



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

Opening remarks of Commissioner Margaret Cunneen SC

Newcastle Courthouse

Monday, 1 July 2013

1. Good morning ladies and gentlemen. Welcome again to the public hearings of the Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle.
2. Today, we start on a new and important part of the public hearings of this Inquiry.
3. While the public hearings to date have concentrated on the conduct of Police officers, this second limb of the Inquiry focuses on the conduct of Church officials of the Maitland-Newcastle Diocese in relation to certain Police investigations, including in particular whether such Church officials hindered or co-operated with such investigations.
4. I intend to make some introductory remarks before inviting Senior Counsel Assisting, Ms Lonergan, to provide an Opening address.
5. After that, I will take the appearances for parties authorised to appear at the public hearing.
6. The Special Commission of Inquiry was established pursuant to Letters Patent dated 21 November 2012 and 25 January 2013, issued in the name of the Governor of New South Wales and in accordance with the *Special Commissions of Inquiry Act* 1983.

7. It followed the broadcast of a report on the ABC's *Lateline* program on 8 November 2012. In that television program, a senior Police officer, Detective Chief Inspector Peter Fox, made certain statements regarding the alleged covering up of child sexual abuse by Catholic priests, including Father Denis McAlinden and Father James Fletcher. Both McAlinden and Fletcher had been priests of the Maitland-Newcastle Diocese. Each is now deceased.
8. Detective Chief Inspector Fox made certain allegations, said to be based on his own experience, that the Catholic Church had covered up child sexual abuse by priests to protect the good name of the Church, and that it had hindered Police investigations into such alleged child sexual abuse by alerting offenders, destroying evidence, and relocating priests.
9. The Terms of Reference for the Inquiry require me to inquire into and report upon, two broadly stated matters:
 - (i) First, the circumstances in which Detective Chief Inspector Peter Fox was asked to cease investigating "relevant matters" and whether it was appropriate to do so. This first part of the Terms of Reference has been the subject of public hearings of the Inquiry held over a three-week period in Newcastle during May and June 2013;
 - (ii) Secondly, whether, and the extent to which, officials of the Catholic Church facilitated, assisted, or co-operated with, Police investigations of "relevant matters", including whether any investigation has been hindered or obstructed by, amongst other things, the failure to report alleged criminal offences, the discouraging of witnesses to come forward, the alerting of alleged offenders to possible police actions, or the destruction of evidence.

The public hearings dealing with this second limb of the Inquiry's Terms of Reference, commencing today in Newcastle, will continue for about three weeks.

10. The expression “relevant matters” is defined in the Terms of Reference as meaning:

“any matter relating directly or indirectly to alleged child sexual abuse involving Father Denis McAlinden or Father James Fletcher, including the responses to such allegations by officials of the Catholic Church (and whether or not the matter involved, or is alleged to have involved, criminal conduct).”

11. It is appropriate that I make some opening remarks relating to the second Term of Reference. To some extent, they reflect sentiments that I have expressed previously in formal sittings of this Inquiry. Nonetheless, it is important to reaffirm such matters, including in particular for the benefit of persons present in the courtroom today from the Hunter region who may have been deeply affected by some of the matters touched on by this Inquiry.
12. The sexual abuse of children is abhorrent. It has a devastating and long-lasting effect on victims and their families, and on the community generally. It should not be tolerated or condoned by any modern society.
13. It can be very difficult for children to speak out about sexual abuse. When they do, the collective responsibility to take action weighs heavily on all. The sexual abuse of children should no longer be a crime for which the conspiracy of silence continues to the grave.
14. Child sexual abuse by a priest involves a gross breach of trust of the highest magnitude. It breaches the trust of the victims and their families in a manner that is reprehensible and may cause irreparable harm.
15. The Diocese of Maitland-Newcastle has a very troubled history regarding issues of child protection and the sexual abuse of children.
16. This includes sexual abuse committed against young children by certain priests of the Diocese. Two of those priests were Denis McAlinden and James Fletcher.
17. Both of these persons are named in the Inquiry’s Terms of Reference. Each has been recognised, including by the Diocese, as having committed sexual abuse

against children across extended periods of time while serving in, or incardinated to, the Maitland-Newcastle Diocese.

