

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

**DIRECTIONS HEARING**

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

On Tuesday, 11 June 2013 at 10.09am

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC  
Mr Warwick Hunt

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

1 THE COMMISSIONER: Ms Lonergan.  
2  
3 MS LONERGAN: Commissioner, this Special Commission of  
4 Inquiry is listed this morning for directions. There has  
5 been some developments in terms of appearances and it was  
6 thought useful that parties announce their appearances for  
7 the record today. Before we proceed with that, I have been  
8 instructed to note for the record that Mr Peter Gogarty has  
9 requested leave to appear at the hearing on his own behalf.  
10  
11 THE COMMISSIONER: All right. Ms Lonergan, is it  
12 necessary that I authorise that he be permitted to appear  
13 in that capacity?  
14  
15 MS LONERGAN: Yes, that would be appropriate,  
16 Commissioner.  
17  
18 THE COMMISSIONER: I grant Mr Gogarty the authorisation to  
19 appear on his own behalf in terms of reference 2 hearings.  
20 May I take the other appearances, please. Mr Skinner.  
21  
22 MR SKINNER: My name is Skinner. I seek leave to appear  
23 on behalf of Father Brian Lucas, as before, with Adrian  
24 Williams of counsel. I am instructed by Carroll & O'Dea.  
25  
26 THE COMMISSIONER: Thank you, Mr Skinner.  
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28 MR SKINNER: May I also as agent seek leave on behalf of  
29 Mr Hale of Carroll & O'Dea Lawyers in Newcastle, who acts  
30 for Ms Elizabeth Doyle, to appear in relation to terms of  
31 reference 2 with a counsel yet to be retained.  
32  
33 THE COMMISSIONER: Yes, thank you, Mr Skinner, that leave  
34 is granted. Mr Saidi?  
35  
36 MR SAIDI: I appear on behalf of the Commissioner of  
37 Police and the police officer witnesses and I also note  
38 leave has already been granted in relation to my clients.  
39  
40 THE COMMISSIONER: Yes, that's right, thank you, Mr Saidi.  
41 Ms Needham.  
42  
43 MS NEEDHAM: Commissioner, I appear with Mr Doherty,  
44 instructed by Iles Selley of Adelaide for Archbishop Phil  
45 Wilson.  
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47 THE COMMISSIONER: Thank you, Ms Needham. Mr Terracini.

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MR TERRACINI: Commissioner, I seek your leave to appear for Joanne McCarthy, I am instructed by Alex Irving, and I understand she is required to give evidence on 24 June but if that is not correct then I am here to find out.

THE COMMISSIONER: Thank you, Mr Terracini. Yes, I certainly grant you leave to appear for Ms McCarthy and the date that Ms McCarthy is expected to attend will be confirmed before we rise.

MR TERRACINI: Thank you.

THE COMMISSIONER: Hello, Mr Cohen.

MR COHEN: If it pleases, Commissioner, I seek leave to appear for Detective Chief Inspector Peter Fox in terms of reference 1 and in terms of reference 2.

THE COMMISSIONER: Thank you, Mr Cohen. Such leave is granted. Mr Kohn.

MR KOHN: Mr Kohn, K-O-H-N. I seek leave to appear on behalf of the Diocese of Maitland Newcastle, Bishop William Wright and certain other individuals who have been included on the witness list. Mr Gyles of counsel will be appearing.

THE COMMISSIONER: Of course. Thank you very much Mr Kohn, that leave is granted. Mr Gerathy.

MR GERATHY: I appear as agent for Mullane and Lindsay and seek leave on their behalf to appear for Monsignor Hart.

THE COMMISSIONER: Thank you, Mr Gerathy. Yes, that leave is granted. Mr Ellis.

MR ELLIS: I seek leave to appear on behalf of the witness AJ in relation to term of reference 2. She will be represented by Ms Gerace of counsel.

THE COMMISSIONER: Thank you very much, Mr Ellis.

MS EVANS: I am Ms Evans, seeking leave to appear on behalf of Ms Keevers in terms of reference 2, Dr Dwyer.

THE COMMISSIONER: Thank you, Ms Evans, that leave is

1 granted.

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Yes, Ms Lonergan.

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There will be various other police statements that have already been served on the parties regarding some background matters and they will be tendered at an appropriate time and it is expected that term of reference 1 evidence will all be complete by Friday, 28 June.

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Commissioner, the term of reference 2 hearings are set down to commence in Newcastle again on Monday, 1 July 2013.

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Evidentiary bundles comprising seven volumes of material were served on the parties who have sought leave to be represented last Friday. This provides three clear weeks before commencement of the public hearings of term of reference 2 to enable the parties to review the materials. It is noted that these bundles are confidential to the parties and their legal representatives only. It is stressed that the direction that was provided, ordered by you, Commissioner, with those bundles, is to be complied with and it is important that that direction be adhered to.

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It is noted that the same confidentiality requirements still apply to the evidentiary bundles that were distributed to the parties in relation to term of reference 1, as those bundles have not been tendered in evidence as yet. There will be a service of a folder of statements relating to term of reference 2 matters, which will occur later this week.

1 Moving now to the witnesses who are planned to be  
2 called in the term of reference 2 hearings, a list of these  
3 was circulated to the parties on Friday, 7 June. This list  
4 will be posted on the Special Commission of Inquiry website  
5 after the directions today, Commissioner.  
6

7 The witnesses currently proposed to give evidence at  
8 the public hearing are as follows: Bishop William Wright,  
9 who will give limited evidence only at that point and will  
10 be recalled later in the proceedings; Detective Inspector  
11 Mark Watters; Detective Senior Constable Jacqueline Filipo;  
12 Detective Chief Inspector Peter Fox; Detective Sergeant  
13 Jeffrey Little. We will then move to some lay witnesses:  
14 Helen Keevers; Donald Brown, who is a police officer;  
15 Bishop Michael Malone; Father James Saunders; Father  
16 William Burston; Monsignor Allan Hart; Father Brian Lucas;  
17 Father Bob Searle; Patricia Feenan; Elizabeth Doyle;  
18 Maureen O'Hearn; John Davoren, Sean Tynan, and it is  
19 proposed that we complete the public hearing evidence with  
20 Bishop Wright, who is the current bishop of the  
21 Maitland-Newcastle Diocese.  
22

