

**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 Wednesday, 3 July 2013 at 10.10am  
(Day 3)

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 MS LONERGAN: I recall Detective Chief Inspector Fox.  
2  
3 <PETER RAYMOND FOX, sworn: [10.11am]  
4  
5 <EXAMINATION BY MS LONERGAN CONTINUING:  
6  
7 MS LONERGAN: Commissioner, Mr Cohen, who is counsel for  
8 Detective Chief Inspector Fox, has asked me to note on the  
9 record that Detective Chief Inspector Fox is unwell but not  
10 so unwell that he can't forge on with his evidence, as I  
11 understand the position.  
12  
13 THE COMMISSIONER: If you need a break, Detective Chief  
14 Inspector Fox, perhaps we can go on to something else.  
15  
16 THE WITNESS: Thank you, Commissioner. It is just the  
17 dreaded flu at this time of year.  
18  
19 THE COMMISSIONER: Thank you.  
20  
21 MS LONERGAN: Could the witness be shown exhibit 56,  
22 please.  
23  
24 Q. Also, Detective Chief Inspector Fox could you reach  
25 for volume 7 of the materials there and just flag tab 498.  
26 We'll start with exhibit 56. Do you recall I asked you  
27 some questions yesterday about exhibit 56?  
28 A. Yes.  
29  
30 Q. And that's a report you prepared for the Ombudsman's  
31 office back in May 2003?  
32 A. Yes.  
33  
34 MS LONERGAN: For those at the Bar table, it is tab 396,  
35 if they have not removed it from their bundle, in volume 5.  
36  
37 Q. On page 3 of your report to the Ombudsman - just have  
38 a look at the bottom of page 2 of your report, first, the  
39 very last paragraph. There you deal with having taken  
40 statements from five members of the Catholic Church. Do  
41 you see that at the bottom of the second page of your  
42 report?  
43 A. Yes, I do.  
44  
45 Q. There is a person mentioned, Detective Brown --  
46 A. Yes.  
47

1 Q. -- who you also did some statement-taking with at that  
2 time. Do you remember what his involvement was?  
3 A. My recollection is the day I arrested James Fletcher  
4 I netted a corroborating officer to sit along the  
5 electronic interview with me, and Don Brown was free that  
6 day, so I used him to assist me with that.  
7  
8 Q. Just to clarify, in the paragraph before you talk  
9 about the charging of Father James Fletcher and then, in  
10 the last paragraph, you talk about "in the week following  
11 the charging of Fletcher, statements were taken from five  
12 members of the Catholic Church." You seem to be talking  
13 about five other people, people other than Father Fletcher.  
14 Would you agree with me?  
15 A. Yes.  
16  
17 Q. We just want to identify those five statements.  
18 I take it Bishop Malone is one; Father Burston and Father  
19 Saunders are another two?  
20 A. Yes.  
21  
22 Q. Father Harrigan?  
23 A. Yes.  
24  
25 Q. And then there would be one more person. I suggest to  
26 you, if you have a look at the following page, the fifth  
27 person was Father Searle.  
28 A. Yes.  
29  
30 Q. You didn't take the statement from Father Searle, did  
31 you?  
32 A. I don't recall. I know I spoke to him.  
33  
34 Q. On top of page 3 of your report, you talk about having  
35 spoken to Father Searle by phone on 16 May 2003.  
36 A. Yes.  
37  
38 Q. Are you able to recollect now what it was that led you  
39 to having the conversation with Father Searle?  
40 A. Yes, I do.  
41  
42 Q. And what was that?  
43 A. When I obtained the statement from --  
44  
45 Q. [AH]?  
46 A. -- [AH], he relayed to me an incident that occurred at  
47 Nelson Bay where a comment was passed to him, I suppose

1 innocently, by Father Searle in a social setting.  
2  
3 Q. Yes.  
4 A. And [name suppressed], I suppose without him  
5 knowing the background --  
6  
7 Q. [AH].  
8 A. Sorry  
9  
10 MS LONERGAN: If the record could be noted it is [AH].  
11  
12 THE WITNESS: Yes. As a result of what --  
13  
14 MS LONERGAN: I'm sorry, the non-publication, a  
15 non-publication over the name.  
16  
17 MS COMMISSIONER: Yes, a non-publication order --  
18  
19 MS LONERGAN: Q. I'm sorry, Detective Chief Inspector  
20 Fox, we have to try and use the pseudonym, please.  
21 A. Yes, sorry, [AH]. As a result of what was said to  
22 [AH], he became very distressed and stayed where he was  
23 drinking for longer. Later that evening, he attended the  
24 presbytery --  
25  
26 Q. I'm going to stop you there. To get the context of  
27 your evidence, you're conveying something that [AH] said to  
28 you occurred?  
29 A. Yes, and I believe it is in his statement.  
30  
31 Q. Continue. This was associated with Father Searle, was  
32 it?  
33 A. Yes. And [AH] went to the presbytery and began to  
34 yell obscenities, things of the nature of, "You're all  
35 f...ing paedophiles and you all do ..." - you know things  
36 of a sexual nature - "to boys", and all that sort of thing,  
37 and he became angry over it all and threw a beer bottle at  
38 the presbytery at one stage.  
39  
40 Q. Again the context of your evidence is [AH] told you  
41 that that's what had he done?  
42 A. Yes, exactly.  
43  
44 Q. Where does Father Searle come in?  
45 A. Father Searle came out in the middle of the tirade.  
46  
47 Q. Again, [AH] is telling you this?

1 A. Yes. I also learnt it from later on; Father Searle  
2 acknowledged that he came out. Where it varied, though, is  
3 from that point.

4  
5 Q. When you say he acknowledged Father Searle came out,  
6 you also spoke to Father Searle on the phone on 16 May?

7 A. That's right.

8  
9 Q. Can we just go to that conversation. Can you tell me  
10 what Father Searle told you about that particular event?

11 A. Father Searle told me that [AH] was drunk and upset  
12 and quite - basically, out of control, for whatever reason  
13 that he didn't know. He told me that the only thing he  
14 recalls saying was that - trying to get [AH] to leave and  
15 told him if he didn't do so, he'd be calling the police.  
16 [AH] [sic] went back into the presbytery at this point and  
17 telephoned the mother of [AH] --

18  
19 Q. I think you mean --

20 A. -- the parents of [AH].

21  
22 Q. I think you are confused. You said "[AH] went back  
23 into the presbytery." I think you meant Father Searle.

24 A. Sorry, Father Searle went back in the presbytery and  
25 phoned the parents of [AH].

26  
27 Q. Yes.

28 A. And the material that I - was obtained in  
29 Father Searle's statement by Detective Brown and also what  
30 Father Searle told me over the phone on the 16th differed  
31 markedly from what the conversation was that was relayed to  
32 me by [AH]'s parents.

33  
34 Q. We've got a number of second and third-hand hearsay  
35 pieces of material. Do you agree with me?

36 A. Exactly.

37  
38 Q. Let's concentrate on what it was that was told to you  
39 by Father Searle, as set out in your May 2003 report to the  
40 Ombudsman. You see on page 3 you mention that Father  
41 Searle told you certain things in a phone call on 16 May  
42 2003?

43 A. Yes.

44  
45 Q. One of the things he told you was:

46  
47 *[AH] "seemed to be angry with the world"*

1                   that night and in light of what has now  
2                   come out that may be understandable."  
3  
4           A.    Yes.  
5  
6           Q.    You put that in inverted commas in your statement to  
7           the Ombudsman in May 2003?  
8           A.    Yes.  
9  
10          Q.    Did you have a record of what Father Searle had told  
11          you on 16 May 2003 at the time you prepared this statement  
12          for the Ombudsman?  
13          A.    I don't recall.  
14  
15          Q.    But it was fresh enough in your mind to form the view  
16          that you could put it in inverted commas in that way in  
17          your report to the Ombudsman?  
18          A.    Yes, it was only - the report --  
19  
20          Q.    Only a week or two later.  
21          A.    Yes.  
22  
23          Q.    You formed the impression that at that time he was  
24          sympathetic and seemed more than happy to speak to  
25          investigators and assist - "he" being Father Brown?  
26          A.    Yes. And that statement that he made --  
27  
28          Q.    Sorry, Father Searle, terribly sorry.  
29          A.    That comment that Father Searle --  
30  
31          Q.    I don't want you to make a comment. I just want you  
32          to confirm that that was the impression that you received  
33          from your conversation with Father Searle.  
34          A.    Yes, it was.  
35  
36          Q.    Did you then instruct Detective Brown to go and take a  
37          statement?  
38          A.    Yes.  
39  
40          Q.    From Father Searle?  
41          A.    Yes.  
42  
43          Q.    Did you go with Detective Brown?  
44          A.    I was there. I spoke to - from recollection, I spoke  
45          to Father Searle, when he arrived at the police station to  
46          provide his statement, and we discussed what he was - you  
47          know, what I would like - well, not what I would like,

1 I should rephrase that. I indicated the relevant areas --

2

3 Q. To Detective Brown?

4 A. To both Detective Brown and to Father Searle.

5

6 Q. Your recollection is that you were present with  
7 Father Searle and told Detective Brown and Father Searle  
8 what you expected would be addressed in the statement?

9 A. Yes my recollection is I had originally intended  
10 to take the statement myself. I don't recall now, but  
11 something significant came up that was going to prevent  
12 me from doing that, so I needed to speak to both  
13 Detective Brown and Father Searle together for the reason  
14 that Detective Brown had very minimal knowledge of the  
15 matter and I wanted to ensure that he included in it what  
16 I felt was important and relevant to the investigation.

17

18 Q. All right. Just to clarify a bit of context for the  
19 material which Detective Brown was going to be covering  
20 with Father Searle, the event that was described, the night  
21 where [AH] was outside the Nelson Bay presbytery, was that  
22 some years before May 2003?

23

24

25 A. Yes.

26

27

28

29

30

31

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45

46

47

Q. I want to suggest to you the event occurred in 1998.  
Does that accord with your memory as being correct?

A. That would be consistent, yes.

1  
2 Q. The discussion between you and [AH] where [AH] told  
3 you about this particular event, when did that occur?  
4 A. That occurred - I typed his statement over a period of  
5 months. That was an aspect that I think was included in  
6 his statement towards the end, so I'm going to suggest in  
7 early 2002, probably not all that much longer before what  
8 we're talking about here in May.  
9  
10 Q. Can I suggest you mean early 2003?  
11 A. Sorry, 2003, you're correct.  
12  
13 Q. You go on in your report to the Ombudsman to say that:  
14  
15 *When interviewed by Detective Brown on*  
16 *Monday the 19th of May 2003 he backed away*  
17 *from his former statements recalling only*  
18 *that.*  
19  
20 And then you go on. First of all, you weren't present for  
21 the interview; is that the position?  
22 A. That's correct.  
23  
24 Q. And you say.  
25  
26 *... he backed away from his former*  
27 *statements ...*  
28  
29 By that, do you mean what he said to Detective Brown and  
30 what ended up within the statement was different to what  
31 he'd said to you on the phone a couple of days before?  
32 A. Exactly.  
33  
34 Q. But there was no previous signed statement from  
35 Father Searle?  
36 A. No.  
37  
38 Q. You say that what Father Searle ended up putting in  
39 his statement was words to the effect that [AH] made  
40 comments of "Nobody loves me", and this resulted in him  
41 threatening to call the police and telephoning [AH]'s  
42 father. Is it the position that you expected other  
43 information to be in there in the statement of Father  
44 Searle that wasn't?  
45 A. Yes, and - yes.  
46  
47 Q. Did you form a view about that difference in versions



1 between the telephone conversation with you on 16 May and  
2 what Father Searle ultimately included in the statement on  
3 19 May?

4 A. Yes.

5  
6 Q. What was the other information that you say was  
7 conveyed to you in the telephone conversation on 16 May  
8 that you had with Father Searle?

9 A. More - very much along the lines of that the night of  
10 the incident - what he told me over the phone was  
11 consistent with what was alleged by [AH] --

12  
13 Q. I'm going to stop you there. What I want you to  
14 focus on is the telephone conversation that you had with  
15 Father Searle. Forget about what [AH] told you happened,  
16 but just your conversation with Father Searle on 16 May.

17 A. Okay.

18  
19 Q. In your much more contemporaneous report you prepared  
20 for the Ombudsman you have identified one comment that  
21 Father Searle made to you; that, is:

22  
23 *[AH] "seemed to be angry with the world*  
24 *that night and in light of what has now*  
25 *come out that may be understandable".*

26  
27 However, you don't attribute any other information or  
28 comment by Father Searle to him in your report to the  
29 Ombudsman?

30 A. No, that's correct.

31  
32 Q. So what else was there that was said to you by  
33 Father Searle but did not end up in the statement?

34 A. What he said to me is he - off my recollection, I put  
35 to him over the telephone that [AH] said that he had been  
36 making offensive comments about sexual acts perpetrated by  
37 priests against kids.

38  
39 Q. By "he" you mean [AH] --

40 A. [AH].

41  
42 Q. -- told you [AH] had done that?

43 A. That's correct

44  
45 Q. Yes.

46 A. And I think Father Searle initially was concerned that  
47 I was suggesting that it was he that may have committed

1 some of these acts. I reassured him that that wasn't the  
2 case.  
3  
4 Q. I'm going to stop you there. As an experienced  
5 witness, detective chief inspector, you would understand  
6 that because I'm asking about a telephone conversation,  
7 I really need you not to talk about what you think he would  
8 have thought --  
9 A. My apologies.  
10  
11 Q. -- but try to stick to the conversation if you  
12 possibly can.  
13 A. He said, "You don't think that I've done any of these  
14 things?" I said, "No, not at all. That's never been  
15 suggested. Please don't be concerned about that. " He  
16 said, "No" - he said - "He was talking about filthy things  
17 that priests do to children."  
18  
19 Q. And "he" being [AH]?  
20 A. Yes.  
21  
22 Q. Right.  
23 A. He was attributing those words to [AH]?  
24  
25 Q. Yes.  
26 A. And I said, "Well, I've spoken to [AH]'s mother and  
27 she told me that you also spoke to her and told her that."  
28 He said, "Yes." He said, "I had no idea what was going on  
29 at the time." I said, "Well, that's what I need to get a  
30 statement from you about." We then made a date. Off  
31 recollection, my recall of that is I did set a date earlier  
32 than the 6th - sorry, the date that he ultimately came in  
33 to provide his statement, but he failed to keep that  
34 appointment. I don't recall the reason for that.  
35  
36 Q. Now, I'm going to stop you. Going back to the  
37 beginning of your previous answer, you said that you told  
38 Father Searle that [AH] had raised certain things with you  
39 to the effect that he'd gone and made assertions that  
40 priests had been doing things to little boys?  
41 A. Yes. Yes.  
42  
43 Q. What I want to know is whether Father Searle confirmed  
44 or stated in the conversation to you on 16 May that that's  
45 in fact what [AH] had said?  
46 A. That's correct. That's exactly what occurred.  
47

1 Q. That wasn't within the material that you've just  
2 outlined. What was it that Father Searle said to you about  
3 what [AH] had yelled?  
4 A. Sorry. I thought I said. He said that he was saying  
5 filthy things - and I remember that was the term he used,  
6 "filthy things" - about what priests do to young boys.  
7  
8 Q. And he said that to you before or after you raised  
9 what [AH] had allegedly said to him?  
10 A. After.  
11  
12 Q. Father Searle said to you he, being [AH], was saying  
13 filthy things regarding what priests do?  
14 A. What priests do to young boys.  
15  
16 Q. All right. I'm with you. Your recollection is that  
17 that information didn't end up in the statement that  
18 ultimately was completed by Father Searle?  
19 A. I was surprised that it never - because that  
20 conversation only occurred days before and - yes, obviously  
21 what was in his statement was nothing - nothing along the  
22 line of what - our conversation only days earlier.  
23  
24 Q. So did you go and further interview Father Searle,  
25 given that what he put in the statement seemed to be out of  
26 step with significant matters he told you a few days  
27 before?  
28 A. I did. I spoke - well, I didn't interview him in the  
29 sense that I obtained a formal interview or a statement  
30 from him, but I spoke to him after it, obviously raising  
31 concern that what we had spoken about on the phone wasn't  
32 what was put in his statement. I initially thought there  
33 may have been some --  
34  
35 Q. Don't worry about what you thought. What did Father  
36 Searle say in reply to you raising with him that his  
37 statement seemed not to be complete in terms of what he  
38 told you a few days before?  
39 A. Effectively, he denied saying those things to me over  
40 the telephone.  
41  
42 Q. All right. Did you make a note of that denial in your  
43 duty book or police notebook?  
44 A. I may have. I know I certainly had some conversations  
45 with Detective Brown about the fact, because I wanted to  
46 ensure that it wasn't his omission that those things  
47 weren't contained, and he explained to me that he was au

1 fait with what I was wanting to put in that statement  
2 because of the phone call and --  
3  
4 Q. When you say what you wanted him to put in the  
5 statement, by that do you mean you wanted Detective Brown  
6 to tell Father Searle what he should put in the statement  
7 in terms of content because you wanted the conversation  
8 that he had had with you --  
9 A. Yes.  
10  
11 Q. -- included in the statement?  
12 A. That's correct.  
13  
14 Q. Would you have a look at the same volume you've got  
15 there, tab 385.  
16 A. 385? Sorry, it is a different volume.  
17  
18 Q. I'm sorry, yes, it is a different volume, volume 5.  
19 Just leave the one you've got there open. We'll come back  
20 to that one very shortly.  
21 A. Yes, I have that.  
22  
23 Q. Have you turned up that statement of Father Searle?  
24 A. Yes.  
25  
26 Q. Leave that open and go back to exhibit 56. Do you  
27 see that paragraph that we've been looking in detail? The  
28 position is, isn't it, that you wanted to, as accurately as  
29 possible, convey relevant events to the Ombudsman in that  
30 report?  
31 A. I wanted to convey to them the situation.  
32  
33 Q. And the situation was that you felt you weren't  
34 getting appropriate cooperation from the Maitland-Newcastle  
35 diocese priests?  
36 A. Yes.  
37  
38 Q. So wouldn't it have been important in that document to  
39 have included the detail of what you allege Father Searle  
40 said to you; that is, that [AH] was outside his house  
41 saying the priest did filthy things to young boys?  
42 A. No, I - when I spoke to - I think I can say the name  
43 of the Ombudsman officer. When I spoke to Anne Barwick  
44 I offered --  
45  
46 Q. No, I'm going to stop you. That's not responsive to  
47 my question. What I want to know is about your document.

1 A. Yes.  
2  
3 Q. Wasn't it important in your document, which you were  
4 sending in to the Ombudsman's office, to include the  
5 details of what Father Searle said to you that ended up not  
6 being in his statement?  
7 A. No.  
8  
9 Q. Sorry, what was your answer?  
10 A. No.  
11  
12 Q. Why wasn't it important to include in your report,  
13 in the paragraph where you're dealing specifically with  
14 Father Searle's cooperation or lack thereof, that part of  
15 the conversation that he had with you that you say was  
16 important?  
17 A. Because, when I spoke to Anne Barwick at the  
18 Ombudsman's office, I offered to provide her with  
19 Father Searle's statement, or any other statements that  
20 would assist them, and she explained to me that they  
21 wouldn't be able to look at those aspects. What fell into  
22 their ambit was the fact that the diocese had failed to  
23 remove Father Fletcher from contact with children and  
24 visiting schools. They weren't concerned - even though she  
25 wanted an overview of the background, she didn't want a  
26 detailed account because that wasn't part of what they had  
27 the power to investigate.  
28  
29 Q. But the trouble is, isn't it, that what you sent to  
30 her was inaccurate in that paragraph about Father Searle  
31 because you have failed to include the comment you say  
32 Father Searle made to you, that [AH] was outside the  
33 presbytery saying filthy things about what priests do to  
34 little boys or young boys. What you put there is  
35 misleading, isn't it, because it doesn't include that  
36 comment?  
37 A. I don't think it is misleading because of that. As  
38 I said, I had much more detailed and fairly lengthy  
39 conversations with not only Anne Barwick but others at the  
40 Ombudsman's office, but what they made clear to me, even  
41 though I was telling them about these situations, is that  
42 they explained that they don't investigate that, that - you  
43 know, they wanted the report to give them just a background  
44 coverage.  
45  
46 Q. But the report you prepared to give them background  
47 coverage was inaccurate, wasn't it, based on the matters

1 that you say Father Searle in fact said to you?  
2 A. Yeah - no, I don't think it is inaccurate.  
3  
4 Q. Well, "Yes" or "No"? You said ""Yeah - no."  
5 A. Sorry.  
6  
7 Q. Which is it? Is it accurate or inaccurate?  
8 A. I think it's accurate.  
9  
10 Q. This report that you prepared for the Ombudsman was  
11 about 13 days after the conversation you alleged you had  
12 with Father Searle?  
13 A. Yes.  
14  
15 Q. You would be much more likely to accurately recall  
16 what the actual conversation with Father Searle was on  
17 16 May 2003 back then in May 2003?  
18 A. Yes.  
19  
20 Q. Than now?  
21 A. Yes.  
22  
23 Q. And 10 years later, now you recall a very distinctive  
24 phrase, "filthy things to young boys" and attribute that to  
25 Father Searle?  
26 A. I do remember him saying "filthy things" because he  
27 was - he didn't want to actually recount it. I do recall  
28 the conversation.  
29  
30 Q. All right. But you don't put it in your report to the  
31 Ombudsman, do you?  
32 A. But they didn't want it. Well, they just wanted an  
33 overview. Yes, I have only put that there and there is -  
34 I agree with you; there is much more in first-person  
35 conversation that I could have included in that report had  
36 the Ombudsman's office indicated, number one, that they  
37 were interested in it; and, number, two, that they had the  
38 power to do something about it, but --  
39  
40 Q. But the trouble is, detective chief inspector, what  
41 you included there in inverted commas, "He seemed to be  
42 angry with the world that night and in light of what has  
43 now come out, that may be understandable", represented,  
44 I suggest to you, that that was the material that was  
45 important that wasn't included in the subsequent statement.  
46 Would you agree with me?  
47 A. I agree with you that it is one sentence, which is a

1 snippet of the phone call had between us. I agree, I could  
2 have put much more in there, but I felt at the time, as a  
3 summary, that that encapsulated very briefly just the fact  
4 that he appeared to be not assisting and changing his  
5 evidence.  
6

7 Q. The significant matter of non-assistance was the  
8 absence, was it not, of the statement you alleged he made  
9 to you, that [AH] accused or shouted out that priests do,  
10 as he's termed it, "filthy things to little boys", but you  
11 haven't put that in that paragraph?

12 A. No, I haven't put that in because, as I said, I'm sure  
13 I mentioned it to Anne Barwick and she said "Well" - and  
14 she didn't specifically ask me to leave it out or to put it  
15 in. In me preparing this report, she said, "Can you put  
16 something together for us, just to give us a bit of  
17 background and an overview of the situation?"  
18

19 Q. The purpose of the report was to inform the  
20 Ombudsman's office of lack of assistance and cooperation by  
21 priests of the diocese, wasn't it?

