens?
28 A. Yes.
29
30 Q. Why did you transfer the case out of where it was,
31 Lower Hunter, to Port Stephens on 23 November 2010?
32 A. Because at the time that case was created, the command
33 was referred to as Lower Hunter Command. In June 2008, the
34 command was split in two, and there were a lot of
35 difficulties on the computerisation aspect of suspended
36 finalised cases. Because they had originally been
37 determined as Lower Hunter, the technicians had a lot of
38 difficulty assessing where those cases should go. So what
39 ultimately occurred is every case, whether they belonged to
40 Port Stephens, as this particular case should have, because
41 the crimes relating to [AE] occurred at Raymond Terrace, it
42 was still allocated to Central Hunter, as were all the
43 cases preceding that. But quite clearly, the crime having
44 been committed in Port Stephens, at Raymond Terrace, the
45 case was brought across.
46
47 Q. What does "Transfer case" mean?

1 A. It was transferred from one local area command to the
2 next, electronically, to gain access from that neighbouring
3 command.
4

5 MS LONERGAN: May I interrupt my learned friend. A name
6 was used by the witness. Could that name please be subject
7 to a non-publication order, Commissioner.
8

9 THE COMMISSIONER: Yes, I make that order. Thank you.
10

11 THE WITNESS: I do apologise.
12

13 MS LONERGAN: Can I remind the witness to try to consult
14 with the pseudonym list.
15

16 THE WITNESS: Yes, I will put it in front of me and I'll
17 try not to do that.
18

19 MR ROSER: Q. So you transferred the case that day and
20 you finalised it again on that particular day?

21 A. Yes. Of course, the case rightfully, of course,
22 belonged to Raymond Terrace, for the reasons I've stated,
23 and it should have been retained in the holdings at Raymond
24 Terrace.
25

26 Q. You see, in relation to - I suggest to you - when you
27 reopened the case on 26 September 2007, in reopening that
28 case you made an entry on that day, didn't you?
29

30 A. Yes.
31

32 Q. And you made yourself the officer in charge?
33

34 A. Well, on that case, simply because no one else was on
35 it at that stage and someone else needs to be allocated to
36 it to update it, yes.
37

38 Q. The suspect was dead?
39

40 A. Yes.
41

42 Q. But you made yourself the officer in charge,
43 I suggest, of a non-existent investigation?
44

45 A. If you read, sir, the case was suspended, which it
46 hadn't been finalised. It necessitated being finalised,
47 and I opened the case to update the reason why it was now
going to be finalised, because it had been omitted to have
been done in 2005. So I, of course, then updated from the
documents that I had, that I had, in fact, in 2005
contacted police in Western Australia and also the nurse

1 I referred to earlier, June Spargo, of the medical records
2 section of the hospital, and then updated that event to
3 allow that case to be finalised, because had I done so
4 without updating that, people would have been going, "Well,
5 hang on. No, there's an offender there, why has this been
6 closed?" So that entry did that, and I believe I always
7 changed the status - and I don't have enough documentation
8 here, but I believe I would have changed the status of the
9 POI, which would have listed Denis McAlinden from "wanted"
10 to "deceased".

11
12 Q. On 27 December 2007 you removed yourself as officer in
13 charge, didn't you?

14 A. I don't know whether the system - when it's closed,
15 I think it just does that. I don't specifically recall
16 removing myself. I think that's just an automatic
17 function.

18
19 Q. When you reopened it on 23 November 2010, you made
20 yourself officer in charge again, didn't you?

21 A. Well, you can't open it without doing that. The thing
22 is, the case when it's shut, removes all police from it, so
23 it can't be opened until you actually allocate it to
24 someone, to allow them to make an entry. So I've obviously
25 decided that, to allocate it to myself, because I've
26 obviously had a reason to open it.

27
28 Q. You see, I suggest to you that you did that, made
29 those entries, so that if anyone is looking at the system,
30 they would think that you were the officer in charge of
31 this particular investigation from 1999?

32 A. The reason I did that is for the reason --

33
34 Q. Is that correct or not?
35 A. No.

36
37 Q. I suggest to you that you did that so that
38 subsequently in a report you could state that you had been
39 investigating McAlinden for over a decade?

40 A. Mr Roser --

41
42 Q. Did you?
43 A. No, sir.

44
45 Q. You see, you opened the case on 23 November 2010?
46 A. Yes.

47

1 Q. And you closed it on the same day?
2 A. Yes.
3
4 Q. That particular day, or the day after, did you write a
5 report to your commanders, superiors?
6 A. I submitted a report on 25 November. I'm not certain
7 whether I did it on that same day or the day before that or
8 a couple of days.
9
10 Q. Can you bring back your memory and see, if you can,
11 when you started doing that particular report?
12 A. I can't recall when I started doing it, no.
13
14 Q. I suggest to you that in that particular report, you
15 referred to [AE] in some detail?
16 A. Yes.
17
18 Q. And stating that you were the investigator in relation
19 to that investigation?
20 A. Could I have a look at my report?
21
22 Q. Is that correct?
23 A. Did I say those words, sir?
24
25 Q. Is that correct?
26 A. I don't know, sir.
27
28 Q. You have no memory of that?
29 A. I would like to - if I had the report in front of me,
30 I could have a read of that and confirm that.
31
32 Q. Don't you have a copy of that report - at home?
33 A. It is somewhere.
34
35 Q. At home?
36 A. Yes.
37
38 Q. Have you read it since this inquiry, this Commission
39 was established?
40 A. Some months ago.
41
42 Q. I suggest to you, as I have suggested to you, that the
43 sole reason for opening and transferring the file and
44 putting yourself as officer in charge was so that you could
45 assert that you had been investigating McAlinden for over a
46 decade?
47 A. That doesn't make sense, sir, when you look at the

1 documentation. It doesn't - there's no logic behind that
2 statement, sir, no.

3

4 Q. If I can take you to volume 2, tab 79?

5 A. Yes.

6

7 Q. That's the report you submitted to your superiors on
8 25 November 2010?

9 A. Yes.

10

11 Q. Can you recollect what shift you were working on that
12 particular day, or did you have a regular shift as the --

13 A. I predominantly was on day work, but I did fluctuate
14 that somewhat. Do I remember now what shift I was on?
15 Absolutely not, no.

16

17 Q. Your regular shift was day work?

18 A. Generally, yes.

19

20 Q. As the crime manager at Port Stephens?

21 A. Yes.

22

23 Q. What time in the morning do you start?

24 A. Normally I start at 7, 7am.

25

26 Q. In relation to the second paragraph, under the second
27 heading, "Background" you assert:

28

29 *In 1999 Detective Mark Watters and*
30 *I investigated ...*

31

32 That's not correct, is it?

33 A. Yes, it is.

34

35 Q. I suggest to you the only input you had was being the
36 supervising sergeant of the investigator at the police
37 station?

38 A. No, sir.

39

40 Q. You say that yourself and Detective Watters swore out
41 a warrant?

42 A. Mark specifically swore it out after we discussed it,
43 yes.

44

45 Q. In your document you said you and he did it, didn't
46 you?

47 A. Well, only one person can do it, of course. But, as

1 I explained, we discussed it and Mark went over to the
2 courthouse and swore that out.
3
4 Q. Can you do your best in relation to your recollection
5 of when you typed this particular report?
6 A. As I've already explained, I can only imagine that
7 I've done it in the days preceding. It may have been all
8 on the 25th, it might have been partly on the 23rd, 24th,
9 25th. I don't recall exactly.
10
11 Q. So you could have done this on the 25th when you were
12 at work; is that what you're saying?
13 A. If I was at work on the 25th, yes. I believe I was,
14 and I could have done it then, yes.
15
16 Q. Is that your recollection, that you would have done it
17 at work on the 25th, the day you submitted it to your
18 commanders?
19 A. No, quite often I take a lot of work home. Obviously
20 with interruptions and different things during the day, for
21 that reason I do a lot of my work and save it on to a
22 memory stick, and I quite often take work home with me and
23 complete it there. I may have done some at home, some at
24 work, or all at home or all at work, I don't recall.
25
26 Q. You would agree, wouldn't you, that this report sets
27 out in detail a number of investigations that were
28 occurring in the NSW Police Service for suspects that had
29 been investigated?
30 A. Yes.
31
32 Q. And also victims, alleged victims?
33 A. Yes.
34
35 Q. And that includes [AE], which is the second paragraph?
36 Do you see that? The second line, under "Background"?
37 A. Yes.
38
39 Q. The third page, "Comment", [AJ] is mentioned, [AL] and
40 [AK]. Do you see that?
41 A. Yes.
42
43 Q. Did any other police officer contribute to you
44 drafting this particular report?
45 A. The report is entirely my own work.
46
47 Q. When you typed it, you signed it and you sent it off

1 to your superiors?
2 A. Yes.
3
4 Q. You're not telling the truth, are you?
5 A. Yes.
6
7 Q. Are you? You've got a clear recollection of that?
8 A. Yes.
9
10 Q. You see, I suggest to you that you drafted this report
11 and then you sent it off to your friend Ms McCarthy?
12 A. I did tell --
13
14 Q. For her to amend it?
15 A. No, sir.
16
17 Q. You didn't?
18 A. No.
19
20 Q. You did not ask her to amend this particular report?
21 A. I may have asked for suggestions or any other
22 information, because, as I've said many a time, she had a
23 very good knowledge of what had been going on. But
24 I didn't tell her to amend it.
25
26 Q. You didn't?
27 A. No.
28
29 Q. You've got a clear recollection of that, have you?
30 A. My recollection --
31
32 Q. Have you got a clear recollection of that?
33 A. No.
34
35 Q. Why don't you?
36 A. Because if I was going to submit it, I would have
37 taken it on board, I wouldn't have just said, "Listen, you
38 change whatever is in it and send it back to me," without
39 having a look at it. I would have considered anything else
40 she may be able to connect, because the idea of it was to
41 assist the police force in putting all of this information
42 together, as I said before, not just in relation to
43 McAlinden. But there were a lot of connections and other
44 aspects that I wanted to clearly convey to superior
45 officers that we needed to do something a bit more
46 substantive than what was occurring.
47 Q. Do you remember when you sent that report to her, if

1 she was - were there any changes to it?
2 A. No, there wasn't. She didn't contribute anything to
3 it at all.
4
5 Q. So the original document that you sent her, you sent
6 off to the commanders?
7 A. It was unchanged, yes.
8
9 Q. It was unchanged
10 A. Yes.
11
12 Q. And you've got a clear recollection of that?
13 A. Yes, I do, yes.
14
15 Q. And you couldn't be mistaken with that at all?
16 A. Sorry?
17
18 Q. You couldn't be mistaken, could you?
19 A. No.
20
21 Q. You see, I suggest to you are lying.
22
23 MR COHEN: I object. The notion that somebody could be
24 mistaken and then the proposition immediately following on
25 that if they are not mistaken, they are lying is not a
26 clear way to address this issue, in my submission.
27
28 MR ROSER: I will deal with it, Commissioner.
29
30 THE COMMISSIONER: Yes, Mr Roser.
31
32 MR ROSER: Q. If I can take you to tab 77, could you
33 read that to yourself, the email.
34 A. Yes.
35
36 Q. Have you read that?
37 A. Yes.
38
39 Q. That's an email from you to Joanne McCarthy?
40 A. Yes.
41
42 Q. Dated 24 November 2010 at 23.50?
43 A. Yes.
44
45 Q. There you ask her in the first line:
46
47 *Have a read of the attached report and let*

1 *me know what you think.*
2
3 A. Yes.
4
5 Q. What were you asking her to do?
6 A. To give her view on whether there were other aspects
7 or connections to other clergy or links to other victims or
8 other information that she had, that may have been able to
9 enhance that report for police purposes, to give them a
10 much clearer understanding of a lot of the connections.
11
12 Q. Then in the next paragraph:
13
14 *PS: It is getting late and I haven't*
15 *proofread so please let me know any*
16 *grammar ...*
17
18 Do you see that?
19 A. Yes.
20
21 Q. "Or amendments"?
22 A. Yes.
23
24 Q. So you are asking her to amend your document?
25 A. That's not what it says, sir.
26
27 Q. "Any grammar or amendments you feel might help"; what
28 do you mean by "you feel might help"?
29 A. Just better phraseology or any other information. As
30 I said, amendments, in that, was she aware of any other
31 clergy or victims or situations; if so, let me know what
32 they are, I'll include them in the report and it will
33 enhance what the police holdings are.
34
35 Q. You say that she didn't make any amendments to the
36 document itself?
37 A. She didn't, no. She read through it and she said,
38 "No, you've pretty well - it's fairly good."
39
40 Q. She went a bit further than that. She said it was
41 excellent, didn't she?
42 A. I don't know, sir; she may have.
43
44 Q. I suggest to you just behind that document is the
45 report that you sent her; is that correct?
46 A. Yes.
47

1 Q. I suggest to you, you have given evidence that with
2 this particular report that you sent her, she made no
3 amendments and you submitted that particular report to your
4 commanders that day, or the next day?