23 Commissioner, on a number of occasions the issue has  
24 been raised as to the necessity to have in camera hearings  
25 and a number of persons will be giving evidence in camera.  
26 This is a situation that has arisen, partly because of the  
27 background of the inquiry being announced against an  
28 existing police investigation, Strike Force Lantle, which  
29 is an investigation into alleged concealment offences by  
30 certain officials of the Maitland-Newcastle diocese and  
31 others.  
32

33 There is also the consideration that a number of  
34 victims of sexual abuse do not wish to give their evidence  
35 in public and owing to the sensitivity of their evidence it  
36 has been arranged, and Commissioner, you have seen fit to  
37 arrange for witnesses to give evidence at in camera  
38 hearings rather than at public hearings.  
39

40 It is noted and emphasised that no adverse inferences  
41 should be drawn as to why any persons are giving evidence  
42 in camera. In relation to this, Commissioner, I have been  
43 asked to note that Peter Gogarty will be giving evidence in  
44 camera and has asked that it be noted on the record that he  
45 wish to give evidence in public but due to considerations  
46 by those assisting you it has been determined that he ought  
47 to give his evidence at an in camera hearing.

1  
2 Commissioner, it is proposed that in camera hearings  
3 be conducted in relation to the following persons:  
4 Archbishop Philip Wilson; Father Glen Walsh; Father Gerard  
5 Mackie; Sister Paul Redgrove; Michael Stanwell; Peter  
6 Gogarty and various other victims of sexual abuse who, for  
7 obvious reasons, are not being named in the witness  
8 schedule at this stage. It is also noted that some  
9 witnesses who are scheduled to give evidence in public may  
10 also be required to give additional evidence at in camera  
11 hearings.  
12

13 It is also noted, finally, in relation to the witness  
14 list, that it is not set in stone and the dates that are  
15 included on the witness list that will be posted on the  
16 website later today are indicative only and subject to  
17 change.  
18

19 Attention is drawn to practice note 2, which is  
20 available on the Special Commission of Inquiry website, in  
21 particular paragraph 5 and paragraph 19. Paragraph 5 deals  
22 with the question of additional witnesses. If any person  
23 or party wishes to have evidence of a witness or witnesses  
24 placed before the Commission, they are to notify me of the  
25 names of such witnesses and provide a signed statement of  
26 their expected evidence, if possible in the form of a  
27 statutory declaration, as soon as practicable. That is the  
28 terminology that is used on the website. Obviously with  
29 the hearing date approaching, it would be helpful if  
30 parties could indicate as a matter of some urgency their  
31 thoughts in relation to this and if they have any witnesses  
32 that in their view should be considered, and those  
33 assisting you will give due consideration to those matters.  
34

35 The additional matter mentioned in the practice note  
36 is paragraph 19, which deals with other material to be put  
37 before the Commission in public hearings and that requires  
38 that if any person wishes to have a document placed before  
39 the Commission at a public hearing, they will need to  
40 notify the Commission by providing a copy of the document  
41 to my instructing solicitor, Ms Sullivan or Ms Wardle, and  
42 counsel assisting will decide whether or not to tender the  
43 document and there will be an appropriate discussion  
44 between the parties as to how that matter will be managed,  
45 and again if that could be raised as soon as possible that  
46 would be most helpful.  
47

1 Commissioner, finally there is an issues list and it  
2 is an indicative issues list, not a detailed one. That  
3 sets out the matters to be explored during the term of  
4 reference 2 proceedings. This was circulated to parties  
5 last Friday and a copy of it will be posted on the Special  
6 Commission of Inquiry website after the directions hearing  
7 today.

8  
9 One further matter, when the term of reference 2  
10 bundles were circulated there was provided to the parties a  
11 list of pseudonyms. For reasons that are clear, a number  
12 of victims of McAlinden and Fletcher do not want their  
13 names to get out into the public domain and many of them  
14 have taken some care to make sure that hasn't happened to  
15 now. It is expected that all legal representatives will  
16 sign an undertaking in relation to particular care to be  
17 taken with the use and destruction of the pseudonym list  
18 that has been provided to the parties. It is certainly not  
19 meant as any criticism of legal representatives that that  
20 undertaking has been requested to be given but it has been  
21 requested on behalf of those victims of Fletcher and  
22 McAlinden as an added assurance that their identities will  
23 be kept confidential. So it would be greatly appreciated  
24 if all legal representatives would sign the appropriate  
25 undertaking and forward it to Ms Sullivan or Ms Wardle by  
26 the end of this week.

27  
28 THE COMMISSIONER: Thank you, Ms Lonergan.

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30 MS LONERGAN: Those are the matters that I wish to raise,  
31 Commissioner. I understand there is one additional matter  
32 for you to deal with.

33  
34 THE COMMISSIONER: Yes, thank you, there is a further  
35 matter that I will address now.

36  
37 On 13 May 2013, during the second week of the public  
38 hearings, Mr Saidi, on behalf of the NSW Police Force, made  
39 an application in respect of a Tweet made by Detective  
40 Chief Inspector Fox from the hearing room using the Twitter  
41 service. This Tweet by Detective Chief Inspector Fox  
42 referred to certain evidence claimed to have been given by  
43 Detective Inspector Waddell earlier that day.

44  
45 Detective Chief Inspector Fox's Tweet was said by  
46 Mr Saidi to raise a potential contempt of the Commission.  
47 Mr Saidi's application was that I refer the matter of

1 Detective Chief Inspector Fox's Tweet for consideration by  
2 an appropriate authority, such as the registrar of the  
3 Supreme Court, for consideration to be given to commencing  
4 proceedings against Detective Chief Inspector Fox for  
5 contempt of the Commission. Mr Saidi's application was  
6 made orally during the proceedings and at that stage the  
7 inquiry was in the midst of taking further oral evidence  
8 from witnesses.

9  
10 To permit Detective Chief Inspector Fox time to  
11 provide a considered response to the application,  
12 I directed that he provide any written submissions in  
13 response by 24 May 2013. Mr Cohen, of counsel, provided  
14 written submissions on behalf of Detective Chief Inspector  
15 Fox. Among other things, Mr Cohen submitted that under the  
16 Act I do not have power to refer a matter of potential  
17 contempt for consideration by the registrar of the  
18 Supreme Court. Subsequently I directed Mr Saidi to file  
19 written submissions in reply by 31 May 2013.