22 A. No.  
23

24 Q. No?

25 A. The purpose of the report was for them to take action  
26 and investigate the church and why they hadn't removed  
27 Father Fletcher from contact with children and why they had  
28 failed under the Ombudsman's Act to notify the Ombudsman's  
29 office, which was a mandatory regulation at the time, of  
30 their knowledge that he was being accused of child abuse  
31 offences, and that was the purpose of the report. The  
32 other contents were just to give them a general background.  
33

34 Q. Isn't the key matter, given that the Ombudsman's  
35 office had a child protection function, to include in your  
36 report that an assertion had been made by [AH] about sexual  
37 abuse of children by priests? Isn't that a key matter for  
38 you to have included there?

39 A. No, I can only reiterate, you know, I actually thought  
40 I probably gave them more than what they actually wanted  
41 in that report. As I explained, it was only an overview.  
42 They weren't as concerned about that aspect, and Anne  
43 Barwick made that fairly clear to me, but they just wanted  
44 a little bit of a background for - the fact whether or not  
45 priests were being cooperative or not on other aspects,  
46 away from the fact that Fletcher was still being allowed  
47 access to schools and children, was only subsidiary to what

1 their main interest in the matter was.

2

3 Q. What use would you have been able to put to any  
4 statement by Father Searle about the matters [AH] is  
5 alleged to have yelled outside the presbytery in Nelson Bay  
6 in terms of the prosecution of James Fletcher?

7 A. What he told me over the phone was, number one,  
8 consistent with what [AH] alleged occurred on night and,  
9 number two, was also consistent with what [AH]'s parents  
10 had told me was said.

11

12 Q. How was that important or relevant to your  
13 investigation and/or prosecution of James Fletcher?

14 A. Because it actually indicates that, at a much earlier  
15 time, [AH] had issues, if you like, for want of a better  
16 term, and was quite distraught and making comments of  
17 priests sexually abusing young boys, and I felt that the  
18 fact that he had made that comment that night and exhibited  
19 sort of traumatic behaviour following what he alleged and  
20 was ultimately proven in court, would have supported his  
21 assertions further at the trial.

22

23 Q. Could you go to tab 498 of volume 7. That's your  
24 report of 25 November 2010. Yes, there was one other  
25 matter I needed to finish off in the matters relating to  
26 Father Searle. You don't need the document for this  
27 question. Do you recall you mentioned that Father Searle  
28 failed to keep an appointment on 16 May 2003 and that's why  
29 you phoned him?

30 A. I don't recall when he failed to keep the appointment.

31

32 Q. Okay.

33 A. I phoned him initially, obviously just to make contact  
34 with him and say, "Listen, I would like to talk to you  
35 about a matter. Can you come in?" I don't recall the date  
36 or time. I do recall that we made a time and an  
37 appointment for him to come in, and he didn't turn up and  
38 didn't notify me, which I felt was a bit unusual. I then  
39 had to make a second appointment, for which he did then  
40 turn up. I don't recall why he didn't turn up the first  
41 time.

42

43 Q. Was there much time delay between the failure to turn  
44 up to the first appointment and his presentation?

45 A. No, there wasn't. I say that simply as a fact that it  
46 occurred. I'm not suggesting there that - any more to it.  
47 I don't know why he didn't come in on the first



1 appointment.

2

3 Q. In terms of background witnesses in matters such as  
4 the one involving [AH], there's no obligation for people to  
5 attend at the police station as part of your investigation.

6 They have an option to attend or not attend?

7 A. Correct. Absolutely.

8

9 Q. So, from that point of view, did you encounter any  
10 resistance from Father Searle in attending the police  
11 station to complete a statement for you?

12 A. No. He was - yes, he came in and he provided the  
13 statement. I think that's a fact.

14

15 Q. Were there any priests of the Maitland-Newcastle  
16 diocese who you asked to attend and provide statements who  
17 refused to do so at part of your Fletcher investigation?

18 A. No. They all came in. You know, I probably should  
19 add, and I don't want to be unfair to Father Searle, but  
20 he - the impression I got was that he wasn't keen to  
21 provide a statement. He didn't really want to become  
22 involved in the matter at all, but that may have been  
23 understandable.

24

25 MR GYLES: I object to that evidence and I seek a  
26 non-publication order. The impression this witness had is  
27 of no probative value whatsoever. The point is that he did  
28 not take this statement.

29

30 THE COMMISSIONER: Yes.

31

32 MR GYLES: We don't know the circumstances in which the  
33 statement was taken.

34

35 THE COMMISSIONER: He said there was no resistance from  
36 Father Searle.

37

38 MR GYLES: Detective Chief Inspector Fox has said what he  
39 can about it. His impressions of things are of no value at  
40 all.

41

42 THE COMMISSIONER: Unless they are derived from something  
43 more concrete, perhaps Mr Gyles.

44

45 MR GYLES: Quite.

46

47 MS LONERGAN: Perhaps could I ask a few more questions on

1 that. In any event, the answer given by this witness would  
2 be a question of weight.  
3  
4 Q. Detective Chief Inspector Fox, did something that  
5 Father Searle said or did in your presence or in your  
6 hearing lead you to form the impression that there was some  
7 reluctance on his part to become involved?  
8 A. Yes, and I think that word would be a fair word,  
9 "reluctance", yes.  
10  
11 Q. What was that that he said or did that led to you  
12 believe that Father Searle was reluctant to become  
13 involved?  
14 A. Again I can't remember the exact words, but it was  
15 along the lines of, "I don't see what this has to do with  
16 the matter" - when I spoke to him on the 16th - "I don't  
17 see what it has to do with the matter. Do I really have to  
18 give a statement?" He wasn't saying he wouldn't. He was  
19 being cooperative. It may have been that he just didn't  
20 comprehend, but those words - he wasn't jumping at the  
21 opportunity to come in and assist. He - from those  
22 comments, I deduced that - well, I won't --  
23  
24 Q. When you explained to him that his evidence was  
25 helpful, did that reluctance then disappear?  
26 A. Yes, it did. You know, I insisted that we did need to  
27 get that statement and, ultimately, he did come in and  
28 provide it.  
29  
30 Q. We'll move to tab 498 of volume 7, which is your  
31 report of 25 November 2010.  
32 A. Yes.  
33  
34 Q. Can you just pass down to me what's behind tab 498,  
35 please. Just take it out of the folder and pass it down.  
36 A. Yes.  
37  
38 Q. Thank you. I will pass that back. Have a look,  
39 please, at page 2 of your report, the fourth paragraph. Do  
40 you see you state:  
41  
42 *Detective Ann Joy and I also spoke to*  
43 *Leo Clarke during my investigation.*  
44  
45 A. Yes.  
46  
47 Q. What investigation are you talking about there - the

1 Fletcher investigation?  
2 A. Predominantly, yes. I - yes.  
3  
4 Q. When you say "predominantly" --  
5 A. Well, yes, sorry, as I explained yesterday,  
6 predominantly I went down to speak to him about the - about  
7 my investigation of James Fletcher and links with Father  
8 James Ryan - sorry, Vincent Ryan, but also in view that  
9 Detective Watters had transferred down to the  
10 Central Coast, you know, I don't want to overemphasise it,  
11 but I suppose, in some respects, that I was just  
12 investigating the McAlinden matter, so far as --  
13  
14 Q. [AE]?  
15 A. Yes, just trying to ascertain whether or not the  
16 rumours that she had passed on to me had any foundation or  
17 not.  
18  
19 Q. So you asked Bishop Clarke whether he knew anything  
20 about McAlinden - was that the position? How did you put  
21 the question to Bishop Clarke?  
22 A. How I put that was along the lines of saying to  
23 him, "I've been told a rumour that the church had or  
24 you may have had knowledge of two other victims of Father  
25 McAlinden", and, "Do you have any - do you know anything  
26 about that?" And --  
27  
28 Q. Look at paragraph 4 of your report.  
29 A. Yes.  
30  
31 Q. Is that the conversation we're talking about, the last  
32 couple of sentences of paragraph 4 on page 2 of your  
33 report?  
34 A. Yes.  
35  
36 Q. Where you say:  
37  
38 *He said, "No. You would have to ask*  
39 *Michael Malone about that."*  
40  
41 A. Yes.  
42  
43 Q. Are you confident that former Bishop Clarke said,  
44 "No"?  
45 A. Oh, absolutely, yes, because had he said, "Yes", you  
46 know, at the time in the mind of I think it was [AE] --  
47

1 Q. Yes.  
2 A. -- and my mind is she didn't place a great deal of  
3 weight on it when she told me. She made it very clear it  
4 was only asserted so far as a rumour and I thought, well -  
5 you know, whether I'd have actually - I'd have probably  
6 just rung him up had it not been for the fact I was going  
7 to see him about these other matters and I simply wanted to  
8 know whether or not that had any legs or whether we could  
9 put that rumour to bed in my conversation with him.  
10  
11 Q. Had Bishop Clarke, former Bishop Clarke said, "Yes",  
12 what would you have done?  
13 A. Obviously I would have said, "What victims do you know  
14 of? Who are they? Can we get in contact with them?" It  
15 would have obviously flowed on to a lot more inquiries from  
16 there.  
17  
18 Q. What other inquiries amongst the "a lot more  
19 inquiries" would you have made if Bishop Clarke had said,  
20 "Yes" in answer to your question that he knew of other  
21 alleged victims of McAlinden?  
22 A. I would have obviously asked him to come back and  
23 provide a statement or an interview and made arrangements  
24 for that to occur. Through that process, I would imagine  
25 that - you know, I'd be surprised if I wouldn't have asked,  
26 "What documentation do you or does the diocese have? Can  
27 you tell me the name of those victims, how I can contact  
28 them, and exactly what were the allegations in relation to  
29 those other victims?" There would have been a whole array  
30 of material, and the main purpose - and I think other  
31 police have mentioned that here - is victims, whenever they  
32 come in, feel very isolated, that they're the only  
33 individuals making an allegation, and it strengthens not  
34 just the investigation but their resolve and their courage  
35 to go through with a prosecution when they know that there  
36 are other people supporting what they're alleging.  
37  
38 Q. You say you would have been surprised if you hadn't  
39 gone on and done these other steps. Can we take it by  
40 that, you mean it would have been your usual practice as an  
41 investigating officer to proceed down that path?  
42 A. If he had said, "Yes, I've got some knowledge of  
43 that", it would have opened up Pandora's box for a whole  
44 array of other investigations to be pursued.  
45  
46 Q. At the time you interviewed former Bishop Clarke, did  
47 you have an expectation that the bishop was telling the

1 truth?  
2 A. Oh, yes, I - you know, at this stage, I've got to say  
3 I had had very little contact with clergy and I took him on  
4 face value at his word when he said, "No", and the fact  
5 that it had only been conveyed to me as a rumour and I -  
6 which is the reason I think I only asked one or two  
7 questions about it. Sadly at the time, I never attributed  
8 any greater weight to it than what [AE] had said was a  
9 rumour. Obviously, events in later years, yes, I probably  
10 should --

11  
12 Q. Don't worry about that.

13 A. Yes.

14  
15 Q. You said it would have opened a Pandora's box and you  
16 also said you would have made inquiries of the diocese  
17 about documents. What are the investigative steps in the  
18 formal sense that you would have undertaken had you been  
19 advised by former Bishop Clarke that he knew of other  
20 victims of McAlinden?

21 A. You know, there's a whole array of things that come to  
22 mind is - you know, part of that, of course, would have  
23 been why it hadn't been volunteered earlier --

24  
25 Q. Don't worry about commenting on the morality or  
26 otherwise of the failure, if there was one, to volunteer  
27 this information. Just focus on the investigative and  
28 policing formal investigative steps you would have taken if  
29 former Bishop Clarke had told you he knew of other victims  
30 of McAlinden?

31 A. No, I don't raise that on a morality basis --

32  
33 Q. No, I don't want you to comment on my question.

34  
35 MR COHEN: I object. It's not commenting. There was a  
36 question, "What investigative steps would you take?" This  
37 was an endeavour to answer that question and it is not  
38 being permitted.

39  
40 MS LONERGAN: I want the witness to answer what  
41 investigative steps he would have taken without a comment  
42 on the morality or otherwise of the information being  
43 provided earlier.

44  
45 MR COHEN: I maintain my objection. There is no morality  
46 judgment or subjective impression being asserted there.  
47 The question was "What investigative steps?" It is nothing

1 to do with morality - "What steps?"

2

3 MS LONERGAN: And that is the answer that I am hoping  
4 to get, what the investigative steps were that were  
5 taken rather than a comment along the lines of whether  
6 there was a judgment or otherwise of the moral position of  
7 Bishop Clarke in having told the truth or not told the  
8 truth. I would just like an answer that addresses what  
9 investigative steps this witness would have taken.

10

11 THE COMMISSIONER: Q. Could you answer that, please, sir.

12 A. I'm not addressing a morality aspect; I'm addressing  
13 an investigative aspect because had --

14

15 MS LONERGAN: Q. All right, please do.

16 A. Had it turned out that Bishop Clarke had knowledge  
17 then and then there was documentation of those matters, it  
18 would have gone down the path of concealing a serious  
19 offence, possibly, depending on the nature of how that was  
20 volunteered. So that would have also been something that  
21 I would have made more inquiries on because, even in 2003,  
22 that still existed.

23

24 Q. It may be the way I'm asking the question. I'm not  
25 asking about what ultimate criminal offences you may have  
26 pursued.

27 A. Okay.

28

29 Q. I'm asking something much more mechanical and much  
30 more basic. You gave an answer broadly outlining the sort  
31 of things you would have done.

32 A. I understand.

33

34 Q. What I would like you to address is what would you  
35 have done as a police officer? What are the formal things  
36 you do in pursuing the line of inquiry that you've  
37 mentioned you would have, given a situation where former  
38 Bishop Clarke told you that he knew about previous victims?

39 A. Okay. I would have - I think had he told me that,  
40 that day, I would have, in all likelihood, actually asked  
41 him to come to the local police station to give a statement  
42 if he was available that day. I would have been - I know  
43 I would have been very keen to get that as soon as I could,  
44 if not that day, very soon after.

45

46 Q. What about documents?

47 A. That would have been the next step. I would have

1 asked him in providing that statement if any documentation  
2 existed in relation to those other two victims and where  
3 that documentation was and who had created it - all those  
4 questions, to his knowledge, surrounding their existence or  
5 otherwise - and --  
6

7 Q. Would you have --

8 A. -- then execute a search warrant on the diocese, or  
9 wherever they may be in existence, to obtain those.

10  
11 Q. Could you have a look at volume 1 of the tender bundle  
12 and turn to tab 59. I want you to read the letter behind  
13 tab 59 to yourself. There's a typescript of it behind the  
14 letter that might be a little easier to read. Let me know  
15 when you've read that.

16 A. Okay.

17  
18 MS LONERGAN: Commissioner, it is quite a long letter.  
19 Perhaps we could take the morning tea adjournment now so  
20 that Detective Chief Inspector Fox can catch his breath and  
21 read that in some comfort.

22  
23 THE COMMISSIONER: Very well. Thank you, Ms Lonergan.

24  
25 **SHORT ADJOURNMENT**

26  
27 MS LONERGAN: Commissioner, before we resume the evidence  
28 of Detective Chief Inspector Fox, there has been a request  
29 from the media for access to copies of exhibits 49 to 56,  
30 inclusive. If any person at the Bar table has an objection  
31 to those being released, could they let the staff of the  
32 Special Commission know by 1.45.

33  
34 THE COMMISSIONER: Yes, thank you, Ms Lonergan.

35  
36 MS LONERGAN: Q. You've had an opportunity to read the  
37 letter that is behind tab 59?

38 A. Yes, I have.

39  
40 Q. It is a letter dated 17 May 1976 from PD Cotter to  
41 LM Clarke?

42 A. Yes.

43  
44 Q. Are there any matters in that letter - that is,  
45 provided to you as an officer investigating McAlinden - you  
46 would have been able to use?

47 A. Oh, absolutely, yes.

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Q. Can you identify what matters in the letter you would have been able to use?

A. Predominantly, you know, the central matter is the - well, it alludes to it. It doesn't actually say explicitly the nature of the sexual abuse of young girls in the Forster-Tuncurry area by McAlinden.

Q. Is that page 3 of the letter, commencing --

A. Sorry, I'm cheating; I'm using the transcript.

Q. Go to the handwritten one. On page 3 it starts with:

*On May 6th ... a deputation came from Forster-Tuncurry to the Education Office to complain that Father Mac had struck a child about the head while giving a religion lesson ...*

Do you see that?

A. Yes.

Q. Then it mentions:

*Father Coolahan passed the situation on to me.*

Do you see that?

A. Yes.

Q. In terms of those parts of the matter, is that information you could have used as an investigating officer to further make inquiries about McAlinden?

A. That's obviously a physical assault as opposed to a sexual assault, but certainly it's - you know, apart from stating the quite obvious, that is something that's quite abhorrent occurring. But I still believe that his attitude and his conduct towards children, that that would have fallen into relevancy.

Q. Look at the next bit:

*A week later, while I was away in Sydney for our talk, a further deputation (led by a young solicitor) came to Newcastle with other charges against Father Mac. In my absence Father Coolahan saw them. These*



1 charges have to do with 'de sexto' in an  
2 unusual way but I think not extremely  
3 serious.  
4

5 In terms of what I've read out to you there, would that  
6 have assisted investigative steps that you would have taken  
7 had this letter been drawn to your attention?

8 A. Certainly, yes, absolutely, on that basis, I --  
9

10 Q. What would you have done based on that piece of  
11 information?

12 A. I would have obviously - I think the most probable  
13 thing, the one that could probably assist the most out of  
14 that statement, is the young solicitor that is referenced  
15 and obviously, I would imagine, other parents. But in  
16 addition to that, Father Coolahan, his statement of what  
17 occurred would have been very important as well.  
18

19 Q. Then there's mention in the next paragraph of the  
20 author of the letter, Monsignor Cotter, discussing the  
21 situation on Saturday morning with other consultants.

22 A. Yes.  
23

24 Q. Would you have done anything about that particular  
25 piece of information?

26 A. My understanding of those meetings is that there  
27 should have been minutes taken and there should have been  
28 records. Obviously, anyone else at that meeting, their  
29 evidence may or may not have been admissible, but I still  
30 would have been desirous of getting statements from them  
31 and certainly any minutes or notations.  
32

33 Q. Did you know, in or about the time you had the  
34 conversation with former Bishop Clarke, that the consultants  
35 kept minutes of meetings? Was that something within your  
36 knowledge?

37 A. Yes, I've known that, yes. I think most people --  
38

39 Q. You knew that?

40 A. Most people are aware of that.  
41

42 Q. I'm sorry, to interrupt you. You knew that in 2003?

43 A. Oh, yes.  
44

45 Q. You knew that as part of other investigations you'd  
46 carried out or you just knew that generally?

47 A. No, predominantly from talking to witnesses mainly

1 through the Fletcher investigation. A lot of them had been  
2 involved in meetings of this nature. I was aware of that  
3 more so from work - you know, gathering information had it  
4 become relevant in relation to Fletcher's investigation.  
5 But, as a result, I had that knowledge that I probably  
6 could have applied to the McAlinden investigation.  
7

8 Q. And then the letter goes on:  
9

10 *On Saturday evening I went to*  
11 *Forster-Tuncurry to meet a group of some*  
12 *ten or twelve people convened by telephone*  
13 *independently of Father Mac.*  
14

15 Do you see that?

16 A. Yes.  
17

18 Q. Would you have made some inquiries about who attended,  
19 or matters of that nature?

20 A. Of course, I would have been desirous of speaking to  
21 and getting statements off every single one of those  
22 individuals and, in all likelihood, their children.  
23

24 Q. Do you see in the final paragraph on that page:  
25

26 *The 'de sexto' business. Father Mac has an*  
27 *inclination to interfere (touching only)*  
28 *with young girls - aged perhaps 7 to 12 or*  
29 *so.*  
30

31 A. Yes.  
32

33 Q. That piece of information, how would that have  
34 informed your investigation, if it would have, relating to  
35 matters that [AE] had complained about?

36 A. Well, it's, again, as I mentioned, that evidence of  
37 tendency, coincidence or acts - similar acts. Even though  
38 these events - without sort of explaining to this forum, it  
39 would have been a decision for the judge as to whether or  
40 not it would have been admissible. The fact that [AE]'s  
41 abuse occurred some 20 years prior to this, the  
42 similarities and the nature and the age groups of the  
43 victims and the fact that they were female all become  
44 relevant in any further investigation and could have been  
45 used very much in [AE]'s matter.  
46

47 Q. Having this letter would have assisted other lines of

1 inquiry and other investigations you would have carried out  
2 in 2003 and following?

3 A. Yes. It would have - obviously, back then it would  
4 have - as I said earlier, it would have opened up a real  
5 Pandora's box and numerous other avenues of inquiries.

6  
7 Q. Have a look at the following page. You see - I should  
8 read it all to be fair:

9  
10 *The furore caused by striking the boy about*  
11 *the head in the presence of the whole class*  
12 *caused the girls to give the other*  
13 *information to their mothers which they had*  
14 *till then withheld.*

15  
16 I'm going to read on:

17  
18 *On examination this is found to be factual.*

19  
20 As an investigating officer, how would you have received  
21 that particular comment in this letter and what  
22 investigation steps would have proceeded from that comment  
23 by the author of the letter?

24 A. Yes. I realise - well, I'm not speculating; you know,  
25 I have done a reasonable amount of reading. I'm aware of  
26 certain investigative processes that the clergy are  
27 required under canon law to conduct when matters of this  
28 nature occur.

29  
30 Q. Would you have made requests to see if there's other  
31 documents that might underpin that statement?

32 A. Oh, exactly, because part of that process actually  
33 states that there's to be records of a certain nature kept  
34 in the Curia, et cetera, and I would have been very anxious  
35 to obtain any of that information or - to see whether or  
36 not statements had actually been obtained, because, even  
37 though it doesn't say so, I suppose it alludes to the fact  
38 that - where it says "upon investigation it was found to be  
39 factual", was it the case that statements had been taken by  
40 a church authority from those specific victims?

41  
42 Q. It goes on to say:

43  
44 *Having dealt with the people I had a long*  
45 *session with Father Mac at the presbytery.*  
46 *Slowly, very slowly he admitted some*  
47 *indiscretions but then agreed that it was a*

1           *condition that had been with him for many*  
2           *years. He feels no such inclination*  
3           *towards the mature female but towards the*  
4           *little ones only.*

5  
6           Does that information, in particular the assertion that  
7           there had been some admission of some indiscretions provide  
8           information that would have assisted your investigation?

9           A.   Obviously, that - you know, the Commission has heard  
10          evidence that --

11  
12          Q.   Don't worry about other information.  Would that  
13          information --

14          A.   Yes, but the fact that McAlinden has made admissions  
15          to those crimes is a huge plus for any police officer  
16          investigating.