5 A. She made no amendments. Are you suggesting, sir, that
6 it was slightly changed, or a line or two?

7
8 Q. No, I'm not suggesting anything. I'm just repeating
9 your evidence.

10 A. I didn't include anything else that Joanne McCarthy
11 said. I may - you know, if there's something in it like a
12 couple of words added or a line changed, I may have done
13 that, but generally, nothing to my knowledge, substantively
14 was changed, if at all.

15
16 Q. You see, you have given evidence just a few minutes
17 ago that you didn't make any changes whatsoever to the
18 document that you sent Joanne McCarthy. What's the truth?

19 A. The truth is that none of the information - there was
20 no information provided by Joanne McCarthy that I felt
21 could be included in that report. Like most people, when
22 you type something up, I may have proofread it again the
23 next day, changed a line or put in a comma or rephrased
24 something, but that would have been the extent of it.

25
26 Q. You see, I suggest to you there was numerous changes
27 made to that document after it was returned to you, and the
28 one you presented to the commanders?

29
30 MR COHEN: I object. This requires specificity. If it is
31 being suggested this is an overt lie to you, Commissioner,
32 then we need to do this line by line, word by word.

33
34 THE COMMISSIONER: Mr Roser is entitled, Mr Cohen, to put
35 that general proposition that there were numerous changes
36 made, and then perhaps he proposes to go through them one
37 by one. Is that right, Mr Roser?

38
39 MR ROSER: I will do that if that's what is required.

40
41 MR COHEN: It is.

42
43 MR ROSER: It will take some time.

44
45 THE WITNESS: Mr Roser, in all likelihood that may have
46 been the case. Again, I think anyone who has typed six
47 comprehensive page, when you sit down and proofread it,

1 I think most people here would understand that they have
2 gone over that a second time themselves and added, changed.
3 But there was nothing, from my recollection, that I added
4 from what Joanne McCarthy told me, no.

5
6 Q. You said --

7 A. If I did, I would have been happy to say so, because
8 I think it would only have enhanced it and I would have no
9 problem in telling you that, but I don't recall that
10 occurring.

11
12 Q. Originally you said you made no changes from the
13 document you sent Ms McCarthy. What's your position now?

14 A. No, what I was saying, sir, is the proposition --

15
16 Q. I'm just repeating your evidence. Did you give that
17 evidence just about five minutes ago?

18
19 MR COHEN: I object. That's not the evidence.

20
21 THE COMMISSIONER: Mr Roser, there is a difference between
22 whether there were any changes made as a result of
23 suggestions or amendments made by Ms McCarthy and whether
24 the witness, for his own reasons, made some amendments.

25
26 MR ROSER: No, I asked a question specifically before that
27 in relation to the document itself, and I asked the
28 witness, "The document that was sent to Ms McCarthy, were
29 there any changes made to that which were submitted to the
30 commander," and the witness said no.

31
32 THE COMMISSIONER: Yes, that's true, Mr Roser. The
33 witness said she didn't contribute anything to it at all.
34 I think your next question was, "The original document was
35 unchanged," and the witness said "Yes."

36
37 MR ROSER: Yes.

38
39 THE WITNESS: And those statements still stand. As
40 I said, there may have been grammatical changes or things,
41 but Ms McCarthy contributed - Mr Roser, just to make it
42 very clear, Ms McCarthy, in the end, I did ask for her
43 advice. I would have been more than happy to include in
44 that report any information or additional information that
45 she could have added, because that was the purpose in
46 sending it to her. She didn't do so. I may have made
47 continual changes to it before, and that's my recollection

1 of how the final report came into being, and being sent.

2

3 Q. And you say that, if you did make any change, they
4 would have been very minor. Is that what you're saying?

5 A. I don't recall the changes. All I do recall - and
6 I haven't sat down and scrutinised the two and highlighted
7 changes through it. No doubt, Mr Roser, you will do that
8 for me, but at the end of the day what I submitted - and
9 that's what I'm asserting - the final report that
10 I submitted was my own work. There may have been
11 information that I included in that report that I had been
12 told by Joanne McCarthy weeks or months earlier, and
13 I think that the police force should be only too grateful
14 for Ms McCarthy's assistance in putting that together, and
15 should have welcomed that information as any complainant or
16 witness wanting to help the police force.

17

18 Q. Is this your normal habit: Before you do a report
19 which is submitted to your superiors, you send it off to a
20 journalist to get checked?

21

22 MR COHEN: I object.

23

24 MR ROSER: Q. Is that your normal behaviour?

25

26 MR COHEN: That question was already put and answered
27 comprehensively before the adjournment.

28

29 MR ROSER: I don't think so.

30

31 MR COHEN: It was. I have a distinct memory of it, with
32 respect. That's the phrase that was put, that's the way it
33 was put.

34

35 THE COMMISSIONER: "Is that your normal practice"?

36

37 MR COHEN: Yes; and the response was, "No, I have never
38 done it before."

39

40 THE COMMISSIONER: I do recall a question and answer to
41 that effect, Mr Roser.

42

43 MR ROSER: Thank you.

44

45 Q. So this is the first time you have ever done that?

46 A. Yes, sir.

47

1 Q. Don't you think that's improper behaviour by a police
2 officer, sending off confidential information to a
3 journalist and then sending it to your commanders to act
4 upon?
5 A. No.
6
7 Q. If I can just take you to that document, at tab 78.
8 Have you got that?
9 A. Document 78, yes.
10
11 Q. And 77?
12 A. Yes.
13
14 Q. If you agree with me, I'll just take you what to
15 I suggest were changes which were made in the two
16 documents. Do you understand what I'm saying?
17 A. Yes.
18
19 MR COHEN: I object. This will not be a fair process.
20 There is no way this witness can put together in his mind
21 two dissimilar documents in different locations in the
22 bundle and agree to propositions that are put to him.
23 There should be a document prepared in a form that can be
24 put to him and it should be put to him whether or not he
25 did or did not make the changes. That is the only way to
26 do it.
27
28 THE COMMISSIONER: Mr Cohen, it is surely not that
29 difficult for the witness, if he wishes to do it, to take
30 the two documents out of the bundle and make the
31 comparison.
32
33 MR COHEN: If the Commission pleases. I have noted my
34 objection.
35
36 MR ROSER: Q. Have you got both documents there?
37 A. I have, Mr Roser.
38
39 Q. I'll refer first to document 77, then I'll refer to
40 the other document, if that's suitable, document 78. Do
41 you understand what I'm saying?
42 A. Yes.
43
44 Q. The date is different; is that correct?
45 A. Yes.
46
47 Q. If I can take you under "Background", so that the

1 minor matter of "priest" has been put in lower case. Do
2 you see that?
3 A. Yes.
4
5 Q. A little bit further down, the paragraph commencing
6 "Bishop Malone," do you see that?
7 A. Yes.
8
9 Q. The second sentence?
10 A. Yes.
11
12 Q. That's been changed, hasn't it?
13 A. Yes.
14
15 Q. Who suggested to you, if anyone did suggest, or
16 yourself, to change it from "immediate" to "immediate
17 defiance"?
18 A. Me. Like I explained earlier, sir, I proofread it
19 again and no doubt I've made a couple of small changes like
20 that. The date at the top shouldn't be misunderstood, by
21 the way, the date at the top right-hand corner under the
22 tab number 77, is because the document automatically, when
23 it's opened up, prints out the date on which it's opened.
24 So I certainly didn't draft that report on 6 March 2013.
25 That just simply denotes the date that I opened and printed
26 that document.
27
28 Q. If I can take you to page 2, down the bottom of the
29 page, the last line down, certain words have been entered
30 there, additional words?
31 A. That's exactly the sort of alterations I was talking
32 about that I would have made, yes.
33
34 Q. And put in there "by the church"; correct?
35 A. Yes.
36
37 Q. If I can take you to the next page, down the bottom of
38 the page, if you read that paragraph.
39 A. The last paragraph?
40
41 Q. Yes, to yourself.
42 A. On which document, sir?
43
44 Q. In relation to - well, just the comparison. I just
45 take you to the second last line, "McAlinden"?
46 A. Yes.
47

1 Q. You added "have" in there; a minor change. Do you see
2 that?
3 A. Which part? "McAlinden" is there more than once.
4
5 Q. The second last line?
6 A. Yes.
7
8 Q. After "and" you added "have" in there.
9
10 THE COMMISSIONER: "Have never got over the trauma."
11
12 MR ROSER: Q. Do you see that?
13 A. Yes.
14
15 Q. After "trauma" there was added a full sentence, hasn't
16 there?
17 A. Yes.
18
19 Q. Which wasn't in the other document; correct?
20 A. Yes, that's what I've added.
21
22 Q. And the pseudonym "[AK] still feels guilty of not
23 being able to protect" her own daughters?
24 A. Yes.
25
26 Q. Where did you get that information from?
27 A. [AK].
28
29 Q. And who added it in that document, yourself?
30 A. Yes.
31
32 Q. That's one of the minor matters that you said you've
33 made amendments for?
34 A. It is, yes.
35
36 Q. I take you to page 313 in tab 77 and page 322 at
37 tab 78. Do you see that?
38 A. Yes.
39
40 Q. You changed "school teacher" to "mother"?
41 A. Sorry, which paragraph?
42
43 Q. The second one.
44 A. Sorry, it's just that the documents that I have aren't
45 lined up exactly. So it's the second paragraph in annexure
46 77 or 78?
47

1 Q. Tab 78 at page 322. You have changed the word
2 "schoolteacher" to "mother"; correct?
3 A. Yes.
4
5 Q. Then you made extensive, I suggest, changes after
6 that, didn't you?
7 A. I may have, sir. That's exactly what I was explaining
8 to you earlier. In all likelihood, they are the changes
9 that I've made. I don't shy away from it. There's nothing
10 sinister there, it's quite normal. I do that all the time
11 and I think most people do.
12
13 Q. Didn't you say you made only minor changes, when
14 I asked you the question before?
15 A. Sir, we've gone through six pages and you've pointed
16 out a few.
17
18 Q. Is that the answer?
19 A. Yes, and I stick --
20
21 Q. Are you sure Ms McCarthy didn't suggest these changes
22 to you?
23 A. Mr Roser, absolutely positive. I cannot make that any
24 clearer, sir. No, I did those changes myself. I proofread
25 it. I think that is something all of us do every day when
26 making reports of this nature. Your suspicions are
27 unfounded, sir.
28
29 Q. But, as your evidence is, you do not send a report
30 that is going to your superiors to a media person to see
31 whether they should amend the document, do they?
32 A. I have answered that a number of times, sir. I don't
33 know whether you wish me to give a different answer but I'm
34 going to continue to answer it the same way.
35
36 Q. What you have added there, or someone has added there,
37 "was" after "who", you took out a number of words, didn't
38 you.
39
40 MR COHEN: I object to that reference to "someone".
41
42 THE COMMISSIONER: Could you take out the asides,
43 Mr Roser.
44
45 MR ROSER: I will withdraw that.
46
47 THE COMMISSIONER: Thank you.