20  
21 I have considered the application and the parties'  
22 submissions. I will now hand down my written decision on  
23 the matter and a copy of the decision will be published on  
24 the inquiry's website later today.

25  
26 In short, I have determined that I do have power to  
27 deal in summary fashion with a contempt in the face of the  
28 Commission when circumstances require. I also do have  
29 power under the Act to refer a potential contempt to be  
30 considered and dealt with by the registrar of the  
31 Supreme Court. However, in the present case and for the  
32 reasons set out in my decision, I am not persuaded that  
33 I should refer the issue of Detective Chief Inspector Fox's  
34 Tweet to the registrar of the Supreme Court.

35  
36 Thank you, Ms Lonergan. Is there anything further?

37  
38 MS LONERGAN: Yes, Commissioner, just two matters that  
39 have been drawn to my attention by my instructing  
40 solicitor.

41  
42 The first is that it should be noted that not every  
43 witness to be called to give evidence has provided a  
44 statement and so the statement folder to be circulated  
45 later this week won't have necessarily a statement from  
46 each of the persons on the witness list.



1           Second, as I understand it, the pseudonym list has not  
2 yet been provided to all parties but will be provided upon  
3 receipt of the relevant signed undertakings that I have  
4 already raised this morning, Commissioner. Those are the  
5 additional matters.

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7           THE COMMISSIONER: Thank you, Ms Lonergan. I will  
8 adjourn. Thank you.

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10          **AT 10.29AM THE COMMISSION WAS ADJOURNED**