17  
18          MS LONERGAN:  I tender that letter, thank you,  
19          Commissioner.

20  
21          THE COMMISSIONER:  The handwritten letter dated 17 May  
22          1976 from Monsignor Cotter to then Monsignor Clarke will be  
23          admitted and marked exhibit 57.

24  
25          MS LONERGAN:  Can I tender with that letter the  
26          typewritten transcription of that letter that accompanies  
27          it behind tab 59.

28  
29          THE COMMISSIONER:  Yes.  The tender also includes the  
30          handwritten transcript.

31  
32          **EXHIBIT #57 HANDWRITTEN LETTER, AND TYPED TRANSCRIPTION**  
33          **THEREOF, DATED 17/5/1976 FROM MONSIGNOR COTTER TO THEN**  
34          **MONSIGNOR CLARKE (TAB 59)**

35  
36          MS LONERGAN:  Q.   Could you go to volume 2 of the bundle,  
37          detective chief inspector.  You can put volume 1 away.  Go  
38          to tab 147.

39          A.   Tab 417?

40  
41          Q.   Just have a look at tab 147.  Do you see that's a  
42          letter dated 2 February 1988 authored by, apparently,  
43          Bishop Clarke to Reverend Kalisz in New Guinea?

44          A.   Yes.

45  
46          Q.   Do you see that that letter talks about:  
47

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*Towards the end of last year --*

That is towards the end of 1987 --

*allegations were made by some parents and the head teacher that Father's behaviour with small girls was worrying them because of his imprudent relationship and expressions of affection.*

Do you see that?

A. Yes.

Q. And then it goes on:

*I had this matter investigated. Father categorically denied any seriousness or guilt, admitting only that he had been imprudent. The investigations proved inconclusive - Father still maintaining his innocence.*

Do you see that?

A. Yes.

Q. Then it says:

*He voluntarily submitted to psychiatric assessment and once again no conclusion was reached by the doctor.*

Do you see that?

A. Yes.

Q. Having that letter, referring as it does to incidents at the end of 1987, given the other ones were incidents relating to 1976, would it be a document or would the information be something that you would have been able to use in furthering investigations about [AE]?

A. Of course.

Q. And when I say "about [AE]", I mean relating to [AE]'s matter?

A. On the same basis that I explained earlier.

MS LONERGAN: I tender that letter, Commissioner.

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THE COMMISSIONER: The letter of 2 February 1988 to Reverend Kalisz of Papua New Guinea from the then Bishop of Maitland, Leo Clarke, will be admitted and marked exhibit 58.

**EXHIBIT #58 LETTER DATED 2/2/1988 FROM THE THEN BISHOP OF MAITLAND LEO CLARKE TO REVEREND KALISZ OF PAPUA NEW GUINEA (TAB 147)**

MS LONERGAN: Excuse me, Commissioner, we are just obtaining a copy of a document.

Q. Would you have a look at the document behind tab 139 which is in volume 2. Just read that document to yourself.

A. Yes.

Q. Do you see it is a report by a psychiatrist, Mr Johns, or Dr Johns, dated 5 November 1987?

A. Yes.

Q. It is directed to Bishop Clarke?

A. Yes.

Q. Do you see it refers to having reviewed McAlinden?

A. Yes.

Q. And that was it was --

A. "Reviewed" or "interviewed"?

Q. Say again?

A. Sorry, "reviewed" or "interview".

Q. "Reviewed". It says "interviewed", but it is a psychiatrist.

A. Sorry, yes.

Q. And that the author has an initial impression that the alleged behaviour had occurred only relatively recently and that it was obviously important to exclude the possibilities that McAlinden was suffering from either one of the major psychiatric disorders. Do you see it says that?

A. Yes.

Q. And then over the page, there's this comment:

1           In any case according to Father McAlinden,  
2           there had been previous similar  
3           allegations, the first one occurring in  
4           1954, when the late Bishop Toohey had cause  
5           to discuss the issue with Father McAlinden  
6           at that time.

7  
8           A.    Yes.

9  
10          Q.    You're aware, aren't you, that the allegations  
11          regarding [AE] were from the 1950s?

12          A.    1953 to, certainly, 1954 and I believe a couple of  
13          years after that, yes, certainly.

14  
15          Q.    Is there information in this report that would have  
16          assisted in your investigation?

17          A.    Probably more so than even the other documents in that  
18          it may very well be that that second paragraph refers to  
19          [AE].

20  
21          Q.    Just keep reading to the end of the report.  It is not  
22          very long.  If there are any other matters in there that  
23          you would have pursued by way of investigation in 2003,  
24          could you identify them.

25          A.    (Witness does as requested).  Yes.  Obviously, there's  
26          much that I would like to say about it, but I won't, but it  
27          appears that, predominantly, the psychologist only really  
28          refers to his assessments being based upon those four  
29          interviews with McAlinden where McAlinden, contrary to the  
30          other documents that we've looked at, denies that he'd ever  
31          made admissions to interfering with children.

32  
33          Q.    Yes.

34          A.    And asserts that it was misinterpretation or  
35          misunderstanding.  I suppose we can sit back now and say,  
36          "Well, why had others from the church that had full  
37          knowledge of the other matters not also had input into the  
38          psychologists assessment?", which may have resulted in  
39          something much different surfacing.

40  
41          MS LONERGAN:  I tender that report, Commissioner.

42  
43          THE COMMISSIONER:  The report of Dr Derek Johns of  
44          5 November 1987 about Father Denis McAlinden will be  
45          admitted and marked exhibit 59.

46  
47          EXHIBIT #59 REPORT DR DEREK JOHNS, DATED 5/11/1987,

1 RE FATHER DENIS MCALINDEN (TAB 139)

2  
3 MS LONERGAN: Q. Could you have a look at the document  
4 behind tab 210.

5 A. Volume?

6  
7 Q. I'm sorry, volume 3, please.

8 A. Volume 3.

9  
10 Q. That's tab 210. Just have a read of that document on  
11 Diocese of Maitland letterhead, apparently authored by then  
12 Bishop Clarke.

13 A. (Witness does as requested). Yes.

14  
15 Q. Detective chief inspector, you will see that this  
16 letter, in the second paragraph, describes a background -  
17 I'll start at the beginning rather than try and shorten it.  
18 The first paragraph, after being addressed to McAlinden,  
19 says:

20  
21 *Further to my telephone call to you on*  
22 *Thursday, 11th February, I now write to*  
23 *confirm your position as from Monday, 15th*  
24 *February [1993].*

25  
26 A. Yes.

27  
28 Q. Then it goes on to say this:

29  
30 *The background to all this is a decision*  
31 *made by Australian Bishops Conference to*  
32 *follow legal advice, both civil and*  
33 *canonical as to the process to be followed*  
34 *when serious allegations are made about a*  
35 *priest's conduct. This is called a*  
36 *Protocol. It is made and followed to*  
37 *ensure:*

38 *(a) that the accused is treated with*  
39 *justice and charity while an investigation*  
40 *is carried out and after the result is*  
41 *known*

42 *(b) that the person(s) making allegations*  
43 *receive a hearing with respect and are not*  
44 *summarily dismissed.*

45  
46 *This protocol must be followed by all*  
47 *Bishops when confronted with such cases.*



1  
2 Do you see that?  
3 A. Yes.  
4  
5 Q. Are those matters that would have led you to carry out  
6 any investigative inquiries?  
7 A. Yes, they would have.  
8  
9 Q. What would they have been?  
10 A. I'm aware of not only civil law but also canon law  
11 or --  
12  
13 Q. I'm going to stop you there. It has to be what  
14 investigative steps would you have taken given what you  
15 knew in 2003 not now. Just make sure you preface it with  
16 that?  
17 A. Yes. In 2003, I would have looked for the law in both  
18 those codes that would have been applicable at the time to  
19 gain a full understanding of what those processes are that  
20 are made clear there.  
21  
22 Q. Yes?  
23 A. Also, of course, a copy of the notes or the minutes  
24 that would have been taken at that particular Australian  
25 Bishops Conference in respect to all that.  
26  
27 Q. Then there's an outline of the process by which  
28 Bishop Clarke is going to issue an administrative decree  
29 that formally withdraws the faculties of McAlinden as a  
30 priest of the diocese of Maitland:  
31  
32 *... in light of certain serious allegations*  
33 *that have been made concerning your*  
34 *behaviour.*  
35  
36 Then it talks about the effect of that decree. Then it  
37 goes on as follows:  
38  
39 *As I stated to you on the telephone it is*  
40 *necessary also for you to contact and see*  
41 *Father Brian Lucas who has been appointed*  
42 *by the New South Wales Bishops to handle*  
43 *such cases.*  
44  
45 Do you see that?  
46 A. Yes, I do.  
47

1 Q. Would you have done anything about that particular  
2 comment in terms of investigation in 2003?  
3 A. I certainly would have spoken to Father Brian Lucas  
4 without doubt.

5  
6 MS LONERGAN: I tender that letter, Commissioner.

7  
8 THE COMMISSIONER: The letter from then Bishop Leo Clarke  
9 to Father McAlinden on 12 February 1993 will be admitted  
10 and marked exhibit 60.

11  
12 **EXHIBIT #60 LETTER FROM THEN BISHOP LEO CLARKE TO**  
13 **FATHER MCALINDEN ON 12/2/1993 (TAB 210)**

14  
15 MS LONERGAN: Q. Would you turn now to tab 212,  
16 detective chief inspector. Do you see that's a letter from  
17 then Bishop Clarke to McAlinden. Do you see it says in the  
18 first paragraph:

19  
20 *In the light of your health I hereby*  
21 *confirm your retirement from priestly*  
22 *ministry.*

23  
24 Do you see that?

25 A. I do.

26  
27 Q. Then in the next paragraph:

28  
29 *Because of the circumstances as discussed*  
30 *with Father B Lucas, I hereby withdraw your*  
31 *faculties as of the date of this letter.*

32  
33 It is dated 27 February 1993?

34 A. Yes.

35  
36 Q. Then it goes on to talk about the implications of  
37 this:

38  
39 *This means that you may not engage in*  
40 *any public priestly ministry eg. Mass,*  
41 *Sacraments, Funerals, etc., nor may you*  
42 *present yourself as a priest or be known as*  
43 *a priest wherever you live.*

44  
45 Do you see that?

46 A. Yes.

47

1 Q. Then:  
2  
3 *You may not make any contact with any*  
4 *people who may be fearful of such contact.*  
5  
6 A. Yes.  
7  
8 Q. Then it talks about some need to engage with a  
9 spiritual director and to sign a document accepting the  
10 terms of the administrative decree. Is there anything in  
11 that letter that would have led you to carry out any  
12 particular investigative steps?  
13 A. Yes, there is.  
14  
15 Q. And what's that?  
16 A. I would have obviously been - I am aware that despite  
17 this --  
18  
19 MR SKINNER: I object.  
20  
21 MS LONERGAN: Q. Don't worry about that; we can't go  
22 there. It is a very strict question.  
23 A. Okay.  
24  
25 MS LONERGAN: Who objected?  
26  
27 MR SKINNER: I did, on the basis --  
28  
29 MS LONERGAN: No, I don't need to know the objection.  
30 I will stop the witness from going into that territory.  
31  
32 Q. We're really focusing on the investigative steps that  
33 you would have carried out that are additional to those  
34 you've already articulated in relation to this particular  
35 letter. If there aren't any, please say so and we'll move  
36 on to the next one?  
37 A. No, but the particular - the first one that jumps out  
38 is the first line where it actually tells him basically  
39 that he will no longer be in priestly ministry --  
40  
41 MR SKINNER: I object, Commissioner. It is not  
42 responsive.  
43  
44 MS LONERGAN: Q. Let's, Detective Chief Inspector Fox,  
45 finish what the investigative steps are. If there aren't  
46 any, then please say so.  
47 A. Yes. It says that he will no longer be able to

1 conduct any priestly ministry, on the basis of a health  
2 issue as opposed to what was disclosed in the previous  
3 letter, which quite clearly says that the faculties were  
4 being removed from him for sexual misconduct in respect to  
5 children, or alludes to that.

6  
7

Q. Yes?

8 A. So that does not sit well, and I obviously would --  
9

10 Q. When you say "that does not sit well", what  
11 investigative steps would you have taken in relation to  
12 those matters not sitting well?

13 A. Yes. I'm aware that Father McAlinden had --  
14

15

Q. No, no.

16 A. -- an issue with his health --  
17

18

Q. No, no. Stop, stop.

19 A. Sorry.  
20

21

Q. I'm focusing on investigative steps. Don't worry  
22 about what other things you are aware of. We're focusing  
23 on this letter and what in that paragraph would have led  
24 you to carry out further investigative steps. I think you  
25 have articulated that, but what investigative steps would  
26 you have carried out?

27 A. I would have spoken to the author, former Bishop  
28 Clarke, and others of the diocese to ascertain what medical  
29 evidence they had to support that first statement.  
30

31

Q. Yes.

32 A. And also obviously to inquire of Father McAlinden and  
33 to speak to any medical practitioner or specialist that  
34 would have been stating that he was no longer fit to  
35 conduct ministry, to either firm up or refute the aspect  
36 that he was being effectively stood down for medical  
37 reasons.  
38

39

MS LONERGAN: I tender that letter.

40

41 THE COMMISSIONER: The letter from Bishop Clarke to Father  
42 McAlinden of 27 February 1993 will be exhibit 61.  
43

44

**EXHIBIT #61 LETTER FROM BISHOP CLARKE TO FATHER MCALINDEN  
45 OF 27/2/1993 (TAB 212)**  
46

47

MS LONERGAN: Q. Can you have a look at the document

1 behind tab 215. Do you see that's a letter apparently  
2 authored by Bishop Clarke to Reverend Brennan, from the  
3 Sick Clergy Fund?  
4 A. Yes.  
5  
6 Q. It is dated 5 March 1993. I don't want you to read  
7 the addresses out, but do you see there are two addresses  
8 on that letter? Although the letter is dated 5 March 1993,  
9 is there anything in that letter that would have led to  
10 some further investigative steps to be taken by you in  
11 2003?  
12 A. Yes. Obviously with those two addresses, there is one  
13 here in the Newcastle area at[(name of suburb suppressed)].  
14  
15 Q. Don't state them.  
16 A. No. Obviously inquiries would have been made there.  
17 I am aware of some things in relation to that address that  
18 I won't expand on.  
19  
20 Q. No.  
21 A. The other one, of course, is the address in the  
22 United Kingdom. Again, I am aware of some things that  
23 I won't expand on. Obviously, in 2003, we would have been  
24 very anxious to make inquiries at that address to locate  
25 Father McAlinden. I would imagine that what would have  
26 happened is inquiries would have been made --  
27  
28 Q. Don't worry about what you imagine would have  
29 happened?  
30 A. Sorry, what we would have done is make inquiries  
31 through Interpol with the Scotland Yard police to attend  
32 that address to find out if McAlinden was there, and, if  
33 that was the case, to organise for a provisional warrant  
34 and potential extradition proceedings to commence.  
35  
36 MS LONERGAN: I tender that letter.  
37  
38 THE COMMISSIONER: The letter of 5 March 1993 to Reverend  
39 T Brennan from Bishop Clarke will be admitted and exhibit  
40 62.  
41  
42 EXHIBIT #62 LETTER OF 5/3/1993 TO REVEREND T BRENNAN FROM  
43 BISHOP CLARKE (TAB 215)  
44  
45 MS LONERGAN: Q. Do you see behind tab 219 --  
46 A. Yes.  
47

1 Q. -- there is a fax cover sheet, but behind that is a  
2 letter dated 1 April 1993?

3 A. Yes.

4  
5 Q. It is a letter apparently authored by then  
6 Bishop Clarke to a Reverend James McGuinness --

7 A. Yes.

8  
9 Q. -- Bishop of Nottingham. Do you see that?

10 A. Yes.

11  
12 Q. Do you see in the third paragraph, the following is  
13 stated:

14  
15 *After a number of complaints and*  
16 *allegations had been made concerning his*  
17 *behaviour with small children some years*  
18 *ago, he admitted that he had offended in*  
19 *this matter. However, he also claimed that*  
20 *he has not offended over the past 5 years.*

21  
22 Do you see that?

23 A. Yes.

24  
25 Q. Then the following:

26  
27 *Following the policy agreed upon by the*  
28 *Bishops of Australia I withdrew his*  
29 *faculties and obtained from him a promise*  
30 *that he would not dress as a priest nor*  
31 *carry out publicly any priestly functions.*

32  
33 Then there's some information about where he has opted to  
34 reside?

35 A. Yes.

36  
37 Q. Don't say the address. Would that letter have  
38 assisted in any further inquiries you would have made as at  
39 2003?

40 A. Yes. That - those comments, through the course of  
41 that letter, of course, may be doubling up on what was  
42 contained with other documents that we've just spoken about  
43 so far as the admissions to his sexual abuse of children  
44 were concerned, but obviously we would need to have  
45 confirmed that and asked Bishop Clarke to whom was he  
46 referring when he made those comments, and they may have  
47 been different victims.

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MS LONERGAN: I tender that letter, only the letter of 1 April 1993 behind tab 219, Commissioner, not the other matters behind that.

THE COMMISSIONER: The letter to Bishop McGuinness from Bishop Clarke of 1 April 1993 will be admitted and marked exhibit 63.

**EXHIBIT #63 LETTER FROM BISHOP CLARKE TO BISHOP MCGUINNESS, DATED 1/4/1993 (TAB 219)**

MS LONERGAN: Q. Would you have a look at the document behind tab 243, please.

A. Yes.

Q. Before you do that, could you look at the document behind tab 239. Do you see that's a letter dated 8 November 1994 by Bishop Clarke to Monsignor Bantigue?

A. Yes.

Q. In the Philippines; do you see that?

A. Yes.

Q. It talks about McAlinden having asked for approval of then Bishop Clarke to work in the Philippines?

A. Yes.

Q. Or, alternatively, to be excardinated from the Maitland diocese and incardinated to the San Pablo diocese?

A. Yes.

Q. Do you see he concludes:

*... I cannot give approval of either option and Father McAlinden is fully aware of the reasons for this decision.*

Would that document have led to you carrying out any particular additional inquiries or investigations other than those you've already articulated?

A. Yes, of course. It would have meant making inquiries as to, number one, how he - as it appears, that he's either in the Philippines or is intending to go to the Philippines and has been in contact with Reverend Bantigue; and also again speak to Bishop Clarke, or former Bishop Clarke, as to what his reasons were that he speaks about in here,

1 where he says that McAlinden is fully aware of the reasons  
2 why he wouldn't support an application such as this.

3  
4 MS LONERGAN: I tender that letter.

5  
6 THE COMMISSIONER: The letter to Bishop Bantigue from  
7 Bishop Clarke dated 8 November 1994 will be admitted and  
8 marked exhibit 64.

9  
10 **EXHIBIT #64 LETTER TO BISHOP BANTIGUE FROM BISHOP CLARKE**  
11 **DATED 8/11/1994 (TAB 239)**

12  
13 MS LONERGAN: Q. Could you now turn to tab 243 and the  
14 document behind it, which is a letter dated 10 May 1995,  
15 again to Bishop Bantigue, and authored apparently by then  
16 Bishop Clarke.

17 A. Which tab, sorry?

18  
19 Q. Tab 243.

20 A. Yes.

21  
22 Q. Do you see there Bishop Clarke now, about six months  
23 after the last letter to this particular bishop, states  
24 that he now wishes to explore the reasons why he couldn't  
25 give permission for McAlinden to work in the San Pablo  
26 diocese?

27 A. Yes.

28  
29 Q. He sets out that:

30  
31 *In 1994 serious allegations were made*  
32 *against Father Denis. In being confronted*  
33 *by these accusations by a priest deputed by*  
34 *the Australian Episcopal Conference,*  
35 *Father Denis admitted to the accusations.*

36  
37 A. Yes.

38  
39 Q. Then he says:

40  
41 *The agreement entered into was that*  
42 *Father Denis should retire to Ireland.*  
43 *This agreement found endorsement from those*  
44 *who had filed the accusations.*

45  
46 Do you see that?

47 A. Yes.



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Q. And it goes on to say:

*Some people of my Diocese have now learnt that he is not in Ireland but he is supposedly working in your Diocese. They have demanded to know whether this is true.*

A. Yes.

Q. Then he asks for some advice about whether, at that time, McAlinden was working in the Philippines. Given that we're looking at a situation where this information would have come to you only in 2003, is there still anything in that first part of the letter that you could have used as a basis to assist your investigations of McAlinden?

A. Yes, there is.

Q. And what's that?

A. Again, "being confronted by the accusations by a priest", et cetera, et cetera, the comment there that Denis, Father Denis admitted to the accusations --

Q. What would that have led - I'll withdraw that.

A. Well, obviously I would have needed to interview and obtain a statement from whoever that was that obtained those admissions and if there was any documentation at the time relevant to those admissions that could be utilised in any future prosecution.

Q. Then looking at the next couple of paragraphs, one refers to asking Bishop Bantigue to advise whether McAlinden had been working in the San Pablo diocese and also to confirm that the bishop would withdraw his faculties and tell him to return to Ireland. Is there anything in that paragraph that you could have usefully pursued in 2003?

A. Yes. Obviously, the question is very much as to how Father McAlinden found himself to be in the Philippines and how he started - considering the earlier correspondence that he received, if he had started working as a priest. Obviously I would have caused police in the Philippines to make inquiries as to children that he may have come into contact during his time over there.

Q. Was that something you could have done as a member of the police force of New South Wales, pursued matters

1 overseas in --  
2 A. Not so far as a prosecution, but certainly to alert  
3 the authorities over there of his conduct here and that  
4 children over there that he may have come into contact with  
5 should be explored for their benefit and any potential  
6 prosecution from their end.

7  
8 Q. Thank you. Then at the end:

9  
10 *I fear that if this is not done then the*  
11 *people concerned could well proceed to the*  
12 *next step. This would have serious*  
13 *implications to both your Diocese, this*  
14 *Diocese and to Father Denis and the Church.*

15  
16 Do you see that?

17 A. Yes.

18  
19 Q. Given that this letter refers to, in paragraph 3,  
20 serious allegations having been made in 1994, does that  
21 information suggest to you that there are other lines of  
22 inquiry in addition to those you've already articulated  
23 that you would have pursued in 2003?

24 A. Yes, and I'll be cautious with my response there, of  
25 course. I'm aware of matters that were brought to the  
26 attention of Bishop Clarke and other clergy within the  
27 Maitland-Newcastle diocese from 1993, 1994 and 1995, and  
28 I would have been desirous of knowing whether or not what  
29 is contained within that letter related to those  
30 individuals and the allegations that were being made or  
31 whether they were in relation to other matters that may  
32 have been unknown to us at the time and ascertaining more  
33 knowledge of that generally.

34  
35 MS LONERGAN: I tender that letter, Commissioner.