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MR ROSER: Q. You took out the words "saw her troubled teenage son come". Do you see that?

A. Again, sir, if you can assist me with the annexure because the paragraphs still don't line up.

Q. It was the words after what I just referred to there?

A. Yes, I've changed that sentence around, quite obviously. Obviously, reading it again, I felt it was much more accurate with those changes. That was something I already knew. I didn't need anyone's assistance. I had spoken to that particular victim considerably earlier. That was information I obtained from her. I reread that and I thought, "No, I can better phrase it this way," and I made the change.

Again, sir, I can only continue to reiterate that those changes are simply everyday things that I've done and I didn't - I asked for Ms McCarthy's assistance. If she had told me something substantive, sir, I would have been happy to include it and I would tell you now, "Yes, I put this in from Ms McCarthy." I don't shy away from that and I would have welcomed her input, but the fact is she wasn't able to give me any great suggestions. As she said, my original report was excellent. I never got that good a remark from my school teachers.

Q. So if the report was so excellent from her, what made you want to change it?

A. I think we're all able - I think - well, I don't think, I know, whenever I generally write something or do something, I generally hand it to somebody else and say, "Would you mind proofreading this for me," because, quite often, our eyes will sweep over a word or something that we read in there that's not there and somebody else reading it will pick it up.

Q. This is not changing that, this is amending the document herself. You asked her, besides the grammar, were there any amendments which would help?

A. Yes, I did.

Q. So you added there.

*... was unaware of years of sexual abuse
her son was suffering at the hands of her
family priest.*

1
2 You added that; correct?
3 A. Yes.
4
5 Q. And then "As a teenager he came". Then you took out
6 the words "saw her troubled teenage son come". Do you see
7 that?
8 A. Yes.
9
10 Q. Then I suggest to you that you changed other words,
11 minor changes in relation to that paragraph?
12 A. In all likelihood.
13
14 Q. After "family barn" you said "she" which was changed
15 to "his mother"?
16 A. Yes.
17
18 Q. And then further on "counselling him when he sobered
19 up", you changed those words also? Do you see that?
20 A. Yes.
21
22 Q. You still say that you didn't get any assistance from
23 Ms McCarthy in relation to any of these changes?
24 A. Sir, I can only continue to state it. If she have
25 suggested that I change that, if that's something I hadn't
26 known, I would have done that. You're asking me who is the
27 author of that change. I am, quite clearly, and I don't
28 shy away from it. As I said, if Ms McCarthy had said,
29 "Listen, I think you should change that," and I didn't know
30 about it, I would have done it, and I would have said to
31 you in this Commission, "That's what I did." But the fact
32 is, she didn't have any changes, she looked at it, and
33 I think - the comment, "No, it's excellent," but I've still
34 read it again. And there are a couple of things,
35 I thought, yes, I might be able to tweak this bit here or
36 change this part here or just put in a word here and there.
37 There's nothing sinister in any of that, that's just the
38 normal process.
39
40 Q. In the next paragraph, I suggested you took out the
41 words, "I continue to hear stories of reprisals following
42 the disclosure of," and you put in the words: "Reprisals
43 are another distasteful aspect of sexual abuse"; are they
44 your words?
45 A. I rephrased the sentence, sir. That's all that
46 occurred there. I do that today all the time in correcting
47 my own grammar, as I think most of us do.

1
2 Q. Further down you took out the word "their", so it's
3 "disclosed abuse"?
4 A. The same paragraph?
5
6 Q. Yes.
7 A. I think it reads better after I made the change, sir.
8 Yes, that's probably why I did it.
9
10 Q. Of course. Then "surrounded by friends"?
11 A. Same paragraph, sir?
12
13 Q. Same paragraph. There you added "until someone comes
14 forward with allegations of abuse". Do you see that?
15 Then, full stop, "The family is". Do you see that? You
16 added those words?
17 A. No, sir. We are talking about the same paragraph
18 still?
19
20 Q. Yes. You've got "surrounded by friends"?
21 A. Yes, I'm now with you, I've come to that part.
22
23 Q. You have added "until someone comes forward with
24 allegations of abuse. The family is"?
25 A. That's all part of that change, sir, that I'm talking
26 about in that paragraph. I've altered that paragraph
27 around because I've decided to just rephrase it. I don't
28 think it really changes anything in it greatly; I just felt
29 that I could write it better.
30
31 Q. Then you took out a couple of words "within their
32 church. They are"; correct? Then at the end of the
33 paragraph --
34 A. No, isn't that in both - "church. They are"? Yes,
35 that's in both. It's the same.
36
37 Q. "The family is" - and at the end you add "and
38 perpetuates the silence of abuse in fear of speaking out"?
39 A. Yes.
40
41 Q. You added those words?
42 A. Sir, that's a paragraph where I needed to convey what
43 I thought on the matter. They are my own thoughts, and
44 reading that paragraph, I think I was quite at liberty to
45 make those alterations. It's not actually in any way
46 really adding material or suggestions from anyone. I've
47 just simply rephrased it, that I felt it would have a

1 better impact in reading by somebody else, and it's as
2 innocent as that.

3

4 Q. Yes, of course. If I take you to --

5 A. You sound sceptical, sir, but I assure you that's
6 certainly the case.

7

8 Q. I think you are misreading me, Mr Fox.

9

10 The recommendation in relation to the second
11 paragraph, just tell me where that particular paragraph -
12 I'm looking at tab 78.

13 A. Yes.

14

15 Q. Starting "[AE]"; this is the file that you transferred
16 to yourself, do you remember that, the day before? Can you
17 tell me where that is in relation to tab 77?

18 A. Sorry, I've lost you, sir. The file I transferred to
19 myself, I don't understand.

20

21 Q. That's all right. Look at tab 78. Have you got that?

22 A. Yes.

23

24 Q. Under "Recommendation", do you see the heading there?

25 A. Yes.

26

27 Q. The second paragraph, "[AE]", do you see where that
28 is?

29 A. In 78, yes.

30

31 Q. Can you tell me where that is in 77, that whole
32 paragraph?

33 A. I've added that paragraph?

34 A.

35 Q. I thought you said if you made any changes at all, it
36 was only minor?

37 A. I believe so, out of six pages, sir. I know if you
38 pulled them apart individually and said I left out the
39 "and" here or something else, I still - I maintain that the
40 vast majority of that report is unaltered. There are some
41 changes. I don't back away from the fact that they are
42 only minor. You may look at it and say, "Hang on, I can
43 actually count 15 or 14 alterations," but really in the
44 overall reading of that report, they are only minor.

45

46 Q. I suggest to you, that's why you needed the file to be
47 transferred to you on 23 November, so you can put in this

1 particular report that you were involved in this particular
2 investigation?
3 A. What file, sir? I don't understand.
4
5 Q. The one you transferred from Lower Hunter to yourself?
6 A. Oh, sorry, not the --
7
8 MR COHEN: I object. That was not the evidence.
9
10 MR ROSER: Well, it is.
11
12 MR COHEN: No.
13
14 THE COMMISSIONER: What do you say the evidence is?
15
16 MR COHEN: The suggestion was the file was reopened
17 because there had been the reorganisation of Lower Hunter
18 into two commands and it was reopened to make the system
19 work. It had nothing to do with being transferred to
20 itself. The case was reopened precisely to allow the
21 system to avoid blowing up on itself.
22
23 MR ROSER: My recollection of the evidence is that this
24 witness said --
25
26 Q. You are smirking, are you, Mr Fox?
27 A. I think you have both got it wrong, sir.
28
29 MR ROSER: He said it was transferred on 23 November 2010
30 out of the Lower Hunter to himself at Port Macquarie and at
31 the same time he made himself officer in charge of that
32 particular file. I put the suggestion to him that the
33 reason why that occurred was so he could write this report,
34 so he could argue in the report that he did investigations
35 over a period of 10 years.
36
37 THE COMMISSIONER: Mr Cohen, I'm going to permit the
38 witness to answer the question because I think that he
39 wishes to do so, and forthwith.
40
41 MR COHEN: If the Commission pleases.
42
43 THE WITNESS: Just two corrections there, sir. You are
44 mistaken. It was never a file, it was an electronic case,
45 and that's why I didn't understand what you were talking
46 about when you were referring to file. Secondly, I was at
47 Port Stephens, not Port Macquarie, and thirdly, the reason

1 I sent it over is exactly that. But I think if you have a
2 look through, I don't know how me updating the case in
3 2007 - that I would have known in 2007 that all this
4 information would come, in 2010, where I would have been
5 then able to use the information I had three years earlier
6 of having allocated the case to myself for some sinister
7 reason three years later, that I didn't know was going to
8 eventuate.

9
10 Q. You transferred the case to yourself on 23 November
11 2010.

12
13 MR COHEN: I object.

14
15 THE COMMISSIONER: Perhaps you could say that an entry
16 was made on that date.

17
18 MR ROSER: Yes, and making himself officer in charge.
19 Thank you.

20
21 THE COMMISSIONER: Did you want to pursue that before we
22 break for lunch?

23
24 MR ROSER: I don't think so.

25
26 THE COMMISSIONER: Thank you.

27
28 **LUNCHEON ADJOURNMENT**

29
30 **UPON RESUMPTION**

31
32 THE COMMISSIONER: Ladies and gentlemen, before we resume
33 the evidence of Detective Chief Inspector Fox, I wish to
34 make some further comments about other matters.

35
36 The most important focus of this inquiry is the
37 vulnerable victims of child sexual abuse and their
38 relatives. Their confidentiality is of paramount
39 importance. Although great care has been taken in the
40 preparation of the documentation and a great deal of effort
41 has been taken to protect confidentiality by reduction and
42 the use of pseudonyms, names have been mentioned, of course
43 inadvertently, on occasion today and yesterday.
44 Non-publication orders have been made by me immediately
45 that this has occurred.

46
47 I wish to emphasise that non-publication orders should

1 be honoured to the letter, and this includes social media
2 and word of mouth, and it would be entirely improper for
3 anyone to repeat the names which have been mentioned in any
4 circumstances at all.

5
6 The second thing is more a matter of housekeeping.
7 I will be taking the evidence of Detective Superintendent
8 John Kerlatec in the morning at 9.30, interposing him
9 between any other witnesses we may be hearing from.

10
11 Thank you. Mr Roser.

12
13 MR ROSER: Q. Just prior to lunch I was taking you to
14 tab 77 and tab 78.

15 A. Yes.

16
17 Q. The sequence of events, would you agree with this, is
18 that on 24 November 2010 at 23.50 you sent a draft report
19 to Ms McCarthy?

20 A. Yes.

21
22 Q. That's set out in number 77 of the papers. That's
23 where you've asked her:

24
25 *Let me know any grammar or amendments you*
26 *feel might help.*

27
28 Do you see that?

29 A. Yes.

30
31 Q. She returned that to you, didn't she, at about -
32 I take you to tab 78. At the bottom of page 315, that's
33 the reply that you received from Ms McCarthy? Do you see
34 that at the bottom of the page?