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<p style="text-align: center;"><b>1</b></p> <p>1 [6] - 3:18, 4:7, 4:9, 4:22, 4:26, 4:42  <b>10.09am</b> [1] - 1:31  <b>10.29AM</b> [1] - 9:10  <b>11</b> [1] - 1:31  <b>13</b> [1] - 7:37  <b>17</b> [1] - 4:6  <b>19</b> [2] - 6:21, 6:36</p>	<p>2:19, 2:22, 2:30, 2:36, 2:43, 3:2, 3:8, 3:17, 3:23, 3:32, 3:33, 3:38, 3:44  <b>appearances</b> [3] - 2:5, 2:6, 2:20  <b>appearing</b> [1] - 3:27  <b>application</b> [5] - 7:39, 7:47, 8:5, 8:11, 8:21  <b>apply</b> [1] - 4:40  <b>appreciated</b> [1] - 7:23  <b>approaching</b> [1] - 6:29  <b>appropriate</b> [5] - 2:15, 4:21, 6:43, 7:24, 8:2  <b>Archbishop</b> [2] - 2:44, 6:4  <b>arisen</b> [1] - 5:26  <b>arrange</b> [1] - 5:37  <b>arranged</b> [1] - 5:36  <b>Assisting</b> [1] - 1:38  <b>assisting</b> [3] - 5:46, 6:33, 6:42  <b>assurance</b> [1] - 7:22  <b>AT</b> [1] - 9:10  <b>attend</b> [1] - 3:9  <b>attention</b> [2] - 6:19, 8:39  <b>authorisation</b> [1] - 2:18  <b>authorise</b> [1] - 2:12  <b>authority</b> [1] - 8:2  <b>available</b> [1] - 6:20</p>	<p>5:12, 7:40, 7:41, 7:45, 8:1, 8:4, 8:10, 8:14, 8:33  <b>CHILD</b> [1] - 1:14  <b>circulated</b> [4] - 5:3, 7:4, 7:10, 8:44  <b>circumstances</b> [1] - 8:28  <b>claimed</b> [1] - 7:42  <b>clear</b> [2] - 4:30, 7:11  <b>clients</b> [1] - 2:38  <b>Cohen</b> [4] - 3:14, 3:20, 8:13, 8:15  <b>COHEN</b> [1] - 3:16  <b>commence</b> [1] - 4:26  <b>commencement</b> [1] - 4:31  <b>commencing</b> [1] - 8:3  <b>COMMISSION</b> [2] - 1:10, 9:10  <b>Commission</b> [11] - 2:3, 5:4, 6:20, 6:24, 6:37, 6:39, 6:40, 7:6, 7:46, 8:5, 8:28  <b>Commissioner</b> [19] - 1:35, 2:3, 2:16, 2:36, 2:43, 3:2, 3:16, 4:5, 4:25, 4:36, 5:5, 5:23, 5:36, 5:42, 6:2, 7:1, 7:31, 8:38, 9:4  <b>COMMISSIONER</b> [17] - 2:1, 2:11, 2:18, 2:26, 2:33, 2:40, 2:47, 3:7, 3:14, 3:20, 3:29, 3:35, 3:42, 3:47, 7:28, 7:34, 9:7  <b>complete</b> [2] - 4:22, 5:19  <b>complied</b> [1] - 4:36  <b>comprising</b> [1] - 4:28  <b>concealment</b> [1] - 5:29  <b>conducted</b> [1] - 6:3  <b>confidential</b> [2] - 4:33, 7:23  <b>confidentiality</b> [1] - 4:39  <b>confirmed</b> [1] - 3:10  <b>consideration</b> [5] - 5:33, 6:33, 8:1, 8:3, 8:17  <b>considerations</b> [1] - 5:45  <b>considered</b> [4] - 6:32, 8:11, 8:21, 8:30  <b>Constable</b> [2] - 4:14, 5:11  <b>contempt</b> [5] - 7:46, 8:5, 8:17, 8:27, 8:29  <b>copy</b> [3] - 6:40, 7:5, 8:23  <b>correct</b> [1] - 3:5  <b>Counsel</b> [1] - 1:38  <b>counsel</b> [6] - 2:24, 2:31, 3:26, 3:40, 6:42, 8:13  <b>course</b> [1] - 3:29  <b>Court</b> [5] - 1:26, 8:3, 8:18, 8:31, 8:34  <b>criticism</b> [1] - 7:19  <b>Crown</b> [1] - 1:42  <b>Cunneen</b> [1] - 1:35  <b>current</b> [1] - 5:20</p>	<p><b>Davoren</b> [1] - 5:18  <b>deal</b> [2] - 7:32, 8:27  <b>deals</b> [2] - 6:21, 6:36  <b>dealt</b> [1] - 8:30  <b>decide</b> [1] - 6:42  <b>decision</b> [3] - 8:22, 8:23, 8:32  <b>declaration</b> [1] - 6:27  <b>destruction</b> [1] - 7:17  <b>detailed</b> [1] - 7:2  <b>Detective</b> [18] - 3:17, 4:9, 4:12, 4:13, 5:10, 5:11, 5:12, 7:39, 7:41, 7:43, 7:45, 8:1, 8:4, 8:10, 8:14, 8:33  <b>determined</b> [2] - 5:46, 8:26  <b>developments</b> [1] - 2:5  <b>DIocese</b> [1] - 1:16  <b>diocese</b> [1] - 5:30  <b>Diocese</b> [2] - 3:24, 5:21  <b>directed</b> [2] - 8:12, 8:18  <b>direction</b> [2] - 4:35, 4:37  <b>directions</b> [3] - 2:4, 5:5, 7:6  <b>DIRECTIONS</b> [1] - 1:22  <b>discussion</b> [1] - 6:43  <b>discussions</b> [1] - 4:16  <b>distributed</b> [1] - 4:41  <b>document</b> [3] - 6:38, 6:40, 6:43  <b>Doherty</b> [1] - 2:43  <b>domain</b> [1] - 7:13  <b>Donald</b> [1] - 5:14  <b>down</b> [2] - 4:26, 8:22  <b>Doyle</b> [2] - 2:30, 5:17  <b>Dr</b> [1] - 3:45  <b>drawn</b> [3] - 5:41, 6:19, 8:39  <b>due</b> [2] - 5:45, 6:33  <b>Dunn</b> [1] - 4:14  <b>during</b> [3] - 7:3, 7:37, 8:6  <b>Dwyer</b> [1] - 3:45</p>	<p><b>expected</b> [4] - 3:9, 4:21, 6:26, 7:15  <b>explored</b> [1] - 7:3</p>