36  
37 THE COMMISSIONER: The letter from Bishop Bantigue to  
38 Bishop Clarke of 10 May 1995 will be admitted and marked  
39 exhibit 65.

40  
41 **EXHIBIT #65 LETTER FROM BISHOP BANTIGUE TO BISHOP CLARKE OF**  
42 **10/5/1995 (TAB 243)**

43  
44 MS LONERGAN: Q. Have a look at the letter behind  
45 tab 244, please, dated 23 May 1995?

46 A. Yes.

47

1 Q. Just read that to yourself.  
2 A. (Witness does as requested). Yes.  
3  
4 Q. Do you see that letter commences with the comment  
5 from, apparently former Bishop Clarke to the Apostolic  
6 Nuncio in Manuka, Australian Capital Territory?  
7 A. Yes.  
8  
9 Q. He writes about a very delicate matter and requests  
10 the Apostolic Pro Nuncio's assistance?  
11 A. Yes.  
12  
13 Q. And requests whether it would be possible for him to  
14 use his network of communications to help expedite the  
15 following case?  
16 A. Yes.  
17  
18 Q. Then it outlines that, in March 1993, a certain  
19 approach was made with serious accusations concerning a  
20 priest of the diocese, McAlinden? Do you see that?  
21 A. Yes.  
22  
23 Q. And that:  
24  
25 *The Vicar General contacted Father Brian*  
26 *Lucas who stipulated [a particular]*  
27 *procedure:*  
28  
29 Do you see that there?  
30 A. Yes.  
31  
32 Q. Bishop Clarke was to ring Bishop Quinn and acquaint  
33 him of the accusations and to request him to remove  
34 McAlinden's faculties and that he informed Father Denis to  
35 proceed immediately to Sydney to be interviewed by  
36 Father Lucas. Do you see that?  
37 A. Yes.  
38  
39 Q. Do those pieces of information contained in that  
40 letter suggest any other line of inquiry you would have  
41 pursued in 2003 that you had not already pursued?  
42 A. Yes, and I suppose there's a number of aspects there,  
43 but probably some of the wider inquiries I would have been  
44 anxious to have a look at was the involvement of the papal  
45 nuncio in that - well, just from my knowledge --  
46  
47 Q. Don't worry about that. You would have made inquiries

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with the papal nuncio?  
A. Yes, as to what would have been involved so far as the network of communication, exactly what that is. Now, I have ideas, but I won't expand.

Q. What about the other persons mentioned in the letter? So Bishop Quinn, would you have done anything in relation to Bishop Quinn?

A. Yes. I would have obviously wanted a statement from Bishop Quinn about his knowledge or his involvement. But the most obvious one there is to interview and get a statement from Father Brian Lucas about the fact that Father McAlinden was to be interviewed by him in Sydney.

Q. Do you see in the next line after those steps that Father Lucas had suggested, the words "this was done" appear, and then:

*At the interview Father Denis admitted to Father Brian Lucas that the accusations were true.*

Do you see that?  
A. Yes.

Q. Is that the part of the letter you're referring to in terms of having to take a statement from Father Lucas?

A. Yes ...  
(Transcript suppressed from page 265, line 26 to line 36)

MS LONERGAN: Q. Do you see in the final paragraph on that first page, there is the mention of Bishop McGuinness again and also confirmation or comment that Father Denis agreed to seek counselling in England. Do you see that?

A. Yes.

Q. And it says:

1           To this end, arrangements were made for him  
2           to see Monsignor Dan Leonard, [who was the]  
3           Vicar General of Birmingham, who has had  
4           wide experience with these types of  
5           situations.  
6

7           Do you see that?

8           A.    Yes.

9  
10          Q.    Is there anything in that piece of information that  
11          would have led you to make inquiries in 2003?

12          A.    Yes. Well, I suppose the cost of actually going there  
13          to Britain myself to make those inquiries may have been  
14          dubious, but certainly Interpol would have been very useful  
15          in making all those inquiries in England to find out  
16          exactly, you know, what had actually transpired there and  
17          what documentation, if any, was held.  
18

19          Q.    Is there a practical probability in 2003 that the  
20          NSW Police would have sought documents from those people in  
21          the United Kingdom, or is that not practical?

22          A.    No, it's practical. Again, I'm being cautious with my  
23          answer - I don't want to allude to other things that I'm  
24          aware of concerning that but it would have been desirable,  
25          and I certainly would have made inquiries and endeavours to  
26          do that. Whether it would have been successful is another  
27          question.  
28

29          MS LONERGAN:    I tender that letter, Commissioner.

30  
31          MR SKINNER:    Could I have a moment? It has two pages.

32  
33          THE COMMISSIONER:    Yes.

34  
35          MS LONERGAN:    I will let my learned friend Mr Skinner  
36          consider the second page.

37  
38          THE COMMISSIONER:    Yes, thank you, Ms Lonergan.

39  
40          MR SKINNER:    No objections.

41  
42          THE COMMISSIONER:    Thank you, Mr Skinner.

43  
44                        The letter of 23 May 1995 to the Apostolic Pro Nuncio  
45                        from Bishop Clarke will be admitted and marked exhibit 66.

46  
47                        **EXHIBIT #66 LETTER OF 23/5/1995 TO THE APOSTOLIC PRO NUNCIO**

1 FROM BISHOP CLARKE (TAB 244)

2  
3 MS LONERGAN: Q. You've given evidence to the effect  
4 that some addresses that appeared on other documents I've  
5 shown you this afternoon would have led to inquiries at  
6 those addresses.

7 A. Yes.

8  
9 Q. In 2003, would you have used those addresses as a  
10 basis by which to pursue, to the extent you were able,  
11 locating McAlinden if he was still missing at the time this  
12 information came to your knowledge?

13 A. Definitely.

14  
15 Q. Would you have a look at tab 262, please. Do you see  
16 that's a letter to McAlinden, authored by Clarke, dated  
17 19 October 1995? It has a P0 box in Western Australia on  
18 it?

19 A. Yes.

20  
21 Q. Would that information regarding a P0 box be a line of  
22 inquiry that you could pursue on any level in 2003 as a  
23 police officer?

24 A. Yes, it would have; obviously, you know, making  
25 inquiries with the postal service to ascertain the contact  
26 number and address and other particulars of the person that  
27 operates that postal box.

28  
29 Q. In the usual course, was that kind of information  
30 available in 2003 for a post office box held in 1995?  
31 Would you be able to get that information from the postal  
32 service in 2003 or not?

33 A. I did do that over a lot of years and I didn't  
34 encounter any problems through the 1990s or the 2000s in  
35 doing so. I would imagine it would not have been a  
36 problem.

37  
38 Q. Including historical information?

39 A. Yes.

40  
41 Q. Just read that letter to yourself.

42 A. Yes.

43  
44 Q. You see Bishop Clarke is writing in 1995, apparently  
45 on the face of this letter:

46  
47 *The resolution of problems associated with*

1            *your ministry has been a concern to me for*  
2            *some time.*

3  
4            A.    Yes.

5  
6            Q.    Do you see he goes on to say:

7  
8            *In confidence I have discussed the issues*  
9            *with Bishop Malone and the Deans.*

10  
11           Do you see that?

12           A.    Yes.

13  
14           Q.    And:

15  
16           *After listening to their advice I have made*  
17           *the following decisions:*

18  
19           Then he goes on to list various things, and we'll come to  
20           those. In that first paragraph identifying that there had  
21           been discussions with Bishop Malone and the deans, is that  
22           something you would have pursued in 2003?

23           A.    It certainly would have been. I would have obviously  
24           wanted to speak to Bishop Malone. I understand that the  
25           deans rotate on a fairly regular basis, but obviously I  
26           would have wanted to talk and get statements from the ones  
27           at the time that were involved in this process.

28  
29           Q.    In the next paragraph, there's the following comment:

30  
31           *In the light of your admission to Father*  
32           *Brian Lucas and other evidence, I inform*  
33           *you:*

34  
35           And then there's list of things?

36           A.    Yes.

37  
38           Q.    Is there anything in that sentence that would have led  
39           you to make new inquiries or additional inquiries?

40           A.    Certainly, the fact that it very clearly says there  
41           that Father McAlinden had made admissions of that nature to  
42           Father Brian Lucas which would have been evidence that  
43           would have been used at - been able to be used at a trial.

44  
45           MR SKINNER: I object to that. There is a long step  
46           between evidence and getting it in in a trial and this  
47           witness is not qualified to form that view.

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MS LONERGAN: Commissioner, may I be heard on that?

THE COMMISSIONER: Yes, Ms Lonergan.

MS LONERGAN: This witness is an experienced police officer, who has run at least one sexual abuse trial to a successful conclusion that we are aware of at this Commission. In my respectful submission, he's capable of at least offering a view as to what he thinks may be able to be used as evidence at the trial. It is a matter of weight as to whether the evidence would in fact be used on any particular level at the trial, but it only goes as high as this witness's opinion.

THE COMMISSIONER: Yes.

MR SKINNER: I would agree with that and if it were expressed as such, I wouldn't have objected.

THE COMMISSIONER: Thank you, Mr Skinner.

MS LONERGAN: A question clarifying it may address Mr Skinner's concern.

Q. Detective chief inspector, when you proffer a view that you consider certain material may be able to be used as evidence at a trial, you're offering that as a police investigator of how many years experience?

A. In excess of 35.

Q. Is it fair to say that the decision as to what evidence will be ultimately admissible at a trial will be the decision for the Director of Public Prosecutions or the barrister who runs the case at trial?

A. That's correct.

THE COMMISSIONER: Or the judge, Ms Lonergan.

MS LONERGAN: Q. Yes, and perhaps the judge also.

A. I wouldn't want to offend the judge, and I would hope so. But, yes, I'm fully aware - I've had many, many trials and probably dozens in respect to sexual abuse. I'm aware of what was being suggested and there is sometimes legal debate, but ultimately, as is pointed out, that's a determination for the judge. But as an investigator, I would have - if these admissions were outside of the



1           confessional, I would have been very vigorously pursuing  
2           that it be allowed into evidence at a trial.

3

4           Q.    But you acknowledge that it is the decision of the  
5           judge as to whether evidence would be admissible at the  
6           trial?

7           A.    As always, yes.

8

9           Q.    In numbered paragraph 1, this comment is made:

10

11                   *That I request you to petition the Holy See*  
12                   *for a rescript of laicisation.*

13

14           What would you have done about that piece of information,  
15           if anything?

16           A.    That --

17

18           Q.    Don't state what you understand it to mean as such,  
19           but would you have taken investigative steps having read  
20           that sentence?

21           A.    I would have taken investigative steps to secure  
22           the correspondence between the Vatican and the  
23           Maitland-Newcastle diocese for that process to occur and  
24           anything coming back and I understand --

25

26           Q.    No, don't worry about what you understand.

27           A.    So I'm aware that Father McAlinden --

28

29           Q.    I'm going to stop you --

30           A.    -- is able to --

31

32           Q.    I am going to stop you. I'm only asking you about  
33           investigative steps.

34           A.    Sorry. I'll be careful with my answer. I would have  
35           made inquiries to secure any appeal process that may have  
36           been lodged by Father Denis McAlinden as a result of that  
37           process.

38

39           Q.    You would have looked for documents that may exist  
40           regarding numbered point 1?

41           A.    Yes.

42

43           Q.    And is it a practical reality or was it a practical  
44           reality in 2003 that you, as a New South Wales police  
45           officer, would have been able to pursue documents overseas,  
46           as in pursue and obtain documents overseas, or not  
47           necessarily?

1 A. No. I've done that many times before. I've travelled  
2 overseas, so that's not a difficulty.  
3

4 Q. All right. At point 2, there are some matters listed  
5 about a particular canon law process having commenced.  
6 Putting your mind back to 2003, would you have done  
7 anything based on what is set out next to numbered point 2  
8 where a process is set out and the canons on which it is  
9 based are set out and the processes that are mentioned are  
10 (a) that McAlinden has the right to be heard or to be  
11 informed of the facts and to offer contrary evidence?

12 A. Yes.  
13

14 Q. And (b) that he also has the right to the assistance  
15 of a canonical expert, and the diocese can make an  
16 independent canonist available. Then (c):  
17

18 *You have the right of recourse to the*  
19 *Congregation of the Clergy if you do not*  
20 *accept my decision ...*  
21 *(d) Your good name will be protected by the*  
22 *confidential nature of this process.*  
23 *and*  
24 *(e) Should the impediment be declared*  
25 *I assure you that your right to appropriate*  
26 *support will be honoured by the Diocese of*  
27 *Maitland-Newcastle.*  
28

29 Those points, would they have led to any particular  
30 investigative steps by you?

31 A. Exactly the same again: I would have been desirous of  
32 obtaining any documentation, whether it be from the  
33 Maitland-Newcastle diocese, whether it be in the Vatican or  
34 whether it be initiated by Father McAlinden in any part of  
35 those processes that are to occur under canon law.  
36

37 Q. Just going back to the question about potentially the  
38 obtaining of documents from overseas, in 2003, was it  
39 possible to obtain overseas assistance through mutual  
40 assistance treaties with the foreign police in other  
41 countries, for example, the United Kingdom?

42 A. Yes, absolutely.  
43

44 Q. Was there a mutual assistance treaty with Italy?

45 A. I understand there is a difference between Italy and  
46 the Vatican.  
47

1 Q. That's not the question I asked you.  
2 A. Sorry. With Italy, I'm not sure.  
3  
4 Q. On to the matter that you did just raise: did you  
5 know in 2003 what the status was in terms of being able to,  
6 as a police officer, obtain documents from the Holy See in  
7 2003?  
8 A. I did, and it wasn't always as helpful as it has been  
9 from other countries.  
10  
11 Q. In the final paragraph of the letter this comment is  
12 made:  
13  
14 *A speedy resolution of this whole matter*  
15 *will be in your own good interests as I*  
16 *have it on very good authority that some*  
17 *people are threatening seriously to take*  
18 *this whole matter to the police.*  
19  
20 A. Yes.  
21  
22 Q. Would you have taken any investigative steps in  
23 relation to that comment?  
24 A. Yes, I would have. I would have wanted to know  
25 exactly who made that comment, if they were a victim, and  
26 in light of the comment, why authorities within the church  
27 weren't more assisting to bring those people - encourage  
28 those people to bring those complaints directly to the  
29 police.  
30  
31 MS LONERGAN: I tender that letter.  
32  
33 THE COMMISSIONER: The letter to Father McAlinden,  
34 addressed to a post office box in Western Australia, from  
35 Bishop Clarke dated 19 October 1995, will be admitted and  
36 marked exhibit 67.  
37  
38 **EXHIBIT #67 LETTER TO FATHER McALINDEN, ADDRESSED TO A POST**  
39 **OFFICE BOX IN WA FROM BISHOP CLARKE, DATED 19/10/1995**  
40 **(TAB 262)**  
41  
42 MS LONERGAN: Q. Have a look behind tab 264.  
43 A. Yes.  
44  
45 Q. Just read that letter to yourself. On the face of it,  
46 it appears to be a letter authored by McAlinden directed to  
47 then Bishop Clarke?

1 A. Yes.  
2  
3 Q. And it is dated 26 October 1995?  
4 A. Yes.  
5  
6 Q. Do you see that? There's an address provided in the  
7 top right-hand corner. Do you see that?  
8 A. It is.  
9  
10 Q. I won't read it out on to the record. There appears  
11 to be a street address as well as a PO box address; is that  
12 right or are you unable to be certain from that addressing  
13 in that way?  
14 A. I don't know whether that actually refers to a street  
15 address.  
16  
17 Q. Just read that letter to yourself?  
18 A. I have read that before, yes.  
19  
20 Q. Is there anything in that letter in terms of other  
21 investigations that you could have pursued in 2003 that's  
22 in addition to those you've already articulated?  
23 A. Yes. Again, you know, some of them, as you allude to,  
24 do overlap, but there are specific inquiries that could be  
25 made from that, particularly with regard to the fact that  
26 this is actually in the hand of Father Denis McAlinden.  
27  
28 Q. What inquiries would that lead to?  
29 A. The fact that - the third paragraph down sort of does  
30 jump out at me more so than other aspects.  
31  
32 Q. What is it about that that you would have pursued in  
33 terms of further investigations?  
34 A. What he's suggesting - sorry, I don't know whether you  
35 want me to interpret, but where he says there:  
36  
37 *Brian Lucas convinced me, against my better*  
38 *judgment, to accept that the information*  
39 *I gave him would be held in strict*  
40 *confidence by the Bishop; yet, within a few*  
41 *weeks, the same as mentioned above was able*  
42 *to repeat it on the testimony of --*  
43  
44 Alan something?  
45 A. Alan, yes, something. It is not quite clear there.  
46  
47 Q. What is it about that that would have led - what

1 inquiries would you have made about that?  
2 A. That seems to add even greater weight to the fact  
3 that --  
4  
5 Q. No, I'm going to stop you. What inquiries would you  
6 have made? Don't worry about an evaluation of what it  
7 means. What inquiries or investigation would you have  
8 done?  
9 A. The inquiries and evaluation would have been, again,  
10 to include aspects of that in the statements from Brian  
11 Lucas and, hopefully, in the interview with Denis  
12 McAlinden, should he have been arrested, and also in regard  
13 to the recipient of the letter, Bishop Clarke.  
14  
15 Q. Look at the paragraph above, the second paragraph,  
16 there's mention there of the following:  
17  
18 *Hence, it makes me wonder whether or not*  
19 *this latest recommendation is indeed your*  
20 *own idea or merely the continuation of*  
21 *Alan Hart's vendetta who attempted to*  
22 *[something] a few years ago when he wrote*  
23 *me at --*  
24  
25 I won't say the next bit, at somebody's home in England --  
26  
27 *addressing the letter to "Mr D McAlinden"*  
28 *and advising [another person] to do*  
29 *likewise.*  
30  
31 Do you see that?  
32 A. Yes, I do.  
33  
34 Q. Would that have led you to make inquiries regarding  
35 Allan Hart?  
36  
37 MR SKINNER: Just on that, I wonder if my learned friend  
38 could actually say who it is when it says "advising". It  
39 is anonymised.  
40  
41 MS LONERGAN: I think that's a reasonable point. I should  
42 have said that, Mr Skinner.  
43  
44 THE COMMISSIONER: Yes, thank you.  
45  
46 MS LONERGAN: Q. It says:  
47

1                   ... addressing the letter to  
2                   "Mr D McAlinden" and advising [AL] to do  
3                   likewise.  
4

5           A.    Yes.  Quite obviously, Monsignor or Father Allan Hart  
6           would have to be spoken to and a statement obtained as  
7           to what knowledge he had that is inferred by  
8           Father McAlinden's comments in that paragraph.  
9

10          MS LONERGAN:  I tender that letter.  
11

12          THE COMMISSIONER:  Thank you, Ms Lonergan.  The  
13          handwritten letter by Denis McAlinden to Bishop Clarke  
14          dated 26 October 1995, apparently written in Western  
15          Australia, will be admitted and marked exhibit 68.  
16

17          **EXHIBIT #68 HANDWRITTEN LETTER BY DENIS McALINDEN TO**  
18          **BISHOP CLARKE DATED 26/10/1995 (TAB 264)**  
19

20          MS LONERGAN:  Q.  Having gone through all that material  
21          I've just taken you to from the documents obtained from the  
22          Maitland-Newcastle diocese, in addition to the primary  
23          offender McAlinden, is there any evidence there from the  
24          point of view of your experience as a police officer as to  
25          potential other offences by any church officials?  
26

27          A.  A lot, yes.  
28

29          Q.  Yes.  Without identifying any particular persons, can  
30          you just outline what the general nature of those offences  
31          would have been?  
32

33          A.  Directly from the material that I've looked at, it is  
34          difficult to actually say what specific offences.  If  
35          I could just - I could say generalising --  
36

37          Q.  Yes, just generalise at the moment given that you  
38          don't know what the evidence would have amounted to, in the  
39          end result.  Could you just outline in terms of the type of  
40          offences you would be considering in your interaction with  
41          various church officials?  
42

43          A.  I would have been looking at, certainly with  
44          McAlinden, offences of assault, probably aggravated  
45          assault, and child sexual assault offences.  There would  
46          have been, to my mind, a lot of - a number of individuals  
47          there that I would have been speaking about misprision of a  
48          felony or concealing a serious offence so far as the  
49          hierarchy of the church were concerned in relation to their  
50          knowledge and dealings with Father McAlinden and failure to

1 pass that information on to police.  
2  
3 Q. In terms of the documents that you've just been taken  
4 through, are there a number of matters set out in those  
5 that would have provided leads for further avenues and  
6 lines of investigation for you to pursue?  
7 A. Absolutely. There's - that would have opened up many  
8 other avenues and lines of inquiry that needed to be  
9 conducted and - yes, I would imagine that at the time, had  
10 all this become available in 2003, it would have required a  
11 team of investigators to explore all those avenues and make  
12 all those inquiries.  
13  
14 Q. I am going to go back to your report of 25 November  
15 2010. That appears behind tab 498. Do you have that one  
16 open? That's the only one you will need for the next  
17 20 minutes. Hopefully I'll finish by lunchtime. That's in  
18 volume 7, tab 498.  
19 A. Yes.  
20  
21 Q. Go to the second page of that document. Just  
22 evaluating various matters you raise in that document, at  
23 the top of page 2 you refer to your investigation  
24 progressing where a priest and a nun approached you  
25 separately to provide statements of information?  
26 A. Yes.  
27  
28 Q. First of all, who was the priest?  
29 A. The priest was - I've gone blank. Father Glen Walsh.  
30  
31 Q. Who was the nun?  
32 A. Janice Larkey.  
33  
34 Q. You took statements from both of those people?  
35 A. Yes.  
36  
37 Q. You say in relation to the priest that he was pivotal  
38 in having another victim come forward with critical  
39 evidence that was later instrumental in Fletcher's ultimate  
40 conviction?  
41 A. Yes.  
42  
43 Q. It is the position, isn't it, that you also had  
44 discussions with Bishop Malone around about that time in  
45 relation to the other victim who had come forward?  
46 A. Yes.  
47

1 Q. Are you able to recollect whether Bishop Malone  
2 contacted you or whether you contacted Bishop Malone in  
3 regard to this other victim?  
4 A. I don't recollect.  
5  
6 Q. It is fair to say, is it not, that the information  
7 provided to you by Father Walsh was instrumental in  
8 securing Fletcher's ultimate conviction?  
9 A. Very much so, yes.  
10  
11 Q. In relation to the second paragraph, you make certain  
12 assertions about who you referred to as the "good priest",  
13 but that's Father Walsh we're referring to?  
14 A. It is. He's a very good priest and a wonderful man.  
15  
16 Q. He told you certain things about clashes between him  
17 and senior clergy, including Bishop Malone?  
18 A. Yes.  
19  
20 Q. You didn't, as part of your investigation - I'm not  
21 suggesting you should have - inquire into these particular  
22 assertions he made, did you?  
23 A. I did make some inquiries, yes.  
24  
25 Q. Were those inquiries connected with the Fletcher  
26 prosecution in a relevant way?  
27 A. Yes.  
28  
29 Q. Did you obtain statements from persons in relation to  
30 those inquiries?  
31 A. I predominantly included some of it in Father Walsh's  
32 statement, but that was probably to the extent that it took  
33 us.  
34  
35 Q. You didn't interview Bishop Malone, for example, in  
36 relation to assertions by Father Walsh in relation to his  
37 treatment at the diocese?  
38 A. I don't think his treatment amounted to --  
39  
40 Q. No, no.  
41 A. No, they didn't amount to criminal offences and I  
42 didn't interview him --  
43  
44 Q. No, no. My question is --  
45 A. No, I did not.  
46  
47 Q. -- you didn't interview?