35 A. That's in document 77?

36
37 Q. Document 78, at the bottom of the page, page 315?

38 A. Yes.

39
40 Q. She sent it back to you on Thursday, 25 November 2010
41 at 4.34 am. Do you see that, at the bottom of page 315?

42 A. Yes. Sorry, I do now, yes.

43
44 Q. She made a comment --

45 A. Okay, I see how they work. I was just working out
46 which document leads to the next.

47

1 Q. She made a statement, which is page 316.
2 A. Yes.
3
4 Q. She said:
5
6 *I think it's excellent. I'm going to be*
7 *telling Brad Tayler tomorrow that [AL]*
8 *won't be interviewed by Detective Steel*
9 *under any circumstances [et cetera].*
10
11 A. Yes.
12
13 Q. Why was she telling you that, do you know?
14 A. I take it from - I'd only be speculating. No,
15 I don't.
16
17 Q. Then she says:
18
19 *So they're going to have to work out what*
20 *to do with their investigation ...*
21
22 What did you take that to mean?
23 A. I don't know. Obviously Ms McCarthy can explain that.
24
25 Q. I suggest to you that you were in communication with
26 her --
27 A. Yes.
28
29 Q. -- not only by email but also by telephone contact,
30 weren't you?
31 A. Yes.
32
33 Q. And what she is referring to is the investigation in
34 relation to [AL], [AK] and [AJ]?
35 A. Obviously it's related to that, of course, yes.
36
37 Q. I suggest to you that you knew that those words were
38 of the interference in the investigation?
39 A. I don't know.
40
41 Q. Well, the words speak for themselves, don't they, "So
42 they're going to have to work out what to do with their
43 investigation"?
44 A. But they are not my words, sir.
45
46 Q. What do you take them to mean?
47 A. For some reason, [AL] was reluctant to speak to

1 Newcastle police. It had nothing to do with me, I can
2 assure of you that. For whatever reason - and I would
3 imagine that [AL] and Ms McCarthy would be aware of that -
4 but I don't recall what it was about. I did speak to her
5 on the phone but I've got no recollection of what that
6 related to at that time, no.

7

8 Q. Subsequently did you ask her, or did you reply to her,
9 what she meant by "So they'll have to work out what to do
10 with their investigation"?

11 A. I don't want to guess, sir. I've got some rough
12 ideas, but I genuinely don't know. There was something
13 that occurred, but I'm not positive about it and I don't
14 want to mislead anyone.

15

16 Q. The investigation, you knew, was in relation to Strike
17 Force Lantle?

18 A. Yes, I would have been aware that it would have had
19 something to do with that.

20

21 Q. At that time you had not given the investigators any
22 statements whatsoever in relation to that investigation,
23 had you?

24 A. Absolutely correct.

25

26 Q. But she knew, and I suggest you also knew, that there
27 was an investigation going on with the strike force at that
28 particular time in relation to the allegations that
29 involved [AL]?

30 A. Yes, yes.

31

32 Q. The next sentence:

33

34 *You're report will certainly put the cat*
35 *among the pigeons.*

36

37 What did you take that to mean?

38 A. Well, it would make some difficult decisions as to
39 what the police force was going to do with this matter,
40 quite obviously. I wanted to document exactly what needed
41 to be investigated and, as I've said before, it includes
42 much more than what ultimately was investigated, that there
43 seemed to be some great reluctance by the police force to
44 engage in it. Therefore my intention, by putting that into
45 a six- or eight-page report and articulating all the other
46 issues, or most of the other issues - there are still a lot
47 more, of course - they would have to make a tough decision,

1 because I was aware that, before that, there was a great
2 deal of reluctance by police, from what Joanne McCarthy had
3 told me, to launch any sort of investigation at all
4 initially, and, as I said, I don't shy away from it, the
5 police had to be dragged to investigate this kicking and
6 screaming, ultimately to finally do something.

7
8 Q. That email by her was sent to your private email
9 address at home?

10 A. Yes.

11
12 Q. So the original email was sent from your private home
13 email address, I should say?

14 A. Yes.

15
16 Q. That's at 11.10 pm?

17 A. Yes.

18
19 Q. And it was returned to your private email address at
20 home?

21 A. Yes, and when you draw my attention to it, in all
22 likelihood I probably haven't even read this before I put
23 my final report in, in reality, because it's very rare, if
24 ever, I open up my emails before I go to work. I submitted
25 it on the 25th. So that really now confirms it in my own
26 mind that there was no input whatsoever from
27 Joanne McCarthy. I certainly wasn't sitting up at that
28 hour. I understand that she's very committed and sitting
29 up at that time, but I know for a fact that I would -
30 I definitely didn't sit up at that time and I wouldn't have
31 looked at that before I submitted the final report. So
32 I am now more than happy, as I did before, to reaffirm even
33 more strongly that there was no input from Joanne McCarthy
34 into the body of that report.

35
36 Q. You say that you drafted this particular report, sent
37 it off to Joanne McCarthy for her to correct any grammar or
38 amendments to be added to it, and you are saying to this
39 Commission you didn't even look at her reply before you put
40 the report in?

41 A. I don't believe I did. I obviously speared it off.
42 I thought if there was something, she could have rung me
43 the following morning and said, "Listen, hang on, there are
44 a couple of things you missed out." I know that didn't
45 happen. Reading the times on there, it now just reaffirms,
46 as I said, to me which - you know, I am pleased that it
47 does, because I was certain of it before but I'm absolutely

1 certain of it now.

2

3 Q. So why did you ask her to look at the grammar and/or
4 amend the document, if you didn't look at her reply, prior
5 to putting the report in?

6 A. I expected some sort of communication before I did,
7 even though she has emailed it back, and there were no
8 suggestions in it, which again should make it clear that
9 there were no amendments offered. But I don't remember her
10 ringing me, saying, "No, listen, you've left out a couple
11 of things that are important that I think you probably
12 should include." So that's the basis on which I give that
13 response.

14

15 Q. You sent this particular report to her, I think you
16 said in evidence - correct me if I'm wrong - for her to
17 look at the grammar and to suggest any amendments?

18 A. That's what it says, yes.

19

20 Q. She didn't have any requirements to have a look at the
21 document again; is that correct?

22 A. Sorry, she didn't?

23

24 Q. Yes.

25 A. I don't know.

26

27 Q. As far as you were concerned, you sent it off to her
28 to correct any grammar or amendments to it for you to
29 present the report to your superiors, didn't you?

30 A. Yes.

31

32 Q. And she, not being a police officer, had no other
33 input to put into the document after that particular time
34 it was given to the commanders?

35 A. Yes.

36

37 Q. And there's no necessity for her to have a copy of
38 this particular report thereafter, the one you presented?

39 A. Not for my purposes, but I don't know. I don't know
40 what --

41

42 Q. What do you mean you don't know?

43 A. Well, I'm not Joanne McCarthy. But that's the reason
44 I sent it to her, to assist me in any other material that
45 may have been able to be included, that may have enhanced
46 it, and I submitted the report the next day, and that was
47 the basic reason. I would imagine that Ms McCarthy, of

1 course, still had a copy of it on her computer, but you're
2 suggesting to me that I'd know something that she was
3 thinking about and I - no.

4
5 Q. No, I'm not. I'm asking you a question in relation to
6 any input that she has was finalised in relation to this at
7 4.34 am on 25 November 2010. There was no necessity for
8 her to have a look at that report after that, because you
9 submitted it to the superiors, your superiors?

10 A. Not for the purposes for which I sent it to her, no,
11 that's right.

12
13 Q. And she, not being a member of the police force, had
14 no requirement to make any decision in relation to that
15 report, did she?

16 A. No.

17
18 Q. Why did you, after you submitted it to your
19 commanders, submit the final report to her?

20 A. I don't understand.

21
22 Q. Which aspect don't you understand?

23 A. You're saying that I sent her a copy of the amended
24 version?

25
26 Q. Yes.

27 A. To simply say, "That's the final version, that's the
28 things I fixed up."

29
30 Q. Why did you send to her a police document which was
31 sent to your commanders?

32 A. Because I wanted her to be fully au fait with the fact
33 that I had pointed out very clearly to the police force all
34 these other matters that we had been continually pushing
35 the police force to investigate, concerning other
36 paedophile activity and connections and relationships
37 between different clergy outside of the McAlinden matter,
38 and both of us were pushing a concerted effort for that to
39 occur, much to the resistance of some very senior police.

40
41 Q. You see, I suggest to you that the reason why you sent
42 the final report to her was for her to speak to
43 investigators which were involved in this particular strike
44 force - the following day?

45 A. That wasn't the purpose. I would hope that they would
46 have, because even today I believe that Ms McCarthy has
47 much more knowledge that has not been availed of by the

1 police force, because of their reluctance to utilise her
2 documents and background and knowledge and contacts. But
3 that wasn't the purpose of me sending this, no.
4

5 Q. I suggest it was, because there was no other purpose
6 for her to receive an official document of the police
7 service.

8 A. No.
9

10 Q. You knew that there was going to be an interview on
11 26 November 2010 with members of this particular strike
12 force and Ms McCarthy, didn't you?

13 A. I did not, no.
14

15 Q. She didn't tell you that?

16 A. Well, she may have, if there - I don't recall now, but
17 I'm not aware. There may have been an email, she may have
18 said that, but just off the top of my head now, I don't
19 recall, is probably the honest answer.
20

21 Q. I suggest that's the reason why you sent it to her, so
22 that she could use it as a document which was a privileged
23 document for the police service, so she could use it in the
24 discussions with investigators of the strike force?

25 A. Mr Roser, if I probably make it clear this way:
26 Nearly - I would suggest virtually everything in that
27 document had been provided to me in - well, not everything.
28 There would be some things that weren't, but the vast
29 majority of it was information that had come to me via
30 Ms McCarthy. If she was to meet with them the next day,
31 yes, by all means, utilise that as a tool to try to
32 encourage something further to be done about these
33 concerning matters.
34

35 Q. Tell me when Ms McCarthy gave you information about
36 [AE]. You don't have to look at any document, Mr Fox.
37 Mr Fox --
38

39 THE COMMISSIONER: Mr Fox is looking at the pseudonym
40 list, Mr Roser.
41

42 MR ROSER: Thank you.
43

44 Q. Tell me where Ms McCarthy gave you information about
45 [AE] in 1999?

46 A. Sorry. Okay. No, she didn't, not in 1999 she didn't,
47 no.

1
2 Q. So she had no relevance in relation to that; she never
3 gave you any information at all about that?
4 A. Ms McCarthy had --
5
6 Q. Is right or wrong.
7 A. In 1999? No, she didn't give me any information in
8 1999 about that, no.
9
10 Q. In tab 78, have you read your email of 5.03 pm from
11 your private computer email address to Ms McCarthy?
12 A. Yes, I have. I've read that now, yes.
13
14 Q. Why did you send the report from your private email
15 address and not the police email address of yours?
16
17 MR COHEN: I object. This is becoming oppressive. We
18 have been over this ground five times, before and after
19 lunch.
20
21 MR ROSER: That's absolutely the first question about
22 this, Commissioner.
23
24 THE COMMISSIONER: I'll allow it, Mr Cohen.
25
26 MR COHEN: If your Honour please.
27
28 THE WITNESS: Because I finished work at 4.00 and this
29 was sent at 3 minutes past 5, after I got home.
30
31 MR ROSER: Q. The question was, why didn't you send it
32 during the day?
33 A. I don't know. I may have had other things on. It
34 would have been the case, I imagine, at the time that
35 I didn't want anyone else to know that I was sending it.
36 I don't remember, but one of those reasons.
37
38 Q. That would have been the most likely reason, wasn't
39 it?
40 A. It probably was, yes.
41
42 Q. That you wanted to cover up that you were sending an
43 official document to a journalist?
44 A. To conceal the fact that I was, yes.
45
46 Q. In the third paragraph, is that the reason why you
47 said there for her to keep the report close to her chest?