<p style="text-align: center;"><b>2</b></p> <p>2 [12] - 2:19, 2:31, 3:18, 3:39, 3:45, 4:25, 4:32, 4:44, 5:2, 6:19, 7:4, 7:9  <b>2013</b> [5] - 1:31, 4:26, 7:37, 8:13, 8:19  <b>24</b> [3] - 3:4, 4:11, 8:13  <b>28</b> [1] - 4:22</p>	<p style="text-align: center;"><b>B</b></p> <p><b>background</b> [2] - 4:20, 5:27  <b>behalf</b> [12] - 2:9, 2:19, 2:23, 2:28, 2:36, 3:24, 3:33, 3:38, 3:45, 7:21, 7:38, 8:14  <b>between</b> [1] - 6:44  <b>bishop</b> [1] - 5:20  <b>Bishop</b> [4] - 3:24, 5:8, 5:15, 5:20  <b>Bob</b> [1] - 5:17  <b>Brian</b> [2] - 2:23, 5:16  <b>brief</b> [1] - 4:10  <b>Brown</b> [1] - 5:14  <b>bundles</b> [6] - 4:28, 4:33, 4:36, 4:40, 4:42, 7:10  <b>Burston</b> [1] - 5:16</p>	<p style="text-align: center;"><b>D</b></p> <p><b>date</b> [2] - 3:9, 6:29  <b>dates</b> [1] - 6:14</p>	<p style="text-align: center;"><b>E</b></p> <p><b>eight</b> [1] - 4:8  <b>Elizabeth</b> [2] - 2:30, 5:17  <b>ellis</b> [1] - 3:36  <b>ELLIS</b> [1] - 3:38  <b>Ellis</b> [1] - 3:42  <b>Emma</b> [1] - 1:42  <b>emphasised</b> [1] - 5:40  <b>enable</b> [1] - 4:32  <b>end</b> [1] - 7:26  <b>EVANS</b> [1] - 3:44  <b>Evans</b> [2] - 3:44, 3:47  <b>evidence</b> [23] - 3:4, 4:9, 4:10, 4:22, 4:43, 5:7, 5:9, 5:19, 5:25, 5:34, 5:35, 5:37, 5:41, 5:43, 5:45, 5:47, 6:9, 6:10, 6:23, 6:26, 7:42, 8:7, 8:43  <b>evidentiary</b> [2] - 4:28, 4:40  <b>existing</b> [1] - 5:28</p>	<p style="text-align: center;"><b>F</b></p> <p><b>face</b> [1] - 8:27  <b>fashion</b> [1] - 8:27  <b>Father</b> [7] - 2:23, 5:15, 5:16, 5:17, 6:4  <b>Fay</b> [1] - 4:14  <b>Feenan</b> [1] - 5:17  <b>file</b> [1] - 8:18  <b>Filipo</b> [1] - 5:11  <b>finally</b> [2] - 6:13, 7:1  <b>first</b> [1] - 8:42  <b>fit</b> [1] - 5:36  <b>Fletcher</b> [2] - 7:12, 7:21  <b>folder</b> [2] - 4:43, 8:44  <b>followed</b> [1] - 4:12  <b>following</b> [1] - 6:3  <b>follows</b> [1] - 5:8  <b>Force</b> [2] - 5:28, 7:38  <b>form</b> [1] - 6:26  <b>forward</b> [1] - 7:25  <b>Fox</b> [7] - 3:17, 5:12, 7:40, 7:41, 8:4, 8:10, 8:15  <b>Fox's</b> [3] - 7:45, 8:1, 8:33  <b>Friday</b> [5] - 4:5, 4:22, 4:30, 5:3, 7:5</p>
<p style="text-align: center;"><b>3</b></p> <p>31 [1] - 8:19</p>	<p style="text-align: center;"><b>C</b></p> <p><b>camera</b> [8] - 5:24, 5:25, 5:37, 5:42, 5:44, 5:47, 6:2, 6:10  <b>capacity</b> [1] - 2:13  <b>care</b> [2] - 7:14, 7:16  <b>Carroll</b> [2] - 2:24, 2:29  <b>case</b> [1] - 8:31  <b>CATHOLIC</b> [1] - 1:14  <b>certain</b> [4] - 3:25, 4:6, 5:30, 7:42  <b>CERTAIN</b> [1] - 1:14  <b>certainly</b> [2] - 3:8, 7:18  <b>change</b> [1] - 6:17  <b>Chief</b> [11] - 3:17, 4:12,</p>	<p style="text-align: center;"><b>D</b></p>	<p style="text-align: center;"><b>E</b></p>	<p style="text-align: center;"><b>G</b></p> <p><b>Gerace</b> [1] - 3:40  <b>Gerard</b> [1] - 6:4  <b>Gerathy</b> [2] - 3:30, 3:35  <b>GERATHY</b> [1] - 3:32  <b>given</b> [3] - 7:20, 7:42, 8:3  <b>Glen</b> [1] - 6:4  <b>Gogarty</b> [4] - 2:8, 2:18, 5:43, 6:6  <b>Goulburn</b> [1] - 1:27  <b>Graeme</b> [1] - 4:13  <b>Gralton</b> [1] - 4:15  <b>grant</b> [2] - 2:18, 3:8  <b>granted</b> [6] - 2:34, 2:38, 3:21, 3:30, 3:36, 4:1  <b>greatly</b> [1] - 7:23  <b>Gyles</b> [1] - 3:26</p>
<p style="text-align: center;"><b>5</b></p> <p>5 [2] - 6:21</p>	<p style="text-align: center;"><b>B</b></p>	<p style="text-align: center;"><b>D</b></p>	<p style="text-align: center;"><b>E</b></p>	<p style="text-align: center;"><b>G</b></p>
<p style="text-align: center;"><b>7</b></p> <p>7 [1] - 5:3</p>	<p style="text-align: center;"><b>C</b></p>	<p style="text-align: center;"><b>D</b></p>	<p style="text-align: center;"><b>E</b></p>	<p style="text-align: center;"><b>G</b></p>
<p style="text-align: center;"><b>8</b></p> <p>88 [1] - 1:27  8B [1] - 1:26</p>	<p style="text-align: center;"><b>C</b></p>	<p style="text-align: center;"><b>D</b></p>	<p style="text-align: center;"><b>E</b></p>	<p style="text-align: center;"><b>G</b></p>
<p style="text-align: center;"><b>A</b></p> <p><b>abuse</b> [2] - 5:34, 6:6  <b>ABUSE</b> [1] - 1:14  <b>Act</b> [2] - 8:16, 8:29  <b>acts</b> [1] - 2:29  <b>added</b> [1] - 7:22  <b>additional</b> [6] - 4:15, 6:10, 6:22, 6:35, 7:31, 9:5  <b>address</b> [1] - 7:35  <b>Adelaide</b> [1] - 2:44  <b>adhered</b> [1] - 4:37  <b>adjourn</b> [1] - 9:8  <b>ADJOURNED</b> [1] - 9:10  <b>Adrian</b> [1] - 2:23  <b>adverse</b> [1] - 5:40  <b>agent</b> [2] - 2:28, 3:32  <b>AJ</b> [1] - 3:39  <b>Alex</b> [1] - 3:3  <b>Allan</b> [1] - 5:16  <b>ALLEGATIONS</b> [1] - 1:14  <b>alleged</b> [1] - 5:29  <b>announce</b> [1] - 2:6  <b>announced</b> [1] - 5:27  <b>appear</b> [15] - 2:9, 2:12,</p>	<p style="text-align: center;"><b>C</b></p>	<p style="text-align: center;"><b>D</b></p>	<p style="text-align: center;"><b>E</b></p>	<p style="text-align: center;"><b>H</b></p> <p><b>Hale</b> [1] - 2:29  <b>hand</b> [1] - 8:22  <b>Hart</b> [2] - 3:33, 5:16  <b>HEARING</b> [1] - 1:22  <b>hearing</b> [8] - 2:9, 5:8, 5:19, 5:47, 6:29, 6:39, 7:6, 7:40  <b>hearings</b> [12] - 2:19, 4:7, 4:25, 4:31, 5:2, 5:24, 5:38, 6:2, 6:11, 6:37, 7:38  <b>Helen</b> [1] - 5:14  <b>hello</b> [1] - 3:14</p>