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A. No.

Q. We have been going so well. Let's not have it fall apart.

A. Let's be friends.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q.

A.

Q. In the second-last paragraph on that second page you talk about recording certain information and submitting it by way of COPS intelligence reports?

A. Yes.

Q. Just to understand that process, that is a process by which information can be collected and used by other officers and, in particular, by State Crime Command, in terms of other investigations they may be pursuing or may later pursue?

A. Predominantly for useful background information.

CONTENT SUPRESSE D  
PURSUANT TO COMMISSIONER'S  
DIRECTION DATED  
10 JULY 2013

1  
2 Q. Those intelligence reports may be used by other  
3 officers in the NSW Police Force without any particular  
4 reference back to you - can they not?  
5 A. Yes.  
6  
7 Q. On page 4 of your report you make some comments  
8 halfway down the page regarding your conversation with  
9 Bishop Clarke where he replied "No" to your question about  
10 whether he knew of any other victims of McAlinden.  
11 A. Yes.  
12  
13 Q. Do you see that? You make this observation:  
14  
15 *Clearly he told us a blatant lie and*  
16 *concealed the names of victims known to the*  
17 *church.*  
18  
19 That's a view you continue to hold?  
20 A. Even more so, yes.  
21  
22 Q. On page 5, just above the heading "Recommendation",  
23 you comment about what you term as "Reprisals are another  
24 distasteful aspect of sexual abuse within the church":  
25  
26 *Some have reported to me having had their*  
27 *cars damaged and eggs thrown at their homes*  
28 *following guilty verdicts after a family*  
29 *member disclosed abuse.*  
30  
31 Do you consider that sort of reprisal to be activity that  
32 can interfere with police investigations and, if so, how?  
33 A. I considered that - you know, just on the damage  
34 aspect and the cost of - is one thing, but the intimidatory  
35 nature of that sort of conduct is a much greater concern.  
36  
37 Q. How did that affect or impact on police investigations  
38 of these types of sexual abuse matters, in your opinion?  
39 A. Again, I'll go very carefully here.  
40  
41 Q. No need to mention any names.  
42 A. I don't need to give examples.  
43  
44 Q. No.  
45 A. Okay, I understand. People that come forward to  
46 report child sexual abuse and their families, in my  
47 experience, have - it is a huge step both emotionally and

1 very much spiritually when it relates to the Catholic  
2 Church. The atmosphere surrounding that and the attitude  
3 of clergy and parishioners exert a huge - and I cannot  
4 underline that enough - a huge influence upon those people  
5 and their families. It creates an environment and a  
6 feeling that intimidates many from coming forward when they  
7 see and hear of the way victims and their families have  
8 been treated and their ostracism and, in my experience, it  
9 places a great deal of fear, apprehension and caution in  
10 any other persons that might be prepared to come forward  
11 and make similar complaints.  
12

13 Q. You observe in that paragraph we're looking at that  
14 most victims' families are devout Catholics who are  
15 surrounded by friends until someone comes forward with  
16 allegations of abuse?

17 A. Yes.

18  
19 Q. You say: Tab 498

20  
21 *The family is ostracised within their*  
22 *community and particularly at church. They*  
23 *are no longer spoken to and made to feel*  
24 *unwelcome. They have backs blatantly*  
25 *turned on them until they no longer attend.*  
26

27 No need to identify who, but have families of persons who  
28 have spoken out about sexual abuse told you that's what's  
29 happened to them?

30 A. Yes, they have.

31  
32 Q. We're talking about more than one family who has told  
33 you this?

34 A. Yes.

35  
36 Q. Are you able to estimate - again do not identify who -  
37 how many families or persons have told you of that kind of  
38 behaviour that they've experienced?

39 A. At least three that I can say very definitely have said  
40 that has occurred and there are a number of other families  
41 that have strongly intimated that to me.  
42

43 Q. You make this observation:

44  
45 *Most believe this is silently condoned by*  
46 *other priests and perpetuates the silence*  
47 *of abuse in fear of speaking out.*

1  
2 I think you might mean to say "and fear" of speaking out.  
3 Is that what you meant to say?  
4 A. Yes.  
5  
6 Q. That belief that you refer to there has been  
7 communicated to you by families or victims of sexual abuse  
8 who have spoken out?  
9 A. Yes.  
10  
11 Q. There is no need to say details about who has done  
12 that.  
13 A. Yes, I understand that, and very clearly that has been  
14 detailed to me a number of times.  
15  
16 Q. We're very briefly going to the Lateline transcript of  
17 your interview in November 2012 which is exhibit 12.  
18 A. Yes.  
19  
20 MS LONERGAN: It doesn't appear in the tender bundles, but  
21 if anybody needs a copy of it, we have multiple copies of  
22 it at the Bar table. I have them. I will hand up a copy  
23 for the witness and one for the Commissioner.  
24  
25 Q. Your photo seems to have been blacked out in the  
26 photocopying process. I apologise for that.  
27 A. That may be a good thing.  
28  
29 Q. I'm only going to ask you about the aspects of the  
30 interview that talk about matters directly relevant to our  
31 consideration of term of reference 2, so that's the  
32 cooperation and assistance of officials of the Catholic  
33 Church as opposed to allegations of hindrance or  
34 obstruction?  
35 A. I understand, yes.  
36  
37 Q. Do you see on page 3 of the interview, Mr Jones puts a  
38 question to you where he quotes within that question from  
39 an open letter which I think you sent to Premier O'Farrell?  
40 A. That's correct.  
41  
42 Q. He said this:  
43  
44 *This is actually - this is - as horrific as*  
45 *the litany of sexual crimes against*  
46 *children are, to me one of the most*  
47 *disturbing lines in your letter was along*

1                   *these lines:*

2

3                   He quotes:

4

5                   *"I can testify from my own experience the*  
6                   *Church covers up, silences victims, hinders*  
7                   *police investigations, alerts offenders,*  
8                   *destroys evidence and moves priests to*  
9                   *protect the good name of the Church."*

10

11                   And then there's a question from Mr Jones:

12

13                   *You're saying you have evidence of all of*  
14                   *this?*

15

16                   First of all, in terms of the church covering up, we've  
17                   articulated or you've articulated a number of things over  
18                   the last day and a half. Have we covered the covering up  
19                   in terms of McAlinden and Fletcher in your evidence to  
20                   date, including the documents we have been tendering over  
21                   the last hour or two as --

22

23                   A.   Well, I --

24

25                   Q.   With the exception of matters relating to [CA]?

26

27                   A.   Yes, sorry, that's what I was thinking of. It is very  
28                   hard. I believe so, yes.

29

30                   Q.   In terms of silencing victims, that's the next  
31                   assertion you've made there, what kind of behaviour are you  
32                   referring to as "silencing victims"?

33

34                   A.   Again, I'm a little --

35

36                   Q.   On part of church officials?

37

38                   A.   Through that ostracisation process and, please stop  
39                   me, I don't know whether I'm allowed to go there, but my  
40                   interaction with other potential victims, when I was given  
41                   the name of a potential victim by Mr --

42

43                   Q.   Don't worry about who you were given the name --

44

45                   A.   -- by somebody. When I approached that man, he broke  
46                   down in tears and explained to me that he had seen what had  
47                   happened to other families within the diocese and the  
                 ostracism and their treatment. He explained that he wasn't  
                 prepared to expose his wife and children to that same sort  
                 of conduct and, therefore - he didn't say he had been  
                 abused, didn't say he hadn't, but didn't want to explore  
                 the matter any further with me on that basis.

1  
2 Q. If we can examine that statement a bit further, is it  
3 fair to say that that was this particular gentleman's  
4 feeling about what may well happen to him if he proceeded  
5 and concern for his own family?  
6 A. Very much so, yes.  
7  
8 Q. In terms of the ostracisation, the ostracisation that  
9 you've been referring to came from either unidentified  
10 people or other parishioners; is that a fair comment --  
11 A. Yes.  
12  
13 Q. -- if not, please say so?  
14 A. And also clergy.  
15  
16 Q. And also clergy. What was the behaviour by the  
17 clergy - no need to identify who at this point - that fell  
18 into that category?  
19 A. Well, just one example of that is during the trial of  
20 Father Fletcher, whilst I sat with the victims and their  
21 families in a room at the court, there was a continual  
22 procession of clergy from the Newcastle-Maitland diocese  
23 who visited Fletcher and his supporters in another room,  
24 knelt on the floor, prayed with him. Not one, not a  
25 single one of those clergy spoke a word or consoled or even  
26 attempted to come near any of the victims or their  
27 families.  
28  
29 Q. How does that silence victims? How does that  
30 behaviour exhibited by the clergy, in effect, silence  
31 victims?  
32 A. The victims that I've encountered and been involved  
33 with, most of them are very devout, very committed  
34 Catholics. Their lives, to a large degree, revolve around  
35 their church and their church community. They are  
36 effectively cut off from that. As soon as one of their  
37 family says, "I have been abused", they are cut off. I --  
38  
39 Q. This is in terms of they are cut off; that is, they  
40 are --  
41 A. They are cut off from most of that pastoral care, that  
42 enveloping arm, if you like, of the church that they have  
43 felt so secure in.  
44  
45 Q. Can I stop you there? Did the families or the victims  
46 tell you that that is the impression that they have --  
47 A. Yes.

1  
2 Q. -- once they speak out?  
3 A. Yes. Many of the victims, in fact, if I can extend to  
4 their families, most have felt so intimidated that they no  
5 long attend mass; they no longer attend the church; their  
6 communication which was very regular with various clergy  
7 ceases; they are made to feel outsiders.  
8  
9 Q. That relates to those who have already come forward,  
10 doesn't it?  
11 A. Yes.  
12  
13 Q. Is there any aspect in your comment there "silences  
14 victims" referable to persons who do not come forward and  
15 speak to police and/or proceed with giving evidence because  
16 of the behaviour of officials of the Catholic Church based  
17 on your opinion?  
18 A. Yes. Many - a number of victims I have spoken to have  
19 articulated to me that the reason they took so long to come  
20 forward and speak out was because they didn't just fear  
21 what would happen to them - that was probably a secondary  
22 concern - they knew what would happen to their families.  
23  
24 Q. You can't give evidence about what they knew?  
25 A. I'm sorry. They told me that they believed that their  
26 families would be made to pay the penalty for them telling  
27 of their abuse.  
28  
29 Q. Do you know of any instances where a victim of alleged  
30 sexual abuse has not come forward because of feeling  
31 silenced by that?  
32 A. I believe so, yes.  
33  
34 Q. Is it more than one person? Don't say any details.  
35 A. Yes.  
36  
37 Q. In your experience of alleged victims of sexual abuse,  
38 based on what they've told you?  
39 A. Yes.  
40  
41 Q. How many, just roughly?  
42 A. Three or four.  
43  
44 Q. Are they three or four persons relevant to the  
45 Maitland-Newcastle diocese or priests of the  
46 Maitland-Newcastle diocese or others?  
47 A. Sorry, the three - when I said "three or four", three

1 within the Maitland-Newcastle diocese, one outside. That  
2 person is from Victoria.  
3  
4 Q. You comment that the church hinders police  
5 investigations. We've had a lot of evidence from you about  
6 your instances that you encountered that. Other than  
7 matters relating to [CA], is there any other matter about  
8 hindrance of police investigations that you haven't yet  
9 been able to articulate?  
10 A. Yes.  
11  
12 Q. Does that relate to [CA] or other matters regarding  
13 McAlinden and Fletcher?  
14 A. It relates to a much wider aspect --  
15  
16 Q. Well, we're not going --  
17 A. -- which is outside the term of reference.  
18  
19 Q. Of course. Can we confirm that you have provided  
20 evidence by way of statement to this Commission relevant to  
21 those wider matters?  
22 A. Yes.  
23  
24 Q. And you have been reassured that that has been passed  
25 on to the Royal Commission?  
26 A. Of course, yes.  
27  
28 Q. Regarding McAlinden and Fletcher and your work on  
29 investigating those priests or associated matters regarding  
30 those priests, have you articulated all the hindrance,  
31 excluding [CA], in relation to those two priests?  
32 A. I believe so, yes.  
33  
34 Q. You say that there has been alerting of offenders.  
35 You've given extensive evidence regarding the alerting of  
36 Fletcher by priests and the then bishop of the diocese. Is  
37 that the alerting of the offender that you are referring to  
38 in your comment in your open letter to the premier or are  
39 there other instances regarding to McAlinden and Fletcher  
40 that fall into the category of alerting the offender?  
41 A. No, that's the only one that relates to either  
42 McAlinden or Fletcher  
43  
44 Q. That's Bishop Malone and associated matters?  
45 A. Yes.  
46  
47 Q. The associated matters being the warning of Fletcher



1 in June 2002 that police were investigating him?

2 A. Yes.

3

4 Q. The next assertion is "destroying evidence". Is that  
5 the pornography issue that we dealt with yesterday? Is

6 that the only destruction of evidence you encountered?

7 A. Yes.

8

9 Q. Then the next is "moving priests to protect the good  
10 name of the church". We've gone through various documents  
11 regarding McAlinden. Is that the tenor of the criticism  
12 you are making there regarding McAlinden or is there other  
13 material?

14 A. Relating to McAlinden.

15

16 Q. Was there anything relevant to Fletcher as well on  
17 that issue of moving police to protect the good name of the  
18 church?

19 A. Yes.

20

21 Q. What was that?

22 A. Early on, Fletcher was moved - I'm just trying to  
23 think of the year - very suddenly, overnight, from a  
24 Maitland parish, I believe, to Gateshead where he was - at  
25 Maitland, he was the parish priest. He, for whatever  
26 reason, was then placed on the supervision of a monsignor.  
27 And the suddenness and the nature of it and the move was,  
28 from people I spoke to --

29

30 Q. Don't worry about people you spoke to. You harbour  
31 suspicions in relation to that move.

32 A. Yes, I do very much.

33

34 Q. And you harbour suspicions in relation to the  
35 movements of McAlinden around various parishes, overseas,  
36 et cetera?

37 A. Yes.

38

39 Q. There is just one more thing and then we'll finish. On  
40 the following page, halfway down, under the question by  
41 Mr Jones, you say:

42

43 *Well I worked on it --*

44

45 *That is, an investigation --*

46

47 *since I started investigating*

1           *Denis McAlinden in 1999. I had contact*  
2           *with various witnesses over the years.*  
3           *I actually even interviewed Bishop Leo*  
4           *Clark, who in 2003 told me when I asked if*  
5           *he had knowledge of any other victims other*  
6           *than the one that I already, and very*  
7           *clearly said to me no.*

8  
9           It is the next bit I want to ask you questions about.  
10          A.    Yes.

11  
12          Q.    It says:

13                    *I later seen --*

14  
15           I think a word is missing there:

16                    *I later seen documentation, after he passed*  
17                    *away, that clearly indicated that he had*  
18                    *full knowledge of other victims.*

19  
20  
21  
22           We've been through a number of documents this morning and  
23           this afternoon obtained from the Maitland-Newcastle diocese  
24           files. Excluding anything regarding [CA], is that the type  
25           of material you are referring to in that comment?

26          A.    Yes, it is, and it was - I won't touch that area, but  
27           predominantly, of course, it related to the material that  
28           was ultimately provided to myself and the Police Force by  
29           Joanne McCarthy.

30  
31          MS LONERGAN:   That's the examination, Commissioner. Would  
32           that be a convenient time?

33  
34          THE COMMISSIONER:   Yes, thank you very much, Ms Lonergan.

35  
36          MS LONERGAN:   Commissioner, could I raise one matter which  
37           I should raise on the record. There has been a request by  
38           members of the press, and I'm sorry I nearly forgot them,  
39           for access to copies of exhibits 57 to 68. Could I ask  
40           that those at the Bar table communicate with staff of the  
41           Special Commission by 1.45 whether they consent to those  
42           matters being provided to the press.

43  
44          THE COMMISSIONER:   Thank you. Mr Gyles?

45  
46          MR GYLES:    We may not be to deal with that request over  
47           that period of time. We are attempting to deal with the

1 request that was made after morning tea for eight or nine  
2 exhibits. We will need to look at them. Could I indicate  
3 that we may need a little time than that. We'll do our  
4 best.

5  
6 MS LONERGAN: Could I note for the record that all the  
7 documents that have been tendered today have been contained  
8 in volumes of material that have been made available to all  
9 the members at the Bar table. Other than the Lateline  
10 transcript, there should be nothing new to those at the Bar  
11 table and nothing surprising in the request that those  
12 matters be tendered, nor that they be released to the  
13 press. From that point of view and in the interests of  
14 conducting this inquiry in public, we would stress that it  
15 would be most helpful if we could have a response on that  
16 matter in the shorter term.

17  
18 I also note for the record there are still outstanding  
19 issues regarding some documents tendered last week, again  
20 in relation to objections raised to them by the diocese,  
21 and we would note for the record we would expect those  
22 matters to be dealt with sooner rather than later.

23  
24 THE COMMISSIONER: Thank you, Ms Lonergan.

25  
26 MR GYLES: If I might respond, our position has been made  
27 clear with respect to the latter documents and that  
28 concerns the interests of others. We will do our best in  
29 relation to the documents, but we were given seven bundles.  
30 There have been various documents put out. We're doing the  
31 best we can.

32  
33 THE COMMISSIONER: I understand you're doing your best.  
34 Thank you, Mr Gyles.

35  
36 MS LONERGAN: I'm grateful to Mr Gyles for those efforts  
37 and for that reassurance.

38  
39 THE COMMISSIONER: Thank you. 2 o'clock.

40  
41 **LUNCHEON ADJOURNMENT**  
42  
43  
44  
45  
46  
47

1 UPON RESUMPTION:  
2

3 MS LONERGAN: Commissioner, there have been various  
4 discussions between the parties regarding non-publication  
5 orders and matters of that nature. The diocese has  
6 indicated to me by their representative, Mr Gyles SC, that,  
7 in principle, they have no objection to documents being  
8 released to the media and we're grateful for his indication  
9 so swiftly in that regard.

10  
11 An issue has come up regarding documents that have  
12 been released as annexures to statements regarding term of  
13 reference 1 and, again, discussions are proceeding between  
14 the parties about that. Rather than delay proceedings this  
15 afternoon, given Detective Chief Inspector Fox has had a  
16 day and a half in the witness box already, I note for the  
17 record that some matters have arisen. They will be  
18 discussed between the parties today and, if necessary,  
19 tomorrow, and in particular in relation to Mr Harben and  
20 his client as they did not appear in term of reference 1.  
21 It is hoped those matters can be resolved.

22  
23 THE COMMISSIONER: Yes, thank you very much, Ms Lonergan.  
24 That's very helpful. Thank you.

25  
26 MS LONERGAN: Commissioner, I tender the report of  
27 Detective Chief Inspector Fox dated 25 November 2010 which  
28 was tab 498 in the bundle

29  
30 MR SKINNER: I have an issue about that Commissioner. I'm  
31 sorry, if I'd known it was going to be tendered I would  
32 have spoken to my learned friend about it, but I didn't.

33  
34 THE COMMISSIONER: Yes, Mr Skinner.

35  
36 MR SKINNER: Could I have a moment?

37  
38 MS LONERGAN: I should note for the record that it is only  
39 being tendered at the moment. There's no suggestion at  
40 this stage that it has been requested by members of the  
41 press or that it will be released

42  
43 MR SKINNER: That's entirely anticipated. However, there  
44 is a difficulty, if I can speak in neutral terms. It is  
45 the top of page 4. What remains of the first paragraph in  
46 the redacted version flows from other paragraph above it  
47 which has been redacted which, if it were to be read, would

1 put in context what there now remains, being the second  
2 paragraph.

3  
4 I'm having some difficulties in not going into the  
5 redacted material. In short, with what is remaining, there  
6 is the possibility of a clear misinterpretation as to the  
7 date of some things and there is another issue. You will  
8 see, Commissioner, that it refers to a witness expecting  
9 something about their complaints.

10  
11 THE COMMISSIONER: Yes

12  
13 MR SKINNER: Then it goes on and refers to my client. In  
14 context the complaints that are there referred to in the  
15 first line of that second paragraph have nothing to do with  
16 my client. They are the complaints referred to in the  
17 first paragraph to other people, at a different time.

18  
19 THE COMMISSIONER: Yes. So it is because that first  
20 paragraph is missing, it would seem to suggest that the  
21 complaints that were admitted to your client were about the  
22 people named in that paragraph.

23  
24 MR SKINNER: Yes. It no doubt can be resolved in some  
25 sensible way. At the moment, I have no objection, if it is  
26 received by you, Commissioner, provisionally. I say  
27 "provisionally" in the sense that if it is anticipated to  
28 be released to the press, I would wish to be further heard  
29 about it perhaps being supplemented or addressed in some  
30 way to meet my concerns.

31  
32 THE COMMISSIONER: Very well. Thank you, Mr Skinner. We  
33 will certainly observe that and meanwhile, I will admit it  
34 and mark it exhibit 69.

35  
36 **EXHIBIT #69 REPORT OF DETECTIVE INSPECTOR FOX, DATED**  
37 **25/11/2010 (TAB 498)**

38  
39 MS NEEDHAM: Commissioner, we for our part, have the same  
40 request. Given this document does refer in some detail to  
41 the person who I am representing, we would also seek to be  
42 consulted should there be any question of the matter being  
43 proceeded any further.

44  
45 THE COMMISSIONER: Yes, thank you, Ms Needham. Mr Harben?

46  
47 MR HARBEN: Thank you, Commissioner. We also have a

1 problem. I refer in particular, to the third page, the  
2 second paragraph under the heading "Comment".  
3 Commissioner, we have a problem with that because, firstly,  
4 that's not in accordance with any evidence that I can  
5 recall seeing; secondly, the witness wasn't asked about it;  
6 thirdly, it is clearly hearsay. It may well go to you,  
7 Commissioner, on a provisional basis, but if it were to be  
8 used in any other way, we would wish to be heard.

9  
10 THE COMMISSIONER: That is understood. Thank you,  
11 Mr Harben.

12  
13 MS LONERGAN: I should note for the record, Commissioner,  
14 that some of the material in this document goes to the  
15 issue of this particular witness's understanding,  
16 suspicions, apprehensions about various matters which is  
17 relevant to other public statements he has made regarding  
18 the cooperation or otherwise of the Catholic Church, and  
19 part of what this Commission needs to examine is the  
20 reliability of those suspicions or apprehensions.