1 A. Yes.

2

3 Q. Then you say:

4

5 *And let me know what unfolds.*

6

7 What do you mean there?

8 A. As with the other parts of it all, I think it's fairly
9 clear that no one wanted to investigate those matters.

10 I was pushing very hard, and I know Ms McCarthy was pushing
11 very hard, and I was keen to find out whether between us we
12 were actually finally able to get the police force to
13 really look at these matters in a serious way, rather than
14 passing it back between commands and everybody else, trying
15 to find excuses why it shouldn't be investigated.

16

17 Q. I suggest to you that what you meant there was for her
18 to use that report when she speaks to members of the task
19 force on 26 November, the next day?

20 A. Sir, I would be fairly confident in saying Ms McCarthy
21 knew a hell of a lot more than what was contained within
22 the body of that report and I don't think she needed any of
23 my assistance to be able to know what to talk to them about.

24

25 Q. At the bottom, what do you mean by "Let the games
26 begin"?

27

28 MR COHEN: I object, for this reason, Commissioner. This
29 has been gone over closely by counsel assisting. This
30 cannot assist you to have this repeated.

31

32 THE COMMISSIONER: Mr Roser, I think this was asked by
33 Ms Lonergan.

34

35 MR ROSER: Yes. Thank you.

36

37 Q. In relation to that particular report, did you make
38 any inquiries with Ms McCarthy whether she still had the
39 report in 2012?

40 A. I don't know. I may have.

41

42 Q. If you did, why would you make inquiries of her in
43 2012 whether she still had a report which goes back to
44 25 November 2010?

45

46 MR COHEN: I object. That rolls up two propositions that
47 are potentially mutually exclusive.

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THE COMMISSIONER: Can you try to divide it into two questions, Mr Roser.

MR ROSER: Yes.

Q. Did you contact Ms McCarthy in 2012 to inquire whether she still had the report of 25 November 2010?

A. I may have, yes.

Q. Why?

A. I don't recall.

Q. I suggest --

A. Obviously I either didn't have it or I was having trouble finding it - maybe the latter, I think, and it was - if I had been looking for it and needed to get hold of it I thought, you know, I'll ask.

Q. Didn't you have it on your USB stick, as you have given evidence, that you had at home?

A. Yes. Yes, I did, but at that stage - I've got a number of them there and I may have needed it urgently and, like many of us do, may have misplaced it or for some reason couldn't find the folder it was in, and asked that question. I don't recall, but I'm assuming it was based around something like that.

Q. Why did you need this report, if you did ask her, in 2012, when you had submitted it on 25 November 2010?

A. Because virtually everything that was in that report about any other priest or connections or crimes associated with other clergy have been swept aside by task force Lantle and not investigated and they'd only give a very narrow term of reference to the final investigator to carry that through. Our complaint wasn't in relation to what they were doing with McAlinden. I was fine with that and I understand from what you're saying it was a fine investigation, but the fact is they cut everything else out, for whatever reason, so that it wasn't investigated. And that's the basis of why I decided to put myself and my family through the hell we've been through, and make the complaint.

Q. You didn't know what the strike force was investigating, did you?

A. I had a pretty good idea. [Remainder of

1 answer suppressed].

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12 MR GYLES: Commissioner, I object. Can I ask that the
13 answer be struck out. It was not responsive to my learned
14 friend's question. It's highly pejorative and potentially
15 prejudicial. It is the subject matter of the second stage
16 of the inquiry and it can be dealt with then properly and
17 fully and in a way that provides natural justice to those
18 involved.

19

20 THE COMMISSIONER: Yes, there is great force in your
21 application, Mr Gyles. In relation to the answer
22 concerning the Catholic Church, that is the words
23 attributed to Ms Keevers, I order that there be no
24 publication.

25

26 MR GYLES: Yes, Commissioner.

27

28 MR ROSER: Q. You see, your report of 25 November 2010,
29 at tab 78, relates to [AE]?

30 A. In part, yes.

31

32 Q. And that file had been closed and finalised; correct?

33 A. The investigation of Father McAlinden --

34

35 Q. Can you answer the question?

36

37 MR COHEN: He's trying to.

38

39 MR ROSER: How would you know?

40

41 THE COMMISSIONER: Mr Roser.

42

43 MR ROSER: Q. Can you answer the question?

44

45 MR COHEN: Well, I object. He should be --

46

47 MR ROSER: He should be allowed to answer the question.

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MR COHEN: Indeed. That's exactly the basis of my objection.

THE COMMISSIONER: Mr Roser, I will permit Detective Chief Inspector Fox to continue the answer that he has commenced.

THE WITNESS: In respect to the allegations of sexual abuse upon [AE] by Father Denis McAlinden, obviously he was deceased and could be taken no further, but the greater interest at this stage, because of that, was the alleged concealment [Remainder of answer suppressed].

MR GYLES: Commissioner, I object again. Again, this is not the time for these allegations to be made in the way they are being made, and I seek the same order in respect of the final piece of evidence; namely, going to the number of clergy allegedly involved in the subject matter of what Detective Chief Inspector Fox was saying.

MR COHEN: Might I be heard, Commissioner?

THE COMMISSIONER: Yes, Mr Cohen.

MR COHEN: There is a difficulty here, the same difficulty I addressed you on yesterday, which is this narrow fine line that connects the two terms of reference.

If, on every occasion that Mr Roser puts questions to Detective Chief Inspector Fox asking for his understanding or his motivation or his intention, and then there's an objection about what might or might not trespass on term of reference 2, we will be going around in circles and we will be here forever. In my respectful submission, this is another of those occasions where the matters are to be ventilated, because there is that connection between the two that only this gentleman can explain. To allow the material just to be expunged without any reference in that way makes your job, in my respectful submission, if not very, difficult, almost impossible. There has to be some explanation that you can have regard to.

MR GYLES: If I might respond, Commissioner.

THE COMMISSIONER: I can have regard to it, Mr Cohen, even

1 if the whole of the world doesn't hear about it. .
2
3 MR COHEN: I follow what you say, Commissioner.
4
5 MR GYLES: Can I perhaps try to satisfy my friend's
6 concerns. Commissioner, as you might appreciate the
7 cross-examination has been going for a long time, we have
8 not been objecting on this ground, we have been careful not
9 to interrupt the cross-examination. But the answer that
10 was given was that he had a concern about concealment, and
11 we don't object to that part of it. It is --
12
13 THE COMMISSIONER: What followed.
14
15 MR GYLES: -- what followed. So far as my learned
16 friend's position that he should be accommodated by that,
17 so you, Commissioner, know what the concern was, it is the
18 description going beyond that that we have concerns about.
19 We certainly don't anticipate, and what has been happening
20 is that we certainly don't anticipate troubling you,
21 Commissioner, very much by these things.
22
23 THE COMMISSIONER: Thank you, Mr Gyles. I will order that
24 there be no publication of the final words of the answer
25 after "concealment".
26
27 MR COHEN: Thank you, Commissioner.
28
29 MR ROSER: Q. The report that you put in on 25 November
30 relates to - this is the victims; okay? You understand
31 what the question is about, Mr Fox? ?
32 A. Yes.
33
34 Q. [AE], you agree with that?
35 A. Yes.
36
37 Q. [AJ]?
38 A. Yes.
39
40 Q. [AL] and [AK]; correct?
41 A. They are the ones specifically mentioned, yes.
42
43 Q. That's what's in your report?
44 A. Yes, yes, indeed.
45
46 Q. Because you hadn't disclosed [AJ] at that particular
47 time, had you?

1 A. I had disclosed partially - I hadn't disclosed her
2 name but I had disclosed that I had a statement from that
3 particular witness, that I felt would be of significant
4 impact. I had disclosed that but I just had not disclosed
5 her name.

6
7 Q. You hadn't disclosed her identity or the statement
8 that you had taken from her, had you?

9 A. Didn't I - I thought I did do that. Not her identity,
10 but the fact - did I not disclose that in the email to
11 Detective Steel on 16 September?

12
13 Q. Did you disclose that you had a statement from [AJ]?

14 A. I'd need to go back to that email to make certain of
15 that.

16
17 Q. Can I suggest to you the first time you disclosed that
18 particular person's identity was on 2 December 2010 at the
19 meeting?

20 A. That's true, yes.

21
22 Q. And you knew, outside her, that the strike force was
23 investigating [AL] and [AK], when you wrote this particular
24 report?

25
26 MR COHEN: I must object to the question.

27
28 THE WITNESS: No.

29
30 MR COHEN: That is supposition. There was no
31 investigation of witnesses. That's the way that is put.
32 It needs to be clarified.

33
34 THE COMMISSIONER: Yes. You meant, did you, Mr Roser,
35 investigation of the allegations by those people?

36
37 MR ROSER: Q. Yes, by the strike force. You knew that,
38 didn't you? You knew on 25 November 2010 that the strike
39 force had been set up and was investigating the allegations
40 in relation to [AL] and [AK] that had been made?

41 A. I assumed, I had guessed. No one told me that as of
42 that date. But I was making an assumption that they had.

43
44 Q. They were asking you for documents prior to that
45 particular date, weren't they?

46 A. Yes.

47

1 Q. And you had, prior to that, in September 2010, said
2 you were prepared to give these statements to the strike
3 force? Didn't you?
4 A. I can't remember my exact words. It's whatever I've
5 said in the email of 16 September.
6
7 Q. So by 25 November 2010 you knew that the strike force
8 was investigating [AL] and [AK]'s allegations?
9
10 MR COHEN: I object.
11
12 THE WITNESS: No one has told --
13
14 MR COHEN: That question cannot flow from the previous
15 question and answer. It is just not fair to put it in that
16 way.
17
18 MR ROSER: It's the knowledge of this particular witness.
19
20 MR COHEN: But that's not been established yet.
21
22 THE COMMISSIONER: Mr Roser, would you ask whether the
23 witness knew it.
24
25 MR ROSER: Q. Did you know by 25 November 2010 that
26 there had been a strike force established to investigate
27 the allegations made by [AL] and [AK]?
28 A. I'm hesitating because I'm not sure. I do know
29 that I had a conversation with Detective Waddell and
30 Sergeant Rae, but I don't believe they disclosed very much
31 about it, other than to say there was an investigation
32 about to be commenced in respect to material that had been
33 provided by Joanne McCarthy, and that it would be - that
34 Detective Steel would be involved in that, but no one -
35 certainly no one gave me any more specifics. There's no
36 emails, there won't be any reports, because I never got
37 told by anybody what it is, and I think from the
38 correspondence, Detective Steel never responded, and I can
39 only tell you what the situation was as of that day.
40 Q. You knew that what Ms McCarthy had given Lake
41 Macquarie was in relation to allegations made by [AL] and
42 [AK]?
43 A. Yes.
44
45 Q. So you knew that?
46 A. Yes.
47

1 Q. And you knew, when you wrote your email on 16
2 September 2010, the documents you were going to hand over
3 in relation to that strike force and that information?

4 A. Well, again, I knew --

5

6 Q. Did you know that or not?

7 A. No, sir.

8

9 Q. Well, what documents were you going to hand over to
10 the strike force which was relevant to that strike force?

11

12 MR COHEN: I object.

13

14 THE COMMISSIONER: What is the objection, Mr Cohen?

15

16 MR COHEN: The timing has already been put and answered.
17 That is to say, the time my friend puts that the witness
18 knew, the evidence already is that he didn't. It is just
19 not fair to put it this way, to roll it up in this way and
20 then to roll it up into a statement and say, "Just agree
21 with all this." It has to be done very carefully.