<p><b>helpful</b> [2] - 6:29, 6:46  <b>Humphrey</b> [1] - 4:12  <b>Hunt</b> [1] - 1:39</p>	<p>3:33, 3:35, 3:38, 3:44, 3:47, 4:29  <b>left</b> [1] - 4:8  <b>legal</b> [4] - 4:34, 7:15, 7:19, 7:24  <b>limited</b> [1] - 5:9  <b>Lindsay</b> [1] - 3:32  <b>list</b> [11] - 3:26, 5:2, 5:3, 6:14, 6:15, 7:1, 7:2, 7:11, 7:17, 8:46, 9:1  <b>listed</b> [1] - 2:4  <b>Loneragan</b> [7] - 1:38, 2:1, 2:11, 4:3, 7:28, 8:36, 9:7  <b>LONERAGAN</b> [5] - 2:3, 2:15, 4:5, 7:30, 8:38  <b>Lucas</b> [2] - 2:23, 5:16</p>	<p><b>necessarily</b> [1] - 8:45  <b>necessary</b> [1] - 2:12  <b>necessity</b> [1] - 5:24  <b>need</b> [1] - 6:39  <b>NEEDHAM</b> [1] - 2:43  <b>Needham</b> [2] - 2:41, 2:47  <b>New</b> [1] - 1:27  <b>Newcastle</b> [5] - 2:29, 3:24, 4:26, 5:21, 5:30  <b>NEWCASTLE</b> [1] - 1:16  <b>note</b> [5] - 2:8, 2:37, 5:43, 6:19, 6:35  <b>noted</b> [7] - 4:33, 4:39, 5:40, 5:44, 6:8, 6:13, 8:42  <b>notify</b> [2] - 6:24, 6:40  <b>NSW</b> [1] - 7:38  <b>number</b> [4] - 5:23, 5:25, 5:33, 7:11</p>	<p><b>planned</b> [1] - 5:1  <b>pleases</b> [1] - 3:16  <b>point</b> [1] - 5:9  <b>Police</b> [2] - 2:37, 7:38  <b>POLICE</b> [1] - 1:12  <b>police</b> [5] - 2:37, 4:15, 4:18, 5:14, 5:28  <b>possible</b> [2] - 6:26, 6:45  <b>possibly</b> [2] - 4:8, 4:15  <b>posted</b> [3] - 5:4, 6:15, 7:5  <b>potential</b> [3] - 7:46, 8:16, 8:29  <b>power</b> [3] - 8:16, 8:26, 8:29  <b>practicable</b> [1] - 6:27  <b>practice</b> [2] - 6:19, 6:35  <b>present</b> [1] - 8:31  <b>proceed</b> [2] - 2:7, 4:11  <b>proceedings</b> [4] - 5:10, 7:4, 8:4, 8:6  <b>proposed</b> [3] - 5:7, 5:19, 6:2  <b>provide</b> [3] - 6:25, 8:11, 8:12  <b>provided</b> [7] - 4:35, 7:10, 7:18, 8:13, 8:43, 9:2  <b>provides</b> [1] - 4:30  <b>providing</b> [1] - 6:40  <b>pseudonym</b> [2] - 7:17, 9:1  <b>pseudonyms</b> [1] - 7:11  <b>public</b> [12] - 4:7, 4:31, 5:8, 5:19, 5:35, 5:38, 5:45, 6:9, 6:37, 6:39, 7:13, 7:37  <b>published</b> [1] - 8:23  <b>put</b> [1] - 6:36</p>	<p>7:15, 7:19, 7:24  <b>represented</b> [2] - 3:40, 4:30  <b>requested</b> [3] - 2:9, 7:20, 7:21  <b>require</b> [1] - 8:28  <b>required</b> [2] - 3:4, 6:10  <b>requirements</b> [1] - 4:39  <b>requires</b> [1] - 6:37  <b>respect</b> [1] - 7:39  <b>response</b> [2] - 8:11, 8:13  <b>retained</b> [1] - 2:31  <b>review</b> [1] - 4:32  <b>rise</b> [1] - 3:10  <b>room</b> [1] - 7:40  <b>rose</b> [1] - 4:5</p>
<p style="text-align: center;"><b>I</b></p>	<p style="text-align: center;"><b>M</b></p>	<p style="text-align: center;"><b>O</b></p>	<p style="text-align: center;"><b>S</b></p>	
<p><b>identities</b> [1] - 7:22  <b>lles</b> [1] - 2:44  <b>important</b> [1] - 4:37  <b>IN</b> [1] - 1:14  <b>included</b> [2] - 3:25, 6:15  <b>indicate</b> [1] - 6:30  <b>indicative</b> [2] - 6:16, 7:2  <b>individuals</b> [1] - 3:25  <b>inferences</b> [1] - 5:40  <b>INQUIRY</b> [1] - 1:10  <b>inquiry</b> [2] - 5:27, 8:7  <b>Inquiry</b> [4] - 2:4, 5:4, 6:20, 7:6  <b>inquiry's</b> [1] - 8:24  <b>Inspector</b> [15] - 3:17, 4:12, 4:13, 4:14, 5:10, 5:12, 7:40, 7:41, 7:43, 7:45, 8:1, 8:4, 8:10, 8:14, 8:33  <b>instructed</b> [4] - 2:8, 2:24, 2:44, 3:3  <b>instructing</b> [2] - 6:41, 8:39  <b>INTO</b> [1] - 1:12  <b>investigation</b> [2] - 5:28, 5:29  <b>INVESTIGATION</b> [1] - 1:12  <b>Irving</b> [1] - 3:3  <b>issue</b> [2] - 5:23, 8:33  <b>issues</b> [2] - 7:1, 7:2</p>	<p><b>Mackie</b> [1] - 6:5  <b>Maddison</b> [1] - 1:26  <b>Maitland</b> [3] - 3:24, 5:21, 5:30  <b>MAITLAND</b> [1] - 1:16  <b>Maitland-Newcastle</b> [2] - 5:21, 5:30  <b>MAITLAND-NEWCASTLE</b> [1] - 1:16  <b>Malone</b> [1] - 5:15  <b>managed</b> [1] - 6:44  <b>Margaret</b> [1] - 1:35  <b>Mark</b> [1] - 5:11  <b>material</b> [2] - 4:29, 6:36  <b>materials</b> [1] - 4:32  <b>matter</b> [9] - 6:30, 6:35, 6:44, 7:9, 7:31, 7:35, 7:47, 8:16, 8:23  <b>matters</b> [7] - 4:20, 4:44, 6:33, 7:3, 7:30, 8:38, 9:5  <b>MATTERS</b> [1] - 1:12  <b>Maureen</b> [1] - 5:18  <b>McAlinden</b> [2] - 7:12, 7:22  <b>McCarthy</b> [4] - 3:3, 3:8, 3:9, 4:11  <b>meant</b> [1] - 7:19  <b>mentioned</b> [1] - 6:35  <b>Michael</b> [2] - 5:15, 6:5  <b>midst</b> [1] - 8:7  <b>Monday</b> [2] - 4:10, 4:26  <b>Monsignor</b> [2] - 3:33, 5:16  <b>morning</b> [2] - 2:4, 9:4  <b>most</b> [1] - 6:46  <b>move</b> [1] - 5:13  <b>moving</b> [1] - 5:1  <b>MR</b> [9] - 2:22, 2:28, 2:36, 3:2, 3:12, 3:16, 3:23, 3:32, 3:38  <b>MS</b> [7] - 2:3, 2:15, 2:43, 3:44, 4:5, 7:30, 8:38  <b>Mullane</b> [1] - 3:32</p>	<p style="text-align: center;"><b>P</b></p>	<p><b>Saidi</b> [6] - 2:34, 2:40, 4:16, 7:38, 7:46, 8:18  <b>SAIDI</b> [1] - 2:36  <b>Saidi's</b> [2] - 7:47, 8:5  <b>Saunders</b> [1] - 5:15  <b>SC</b> [2] - 1:35, 1:38  <b>schedule</b> [1] - 6:8  <b>scheduled</b> [1] - 6:9  <b>Sean</b> [1] - 5:18  <b>Searle</b> [1] - 5:17  <b>second</b> [2] - 7:37, 9:1  <b>seek</b> [7] - 