21  
22 To that extent, material that may otherwise be  
23 inadmissible is sought to be admitted only on a  
24 particularly limited basis.

25  
26 MR HARBEN: If I understand my friend, if that's the way  
27 it is to be treated, then that would be made clear at the  
28 relevant time and we would have no problem; that is, if I  
29 understand her correctly.

30  
31 THE COMMISSIONER: Yes. I think you do, Mr Harben.

32  
33 MR HARBEN: I think I do.

34  
35 THE COMMISSIONER: That's a bit of a difficulty that we  
36 have. Thank you, and I certainly will not neglect the  
37 submissions that counsel have made to that effect. Perhaps  
38 it is important that we get on with the witnesses and have  
39 any arguments that need to be had at a later time. Thank  
40 you.

41  
42 MS NEEDHAM: Commissioner, might I cavil with that  
43 briefly? I have just been informed by those assisting you  
44 that the version of the document has actually been  
45 redacted. I hadn't realised that was the redacted  
46 document.

47

1 MS LONERGAN: For the benefit of those at the Bar table, a  
2 further provision of replacement pages in relation to  
3 necessary redactions was provided, and only recently  
4 provided, so it may be that some at the Bar table hadn't  
5 quite caught up with that. If there are any questions  
6 regarding that, I ask that they feel free to address them  
7 to me or any of those --

8  
9 THE COMMISSIONER: Thank you, Ms Lonergan. I take that I  
10 have the most recent version, do I?

11  
12 MS LONERGAN: I hope so, but I'm happy to look at yours to  
13 check that.

14  
15 THE COMMISSIONER: Thank you, Ms Lonergan.

16  
17 Mr Gyles, are you in a position to cross-examine?

18  
19 MR GYLES: Mr Harben was possibly going to go before me.  
20 I don't want to waste time over an issue concerning the  
21 bishop.

22  
23 THE COMMISSIONER: That's a very sensible course. Thank  
24 you, Mr Gyles. Thank you, Mr Harben.

25  
26 <EXAMINATION BY MR HARBEN:

27  
28 MR HARBEN: Q. You've described yourself a number of  
29 times as a very experienced investigating officer?

30 A. I think I've been asked questions of that nature.  
31 Where do I describe myself, sorry?

32  
33 Q. I think in your oral evidence you've agreed with that  
34 proposition?

35 A. Yes.

36  
37 Q. A number of times?

38 A. That would be fair.

39  
40 Q. You would agree that that would comprise a description  
41 of yourself as an experienced investigating officer.

42 There's no mystery about that, is there?

43 A. No.

44  
45 Q. In 2002, you were also a very experienced  
46 investigating officer, weren't you?

47 A. I'd been in the job for quite a few years, yes.

1  
2 Q. Do you disagree with my proposition?  
3 A. No, I agree.  
4  
5 Q. So you were, in 2002, a very experienced officer?  
6 A. Yes.  
7  
8 Q. I take it that part of your method of work involved  
9 paying particular attention to detail?  
10 A. To varying degrees, of course, yes.  
11  
12 Q. I'm sorry?  
13 A. To varying degrees, depending on what it was, but, yes  
14 generally speaking, yes.  
15  
16 Q. Your job as a senior investigating police officer  
17 required you to prepare documents from time to time in that  
18 job?  
19 A. Yes.  
20  
21 Q. And you knew, when you prepared such documents, that  
22 they were prepared for a very important purpose?  
23  
24 MR COHEN: I object. Which documents are we talking  
25 about?  
26  
27 MR HARBEN: Generally speaking.  
28  
29 MR COHEN: I maintain my objection.  
30  
31 THE COMMISSIONER: Some documents may not be very  
32 important, for example, the tea money, Mr Harben.  
33  
34 MR HARBEN: Q. Apart from the tea money document that  
35 you may or may not have prepared, in terms of any document  
36 that you have been shown in this inquiry this week, were  
37 you careful in your preparation of those documents?  
38 A. I tried to be and I suppose, like everyone, you know,  
39 I picked up a couple of errors here and there, not  
40 intentional errors, but I suppose everyone has typos or  
41 they get a date or something mixed up. I tried to take as  
42 much care as I could, but like everyone I'm not infallible.  
43  
44 Q. You've been in the box for two days now, and it is  
45 exhausting, but is it your recollection that where you have  
46 been shown documents and you recognise that there have been  
47 some errors, in your mind they were only minor errors?



1 A. Oh, I suppose somebody could put varying  
2 interpretations on it. Yes, I would like to have got dates  
3 correct in the first place. If that's the document you're  
4 alluding to, yes, there were some errors in dates. I don't  
5 know if that's the one, but if you're able to indicate  
6 those to me, I can try to explain it as best I can. But  
7 I tried to be as careful --

8  
9 Q. I suppose what I'm really asking you is: is it your  
10 view that any mistakes that you've recognised in any  
11 document you've been shown in the last two days was nothing  
12 other than minor?

13  
14 MR COHEN: I object. That's far too wide a question.  
15 There are so many documents and so many potential errors,  
16 if they be errors - that it is impossible to answer that  
17 question. It is not a fair question. Having regard to the  
18 fact that we have to have regard to the Evidence Act, under  
19 section 135, the time wasted in getting to the bottom of  
20 that question clearly outweighs, by the prejudicial effect,  
21 any probative value of it.

22  
23 MR HARBEN: I think he can answer it, Commissioner, it is  
24 a very simple question. He hasn't said he can't answer it.

25  
26 MR COHEN: Because I objected.

27  
28 THE COMMISSIONER: Very well, Mr Harben. I'll permit it  
29 if the witness can answer it.

30  
31 THE WITNESS: Sorry, the question again?

32  
33 MR HARBEN: Q. Is it your view that, in the documents  
34 you have been shown that are your documents - documents  
35 that you have been shown in the last two days - any errors  
36 that you've seen were only minor?

37 A. I don't know. Until you point out the specific error,  
38 I could probably give you a response in relation to what  
39 you're talking about.

40  
41 Q. Thank you. You have before you the last document that  
42 was provisionally tendered dated 25 November 2010, which is  
43 exhibit --

44  
45 THE COMMISSIONER: Exhibit 69. It is tab 498.

46  
47 THE WITNESS: I have the redacted version of that, yes.

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MR HARBEN: Q. Thank you. Would you agree, firstly, that that was a very important document?

A. Yes.

Q. One of the matters that is being looked at in this inquiry is an allegation of cover up within the local diocese, isn't it?

A. Yes.

Q. And that's the very way you introduce this document that presumably you were writing to your superiors; is that right?

A. Yes.

Q. I take it that you understood that that document would be considered as being serious?

A. I was hoping it would have been taken seriously, yes.

Q. Did you attempt to take any subjective viewpoint when preparing the document or did you attempt to be objective?

A. It probably varied.

Q. Do you mean in some parts of the document you were subjective?

A. I would need to go through it passage by passage and deliver a comment on that.

Q. Tell me this: in your words it varied; does that mean it varied from being objective to subjective?

A. Well, I felt it was objective from my perspective. Others reading it from a different angle may have considered otherwise.

Q. You do realise that I was not asking others and I was asking you; you do understand that?

A. I do now, yes, and I tried to prepare it as objectively as I can.

Q. As what, I'm sorry?

A. As objectively as I can.

Q. Thank you. So you weren't being a particular advocate for a point of view in preparing the document, were you?

A. To some degree I probably was, yes.

Q. Was this a cause that you were advocating?

1 A. It depends on what you want to interpret as a cause  
2 that I was advocating.  
3  
4 Q. In what way do you say to some degree you were  
5 advocating?  
6 A. I would term it that I was expressing a fairly  
7 passionate view about what I felt needed to be done on a  
8 wider ranging aspect.  
9  
10 Q. I see. You wouldn't have expressed a passionate view  
11 about being deliberately misleading, would you?  
12 A. No.  
13  
14 Q. And you wouldn't have expressed a passionate view  
15 about being dishonest, would you?  
16 A. No.  
17  
18 Q. Just as an example of the reference to advocacy, if  
19 you go to the heading "Background" on page 1, you used the  
20 word in the second-last line in the first paragraph  
21 "incredibly"?  
22 A. Yes.  
23  
24 Q. That was a very emotive term, wasn't it?  
25 A. I've used it, I believe, in the correct manner, to  
26 draw attention to the fact that I felt that that needed to  
27 be drawn attention to, the fact that a priest within a  
28 diocese - I think most of us are aware that a priest is  
29 more than probably a career, it is a vocation for life, and  
30 I was being told by the church that they had no idea where  
31 a particular priest was at a time that he was wanted to be  
32 arrested. I don't - I don't shy away from the fact that I  
33 said that it seemed incredible.  
34  
35 Q. It is not that they weren't - you used the words  
36 "incredibly was not in contact with McAlinden"?  
37 A. I certainly did, yes.  
38  
39 Q. Did you mean by that that it was incredible that they  
40 had not contacted him?  
41 A. No.  
42  
43 Q. Did you mean by that that you just felt, as a matter  
44 of your understanding of a priest and the church, that you  
45 just would have expected they would have known where he  
46 was?  
47 A. Yes, as you have interpreted it there, that's the

1 interpretation I --  
2  
3 Q. You weren't suggesting, were you, that there was some  
4 incredibility about it because they knew where he was, but  
5 they weren't getting in touch with him? You weren't  
6 expressing that, were you?  
7 A. No, what I was saying is --  
8  
9 Q. Could you answer my question. You weren't expressing  
10 that, were you?  
11 A. I was trying to answer that, sir.  
12  
13 Q. No, you weren't.  
14 A. If you want a "Yes" or "No" answer - no.  
15  
16 Q. Thank you. Could you go down to the third paragraph,  
17 under the heading "Background". You talk about there a  
18 matter that I'll return to shortly, but it involves the  
19 trip by Bishop Malone and Vicar General Saunders to see  
20 Father Fletcher. Do you understand that that is what that  
21 paragraph is about?  
22 A. Yes.  
23  
24 Q. What you assert in sentence one is a fact, that those  
25 two people had been to see Father Fletcher; that's right,  
26 isn't it? That was a fact and that's what you were saying?  
27 A. Yes.  
28  
29 Q. Your second sentence, though, says that "This", being  
30 the trip, "negatively impacted on the investigation"?  
31 A. Yes.  
32  
33 Q. In what way was the investigation impacted in a  
34 negative way?  
35 A. Oh, in many ways, sir. First of all, it allowed, in  
36 my view, Father Fletcher to be aware that he was now  
37 subject of a police investigation; number two, it told him  
38 who, amongst all of his victims, was the one that had made  
39 complaints; number three, it then allowed him to start  
40 ostracising that victim and that victim's family way before  
41 the police even went there. Their treatment from that  
42 point of time and the rumour and innuendo that sprung from  
43 that parish placed that victim's family under a lot of  
44 pressure, to the degree where the victim was later on  
45 admitted to a psychiatric facility and nearly committed  
46 suicide. I still feel that it negatively impacted, sir.  
47

1 Q. You've named three things; is that right?  
2 A. I think they're fairly significant, yes.  
3  
4 Q. I'm not belittling your answer.  
5 A. Well, if you're not belittling it, no, I agree with  
6 you, that's three things. I may be able to elaborate on  
7 more, but, yes, it --  
8  
9 Q. Tell me this: at the time of the trip by Bishop  
10 Malone and his vicar general, you had had limited contact  
11 with [AH], hadn't you?  
12 A. Yes.  
13  
14 Q. And as a matter of your experience in these types of  
15 matters, you expected the process of investigation that you  
16 were intending to embark upon to take quite a long time,  
17 didn't you?  
18 A. I wasn't sure - you know, sometimes - it's very hard  
19 to place a figure on that. I think most police would agree  
20 that every investigation varies enormously. I have had  
21 some investigations, even sexual assault matters, that  
22 I can wrap up in a couple of days. I have had others that  
23 have gone on for a couple of years; whether it be sexual  
24 assault or murders, they all vary. As it panned out in  
25 this matter, I think as a result of that forewarning of  
26 Father Fletcher --  
27  
28 Q. Let's just talk about your expectations.  
29 A. Sir, can I finish that answer?  
30  
31 Q. No, I asked you about your expectations.  
32  
33 MR COHEN: I object. That was a perfectly responsive  
34 answer, which has been cut off.  
35  
36 THE COMMISSIONER: Yes, I don't think the witness had  
37 finished, Mr Harben.  
38  
39 MR HARBEN: He hadn't, Commissioner, but I asked him for  
40 his expectation and he was giving me a philosophy. With  
41 respect, he either answers the question or he doesn't.  
42  
43 THE WITNESS: Sorry, just to finish, if I may, on my  
44 expectation, my expectation is it would have been a lot  
45 shorter had the visit by the bishop to Father Fletcher not  
46 occurred, but I believe directly, as a consequence of that,  
47 it traumatised the victim and his family and, as I have

1 explained to this Commission earlier, he ended up,  
2 extremely damaged from events that then flowed on from that  
3 forewarning, that the investigation took much longer than  
4 probably would have been the case.  
5  
6 MR HARBEN: Q. In any event, Bishop Malone asked you  
7 that very question, didn't he, about your expectation about  
8 how long that process might take?  
9 A. Yes.  
10  
11 Q. Do you remember what you replied to him?  
12 A. Yes. Well, in general terms, but I believe that would  
13 you have it firsthand there, sir.  
14  
15 Q. What's your recollection?  
16 A. I told him, I think, something along the lines of, "a  
17 few months, I'm not really sure" - something along those  
18 lines.  
19  
20 Q. Could I just capture this: on the assumption that  
21 Father Fletcher was not told in the early days in June  
22 about the police investigations, you certainly wouldn't  
23 have been in a position to approach Father Fletcher for  
24 some months?  
25 A. No, I don't - I disagree with that, sir, no.  
26  
27 Q. You wouldn't have been in a position to approach  
28 Father Fletcher until you took a statement from [AH], would  
29 you?  
30 A. I could have. I probably would not have. I agree  
31 I would not have. I would have liked to have finished the  
32 statement from [AH] first, yes.  
33  
34 Q. Just as a matter of interest, when did you commence to  
35 take that statement?  
36 A. I believe November of that year it started.  
37  
38 Q. So about six months later?  
39 A. Yes.  
40  
41 Q. That's not unusual in this type of matter, is it?  
42 A. Yes. It is not unheard of. It is a little bit  
43 unusual, but as I explained --  
44  
45 Q. Sorry, that's not unusual. Your answer is - what's  
46 your answer to that question?  
47 A. I think I said it is not unusual - sorry, it is

1 unusual but not unheard of.  
2  
3 Q. Because what happens is that, as you've said on a  
4 number of occasions, sometimes victims of this abuse are  
5 reluctant to continue to engage in the process; that's  
6 right, isn't it?  
7 A. I don't know if I said that, but I wouldn't disagree  
8 with that comment.  
9  
10 Q. Indeed, it had already happened in this case, hadn't  
11 it, involving [AH]?  
12 A. No.  
13  
14 Q. Wasn't he supposed to contact you on 4 June and that  
15 didn't happen?  
16 A. Yes.  
17  
18 Q. The process of reluctance had already begun?  
19 A. No, no, that wasn't reluctance, sir. You're  
20 misinterpreting that altogether. That was not reluctance  
21 on his part from my view at all.  
22  
23 Q. Would you answer this - it was a couple of months  
24 until you were in a position to approach Father Fletcher  
25 and no-one had been to see him. It stands to reason,  
26 doesn't it, that he would have continued in doing whatever  
27 it is he was doing unchecked and unsupervised?  
28  
29 MR COHEN: I object. That's a question that so begs so  
30 many other questions that, in my submission, it can't  
31 assist you about whether or not there was cover-up or  
32 hindrance or assistance. It is on the very edge of what  
33 might even be relevant. It is an undue waste of time.  
34  
35 THE COMMISSIONER: "It was a couple of months until you  
36 were in a position to approach Father Fletcher and it  
37 stands to reason that" - what was the rest of it?  
38  
39 MR HARBEN: He would have remained doing whatever it was  
40 he was doing in his capacity unchecked and unsupervised.  
41 The allegation, Commissioner, is that --  
42  
43 THE COMMISSIONER: Mr Cohen, I will permit it.  
44  
45 MR COHEN: If the Commission pleases.  
46  
47 MR HARBEN: Q. That's right, isn't it?

1 A. No.  
2  
3 Q. You disagree with that?  
4 A. Yes.  
5  
6 Q. So somehow he would have learnt of the investigation?  
7 A. I believe, when I knocked on his door and arrested  
8 him, that would have occurred very soon thereafter. Just  
9 to clarify it, sir, if I --  
10  
11 Q. Very soon thereafter - what?  
12 A. After the complaint had first come forward.  
13  
14 Q. You assume that very soon after the complaint had come  
15 forward to you, he would have found out about it - that is,  
16 Fletcher?  
17 A. I would have arrested Fletcher. That's how he would  
18 have found out, yes.  
19  
20 Q. Thank you, but you wouldn't have been in a position to  
21 arrest him until you had completed your investigation by  
22 completing your statement process with [AH]; that's right,  
23 isn't it?  
24 A. Yes.  
25  
26 Q. So that if that process took a period of months, it  
27 follows, doesn't it, that no-one - that Fletcher would have  
28 continued doing whatever it was he was doing unchecked and  
29 un supervised?  
30 A. Sir, that's operating on the premise, I believe, that  
31 the victim's state of mind in June of 2002 was very  
32 different to what it was six months later as a direct  
33 consequence of Bishop Malone's actions and the conduct and  
34 the ostracism that came back and affected him and his  
35 family. In early June, when he first came in, I had no  
36 thoughts that this was going to be a process that would be  
37 drawn out. I would have expected that I, hopefully, would  
38 have typed up that statement within a week or two. That  
39 was my expectation, if you're inquiring what I thought in  
40 early June.  
41  
42 Q. But he didn't come in?  
43 A. No, he --  
44  
45 Q. He didn't come in?  
46 A. He came in the next day.  
47



1 Q. Are you saying that he came in on the 4th? Is that  
2 your evidence?  
3 A. My recollection was he was due to come in on the  
4 Monday. Was the Monday the 4th?  
5  
6 Q. Is that your evidence, that he came in the next day,  
7 after speaking to you? Is that your sworn evidence?  
8 A. No, I think my evidence is I spoke to him and I don't  
9 recall the dates and --  
10  
11 Q. Excuse me.  
12 A. -- if you're able to help me with --  
13  
14 Q. You said a moment ago "he came in the next day"?  
15 A. Yes, sorry, that's --  
16  
17 Q. Is that true or untrue?  
18 A. No, that's going back to what you asked me earlier --  
19  
20 Q. No. Is that evidence true or untrue?  
21 A. True.  
22  
23 Q. So he did come in the next day; is that right?  
24 A. Next day from what, sir? That's what I'm trying to  
25 elicit from you so that I can define my answer. The next  
26 day from the day that he originally had made the  
27 appointment. I contacted him on the Friday. I don't  
28 recall the date - sorry. He was due to come in to see me  
29 on Monday, 3 June.  
30  
31 Q. Yes?  
32 A. And because he had watched the interview with Richard  
33 Carleton and Archbishop Pell on the Sunday night, he became  
34 distraught and, as a result, I rang him the next day, which  
35 was Monday, the 3rd, when he didn't come into the office,  
36 and he explained that he was emotionally upset and came in  
37 on Tuesday, the 4th.  
38  
39 Q. Did you commence the process of taking a statement  
40 from him then?  
41 A. Yes.  
42  
43 Q. Do you have notes of that?  
44 A. There's a COPS entry which I commenced on that day.  
45  
46 Q. Do you understand my question was: did you commence  
47 the process of taking a statement from him?

1 A. In what respect? Did I start typing it? No. What  
2 I meant by my answer is that I asked him to chase up a  
3 number of dates and to check a number of things and to get  
4 back to me later that week and we would start to type his  
5 statement up from that material. So I considered that a  
6 part of the statement process and I'm trying --  
7  
8 Q. Did he get back to you?  
9 A. We spoke later that week, yes.  
10  
11 Q. Did you get him in? Did you ask him to come in?  
12 A. Because of what had occurred at the meeting at  
13 Branxton between Bishop Malone and Father Fletcher and the  
14 wider ramifications of that, he was not in an emotional  
15 state where he was any longer able to come in and so that's  
16 what I'm referring to.  
17  
18 Q. You say "the wider ramifications"?  
19 A. Yes.  
20  
21 Q. You talked a moment ago about ostracisation and the  
22 like?  
23 A. Yes.  
24  
25 Q. But this was in the same week.  
26 A. Oh, yes.  
27  
28 Q. It may not even have been before Bishop Malone went to  
29 see Father Fletcher?  
30 A. It didn't take very long for it to start occurring,  
31 sir. I can only tell you that from hearsay, but I am sure  
32 that any member of that victim's family would be only too  
33 happy to explain those wider ramifications more clearly.  
34  
35 Q. What you know, as at that point, is that something he  
36 had seen on the television on the Sunday night had caused  
37 him to be upset; that's right, isn't it?  
38 A. Yes.  
39  
40 Q. But you don't know what impact that had on a  
41 continuing basis compared to what impact something else had  
42 on him, do you?  
43 A. I believe I do because he came in and saw me on the  
44 Tuesday, the following day after that program - not the  
45 Monday, but on the Tuesday. We spoke about that and, yes -  
46 I don't want to run into the hearsay issue, but I think  
47 I had a fairly clear idea in my mind from what he told me

1 and what his and my expectations were of what would occur  
2 that week, and I felt that things were travelling fairly  
3 well up until these other issues arose.  
4  
5 Q. You understood, didn't you, that Father Fletcher had  
6 been told about these matters by [AH]'s father - you  
7 understood that?  
8 A. Who had been told, sorry?  
9  
10 Q. I'm sorry, I'll withdraw that. Bishop Malone had been  
11 told about these matters by [AH]'s father?  
12 A. That is correct, yes.  
13  
14 Q. The parent of this person had seen fit to inform the  
15 bishop; that's right?  
16 A. Yes.  
17  
18 Q. The bishop then went to see Father Fletcher?  
19 A. Yes.  
20  
21 Q. And he didn't hide that visit?  
22 A. No.  
23  
24 Q. Indeed, the first thing that happened when he returned  
25 from the visit was he phoned [AH]'s mother and told her  
26 about it?  
27 A. I don't know if that was the first thing he did.  
28 I can confirm from what I was told by [AH]'s mother that  
29 she received a phone call. I don't know if it was the  
30 first thing he did.  
31  
32 Q. In any event, it was very soon in the process, wasn't  
33 it?  
34 A. Yes.  
35  
36 Q. Can we take it that this is the chronology: [AH]'s  
37 father tells Bishop Malone; Bishop Malone goes to Branxton  
38 to see Father Fletcher; and soon thereafter Bishop Malone  
39 reports back to [AH]'s mother?  
40 A. Yes.  
41  
42 Q. In addition to reporting back to her, he offered  
43 support and assistance; that's right, isn't it?  
44 A. I don't know if it was that call or a later call, but  
45 at some stage I know that did occur; I'm just unsure which  
46 call that that occurred, sir.  
47

1 Q. But you're not suggesting it didn't happen?  
2 A. No. What I'm saying to you, sir, is that I don't know  
3 if it was that call or a later call. I understand what  
4 you're saying and I agree with you from what was told,  
5 which is that did occur, but I don't know if it occurred in  
6 that call  
7  
8 Q. Tell me this: you telephoned Bishop Malone and said  
9 you wanted to see him?  
10 A. Yes.  
11  
12 Q. And he was completely cooperative in that regard?  
13 A. Yes.  
14  
15 Q. You went along and you spoke with him, didn't you.  
16 A. Yes.  
17  
18 Q. Here in Newcastle?  
19 A. Yes.  
20  
21 Q. And he engaged you in that conversation?  
22 A. Yes.  
23  
24 Q. I don't want to go over old ground, but you have  
25 produced a version of what you say took place during that  
26 conversation.  
27 A. Yes.  
28  
29 Q. Tell me, as an experienced investigating officer, do  
30 you carry a notebook?  
31 A. Normally I do, not always. Like some people  
32 I occasionally forget. It depends on what I was planning  
33 to do and where I was going, but I do carry a notebook,  
34 yes.  
35  
36 Q. You carry a notebook if you're going to interview  
37 somebody about an existing investigation, don't you?  
38 A. You carry a notebook for a lot of purposes. That  
39 could be one.  
40  
41 Q. In this case you visited Bishop Malone as part of an  
42 ongoing investigation; that's right, isn't it?  
43 A. Yes.  
44  
45 Q. I want to suggest to you that you would have, as a  
46 matter of your long experience, thought to take a notebook  
47 so that you could record anything that was told to you?