22

23 MR ROSER: With respect, I'm not asking him to agree with
24 anything. He's giving the evidence.

25

26 THE COMMISSIONER: Would you ask it in an interrogatory
27 way, please.

28

29 MR ROSER: Yes.

30

31 Q. On 16 September 2010 what documents were you going to
32 hand over to the strike force in relation to their
33 investigation?

34

35 MR COHEN: I object. It presupposes that there is a
36 strike force and that this witness knows of its existence.
37 That's the problem with the question.

38

39 THE COMMISSIONER: Yes. Would you set it up from first
40 principles. Thank you.

41

42 MR ROSER: Q. Did you send an email to Kirren Steel --

43 A. Yes, I did.

44

45 Q. -- in relation to information you had in relation to
46 an investigation she was conducting?

47 A. Yes.

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Q. What was that investigation that you knew she was doing?

A. I didn't know. And that's why I think I've said in that email, we need to get our heads together, because, yes, I did have documents, but I needed to know what she was actually doing before I made a decision whether any of the material I had would be relevant to what she was doing. I was guessing it may have included that, but until I had that conversation with her I didn't know.

Q. You knew that that strike force was set up in relation to the material that Ms McCarthy had given the police at Lake Macquarie much earlier than that, didn't you?

A. What I was aware of, sir, is that - from Detective McLeod and Joanne McCarthy, is that the police were continually saying that they were not going to investigate it, or only going to review it. Ultimately, at the end of the day, whatever was given to Kirren Steel, I was unsure about, which is why I sent the email saying, "We need to sit down basically and talk about what you're doing, what I've been doing, what I've got and whether or not we're able to assist each other with it." Otherwise I would have just simply taken another course. But that was the whole purpose of that email, because I didn't know what she was doing. Obviously I guessed that it was something to do with the church, but that was the best that I had.

Q. That's your recollection, is it?

A. Yes.

Q. If you turn up tab 63, please, that's the email you sent to Detective Steel on 16 September 2010?

A. Yes.

Q. You have given evidence in relation to that?

A. Yes.

Q. In that email you set out [AL] and [AK]?

A. Yes.

Q. And also Mike Stanwell?

A. Yes.

Q. And you knew, I suggest to you, that Detective Steel was investigating those matters at that particular time?

A. Again, sir, I can only continue to go back to the same

1 answer I've given time and again about that. I was hoping
2 so, but I didn't know. No one had told me. That's why
3 I sent the email. That was the purpose of it. I can't see
4 anywhere where I've said, "I know you are investigating."
5 The reason I didn't say that is because I didn't know.
6

7 Q. Why did you contact Detective Inspector Waddell?

8 A. Because I was trying to find out what was actually
9 being investigated and - well, hang on. Yes, that was
10 after the conversation I had with Sergeant Rae, to try to
11 get some clarity on what it was, because it was now
12 apparent that - you know, I was hoping that someone was
13 going to take some of these issues on, and wanted to let
14 them know where I was up to and assist with it.
15

16 Q. I suggest to you, as I've suggested to you before,
17 that when you did your report on 25 November 2010, you knew
18 that the strike force was investigating [AL] and [AK]?

19 A. Sir, I just continue to refer back to what I've
20 already said. I haven't changed my view on that.
21

22 Q. At tab 130, in volume 3, page 684, that is where you
23 ask Joanne McCarthy whether she still had the report, your
24 report of November 2010; is that correct?

25 A. Yes.
26

27 Q. That's on 10 August 2012.

28 A. Yes.
29

30 Q. She replies to you on the first page, page 683, that
31 she did; correct?

32 A. Yes.
33

34 Q. On 8 November 2012, I think you appeared on Lateline?

35 A. Yes.
36

37 Q. Prior to you going on that particular program, did you
38 have any discussions with anyone in relation to the
39 material to be released that particular night?

40 A. Yes.
41

42 Q. Who was that?

43 A. I spoke to Suzie Smith.
44

45 Q. Who's she?

46 A. She's a reporter with the ABC. And I spoke to
47 Joanne McCarthy, not about what I was going to say in its

1 entirety. I think, pretty much the interview just unfolded
2 as it went. But obviously I had indicated that I intended
3 to speak in relation to the material that was presented.
4

5 Q. Was there any discussions had between either yourself,
6 Ms Smith or Ms McCarthy, or all three of you, in relation
7 to the material which would be produced on that particular
8 program?
9

10 MR COHEN: I object. This is a rolled up question which
11 needs to be properly segmented, Commissioner, it does not
12 immediately become obvious to me how this helps you in any
13 of the matters.
14

15 THE COMMISSIONER: I will allow it, Mr Cohen.
16

17 THE WITNESS: No.
18

19 MR ROSER: Q. You didn't have any discussions with either
20 of those two persons in relation to the managing of the
21 material to be produced on that particular show?

22 A. I'm just struggling to recall if anything was
23 produced. I --
24

25 Q. It was produced by you speaking on the program, wasn't
26 it?

27 A. Sorry, as in orally produced, sorry.
28

29 Q. Yes.

30 A. I thought you were referring to some sort of document
31 or something in hard copy.
32

33 Q. Did you produce any documents on the Lateline program?

34 A. No.
35

36 Q. Was there any discussions between Ms Smith,
37 Ms McCarthy and yourself, or either one of those persons,
38 with yourself?

39 A. There wasn't - I never entered into a discussion with
40 both of those individuals at once. My discussions with
41 them were separately, by telephone.
42

43 Q. And was there any discussion in relation to the
44 material that you would speak about on that particular
45 show?

46 A. Generally, no. It was just, I had written an open
47 letter to the New South Wales Premier, Mr O'Farrell, that

1 had been published that day, and the story that accompanied
2 it that Ms McCarthy wrote, and really the subject matter
3 was fairly open when I went down there. There wasn't a
4 script or dot points or anything else that was going to be
5 flowing. When I walked in there, what was said just
6 unfolded as we spoke.

7
8 Q. Is that your clear recollection?

9 A. Absolutely.

10
11 Q. And you couldn't be mistaken about that, could you?

12 A. I don't believe so. You know, that's my recollection
13 of how it worked. I didn't take any documents with me,
14 I didn't have any documents there, I didn't show any
15 documents to any of the staff at the ABC before I spoke.
16 I just spoke from the top of my head.

17
18 Q. Prior to going on the show, would it be incorrect to
19 say that a script was produced to you and for you to assess
20 whether that material would be produced on that particular
21 show?

22 A. That never happened, no. That never occurred at all.
23 As I said, I was invited down. It wasn't a decision that
24 was made in any great advance. I can't remember now,
25 I think it was only the night before. And it still wasn't
26 confirmed whether I would go down there, I don't think,
27 until the next day. I travelled down with my wife, and by
28 the time we arrived, I remember seeing Tony Jones
29 fleetingly as he was getting ready, and really we hadn't
30 really conversed at all before we sat down and spoke. So
31 if it's suggested that it was stage managed and there was a
32 script, that information, whoever has provided it, is
33 wrong, because that's not how it occurred. It occurred
34 just between he and I talking, and I just - I just gave the
35 answers that came to mind as it progressed.

36
37 Q. Is there a person - do you know a person by the name
38 of David Shoebridge?

39 A. He's an MP, yes.

40
41 Q. An MP, what's that?

42 A. A member of parliament.

43
44 Q. Did you have any discussions with him prior to
45 8 November 2012?

46 A. Yes. I first met Mr Shoebridge when I spoke at the
47 Newcastle Shine the Light forum in September. He was one

1 of the guest presenters that day. I spoke to him shortly
2 thereafter, and a number of other politicians, and I do
3 believe I may have had some contact with him - yes, there
4 was, because I know that he was going to be at a - assist
5 with a book launch for a book being written by one of the
6 abused victim's mothers, [BJ], and there was some
7 discussion over that.

8
9 Q. Did you have any discussions with him in relation to
10 what would be produced on 8 November 2012?

11 A. I didn't discuss what I was going to say with anybody
12 at all. It was an interview where I planned to speak about
13 the letter, and what I knew, and there was no pre-planning.
14 I didn't - I didn't even discuss what I was going to say
15 with my wife. It was just spontaneous responses to the
16 questions I was asked by Tony Jones. There was no
17 premeditation or script or prompting by anybody. I didn't
18 even know what questions I was going to be asked. And, as
19 I said on that night, I didn't even know that they had made
20 inquiries with Assistant Commissioner Carlene York as to
21 the reasons I had been taken off, and that was the very
22 first time I had ever been told that, is when I was
23 actually asked on the show that night.

24
25 Q. If you can turn up tab 138, that is an email by you
26 from your personal email system?

27 A. Yes.

28
29 Q. Is that correct?

30 A. Yes; it is.

31
32 Q. 7 November 2012 at 20.55?

33 A. Yes.

34
35 Q. Directed to David Shoebridge?

36 A. Yes.

37
38 Q. Copied to Joanne McCarthy?

39 A. Yes.

40
41 Q. It says:

42
43 *David*

44 *Can we hold off on any of the stuff on the*
45 *McAlinden (S/F Lintel) matter at present.*

46
47 What were you talking about that there?

1 A. Strike Force Lantle. I have obviously typoed that.

2

3 Q. What were you directing him to hold off on?

4 A. Saying anything - I had spoken to him - as I said,
5 when I spoke at the Shine the Light forum, I expressed to
6 him a number of my concerns and I might have raised it with
7 him, I don't recall specifically, but I may have raised it
8 with him since, in all likelihood I probably did. But
9 again, there was no script, there was nothing that - you
10 know, you're suggesting that it was a pre-planned thing.
11 But, as I said, the decision for me to go down there was
12 only made a short time before.

13 Q. The next sentence:

14

15 *Please ring me about this in the morning.*

16

17 What are you talking about, "ring me about this"? What are
18 you talking about there?

19 A. About what I've said in the previous sentence, to not
20 say anything publicly about the McAlinden matter.

21

22 Q. Then you say:

23

24 *I really don't want any of that to break*
25 *yet.*

26

27 What are you talking about breaking?

28 A. Because I had indicated to him, I think by this stage,
29 which was the day before - what time are we talking about?
30 Yes, this is very late. I had already - from memory, I had
31 already forwarded my letter to the New South Wales Premier.
32 I had also provided a copy of that open letter for
33 Joanne McCarthy to publish the following day in the
34 Newcastle Herald. And I know that - I believe, sorry, that
35 there had been communication between Mr Shoebridge and
36 Joanne McCarthy, and I just wanted to ensure that he didn't
37 say anything in relation to the McAlinden letter until the
38 Premier had had a chance to read what I said, and respond
39 to it.

40

41 Q. And then you say:

42

43 *It will be counterproductive.*

44

45 A. For that reason, yes.

46

47 Q. What information did Mr Shoebridge have? Did he have

1 your report of 25 November 2010?
2 A. I don't believe so, no. I didn't give him one, no.
3
4 Q. From your knowledge, what information did
5 Mr Shoebridge have, that you were talking about here?
6 A. I had obviously told him about the matter.
7 I considered him a supporter, in that his view, like ours,
8 there was a great deal of concern about the way police had
9 handled this matter and --
10
11 Q. When you say the "police had handled the matter," you
12 knew at that particular time that a brief of evidence had
13 been given to the Director of Public Prosecutions to
14 consider charges against a number of people they
15 investigated, didn't you?
16 A. Sir, I'm trying to be kind to other people here.
17
18 Q. Just answer the question.
19 A. I'm reluctant to answer that, because it may be
20 further objections in that it may touch upon --
21
22 Q. Just answer the question. Did you know that a brief
23 of evidence had been presented to the Director of Public
24 Prosecutions for consideration of charges on 7 November
25 2012?
26 A. That had been reported in the paper, yes, and I saw
27 that.
28
29 Q. So you knew that?
30 A. Yes.
31
32 Q. And that's why you mentioned, you knew that you
33 mentioned particularly the strike force, in the email?
34 A. Again, I'm reluctant to answer that question honestly,
35 sir, in view of the terms of reference.
36
37 Q. Just answer the question. It's on the document in
38 front of you, isn't it, that you refer to the strike force?
39
40 MR COHEN: Can I raise this - I'm sorry to cut across my
41 friend, but the witness is clearly worried about trampling
42 all over the very things my friend is worried about.
43
44 THE COMMISSIONER: I think the question can be answered
45 with a "Yes" or "No", can it not, Mr Rosser?
46
47 MR ROSER: I would have thought so, Commissioner.