2:22, 2:28, 3:2, 3:16, 3:23, 3:33, 3:38  <b>seeking</b> [1] - 3:44  <b>Selley</b> [1] - 2:44  <b>Senior</b> [2] - 4:13, 5:11  <b>sensitivity</b> [1] - 5:35  <b>Sergeant</b> [2] - 4:10, 5:12  <b>served</b> [2] - 4:19, 4:29  <b>service</b> [2] - 4:43, 7:41  <b>set</b> [3] - 4:25, 6:14, 8:32  <b>sets</b> [1] - 7:3  <b>seven</b> [2] - 4:8, 4:28  <b>sexual</b> [2] - 5:34, 6:6  <b>SEXUAL</b> [1] - 1:14  <b>short</b> [1] - 8:26  <b>sign</b> [2] - 7:16, 7:24  <b>signed</b> [2] - 6:25, 9:3  <b>Sister</b> [1] - 6:5  <b>situation</b> [1] - 5:26  <b>skinner</b> [2] - 2:20, 2:26  <b>SKINNER</b> [2] - 2:22, 2:28  <b>Skinner</b> [2] - 2:22, 2:33  <b>solicitor</b> [2] - 6:41, 8:40  <b>Solicitor's</b> [1] - 1:42  <b>soon</b> [2] - 6:27, 6:45  <b>sought</b> [1] - 4:29  <b>South</b> [1] - 1:27  <b>SPECIAL</b> [1] - 1:10  <b>Special</b> [4] - 2:3, 5:4, 6:20, 7:5  <b>stage</b> [2] - 6:8, 8:6  <b>Stanwell</b> [1] - 6:5  <b>statement</b> [4] - 6:25, 8:44, 8:45  <b>statements</b> [2] - 4:18, 4:44  <b>statutory</b> [1] - 6:27</p>	
<p style="text-align: center;"><b>J</b></p>	<p style="text-align: center;"><b>R</b></p>	<p style="text-align: center;"><b>P</b></p>	<p style="text-align: center;"><b>R</b></p>	
<p><b>Jacqueline</b> [1] - 5:11  <b>James</b> [1] - 5:15  <b>Jeffrey</b> [1] - 5:13  <b>Jessica</b> [1] - 1:43  <b>Joanne</b> [2] - 3:3, 4:11  <b>John</b> [3] - 1:26, 4:14, 5:18  <b>Julia</b> [1] - 1:38  <b>July</b> [1] - 4:26  <b>June</b> [5] - 1:31, 3:4, 4:11, 4:23, 5:3</p>	<p><b>ought</b> [1] - 5:46  <b>owing</b> [1] - 5:35  <b>own</b> [2] - 2:9, 2:19</p>	<p><b>paragraph</b> [4] - 6:21, 6:36  <b>Parker</b> [1] - 4:13  <b>particular</b> [2] - 6:21, 7:16  <b>parties</b> [13] - 2:6, 4:19, 4:29, 4:32, 4:34, 4:41, 5:3, 6:30, 6:44, 7:4, 7:10, 7:18, 9:2  <b>parties'</b> [1] - 8:21  <b>partly</b> [1] - 5:26  <b>party</b> [1] - 6:23  <b>Patricia</b> [1] - 5:17  <b>Paul</b> [1] - 6:5  <b>permit</b> [1] - 8:10  <b>permitted</b> [1] - 2:12  <b>person</b> [2] - 6:22, 6:38  <b>persons</b> [4] - 5:25, 5:41, 6:3, 8:46  <b>persuaded</b> [1] - 8:32  <b>Peter</b> [5] - 2:8, 3:17, 5:12, 5:43, 6:5  <b>Phil</b> [1] - 2:44  <b>Philip</b> [1] - 6:4  <b>placed</b> [2] - 6:24, 6:38</p>	<p><b>raise</b> [2] - 7:30, 7:46  <b>raised</b> [3] - 5:24, 6:45, 9:4  <b>rather</b> [1] - 5:38  <b>reasons</b> [3] - 6:7, 7:11, 8:32  <b>recalled</b> [1] - 5:10  <b>receipt</b> [1] - 9:3  <b>record</b> [3] - 2:7, 2:8, 5:44  <b>Redgrove</b> [1] - 6:5  <b>refer</b> [4] - 7:47, 8:16, 8:29, 8:33  <b>reference</b> [16] - 2:19, 2:31, 3:18, 3:39, 3:45, 4:7, 4:9, 4:22, 4:25, 4:32, 4:42, 4:44, 5:2, 7:4, 7:9  <b>referred</b> [1] - 7:42  <b>regarding</b> [2] - 4:9, 4:19  <b>registrar</b> [4] - 8:2, 8:17, 8:30, 8:34  <b>RELATING</b> [1] - 1:12  <b>relating</b> [2] - 4:6, 4:44  <b>relation</b> [9] - 2:30, 2:38, 3:39, 4:41, 5:42, 6:3, 6:13, 6:31, 7:16  <b>relevant</b> [1] - 9:3  <b>remaining</b> [1] - 4:8  <b>reply</b> [1] - 8:19  <b>representatives</b> [4] - 4:34,</p>	
<p style="text-align: center;"><b>K</b></p>	<p style="text-align: center;"><b>N</b></p>	<p style="text-align: center;"><b>N</b></p>	<p style="text-align: center;"><b>S</b></p>	
<p><b>K-O-H-N</b> [1] - 3:23  <b>Keevers</b> [2] - 3:45, 5:14  <b>kept</b> [1] - 7:23  <b>Kohn</b> [3] - 3:21, 3:23, 3:30  <b>KOHN</b> [1] - 3:23</p>	<p><b>name</b> [1] - 2:22  <b>named</b> [1] - 6:7  <b>names</b> [2] - 6:25, 7:13</p>	<p><b>name</b> [1] - 2:22  <b>named</b> [1] - 6:7  <b>names</b> [2] - 6:25, 7:13</p>	<p><b>raise</b> [2] - 7:30, 7:46  <b>raised</b> [3] - 5:24, 6:45, 9:4  <b>rather</b> [1] - 5:38  <b>reasons</b> [3] - 6:7, 7:11, 8:32  <b>recalled</b> [1] - 5:10  <b>receipt</b> [1] - 9:3  <b>record</b> [3] - 2:7, 2:8, 5:44  <b>Redgrove</b> [1] - 6:5  <b>refer</b> [4] - 7:47, 8:16, 8:29, 8:33  <b>reference</b> [16] - 2:19, 2:31, 3:18, 3:39, 3:45, 4:7, 4:9, 4:22, 4:25, 4:32, 4:42, 4:44, 5:2, 7:4, 7:9  <b>referred</b> [1] - 7:42  <b>regarding</b> [2] - 4:9, 4:19  <b>registrar</b> [4] - 8:2, 8:17, 8:30, 8:34  <b>RELATING</b> [1] - 1:12  <b>relating</b> [2] - 4:6, 4:44  <b>relation</b> [9] - 2:30, 2:38, 3:39, 4:41, 5:42, 6:3, 6:13, 6:31, 7:16  <b>relevant</b> [1] - 9:3  <b>remaining</b> [1] - 4:8  <b>reply</b> [1] - 8:19  <b>representatives</b> [4] - 4:34,</p>	
<p style="text-align: center;"><b>L</b></p>	<p style="text-align: center;"><b>N</b></p>	<p style="text-align: center;"><b>N</b></p>	<p style="text-align: center;"><b>S</b></p>	
<p><b>Lantle</b> [1] - 5:28  <b>last</b> [3] - 4:5, 4:30, 7:5  <b>Lawyers</b> [1] - 2:29  <b>lay</b> [1] - 5:13  <b>leave</b> [17] - 2:9, 2:22, 2:28, 2:33, 2:38, 3:2, 3:8, 3:16, 3:20, 3:23, 3:30,</p>	<p style="text-align: center;"><b>N</b></p>	<p style="text-align: center;"><b>N</b></p>	<p style="text-align: center;"><b>S</b></p>	