1 A. That was an option. It was an option that I elected  
2 not to do. I didn't feel that the meeting was a forum  
3 where I wanted to sit down at that stage.  
4  
5 Q. But you were agitated about it?  
6 A. Oh, I wasn't happy about what he'd done, sir.  
7  
8 Q. Being agitated about it, you immediately jumped to the  
9 conclusion that this had somehow interfered in the process  
10 that you had begun?  
11 A. Yes.  
12  
13 Q. And you were cranky about it?  
14 A. I was unhappy about it, sir, yes.  
15  
16 Q. In those circumstances, it stands to reason, doesn't  
17 it, that a man of your experience would take a notebook and  
18 take notes of what occurred in that discussion?  
19 A. Not always, sir, no.  
20  
21 Q. In this case?  
22 A. No. I felt that it would be inappropriate in this  
23 case.  
24  
25 Q. Why would it have been inappropriate?  
26 A. A lot of times, sir, and I think that most people  
27 would be aware that - my experience is that as soon as a  
28 policeman pulls out a notebook and starts writing things  
29 down, "I said/he said", in the presence of someone, people  
30 tend to clam up. They start to think, "Oh, geez, now  
31 I'm in trouble here. This is a bit of drama." At that  
32 stage, I was more taking the view that it was a more a  
33 fact-finding mission to find out why he had done it and  
34 I wanted it to be a friendly and open discussion and not  
35 misconstrued as something of a different nature.  
36 I certainly wasn't happy with his actions, but I was keen  
37 to find out what his response was as to why he had acted in  
38 the way he had.  
39  
40 Q. Let's just assume that that is the truth for the  
41 moment, and we're talking about an "I said/he said" --  
42 A. Sorry, what is the truth, sir?  
43  
44 Q. That you decided you were not going to approach it in  
45 a way that you would take down notes in a notebook. Let's  
46 assume that to be the case.  
47 A. I can assume that very easily, sir.

1  
2 Q. Thank you. Where there's an "I said/he said" that  
3 does eventuate, isn't it your practice to take it to the  
4 witness and say, "Could you listen to this and will you  
5 tell me whether it is an accurate record of our  
6 discussion"?

7 A. Not always, sir, and I think in the majority of times  
8 most police don't do that, no.  
9

10 Q. But you went to great trouble to record a conversation  
11 that you say occurred between Bishop Malone and yourself in  
12 a formal "I said/he said" way, thinking that you might have  
13 to produce it before a judge in court at some time; that's  
14 what you've said, isn't it?

15 A. I don't - sir, it would never have got to a judge.  
16

17 Q. But that's what you said. That's what you have said  
18 in this investigation. That's the reason you did it?

19 A. Sorry, if I've said that, sir, I apologise. You know,  
20 I think that clearly it would never have got to a judge.  
21 If I had made up my mind of the nature of the offence,  
22 I don't think it would have gone to that forum - maybe a  
23 magistrate, but probably just my terminology.  
24

25 Q. Why did you write it down?

26 A. I wrote it down to have an accurate recollection of  
27 what was said. I was concerned about what he'd done. I've  
28 already put on record that, ultimately in consultation with  
29 the DPP, I decided to give him the benefit of the doubt.  
30

31 Q. No, inspector, why did you write it down, and by  
32 "write" I mean record it electronically?

33 A. For the reason I just said.  
34

35 Q. No, no, you didn't give a reason. Why did you  
36 record --  
37

38 MR COHEN: I object. The witness gave an evident and  
39 clear reason. Whether it is the right reason for my  
40 friend's purpose --  
41

42 THE COMMISSIONER: Yes, Mr Harben, the witness said,  
43 "I wrote it down to have an accurate recollection."  
44

45 MR HARBEN: Q. You wanted to have an accurate  
46 recollection; is that so?

47 A. Yes.

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Q. What was the need to have an accurate recollection of this conversation?

A. To be both fair to - in many respects, about what was said. I suppose --

Q. You mean fair to Bishop Malone?

A. I take your point. If I'd taken it down and asked him to sign it --

Q. Do you mean fair to Bishop Malone?

A. I think fair to everybody. I think fair to the victim and the victim's family, to Bishop Malone, to the vicar general, who was there, and to myself, yes.

Q. To be fair to Bishop Malone the proper thing would have been, as soon as you had done it, to take it to him and ask him whether it was an accurate recollection of the conversation you had?

MR COHEN: I object. There's no basis for putting that that is or is not proper without setting up why --

THE COMMISSIONER: It was put as the fair thing to do.

MR COHEN: No, it was put as the proper thing to do, with respect, Commissioner.

THE COMMISSIONER: "To be fair to Bishop Malone, the proper thing to do was to ..."

MR COHEN: There is no proper basis, if I may say.

THE COMMISSIONER: Mr Harben, would you be content with "to be fair to" --

MR HARBEN: Q. To be fair to Bishop Malone it would have been proper for you to have shown it to you?

MR COHEN: I object on the same basis. It is not setting up the question.

MR HARBEN: It's either proper or not proper to do something that has the aspect of fairness.

THE COMMISSIONER: Perhaps we may then not know whether the answer is directed to fairness or propriety, Mr Harben.

1  
2 MR HARBEN: Q. You used the word "fair", didn't you,  
3 inspector?  
4 A. Yes.  
5  
6 Q. You know what I am talking about, don't you?  
7 A. I hope so, sir.  
8  
9 Q. You said "to be fair" - it is not funny.  
10 A. I'm not laughing at it to be funny, sir. It's --  
11  
12 Q. You were laughing. You said, "to be fair" and that  
13 included being fair to Bishop Malone, didn't it?  
14 A. Yes.  
15  
16 Q. I want to suggest to you that to be fair to Bishop  
17 Malone, the first thing you would have done is take it down  
18 to him and ask him whether it was an accurate record of the  
19 conversation that you had?  
20 A. I don't think it was being unfair not to do it.  
21 I didn't take that view, you know, and, at the end of the  
22 day, it is an accurate version. You know, I take your  
23 point. I could have gone down there. I elected not to.  
24 It wasn't for the purposes of being unfair. Ultimately,  
25 I believe that - well, I don't know. I was hoping that he  
26 was shown that. It certainly wasn't in any criminal  
27 proceedings.  
28  
29 Q. Do you mean you were hoping he was shown your  
30 "I said/he said" document?  
31 A. Yes.  
32  
33 Q. When did you show it to him?  
34 A. I didn't, sir.  
35  
36 Q. When did you show it to anybody?  
37 A. It depends on who you're asking, but what I was  
38 referring to --  
39  
40 Q. No, I'm asking you.  
41 A. Yes, I know, but --  
42  
43 Q. When did you show it to anybody?  
44 A. I showed it to many people over many years, in  
45 different forums, for different reasons.  
46  
47 Q. When did you first show it to anybody?



1 A. I believe Detective Joy saw - well, I don't know  
2 whether I showed it to her or just read it aloud to her --  
3  
4 Q. Is that Joyce or Joy?  
5 A. Joy, J-O-Y.  
6  
7 Q. Thank you.  
8 A. -- within days. It remained on my computer then and  
9 it was shown to the New South Wales Ombudsman's office  
10 early the following year. My understanding was they were  
11 hoping to - I don't know if they did, they never replied,  
12 but --  
13  
14 Q. Could I just stop you there. You showed it to  
15 Detective Joy; is that your evidence?  
16 A. Yes, it is.  
17  
18 Q. That's your sworn evidence?  
19 A. Yes, it is - no, no, no. What I said was I'm not sure  
20 if I showed it to her or just read it back to here.  
21  
22 Q. You're not sure about - is it your sworn evidence that  
23 you read it to Detective Joy?  
24 A. Yes.  
25  
26 Q. No doubt about that?  
27 A. That's my recollection, sir.  
28  
29 Q. Are you able to say on oath when you did that?  
30 A. No. It was around that time, within days of it being  
31 completed, but, you know, I can't put a date and time on  
32 it.  
33  
34 Q. Just apart from reading it to Detective Joy, when was  
35 the first time you gave a copy of the "I said/he said"  
36 document in any form to anybody?  
37 A. To the New South Wales Ombudsman's office early in the  
38 following year.  
39  
40 Q. Just correct me if I am wrong, but that followed your  
41 interview with Bishop Malone, didn't it?  
42 A. My interview with - I - sorry, the statement you're  
43 talking about, the date I took his statement?  
44  
45 Q. Yes.  
46 A. It was around that same time. I can't recall -  
47 I don't disagree with you. You may be right, but I think

1 they were in close proximity.  
2  
3 Q. Tell me this: why did you ask Bishop Malone to come  
4 in in May 2003 for an interview - with respect to which  
5 investigation was that?  
6 A. Father James Fletcher.  
7  
8 Q. Thank you. Was that the first time you had spoken to  
9 Bishop Malone since 20 March 2002?  
10 A. I don't recall.  
11  
12 Q. Sorry, 20 June 2002?  
13 A. Sorry, yes.  
14  
15 Q. You don't recall?  
16 A. I don't recall. There was various contacts at various  
17 stages, but I honestly don't recall now whether there may  
18 have been a phone call or two in between that time, but --  
19  
20 Q. Did you show Bishop Malone the "I said/he said"  
21 document when he came in for the interview in relation to  
22 the Fletcher investigation?  
23 A. I don't know. My recollection is that I had it with  
24 me when I took his statement. I don't recall if I showed  
25 it to him, but I felt that I used it as a prompt sheet as  
26 I worked through the statement, but I just can't say yes or  
27 no that I actually physically showed it to him.  
28  
29 Q. Can I suggest to you that you didn't show it to  
30 Bishop Malone during that interview at all?  
31 A. I may not have, sir. I don't recall. I know I used  
32 it as a prompt sheet to assist me with making his statement  
33 to canvass a number of the things that I wanted included in  
34 his statement.  
35  
36 Q. I see.  
37 A. But I don't recall whether I did or didn't show it to  
38 him as a - you know, I don't believe I handed it to him and  
39 said, "Listen, read through this".  
40  
41 Q. As a prompt? What part of it did you use as a prompt?  
42 A. Probably most of it, if not all of it.  
43  
44 Q. So you might have used it as a prompt, but not shown  
45 it to him so he could assess whether it was a fair  
46 representation of your recording of the conversation?  
47 A. The material contained within that discussion between

1 he and I on that date would have been hearsay so far as the  
2 purpose of the statement that I was taking from him was --

3  
4 Q. Sorry, hearsay?

5 A. A lot of it, yes.

6  
7 Q. But he was the witness?

8 A. Yes, but what I was getting the statement off him  
9 wasn't so much to do with just, in its entirety, that  
10 matter of our meeting on 20 June 2002; it was predominantly  
11 in relation to his contact with Father James Fletcher.

12  
13 Q. That's what the "I said/he said" document was.

14 A. That was our conversation later on. What the  
15 statement was aimed at doing was getting his firsthand  
16 account in that statement.

17  
18 Q. But the firsthand account was in the "I said/he said"  
19 document, wasn't it?

20 A. That was an "I said/he said" between he and I. What  
21 I was after was the "I said" and "He said" between him and  
22 Fletcher on 4 June.

23  
24 Q. Inspector, you were a very experienced investigating  
25 officer in 2003. If you had a document relevant to the  
26 investigation, you would have shown it to the witness,  
27 wouldn't you?

28 A. No, sir. I suppose the best way to describe it and  
29 I think I actually made the comment, is that I typed that  
30 up in lieu of going back and writing up those things in my  
31 duty book. Now, that was my evidence. I do not - I cannot  
32 think of a situation in all my 35 years where a police  
33 officer has then sat down, pulled out their duty book,  
34 shown it to a potential witness, and said, "Sir, can you go  
35 through, read that and sign it as being correct or not  
36 correct." That doesn't occur.

37  
38 The way I have explained to this court the reason for  
39 me typing that up is that it was a pseudo form of preparing  
40 my duty book from the conversation I had with Bishop Malone  
41 that day that I prepared back in the office, so that I  
42 didn't take up a dozen pages of a duty book for that  
43 purpose. I've never, ever, in all my years had somebody  
44 sign my duty book as to the accuracy or not of a  
45 conversation I've recorded there.

46  
47 Q. But this wasn't in your duty book; this was a separate

1 identifiable, annexable document that you could have held  
2 up and said, "Have a look at this. I want to annex it to  
3 your statement." That's right, isn't it?  
4 A. No, that's not the way - I think, through the course  
5 of this Commission, not only myself but many police  
6 officers have produced photocopies of notebooks. I think  
7 there's numerous examples of that having occurred. You  
8 will not find one of those pages where a conversation with  
9 somebody else has been countersigned by that other person.

10  
11 I explained in my evidence that when I typed that up  
12 it was in a - I can't remember the exact term, but I took  
13 it as a pseudo form of preparing my duty book. Rather than  
14 writing up 12 pages, I felt it quicker and easier to type  
15 it up. That's the way I viewed that document, that's the  
16 way I intended to use it, and I didn't intend to have or  
17 ask somebody to sign it on that basis.

18  
19 Q. Actually what you did, and what you have said  
20 previously on oath, is that you typed it up in response to  
21 your perception that Father Fletcher was not being stood  
22 down from his parish. That is what you have previously  
23 said on oath, isn't it?

24  
25 MR COHEN: I object. When? That's an important  
26 qualification.

27  
28 THE COMMISSIONER: I recall evidence somewhat to that  
29 effect. Do you have it to hand, Mr Harben?

30  
31 MR HARBEN: I do, as a matter of fact, Commissioner.  
32 Exhibit 50.

33  
34 THE WITNESS: Sorry, sir, could I just ask for a  
35 five-minute break, if I might? I don't mean to interrupt  
36 my cross-examination, but it might be an opportunity just  
37 to --

38  
39 THE COMMISSIONER: Yes, of course. I will adjourn for  
40 five minutes.

41  
42 **SHORT ADJOURNMENT.**

43  
44 MR HARBEN: Could the witness be shown, if he hasn't  
45 already been, exhibit 50.

46  
47 Q. Inspector, you recognise that as being some pages from

1 a transcript recording evidence which you had previously  
2 given on oath?  
3 A. Yes.  
4  
5 Q. Do you see that at the bottom of the first page is  
6 page 64?  
7 A. Yes.  
8  
9 Q. If you turn to the next page, which is page 65, you  
10 were asked a question, which I won't read, but could I read  
11 this answer to you from you:  
12  
13 A. *And I am sorry for that. I did prepare*  
14 *that much earlier. That was certainly in*  
15 *2002. The statement format I did not do*  
16 *until requested by the Ombudsman ...*  
17  
18 Can I just stop there.  
19 A. Yes.  
20  
21 Q. When the Ombudsman wrote and asked you for something,  
22 you put the "I said/he said" into the form of a police  
23 document, didn't you?  
24 A. The Ombudsman didn't write. The Ombudsman spoke to  
25 me, or an officer from the Ombudsman's office spoke to me  
26 and asked me to put the "I said/he said", which I had  
27 earlier sent them, into a statement format, that is  
28 correct.  
29  
30 Q. That's what's referred to in that answer:  
31  
32 *The statement format I did not do until*  
33 *requested by the Ombudsman?*  
34  
35 A. Yes.  
36  
37 Q. The answer continues:  
38  
39 *... but I had prepared the transcript*  
40 *"I said", "He said" ...*  
41  
42 That's the document I've been asking you about, isn't it?  
43 A. The hard copy, yes.  
44  
45 Q. You then continue.  
46  
47 *... if you like, much earlier in 2002, but*

1            *I don't recall the date. But it wasn't -*  
2            *I don't mean to say that I did it the very*  
3            *day that I spoke to Michael Malone; it was*  
4            *some time later, maybe a month or two.*  
5  
6            A.    Yes.  
7  
8            Q.    And that's the fact, isn't it?  
9            A.    Yes.  
10  
11           Q.    You were then asked some further questions about what  
12           prompted you to do it:  
13  
14           *Q.    A month or two. And why did you*  
15           *prepare it a month or two later rather than*  
16           *on the day or within a day of interviewing*  
17           *him?*  
18  
19           You remember that question?  
20           A.    Yes.  
21  
22           Q.    You understood it?  
23           A.    Yes.  
24  
25           Q.    You replied:  
26  
27           *A.    I believed that Michael Malone would*  
28           *have stood Jim Fletcher down from his*  
29           *duties and removed him from contact with*  
30           *children. It was after - I didn't do the*  
31           *transcript before that, before I learnt*  
32           *that he wasn't intending to remove him and*  
33           *he expanded his parish.*  
34  
35           That's right, isn't it?  
36           A.    Yes.  
37  
38           Q.    It is the case, isn't it, that you did nothing about  
39           preparing any form of the "I said/he said" record until you  
40           learnt, in your words, that Michael Malone "wasn't  
41           intending to remove" Fletcher from his position; that's  
42           right, isn't it?  
43           A.    No.  
44  
45           Q.    That's exactly what you said, isn't it?  
46           A.    No.  
47

1 Q. Are you suggesting that that answer is not right or is  
2 right?

3  
4 MR COHEN: I object. That confuses and conflates two  
5 concepts and two questions.

6  
7 MR HARBEN: I'll withdraw it. I don't want to conflate  
8 anything.

9  
10 MR COHEN: That's what you're doing.

11  
12 MR HARBEN: Q. Do you say that that answer that I've just  
13 read out is accurate?

14 A. Yes.

15  
16 Q. You then go on further down:

17  
18 *A. Well, okay then, if I'm going to take*  
19 *this further later on, which I intend to*  
20 *show the judge when this goes to court,*  
21 *I am going to type this up, and if I get*  
22 *the opportunity to get that into evidence,*  
23 *I will.*

24  
25 You're not looking at the document, inspector, or do you  
26 remember the answer?

27 A. No, I recall all that, sir, and - yes.

28  
29 Q. Do you remember I asked you about this evidence a  
30 little while ago when I first started cross-examining you  
31 about preparing the document with an intention to take it  
32 to court?

33 A. I think your words, sir, it was with the intention of  
34 showing it to a judge, and I corrected that and explained  
35 that it was a poor use of term; it probably should have  
36 been a magistrate.

37  
38 Q. Sir, you prepared it with the intention of taking it  
39 to court to show a magistrate - is that your evidence now?

40 A. To utilise it in that process, yes.

41  
42 Q. You see, the first time you did that in any form was  
43 when you learnt about Fletcher remaining in his parish?

44  
45 MR COHEN: I object. The first time he did what in any  
46 form? That is very much a misleading question.

47

1 THE COMMISSIONER: Could you just be more precise, please,  
2 Mr Harben.

3  
4 MR HARBEN: I will withdraw the question.  
5

6 Q. The first time you made any record of the "I said/he  
7 said" conversation was after you learnt that Fletcher was  
8 not being removed from his parish?

9 A. No.

10  
11 Q. Do you say that you made some other recording of the  
12 "I said/he said" conversation?

13 A. Yes.

14  
15 Q. Is it your sworn evidence that you did that with a  
16 view to just printing it out at some later time?

17 A. No, I did it initially as an electronic record. I'm a  
18 little bit hesitant to try to expand and explain the  
19 situation which may clear this up --

20  
21 Q. Please don't be hesitant, inspector.

22 A. Thank you very much then. What the situation was to  
23 clear the issue --

24  
25 Q. About the answer.

26  
27 MR COHEN: I object. There was an evident invitation to  
28 explain what was in the mind of the witness. That should  
29 happen without qualification and without comment.

30  
31 THE COMMISSIONER: Carry on.

32  
33 THE WITNESS: What the situation was, was when I went  
34 back, within two or three days, I typed up an electronic  
35 version "I said/he said", which did not change from that  
36 electronic version to anything else at that time. Later,  
37 when I learnt that the bishop was not intending to remove  
38 Father Fletcher from the parish or restrict his contact  
39 with children in the school, I printed up the version that  
40 Ms Lonergan showed me yesterday with that small heading,  
41 and I printed that up for the purpose to place that in the  
42 Fletcher brief folder.

43  
44 Then later in, I think it was May the following year,  
45 2003, when I provided a copy of that second document - that  
46 is, the hard copy as opposed to the electronic copy - to  
47 the New South Wales Ombudsman's office, I spoke to



1 Anne Barwick over the telephone and she requested that  
2 I prepare a statement in the standard police format with  
3 that "I said/he said" incorporated into it. That may have  
4 been the misunderstanding. But I think to vindicate what  
5 I'm saying, if you have a look at the report I prepared for  
6 the Ombudsman, it very clearly says in there that  
7 I prepared the "I said/he said" within two or three days,  
8 not two or three months. I realise that there has been a  
9 misunderstanding with that and I've been anxious to clarify  
10 it for that reason.

11  
12 So it says in there that I typed it up and it also  
13 says in that document that I sent a copy of a disk to the  
14 Ombudsman's office which has a date imprint of the date  
15 created, document created, to support the fact that I had  
16 typed it up within two or three days of my conversation  
17 with Michael Malone. That has caused, I understand, some  
18 confusion, in that there is the electronic version; there  
19 is the second version I placed into the brief folder; and  
20 then later on there is a third version, which is the police  
21 format statement that occurred in the following year.