18. Denis McAlinden is regarded as having a history of sexual offending against children over four decades. Many persons identifying themselves as victims of McAlinden have come forward over time. McAlinden died in late 2005. In June 2010, McAlinden was publicly described by the then Bishop of the Maitland-Newcastle Diocese, Bishop Michael Malone, as having been “a predator” who should have been dealt with earlier.
19. James Fletcher was ultimately convicted and sentenced in NSW in 2004 of having committed nine offences relating to the sexual abuse of a minor, who had been an altar boy. The sentencing judge described these offences as involving a “gross and inexcusable breach of trust.” Over time, a number of other victims of Fletcher have come forward, including to this Inquiry.
20. Following the conviction of Fletcher in December 2004, the then Bishop of the Maitland-Newcastle Diocese issued an apology to the victims and the victims' families for the pain and suffering caused by the criminal actions of Father Fletcher. Fletcher died in gaol in January 2006.
21. In the circumstances described, there can be little doubt that McAlinden and Fletcher were sexual predators who, utilising their position as priests of the Diocese, separately committed heinous offences against vulnerable young children.
22. An additional matter may be noted. Both in public pronouncements (including on the *Lateline* program) and in private hearings before the Inquiry, Detective Chief Inspector Fox has made statements referring to his experience with particular instances of alleged covering up of child sexual abuse and hindering of Police investigations by Church officials. To the extent they fall within the Terms of Reference, these matters are being examined by the Inquiry.
23. However, while the allegations raised by Detective Chief Inspector Fox in the *Lateline* program form part of the backdrop to the establishment of the Inquiry,

the Inquiry's investigations, which have been underway since late last year, have necessarily extended beyond the particular instances raised by Detective Chief Inspector Fox.

24. Further, to the extent that statements made by Detective Chief Inspector Fox relate to matters that fall outside the Terms of Reference, those matters have been referred to the National Royal Commission into Institutional Responses to Child Sexual Abuse for consideration.
25. While the Inquiry's Terms of Reference focus upon matters relating to McAlinden and Fletcher, and associated Police investigations, this Inquiry is acutely aware that there have been victims of priests other than McAlinden and Fletcher. Today, I acknowledge those victims and their families, and the pain and suffering they endure daily. I trust, and expect, that their voices will be heard in other forums.
26. This Inquiry continues to provide an important opportunity for persons, including those who held positions within the Catholic Church, to come forward and provide information to the Inquiry about relevant matters that occurred in the past. This opportunity remains open, even as the public hearings of the Inquiry continue. I encourage such persons to come forward and to contact the Commission's staff, who will continue to make themselves available to receive such information as required.
27. This Inquiry will continue to look at matters that occurred principally in the past. In doing so, while there may be some important aspects that are regarded as immutable, some care may need to be taken about necessarily judging events of the past solely by today's knowledge and standards.
28. It is also appropriate to mention three further matters at the outset.
29. First, the Inquiry has been carrying out its investigations since late last year. This has involved the undertaking of a substantial amount of work in respect of both the first and second Terms of Reference. More than 70 summonses for production of documents have been issued to over 35 relevant persons and organisations.

Approximately 100,000 pages of documents have been produced and reviewed. Further summonses for production may be issued as required.

30. In addition, as part of its investigations, the Inquiry has conducted in excess of 120 compulsory private hearings, conferences and interviews with relevant persons, including Church officials and police officers.
31. The Inquiry has also been acutely aware of the need to ensure that victims of McAlinden and Fletcher, who can provide relevant information, have been able to be heard as part of the Inquiry process. In addition to meeting with victims and their families and conducting numerous private hearings, conferences and interviews, the Inquiry has also held a number of information sessions at a dedicated location at Wallsend. This has proved to be a useful means by which information relevant to the Inquiry's investigations has been obtained.
32. Secondly, as I have already mentioned, the present Inquiry, by its amended Terms of Reference, is authorised to and has established arrangements for the referral and sharing of evidence, information and matters coming to the attention of the Inquiry, which fall outside the scope of the Terms of Reference, but which may be of relevance to the National Royal Commission into Institutional Responses to Child Sexual Abuse.
33. The National Royal Commission was established pursuant to Letters Patent issued by the Governor-General on 11 January 2013 under the Commonwealth *Royal Commissions Act 1902* (Cth).
34. The Terms of Reference of the National Royal Commission are broadly stated. Consistent with its Terms of Reference, the Royal Commission can look at, among other things, any private or non-governmental organisation, including a religious organisation (such as a Diocese), that is, or was in the past, involved with children, and to consider the institutional responses to allegations and incidents of child sexual abuse and related matters.