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THE WITNESS: I mentioned Strike Force Lantle, yes, to him, yes.

MR ROSER: Q. You knew that a brief of evidence was before the Director of Public Prosecutions to consider the merits of that investigation at that point in time, didn't you?

A. I had a rough idea what it was in relation to. I wasn't certain about it. I can only go on what was contained within media reports. That's the entirety of my knowledge.

Q. Which was the strike force, that you knew about?

A. Again, Mr Roser, I was not told the parameters of what the strike force was investigating. I was never shown their terms of reference at that time. I was aware there was a brief. I had had discussions with numerous people in respect to - no, I won't answer that fully. But it makes it very difficult for me to give you a full and honest answer without trampling across term of reference 2 again.

Q. I suggest to you that this was part of your campaign to undermine the investigation which was conducted by the strike force?

A. Absolutely not. The whole purpose of this was - and again, I give reference to term of reference 2, which is - yes.

Q. If I could take you to number 139, halfway down - the top of the document is an email from Suzanne Smith. Who is she?

A. She's a reporter at the ABC.

Q. Directed to you at your home email

A. Yes.

Q. Also to Joanne McCarthy?

A. Yes.

Q. Subject matter "Re transcript, David Shoebridge. Do not forward. Confidential." What's the transcript she's referring to?

A. I'm just trying to recall if it was something Mr Shoebridge had prepared to say in the media the next day. It wasn't something for me to say, but it was something for him to say for himself in relation to this

1 church matter. I think he may have drawn that partly from
2 things that I told him, but certainly from others, and out
3 of courtesy he did show me, or sent me a copy - sorry,
4 someone sent me a copy, and I'm not sure if it was him.
5 There were aspects of it that I didn't want him to address
6 until I saw whether we got a response from the New South
7 Wales Premier the following day, and I simply asked him not
8 to discuss those. That's what that refers to. It was
9 certainly nothing that was being prepared for me.

10
11 Q. Mr Shoebridge, you have mentioned, is a member of
12 parliament?

13 A. Yes.

14
15 Q. Doesn't work for the ABC?

16 A. Not that I'm aware, no, sir, no. I don't think any
17 more than Troy Grant or anyone else, no.

18
19 Q. If I can take you halfway down the first page, is that
20 an email from yours at on 7 November 2012 at 10.49 pm to
21 Suzanne Smith? Do you see where I'm referring to?

22 A. Yes, I do. I'm just reading that, sir. Yes. Sorry,
23 did you want me to continue reading over the next page?

24
25 Q. No, just the first page.

26 A. Okay.

27
28 Q. The first line:

29
30 *Suzie, I was wanting to hold a lot of this*
31 *back.*

32
33 What do you mean by that? What are you referring to?

34 A. When I saw the material that Mr Shoebridge was
35 planning to say, I didn't feel that at that time it would
36 be appropriate to release all that information at one
37 stage. I don't think it's a secret that we were hoping to
38 force the issue finally, for there to be a Royal Commission
39 into child sexual abuse and --

40
41 Q. Who is "we"?

42 A. I think a lot of people I've spoken to at SNAP.

43
44 Q. Just answer the question.

45
46 MR COHEN: He is.

47

1 THE WITNESS: I answered it.

2

3 MR ROSER: Q. Who are the "we"?

4 A. A lot of people at SNAP, people I had spoken to at
5 Broken Rites, also a number of other groups, also a lot of
6 abuse victims, their family members, a number of priests
7 that I had spoken to, and Joanne McCarthy and various other
8 journalists. So there were a lot of people that were
9 trying to bring on a Royal Commission, and I also felt that
10 it was required and I was prepared to lend my knowledge and
11 energy to achieving that.

12

13 Q. In relation to this, you were working off a
14 transcript, were you?

15

16 MR COHEN: I object to this question, to this line of
17 questioning. I put this to you, Commissioner: one only
18 has to go over to page 713 to see that the whole basis of
19 my friend's approach is utterly misconceived and wasting,
20 time of this Commission, in my respectful submission.

21

22 THE COMMISSIONER: I do not agree that it is a waste of
23 time, Mr Cohen, and I will permit the question.

24

25 MR ROSER: Q. At this time you were working off a
26 transcript, weren't you?

27 A. No, sir, I was not working off a transcript. You have
28 misinterpreted that document totally.

29

30 Q. You are saying:

31

32 *Suzie, I was wanting to hold a lot of this*
33 *back.*

34

35 What are you referring to?

36 A. The material that David Shoebridge was planning to
37 say, I didn't want him to say that. I wanted it held back
38 because I wanted, number 1, Premier O'Farrell to actually
39 take some time to consider the open letter I had written to
40 him, without, at that stage, applying more pressure.
41 I don't apologise for that. We did discuss this quite -
42 and I'm quite happy to admit that, yes, we had a strategy
43 to how we are we going to push the politicians to bring
44 about a Royal Commission.

45

46 Now, Mr Shoebridge was also, along with other
47 politicians, quite happy to assist with that, but we wanted

1 to do so in a measured and reasonable way, without sort of
2 just throwing everything up all in one go. And when I saw
3 what Mr Shoebridge had been intending to say, I felt it
4 best to achieve that goal, that all of that not be used on
5 the one occasion by him early on.

6
7 Q. Is that why you say:

8
9 *If we can string it out and drip feed.*

10
11 Is that what you are talking about there?

12 A. Spot on. That's exactly right.

13
14 Q. And that was to drip feed, to undermine the
15 investigation which was before the DPP to consider?

16 A. Absolutely not. What it was is to drip feed - because
17 I, like many others, did not expect an announcement the
18 very next day of this Special Commission, and certainly not
19 four days later of a Royal Commission, and I expected this
20 to be quite a long campaign, possibly over a period of
21 months that, we would need to continue to apply pressure to
22 bring about a Royal Commission. And that's why I'm talking
23 about drip feeding, et cetera, not because it had anything
24 to do with Lantle or what they were doing, that was besides
25 the point. I was happy that there was a brief that could
26 have gone, that was fine. There were so many other issues
27 outside of what Lantle looked at that we needed to address,
28 and that's what I'm talking about.

29
30 Q. Then you say:

31
32 *It will only give us longer coverage and a*
33 *much better impact.*

34
35 Is that part of what you just said? ?

36 A. Yes, I thought that was a fairly good idea, and that's
37 exactly what we were planning to do.

38
39 Q. And:

40
41 *Please don't lose sight of our objective*
42 *here for the sake of a good quick story*
43 *now.*

44
45 That's what it was all about, wasn't it, a good quick
46 story?

47 A. No, sir. If you read that again, "Please don't lose

1 sight of our objective," that's what the focus was. "For
2 the sake of a good quickly story now"; I wasn't concerned
3 about a good quick story, I couldn't give a bugger about
4 that. What I was after was a Royal Commission.

5

6 Q. You were after a quick story for your book, weren't
7 you?

8 A. I haven't written a book, sir, never written a book.

9

10 Q. Haven't you?

11 A. No.

12

13 Q. Haven't you said to Ms McCarthy that you are putting
14 this information in a book?

15 A. Oh, one day - you know, like probably many police,
16 I would hope one day after I'm retired and get a bit old,
17 that I can sit down and pen something together. Most
18 people do, a lot of people do in their lives. And I've
19 read a lot of retired police stories and --

20

21 Q. It would be totally incorrect, wouldn't it, for your
22 wife to tell Joanne McCarthy that you have been writing a
23 book for 12 months?

24 A. I've penned a few stories together that I had back in
25 the 1990s. I'm sure most people would get a bit of a
26 chuckle out of some of them, and, yes, plenty of police
27 stories, but --

28

29 Q. It's all about this, isn't it? That's what you are
30 writing the book about?

31 A. I can assure you, I have not written a thing about
32 this. I have been a bit too busy, Mr Roser, to apply
33 my mind to it at this stage. Hopefully one day I may
34 get around to applying my mind to that, but at this time,
35 I haven't done that and I would hope people would think
36 better of me than that this whole thing has been a simple
37 facade just to simply write a couple of chapters.

38

39 Q. Then you say, after, "for the sake of good quick story
40 now":

41

42 *Let's play Mr Nice Guy before we start*
43 *talking tough and start hiring live ammo at*
44 *them. Milk and honey.*

45

46 I think that's "firing", isn't it?

47 A. Yes, I think that's probably a typo.

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Q. What did you mean by that?

A. I suppose it's being a bit of the old detective, in that when you start an interview with an adversary, if you like, or maybe a client, you always start out on a good footing and try to persuade them to come on board. Probably like most good barristers, you then start to hit them with some of the more harder questions and the more difficult aspects of it as you go on if they're not coming on board and that usually forces their hand. The strategy in relation to looking at achieving a Royal Commission, I didn't view it too differently to that because it was going to be, in my mind, a long hard road and I had committed myself that I was prepared to take that on to achieve that.

I wanted to be fair to Mr O'Farrell. I sent him the email. I wanted to give him the full day to consider that and see what came out of it. As it turned out, nothing came out of that day, and that's why I decided, "Okay, I'm happy to go down and be interviewed by the ABC. We'll take the next step there." I had a number of other strategies in relation to other aspects that this inquiry is not going to touch upon, later down the track, because I felt that, yes, we were going to achieve this at the end of the day and I was determined to make this happen, but I was going to hold all that happen so that we drip fed it, and we got there.

Q. You have given evidence, there was no script, you just went straight into the studio and were interviewed by Mr Jones?

A. That's the evidence I've given because that's exactly the truth. That's exactly what transpired.

Q. You sent that email on 7 November 2012 at 10.49 pm and you received a reply from Ms Smith on 8 November 2010 at 06.18. That's the first document. That's tab 139.

A. Sorry, the page number, Mr Rosser?

Q. Page 712.

A. 10.49, yes.

Q. 06.18?

A. Sorry, I see that, yes.

Q. That's Ms Smith's reply to your email, correct, where

1 she says:
2
3 *No worries, Peter. Whatever you want.*
4
5 Do you see that?
6 A. Yes.
7
8 Q. Then she says:
9
10 *Can I get the script for my piece to you by*
11 *1 pm so you can take out anything you don't*
12 *like.*
13
14 A. For her piece, yes.
15
16 Q. So you did have a script
17 A. It wasn't my script, sir. It says there that, "Can
18 I get the script for my piece"; and that's being sent from
19 Suzie Smith to me, and "my" is hers, not mine.
20
21 Q. I suggest to you that the script was in relation to
22 what you were going to say also?
23 A. No, it wasn't at all. There was nothing in whatever
24 she produced. As I said, sir, I had no paperwork with me
25 at that interview. I was not told what I was going to be
26 asked by Tony Jones, and the responses I gave were live, to
27 him as he asked the questions. I worked off no paperwork,
28 I did not rehearse anything. I was not shown anything that
29 I had to run off. It was totally spontaneous.
30
31 Q. If you go to tab 140, page 718, at the bottom of that
32 page is your email that I referred you to a while ago, your
33 email to Suzanne Smith on 7 November 2012. Do you see
34 that?
35 A. Yes.
36
37 Q. You received a reply from Joanne McCarthy on
38 8 November 2012 at 6.21 am. Do you see that?
39 A. On the same page?
40
41 Q. Yes, above the one I referred you to before. Do you
42 see that?
43 A. No, I can't.
44
45 Q. Page 718, about point 5 on the page, about halfway
46 down the page, on 8 November 2012.
47 A. Yes.