**still** <sup>[1]</sup> - 4:40  
**stone** <sup>[1]</sup> - 6:14  
**Street** <sup>[1]</sup> - 1:27  
**stressed** <sup>[1]</sup> - 4:35  
**Strike** <sup>[1]</sup> - 5:28  
**subject** <sup>[2]</sup> - 4:15, 6:16  
**submissions** <sup>[4]</sup> - 8:12,  
8:14, 8:19, 8:22  
**submitted** <sup>[1]</sup> - 8:15  
**subsequently** <sup>[1]</sup> - 8:18  
**Sullivan** <sup>[3]</sup> - 1:42, 6:41,  
7:25  
**summary** <sup>[1]</sup> - 8:27  
**Superintendent** <sup>[1]</sup> - 4:14  
**Supreme** <sup>[4]</sup> - 8:3, 8:18,  
8:31, 8:34  
**Sydney** <sup>[1]</sup> - 1:27

## T

**tender** <sup>[1]</sup> - 6:42  
**tendered** <sup>[2]</sup> - 4:20, 4:42  
**term** <sup>[11]</sup> - 3:39, 4:7, 4:9,  
4:21, 4:25, 4:31, 4:41,  
4:44, 5:2, 7:3, 7:9  
**terminology** <sup>[1]</sup> - 6:28  
**terms** <sup>[6]</sup> - 2:5, 2:19, 2:30,  
3:17, 3:18, 3:45  
**Terracini** <sup>[2]</sup> - 2:47, 3:7  
**TERRACINI** <sup>[2]</sup> - 3:2, 3:12  
**THE** <sup>[20]</sup> - 1:12, 1:14, 2:1,  
2:11, 2:18, 2:26, 2:33,  
2:40, 2:47, 3:7, 3:14,  
3:20, 3:29, 3:35, 3:42,  
3:47, 7:28, 7:34, 9:7,  
9:10  
**thoughts** <sup>[1]</sup> - 6:31  
**three** <sup>[1]</sup> - 4:30  
**TO** <sup>[1]</sup> - 1:12  
**today** <sup>[5]</sup> - 2:7, 5:5, 6:16,  
7:7, 8:24  
**Tower** <sup>[1]</sup> - 1:26  
**Tuesday** <sup>[1]</sup> - 1:31  
**Tweet** <sup>[5]</sup> - 7:39, 7:41,  
7:45, 8:1, 8:34  
**Twitter** <sup>[1]</sup> - 7:40  
**two** <sup>[1]</sup> - 8:38  
**Tynan** <sup>[1]</sup> - 5:18

## U

**under** <sup>[2]</sup> - 8:15, 8:29  
**undertaking** <sup>[3]</sup> - 7:16,  
7:20, 7:25  
**undertakings** <sup>[1]</sup> - 9:3  
**urgency** <sup>[1]</sup> - 6:30  
**useful** <sup>[1]</sup> - 2:6

## V

**various** <sup>[2]</sup> - 4:18, 6:6  
**victims** <sup>[4]</sup> - 5:34, 6:6,  
7:12, 7:21  
**view** <sup>[1]</sup> - 6:32  
**volumes** <sup>[1]</sup> - 4:28

## W

**Waddell** <sup>[1]</sup> - 7:43  
**Wales** <sup>[1]</sup> - 1:27  
**Walsh** <sup>[1]</sup> - 6:4  
**wardle** <sup>[2]</sup> - 6:41, 7:25  
**Wardle** <sup>[1]</sup> - 1:43  
**Warwick** <sup>[1]</sup> - 1:39  
**WAS** <sup>[1]</sup> - 9:10  
**Watters** <sup>[1]</sup> - 5:11  
**Wayne** <sup>[1]</sup> - 4:12  
**website** <sup>[6]</sup> - 5:4, 6:16,  
6:20, 6:28, 7:6, 8:24  
**week** <sup>[4]</sup> - 4:45, 7:26, 7:37,  
8:45  
**weeks** <sup>[1]</sup> - 4:31  
**William** <sup>[3]</sup> - 3:24, 5:8,  
5:16  
**Williams** <sup>[1]</sup> - 2:24  
**Wilson** <sup>[2]</sup> - 2:45, 6:4  
**wish** <sup>[3]</sup> - 5:34, 5:45, 7:30  
**wishes** <sup>[2]</sup> - 6:23, 6:38  
**witness** <sup>[9]</sup> - 3:26, 3:38,  
4:15, 6:7, 6:13, 6:15,  
6:23, 8:43, 8:46  
**witnesses** <sup>[13]</sup> - 2:37, 4:6,  
4:8, 5:1, 5:7, 5:13, 5:37,  
6:9, 6:22, 6:23, 6:25,  
6:31, 8:8  
**Wright** <sup>[3]</sup> - 3:25, 5:8, 5:20  
**written** <sup>[4]</sup> - 8:12, 8:14,  
8:19, 8:22