35. This Inquiry has been able to utilise its information-sharing procedures to refer a substantial quantity of material, received from a number of different sources (including from Detective Chief Inspector Fox), for examination and investigation by the Royal Commission, and will continue to do so as appropriate.
36. Thirdly, as I have indicated, a significant focus of the Inquiry's work has been dealing with victims of past sexual abuse by McAlinden and Fletcher and with victims' families. The Inquiry will continue to adopt the practice of using pseudonyms to protect the identity of particular persons, including victims and family members, who may give evidence, or otherwise be referred to in evidence or documents before the Inquiry. The use of such pseudonyms has regard to important matters such as the sensitivities of victims and family members, and in particular, the protection of their privacy.
37. It is expected that counsel and witnesses will also use designated pseudonyms when referring to victims and victims' families.
38. I also intend to make non-publication orders regarding the names of such persons or any matters that would tend to identify them.
39. A further matter of importance should be made clear. On occasion, the Inquiry has and will continue to be required to take certain evidence *in camera* (ie without media or the general public present). Under the *Special Commissions of Inquiry Act*, I am authorised to take evidence *in camera* where it is considered desirable to do so. This may be the case for a number of reasons, and no adverse inference should be drawn from the fact that a person may give all or part of their evidence *in camera*.
40. Thus, for example, while recognising the need to accord procedural fairness to relevant parties authorised to appear, I can take evidence *in camera* from victims and other persons who may already have suffered severely because of the offending conduct of McAlinden or Fletcher. In many cases, the witness may be unable or unwilling to give evidence other than in such circumstances.

41. Similarly, evidence may be taken *in camera* so as not to prejudice, by pre-trial publicity, any potential future criminal proceedings or to influence evidence that any witnesses might give at such proceedings. Persons who give evidence *in camera* in such circumstances may not themselves be facing potential criminal proceedings but may be important witnesses in such potential proceedings.
42. As I have previously stated, in circumstances where I am commissioned to inquire into particular matters which relate to allegations of 'concealment' by members of the Catholic Church of sexual abuse of children, and the subsequent co-operation of Church officials with relevant police investigations, I do not make orders for the holding of *in camera* hearings lightly. However, the necessity for such procedures arises primarily due to both the sensitivities of victims and the fact that the present Inquiry was announced against the background of an existing Police investigation (Strike Force Lantle) into alleged concealment of sexual offences by Catholic Church officials. This Inquiry must not compromise any potential future criminal proceedings in any way. I am confident that the necessity to proceed in this manner will be well understood by all.
43. Before embarking on the public hearing for this Second Term of Reference, I wish to make a comment about my ultimate role, under the *Special Commissions of Inquiry Act 1983*, in providing a report to the Governor. Under that Act, I am required to report to the Governor in connection with the subject matter of the Commission, and "in particular... to report as to whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence."
44. Further, under the Act, I am permitted in the report to make such recommendations relating to the publication of the whole or any part of the report as I, as Commissioner, think proper.
45. As presently advised, I intend recommending to the Governor that the major part of my report, dealing with matters other than relating to *in camera* hearings, be made public as soon as practicable after the report has been properly considered.

46. Matters relating to *in camera* hearings will likely be included in a separate volume of the report. It may be expected that publication of this part of the report would be deferred having regard to the course of any potential criminal proceedings or any decisions as to such potential proceedings that might be made by the appropriate authorities. However, I can indicate my provisional view is that I anticipate recommending to the Governor that, at an appropriate time, my report be made public in its entirety.

ENDS