1
2 Q. At 6.21 am, Joanne McCarthy.
3 A. I see that, yes.
4
5 Q. She said, "I agree with Peter on this"??
6 A. No, that's no an email from Joanne McCarthy to me, no.
7
8 Q. Who is that to?
9 A. It's not - it's an email from Suzie Smith to
10 Joanne McCarthy, where I've been cc-ed in.
11
12 Q. I apologise for that. At the top, there's an email
13 from Suzanne Smith on 8 November 2012 at 6.25 am to
14 Ms McCarthy and yourself, as the cc?
15 A. Yes. That's the same email, Mr Roser. That's -
16 I think you have mistakenly thought that it was two, but
17 I believe it is one and the same.
18
19 Q. When you say one and the same, of what?
20 A. I think what you read just a moment ago is part of
21 that same email.
22
23 Q. If you turn up tab 138, I suggest, and just compare
24 both of those.
25 A. Tab 138, page 711?
26
27 Q. Sorry, tab 139. I suggest the email you received from
28 Suzanne Smith on 8 November 2012 at 6.18am was:
29
30 *No worries, Peter, whatever you want. Can*
31 *I get the script for my piece to you by*
32 *1 pm so you can take out anything you don't*
33 *like.*
34
35 A. Yes.
36
37 Q. Then:
38
39 *Apologies, I got the wrong end of the*
40 *stick.*
41
42 Correct?
43 A. Yes.
44
45 Q. In the subsequent one I referred you to, at tab 140,
46 it's an email from Suzanne Smith to Joanne McCarthy and
47 also to yourself as the cc:

1
2 Yes understood. Won't be used. I was
3 trying to get to the heart of why there are
4 concerns of police handling it. Won't be
5 used. Should get the final script to you
6 both by midday.

7
8 A. Yes.

9
10 Q. Who is the "both"?

11 A. Well, Suzie Smith is writing that to Joanne McCarthy
12 and I, so I'm assuming Suzie Smith was telling
13 Joanne McCarthy and I what she was going to put in her
14 script.

15
16 Q. And what was in her script?

17 A. Is it on here? It's the Shoebridge interview.

18
19 Q. Isn't it the amended document that you sent back to
20 her, what you wanted in and what you wanted out?

21 A. I'm --

22
23 MR COHEN: I object. What amended document? There is no
24 evidence there is an amended document, not from this
25 witness.

26
27 THE COMMISSIONER: Sorry, Mr Roser, I didn't understand
28 you to say anything about an amended document by this
29 witness.

30
31 MR ROSER: No, the script that was sent to him, what he
32 wanted in and what he wanted out. That's what I was
33 referring to.

34
35 Q. The transcript that was sent to you, that you amended,
36 what you wanted in and what you wanted out of the
37 broadcast?

38 A. Sorry, the transcript from Mr Shoebridge, the comments
39 that he was going to say?

40
41 Q. Yes, and also what you were going to say - what you
42 wanted in and what you wanted out in the Lateline program?

43
44 MR COHEN: I object. That's the objection. He's rolling
45 up two things that cannot be rolled up together in this
46 way, in fairness.

1 THE COMMISSIONER: Mr Cohen, doesn't it appear here on
2 pages 718 and 719 that Ms Smith is asking both the witness
3 and Ms McCarthy whether there's anything that cannot be
4 used in an interview with David Shoebridge; is that right?

5

6 MR COHEN: That's as I understand it, Commissioner; it's
7 nothing to do with the Lateline broadcast involving in
8 witness.

9

10 THE COMMISSIONER: Yes. Is that also your understanding,
11 Mr Roser?

12

13 MR ROSER: No, this is Suzanne Smith from Lateline.

14

15 THE COMMISSIONER: Yes.

16

17 MR ROSER: Q. My understanding is - correct me if I'm
18 wrong - that you were saying to Suzanne Smith what you
19 wanted in and what you wanted out in relation to the
20 broadcast at Lateline?

21 A. No, it wasn't in respect to what I wanted in.
22 I understood that there had been some interview or
23 discussions between Suzie Smith and David Shoebridge, and
24 what was being checked is that if I was comfortable with
25 everything that was going to be said in that, and if I felt
26 that there should be anything taken out because I did not
27 want that released. And that was the basis of that email,
28 and there was some components that I felt should be held
29 back for now, and that's simply - but, you know, again if
30 it's been suggested that I had a prompt sheet or a
31 transcript or a set plan of what I was going to say, no,
32 I never, sir, I can only continue to reinforce that.

33

34 Q. In relation to your dealings with [AJ], you have told
35 this Commission that [AJ] sought you out, haven't you? The
36 answer is "Yes" or "No"?

37 A. I don't know if I used that exact term. It was my
38 understanding, from what Joanne McCarthy had told me, that
39 [AJ] had expressed a desire to her that if she was to be
40 interviewed by any police officer, she nominated me.

41

42 Q. You have told this Commission that [AJ] sought you out
43 for her to give a statement to you, haven't you?

44 A. Yes, and just adding --

45

46 Q. You have answered the question. Thank you. You have
47 said that on numerous occasions, haven't you, that [AJ]

1 sought you out to take a statement from her?
2 A. Yes.
3
4 Q. You also told Lateline the same words?
5 A. Yes, yes.
6
7 Q. That this particular person, the whistleblower, sought
8 you out to take a statement; is that correct?
9 A. [AJ] sought me out by conveying through
10 Joanne McCarthy that I was the only police officer that she
11 wished to give a statement to. I think that's a fair
12 assessment. Yes, I telephoned her as a result of that,
13 I was the one who phoned her, but why would I have phoned
14 her? I didn't know her from a bar of soap really before
15 that. But because of the information that Joanne McCarthy
16 gave me, I telephoned her and when I spoke to her, she
17 confirmed that that in fact was the case.
18
19 Q. I suggest to you that, contrary to her seeking you
20 out, you sought her out?
21 A. I certainly phoned her, absolutely, yes, I did.
22
23 Q. And that was from information you received from
24 Ms McCarthy?
25 A. Yes.
26
27 Q. And did Ms McCarthy tell you the relationship that she
28 had with [AJ]?
29 A. I - you know --
30
31 Q. Did she or didn't she?
32 A. No, not as a description. She told me, you know -
33 that suggests that the relationship was described to me.
34 Not so much that, but she certainly did tell me that she
35 had been speaking to [AJ] many times; and she was relaying
36 to me much of the material that [AJ] possessed; and the
37 fact that also that she was a victim in her childhood of
38 Father Denis McAlinden; and that she felt that it would
39 prompt quite a significant police investigation; and,
40 despite her efforts to try and encourage [AJ] to speak to
41 the police, she continually resisted that, and then finally
42 considered the only police officer she would speak to was
43 myself.
44
45 Q. Did Ms McCarthy ever tell you that she had never seen
46 [AJ] in person?
47 A. I don't know. I don't recall that. If she did tell

1 me, I don't recall. But certainly from the amount of
2 information I had, that didn't really matter too much to
3 me; it was inconsequential.

4
5 Q. You telephoned [AJ]?

6 A. Yes.

7
8 Q. That was about 7 June 2010, wasn't it?

9 A. Somewhere around there, yes.

10
11 Q. You had a conversation with her over the phone?

12 A. Yes.

13
14 [Transcript redacted from page 392, line 14 to page 399,
15 line 27]

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MS LONERGAN: Commissioner, there is a matter that has arisen that I need give some further consideration to and to obtain some further instructions. Would you mind rising for five minutes to allow me do that.

THE COMMISSIONER: Yes. I will adjourn for five minutes.

SHORT ADJOURNMENT

MR HUNT: Commissioner, I have an application that I do not believe is opposed. I have had a brief word with Mr Roser and Mr Cohen about this. There is a second matter that my leader, Ms Lonergan, will deal with.

The application is that you would put in place a non-publication order. There is a countervailing set of public interests that upset what would otherwise be the public interest in open justice, but for various reasons I do not intend to expose to reasoning what those are, but

1 I think it is accepted by those who have sought
2 authorisation to appear for both the NSW Police Force and
3 various officers, on the one hand, and Detective Chief
4 Inspector Fox, on the other, that that can properly be made
5 out. In formal terms, the last passage of evidence that
6 I would submit should not be subject to a non-publication
7 order led this afternoon are, Mr Roser's question:

8
9 Q. You had a conversation with her over
10 the phone?

11 A. Yes.

12
13 The balance of the evidence commencing from a question that
14 began, "You said are you ..." following until Detective
15 Chief Inspector Fox left the witness box before the short
16 break, ought to be subject to a non-publication order.

17
18 To assist members of the press and members of the
19 public as to what that means in terms of subject matter,
20 what it means is that any questions and answers that went
21 to the actual asserted conversation between Detective Chief
22 Inspector Fox and [AJ] and any suggestion that Detective
23 Chief Inspector Fox was being apparently asked questions
24 about a statement of [AJ], ought not be the subject of any
25 publication, discussion and the like.

26
27 I anticipate that if Mr Roser intends to continue the
28 line in the morning, when the witness is back in the
29 witness box after Officer Kerlatec's evidence, that I would
30 ask for a provisional non-publication order at the
31 commencement of that evidence and pick up a point at which
32 I will submit to you, Commissioner, that order ought cease
33 to have effect.

34
35 THE COMMISSIONER: Yes. As regards this afternoon's
36 evidence, I do make a direction pursuant to section 8 of
37 the Special Commissions of Inquiry Act 1983 preventing
38 publication of the evidence which commences after the
39 question by Mr Roser:

40
41 Q. You had a conversation with her over
42 the phone?

43 A. Yes.

44
45 Until the end of Detective Chief Inspector Fox's evidence,
46 and it includes, as Mr Hunt indicated, any asserted
47 conversation between Detective Chief Inspector Fox and [AJ]

1 and anything to do with the statement or other discourse
2 between them.

3
4 I am obliged to indicate that it is a criminal offence
5 under section 31(2) of the Act to contravene my direction
6 preventing the publication of the evidence and I remind
7 everyone present that that also concerns the Twitter-verse,
8 other social media and word of mouth.

9
10 I return to the application by Mr Roser of yesterday
11 for former Superintendent Charles Haggett to be excused
12 from giving evidence before this inquiry. Those assisting
13 me have commissioned an independent expert medical
14 assessment, which I have considered very closely and
15 carefully, and have admitted in this inquiry as
16 confidential exhibit A. I accept the findings of that
17 expert and, accordingly, I have decided that it is
18 appropriate to excuse Superintendent Haggett from giving
19 evidence before this Commission.

20
21 MR ROSER: In relation to that, Commissioner, would the
22 non-publication order that you stated yesterday be still in
23 force in relation to that judgment you just delivered?

24
25 THE COMMISSIONER: No, not in relation to Superintendent
26 Haggett.

27
28 Thank you for raising that.

29
30 I will adjourn until 9.30 in the morning, when we will
31 interpose, as I indicated before, the evidence of Detective
32 Superintendent John Kerlatec.

33
34 **AT 4.19PM THE COMMISSION WAS ADJOURNED TO**
35 **FRIDAY, 10 MAY 2013 AT 9.30AM**

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