22  
23 I haven't gone back through and read all the questions  
24 and answers, but it may have been - I don't know. It may  
25 have been a fault, on some part, of mine, but that I think  
26 explains clearly to everybody exactly the process.

27  
28 MR HARBEN: Q. Thank you. I'm going to put this  
29 proposition to you. I'm going to put it to you that your  
30 evidence that you prepared an electronic version of the  
31 "I said/he said" document, within a day or two of your  
32 conversation with Bishop Malone is untrue?

33 A. Electronic document is correct. I probably should  
34 have said "electronic" to make it clearer, but what I put  
35 down there --

36  
37 Q. Electronic, in an electronic form, I'm putting to you,  
38 it is untrue for you to say you recorded the "I said/he  
39 said" material in electronic form within a day or two?

40 A. No, that's not incorrect, and if the Ombudsman still  
41 has --

42  
43 Q. Could you turn to page 66. You will see the first  
44 question on page 66 continues this line about your  
45 suggestion that the bishop, by his actions or inactions,  
46 you understood to be saying something to you like,  
47 "Don't tell me how to run my parish." Do you see that

1 first question?  
2 A. Yes, I did.  
3  
4 Q. Your answer:  
5  
6 *No, sorry, that was my perception. That*  
7 *was only my own interpretation of what -*  
8 *I had asked him to remove him, and a month*  
9 *or so later he had expanded his parish, and*  
10 *I just - that's my vernacular, I suppose,*  
11 *for saying, "Well, he just said 'Well'",*  
12 *you know.*  
13  
14 Do you see that answer?  
15 A. Yes.  
16  
17 Q. You gave that answer?  
18 A. Yes.  
19  
20 Q. Question:  
21  
22 *You would agree that the file note is a*  
23 *very detailed recollection to have a month*  
24 *or two after the conversation.*  
25  
26 Do you recall that question?  
27 A. Yes.  
28  
29 Q. Your answer: "It is."  
30 A. Yes.  
31  
32 Q. You were agreeing that it was a very detailed  
33 recollection, a recollection --  
34 A. That's my answer to the question.  
35  
36 Q. Question:  
37  
38 *You had absolutely no notes to work from to*  
39 *construct this document?*  
40  
41 You were asked that question?  
42 A. Yes.  
43  
44 Q. No doubt which document you were talking about?  
45 A. That's where I'm not sure. If you keep reading, I may  
46 be able to clarify the answer for you.  
47

1 Q. In any event, you remember being asked that question?  
2 A. Yes.

3  
4 Q. "A. No." Do you remember the question was:

5  
6 Q. *You had absolutely no notes to work  
7 from to construct this document?*

8 A. No ...

9  
10 A. Yes, that's my answer.

11  
12 Q. In other words, you had no notes to construct the  
13 "I said/he said" document?

14 A. What - how I can explain that is very simply.  
15 I interpreted that as me typing up a completely new  
16 document. All it basically was, I went back into the  
17 original electronic version, typed a couple of lines at the  
18 top to explain what it was, the place in the  
19 Father Fletcher investigation folder. I didn't go back in  
20 and retype up the "I said/He said". To my thinking,  
21 I didn't prepare it, it was already prepared, so all I've  
22 done is just added something to it and it makes it sound  
23 like that they're two really separate documents. It is  
24 not. The first one was electronic. As I said, I am  
25 certain if anyone - if it is available, the Ombudsman's  
26 office has the disk that the original was recorded on which  
27 will verify exactly what I'm telling you and that was my  
28 evidence in a report that I sent to the Ombudsman in 2003,  
29 where I said again in that that I had recorded the  
30 "I said"/He said" within two or three days of the meeting  
31 with Michael Malone and you know I can understand - and  
32 I would have anticipated I'd get some questions about it to  
33 clarify it and I'm glad you've asked me and given me that  
34 opportunity, sir.

35  
36 Q. Thank you. Could I just go back to my question and  
37 answer again. You had absolutely no notes to work from to  
38 construct this document.

39  
40 MR COHEN: I object. That question has been put  
41 comprehensively. This is becoming oppressive.

42  
43 THE COMMISSIONER: You may put it again, Mr Harben.

44  
45 MR HARBEN: Q. You understood when you answered with the  
46 word "No" that you were agreeing that you had absolutely no  
47 notes to work from to construct the "I said/He said"

1 document - you understood that?  
2 A. No. There may be a misunderstanding there. What I  
3 was saying is I utilised all of the "I said/He said".  
4 I didn't use something to prepare that. It was already  
5 prepared in my mind. That's the way I viewed it. It was  
6 already prepared. All I needed to do was just add a couple  
7 of sentences - or I think two lines or three lines at the  
8 top of that document to print it out. That was the only  
9 alteration I did and I think that's where the confusion is.  
10 It sounds like I prepared a completely new, a totally new  
11 document from that electronic one. That wasn't my view and  
12 that's why I explained it that way and I understand it may  
13 have caused a little bit of confusion and I apologise for  
14 that, but I'm hoping what I've explained clarifies the  
15 situation.  
16  
17 Q. Can I now read the balance of your answer to that  
18 question?  
19 A. Please.  
20  
21 Q.  
22 *... that's as accurate - it is a month or*  
23 *two later. I suppose it is like any*  
24 *contemporaneous note, if someone is asked,*  
25 *"Well, listen, can you type something*  
26 *down?", a month or two later, after it*  
27 *happened, there may be the odd word, or*  
28 *something, but it is pretty well damn close*  
29 *to what was actually said.*  
30  
31 A. Yes.  
32  
33 Q. That was your explanation, wasn't it?  
34 A. Yes.  
35  
36 Q. That said nothing about there being an electronic  
37 version that you simply added something to, does it?  
38  
39 MR COHEN: I object. There's an earlier question and  
40 answer that does just that. It is not a fair question.  
41 That earlier question and answer is on page 64.  
42  
43 MR HARBEN: Is that at line 15?  
44  
45 THE COMMISSIONER: Yes, thank you, Mr Harben.  
46  
47 MR COHEN: No, it is line 23.

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MR HARBEN: The question is at 15.

MR COHEN: Yes, it is.

MR HARBEN: Thank you. I'll come to that in a moment, Commissioner, in fairness to the witness.

THE COMMISSIONER: Thank you, Mr Harben.

MR HARBEN: Q. The question and answer that I just read out to you, that answer made no mention of you resorting to a electronic version of the "I said/He said" material?

MR COHEN: I object. It repeats the vice of the last question. The earlier question explained and clarified the --

THE COMMISSIONER: Yes, but Mr Harben is just confining himself to this question.

MR HARBEN: I am confining him to that question for the moment.

THE WITNESS: Sir, I take your point and I do apologise but that - yes, I think - and I'm not trying to just use the assistance of Mr Cohen, but I think that when those questions were flowing in a question and answer format, in a small space of time, I'd already explained about that electronic version and then later on I'm talking about this hard copy. Yes, perhaps I should have gone back and made the point that there was an electronic copy, but I think that the other evidence that I've spoken about concerning the report and the electronic copy sent to the Ombudsman's office to verify it, I hope clarifies any confusion over the issue, but yes, I have given them that. It may have been the case - I don't know what time of day, but it may have been the case that I was getting a bit tired. I know that when I gave evidence in the private hearings, I think on one occasion we sat nearly to 6pm or something and I can't recall the exact environment when that was happening. Perhaps I was not thinking as articulately, but it was certainly never the case - I was never intending to mislead or give a wrong answer. It's just the way I've explained it and I'm hoping that my explanation here today clears that up. It was certainly not the case that I was trying to put in anyone's mind a wrong situation and

1 I'm sorry if I've done that.

2

3 MR HARBEN: Q. Could I just take you back to the page  
4 before, as your counsel has noted, the question beginning  
5 line 15, referring to an annexure, and you see that the  
6 annexure - if you go up a couple of questions:

7

8 Q. *And annexure T appears to be a police*  
9 *statement that you prepared regarding the*  
10 *[AH] allegation?*

11 A. Yes.

12

13 A. Yes.

14

15 Q. That was in relation to the document you sent to the  
16 Ombudsman, wasn't it?

17 A. I'm assuming that, yes.

18

19 Q. The question at line 15:

20

21 Q. *You see it refers to an electronically*  
22 *recorded disk being provided with the*  
23 *hard-copy statement ...*

24

25 Do you see that?

26 A. Yes.

27

28 Q. That's the disk that's referred to in what we have  
29 been calling the police statement that you sent to the  
30 Ombudsman. It is not a trick question.

31 A. Yes, that's the question, sorry.

32

33 Q. Do you remember your statement to the Ombudsman  
34 referred to a electronic disk accompanying the statement?

35 A. No. No. No. My statement didn't refer to it. It  
36 was referred to I think - I may stand corrected but  
37 I thought I referred to that in a report that accompanied  
38 the hard copy statement.

39

40 Q. Whatever it is, the disk that's referred to is the  
41 disk that you sent to the Ombudsman, the same disk you have  
42 been telling us about today?

43

44 MR COHEN: I object. That puts a completely different  
45 gloss on the question and the proposition that has been  
46 examined upon and it is unfair, in my respectful  
47 submission, when regard is had to the answer. It cannot be

1 right and it cannot be a fair question.  
2  
3 MR HARBEN: Pardon me, Commissioner.  
4  
5 THE COMMISSIONER: I will allow it. The witness is able  
6 to explain it.  
7  
8 Q. I think you have the transcript in front of you there.  
9 A. I do, Commissioner, thank you.  
10  
11 THE COMMISSIONER: Go on, Mr Harben.  
12  
13 MR HARBEN: Q. The disk that you've referred to is the  
14 disk that you sent to the Ombudsman?  
15  
16 MR COHEN: I object. The disk referred to where? This is  
17 not fair.  
18  
19 MR HARBEN: The disk referred to in the question that  
20 Mr Cohen referred us to on page 64 at line 15, an  
21 electronically recorded disk.  
22  
23 Q. I am suggesting to you that that's the disk you  
24 referred to in your police statement that you sent to the  
25 Ombudsman about the [AH] allegation?  
26 A. Sir, for me to give the best answer to that, could I -  
27 if I'm permitted to see the report that I forwarded to the  
28 Ombudsman that went with that statement and disk, to answer  
29 that more accurately.  
30  
31 Q. Yes. While we're doing that, do you remember being  
32 taken to that particular document yesterday and the dates  
33 were drawn to your attention?  
34 A. Yes.  
35  
36 Q. The document, you recall, said that you interviewed  
37 Bishop Malone on 2 June?  
38 A. Yes.  
39  
40 Q. And it then recorded that you recorded an electronic  
41 record of the conversation on either Friday 3 June or  
42 Monday 6 June?  
43 A. Yes.  
44  
45 Q. You now agree that all of those dates are wrong?  
46 A. They have to be because those dates are --  
47

1 Q. They're wrong?  
2 A. The dates are inconsistent with the days, yes.  
3  
4 Q. The next line says:  
5  
6 *I produced the disk on which that*  
7 *electronic note was stored.*  
8  
9 A. And I think that is the point, sir, that I was wanting  
10 to go to in the question from the transcript that you're  
11 reading to me, is that disk is where the electronic copy  
12 was stored and, as I explained, as most of us are aware,  
13 when you create a document and you hit "File Open", and I'm  
14 talking about Microsoft Word, it tells you the date that  
15 that was created and that is what I was sending down to the  
16 Ombudsman. I acknowledge, sir, I have got the dates wrong  
17 because there was never a Thursday 2 June 2002. That  
18 didn't exist. 2 June was a Sunday. What I should have put  
19 there is it was actually Thursday 20 June, which coincides  
20 with everything else as the day, I think everyone agrees,  
21 that the meeting occurred.  
22  
23 Q. I understand that.  
24 A. Yes.  
25  
26 Q. Can we get back to the question that you've been  
27 referred to on page 64?  
28 A. Yes.  
29  
30 Q. And your answer is this:  
31  
32 *A. Yes. That electronic disk - I did*  
33 *prepare - I realised that the conversation*  
34 *I had with Michael Malone at the time was*  
35 *important and I was thinking I may need*  
36 *that at court later on.*  
37  
38 A. Yes.  
39  
40 Q. You've got that in front of you?  
41 A. Yes.  
42  
43 Q. Continuing:  
44  
45 *I typed up an electronic version of the*  
46 *conversation. That's when I had some*  
47 *conversations with Ann Joy. But I never*



1           *printed them out. And when I spoke with*  
2           *Anne Barwick I mentioned that I had*  
3           *prepared a contemporaneous note*  
4           *electronically of what was had with*  
5           *Michael Malone, and she then said, "Well,*  
6           *can I get you to type it up in a statement*  
7           *format?", and so I basically block-copied*  
8           *that into that format.*

9  
10          That's the question your counsel wanted me to refer you to.  
11          Do you understand that?

12          A.    Yes.

13  
14          Q.    That's what you then said, but if you follow the  
15          questions over the page, line 17 refers to:

16  
17                ... *I had prepared the transcript* ...

18  
19          And you did it "some time later, maybe a month or two"?

20          A.    Sorry? What page, sorry?

21  
22          Q.    Page 65.

23          A.    Line 17?

24  
25          Q.    Beginning at line 17.

26          A.    "And I am sorry for that."

27  
28          Q.    "I did prepare that much earlier"?

29          A.    Okay. Yes, I'm there with you.

30  
31          Q.

32                *The statement format I did not do until*  
33                *requested by the Ombudsman, but I had*  
34                *prepared the transcript, "I said",*  
35                *"He said", if you like, much earlier in*  
36                *2002 ...*

37  
38          Do you see that?

39          A.    Yes.

40  
41          Q.

42                ... *but I don't recall the date. But it*  
43                *wasn't - I don't mean to say that I did it*  
44                *the very day that I spoke to*  
45                *Michael Malone; it was some time later,*  
46                *maybe a month or two.*

47          A.    Yes, I see all that, and I'm hoping I've explained the

1 situation.  
2  
3 Q. What I finally took you to was the document that was  
4 referred to was then revisited on page 66, when you were  
5 asked a question about whether you had any notes to work  
6 from and you answered "No." Do you remember that?  
7 A. Yes.  
8  
9 Q. And what I'm suggesting to you is that if you had  
10 electronic notes to work from to construct the document,  
11 your answer wouldn't have been "No", it would have been,  
12 "I had an electronic version and that's what I prepared it  
13 from." That's right, isn't it?  
14 A. No.  
15  
16 Q. Did you understand the word "notes" to exclude  
17 electronic notes?  
18 A. No.  
19  
20 MR COHEN: I object. There's no reference to an  
21 electronic note anywhere in that transcript.  
22  
23 THE COMMISSIONER: No, the question is a fair one.  
24  
25 THE WITNESS: I can only go back, sir, to what I keep  
26 explaining, in that - I suppose with those three, if I can  
27 refer to them like that, is the electronic note, the folder  
28 note and the police statement. In so many respects they  
29 are all one and the same. I had prepared the electronic  
30 note within two or three days, not necessarily the day  
31 I spoke to Michael Malone, but, as said in the report to  
32 the Ombudsman in 2003 and as supported by the disk I sent  
33 them, I prepared that within two or three days. Then  
34 later, a month or two later, I decided to print up a hard  
35 copy and put it in the folder for the Fletcher brief.  
36  
37 Then when I later on had discussions with Anne Barwick  
38 at the New South Wales Ombudsman's office early in 2003,  
39 and she requested that I prepare it in a police statement  
40 format, I then again block copied that original document  
41 into the statement. I understand that it may have created  
42 some confusion but I'm hoping I've explained it so that it  
43 becomes fairly clear as to what was actually going on. It  
44 may be the case that when I was being asked the questions  
45 in the private hearing, there may have been a  
46 misunderstanding as to which document, and equally so there  
47 may have been some degree of misunderstanding by me as to

1 what the questioner was talking about of those three  
2 documents at any one time, but I'm hoping today that I've  
3 clarified the issue as best I can.

4

5 MR HARBEN: Q. Tell me this - when you are interviewing  
6 witnesses and recording what they say, do you regard it as  
7 important to record those matters at the earliest possible  
8 time?

9 A. It would always be beneficial. I don't always record  
10 it at the earliest possible time because there can always  
11 be influences impacting upon that, even though that would  
12 be desirable.

13

14 Q. It would be true to say that in 2002 you were a busy,  
15 hard-working detective inspector, or a detective, whatever  
16 rank you had then?

17 A. Detective sergeant.

18

19 Q. Detective sergeant - that's right, isn't it?

20 A. Yes.

21

22 Q. I take it that you didn't have just the one thing to  
23 do?

24 A. No.

25

26 Q. You would interview people, any number of people on  
27 any particular day?

28 A. Sometimes I would. You know, you go through periods  
29 where you don't interview anybody at all. It's like most  
30 vocations. Your volume of work and the nature of it  
31 fluctuates.

32

33 Q. It goes up and down. But that's one of the reasons  
34 why it is better to get things down as quickly as possible  
35 so that things aren't forgotten?

36 A. As I said, it's always desirable to do that. It's not  
37 always practical but I agree with your overall proposition.

38

39 Q. The further you get from an event that you are making  
40 a record about, it's probably possible to get the gist of  
41 what people are saying but the accuracy of word for word  
42 what is asked and answered may be somewhat questioned.  
43 Would that be a fair proposition?

44 A. I would agree with that, sir, yes.

45

46 Q. So that this "I said/He said" document, if I just  
47 asked you for the moment - and I know you'll find this

1 difficult to do - to assume that it was prepared in any  
2 form a month or two after the event, it is possible that  
3 the gist of the "I said/He said" material is there but the  
4 absolute accuracy of the form of the question and the form  
5 of the answer might be somewhat suspect?  
6

7 MR COHEN: I object.  
8

9 THE COMMISSIONER: No, it is a fair question, Mr Cohen.  
10

11 MR COHEN: No, it is not a question of fairness. This  
12 material has been covered by Ms Lonergan at length. We are  
13 now going through this again at length. There must be an  
14 end to this at some point.  
15

16 THE COMMISSIONER: It's not yet, Mr Cohen.  
17

18 MR HARBEN: Q. That's a fair proposition, isn't it?  
19 A. I think most people would agree, you know, even the  
20 lapse of one hour - you know, could I walk outside of here  
21 and write down everything that's been said in this  
22 courtroom today and get an accurate reflection without the  
23 assistance of the people transcribing it? I don't think  
24 any of us would be able to purport to do that, sir, so  
25 overall, the sooner you actually record that the better it  
26 is, in memory. I think, you know, that also helps in  
27 regard to it, because it very clearly says in my report in  
28 2003 to the Ombudsman that I made those notes within two or  
29 three days of the meeting with Bishop Malone.  
30

31 I know I'm answering these questions now 10 years  
32 later and my memory of those events may not have been as  
33 good, but I still don't shy away from the fact that my  
34 recollection is I did it within two or three days, as is  
35 recorded in that report all the way back then.  
36

37 Q. I now want to ask you about the content of the  
38 discussion between you and Bishop Malone. Could the  
39 witness be shown exhibit 49?  
40

41 THE COMMISSIONER: I have my copy. It is not the precise  
42 exhibit.  
43

44 MR HARBEN: Thank you, Commissioner. (Shown to witness).  
45

46 Q. Firstly, just to recap, you rang Bishop Malone and  
47 asked to meet him and he complied with that request?

1 A. Yes, he did.  
2  
3 Q. As arranged, he met you at the time and the place?  
4 A. Yes, he did.  
5  
6 Q. You didn't feel the need to caution him about  
7 anything?  
8 A. No, I did not.  
9  
10 Q. He didn't express or show any reluctance to answer  
11 anything?  
12 A. No, he did not.  
13  
14 Q. You didn't make a note of any difficulty in extracting  
15 whatever you wanted to extract from him?  
16 A. I didn't make a note about it, sir, and it wasn't an  
17 issue. He was very obliging.  
18  
19 Q. You see, just in terms of page 1 of that document, he  
20 told you that he learned of the [AH] complaint through  
21 [AH]'s father. He was up-front about that.  
22 A. Sorry, sir, just the speed of responding, that part is  
23 whereabouts on page 1?  
24  
25 Q. On page 1. It is the second "He said".  
26 A. Yes.  
27  
28 Q. That's how he learnt of the matter?  
29 A. Yes, it is.  
30  
31 Q. He was completely up-front, how he'd learnt about it,  
32 how he'd offered help to [AH] and his family with the  
33 church's full support. There's no doubt about any of that,  
34 is there?  
35 A. No, none whatsoever, sir.  
36  
37 Q. He then said this to you - first of all, you told him  
38 you were not able to disclose any specifics of the  
39 allegations?  
40 A. Yes.  
41  
42 Q. There would be no way for him to know whether it was  
43 monumentally serious or some minor matter; he had no  
44 specifics, did he?  
45 A. Sir, when I'm saying to him, "I'm investigating sexual  
46 abuse allegations against Father Fletcher," I don't think  
47 anyone would trivialise that and say that it wasn't

1 serious.  
2  
3 Q. No, No, I'm not - please --  
4 A. I think that in itself would have rung alarm bells:  
5 that is serious.  
6  
7 Q. You see, you didn't give him any specifics of the  
8 strength of any allegation or the number of allegations?  
9 A. No.  
10  
11 Q. Or the type of allegation, other than by general  
12 description?  
13 A. That's correct.  
14  
15 Q. What he said to you is that he understood you were not  
16 able to do that - or this is the gist of what he said - but  
17 he acknowledged and invited you to do your job?  
18 A. Yes. Well, I don't know whether he invited me to do  
19 my job. He just said, "You must do your job of course."  
20  
21 Q. There was certainly no hindering, was there?  
22 A. That was all fine, sir.  
23  
24 Q. No obstruction?  
25 A. None whatsoever there.  
26  
27 Q. This was said. You say that you asked him a question  
28 about prior concerns about Father Fletcher.  
29 A. Yes.  
30  
31 Q. I want to suggest to you that you didn't ask him that  
32 on the day, on 20 March 2002, in that form?  
33  
34 MR COHEN: I object. There's nothing in any of the  
35 evidence that supports this line of inquiry.  
36  
37 THE COMMISSIONER: Mr Harben is entitled to put his  
38 client's version of events, surely, Mr Cohen.  
39  
40 MR COHEN: His version of events has not been provided to  
41 us. This is an inquiry that surely should require that  
42 this material was first disclosed - if it is seriously  
43 asserted that this document which was provided in the  
44 bundle is inaccurate, an alternative version ought to have  
45 been provided and that hasn't happened.  
46  
47 THE COMMISSIONER: Not necessarily, Mr Cohen. I will

1 permit Mr Harben to continue.  
2  
3 MR COHEN: If it please you, Commissioner.  
4  
5 MR HARBEN: Q. I want to suggest to you that you did not  
6 put that question in that form to Bishop Malone on 20 March  
7 2002?  
8 A. Yes, I did.  
9  
10 Q. You would agree with me, on the assumption that this  
11 "I said/he said" document in any form was done a month or  
12 two later, that the form of your questions as recorded  
13 might be somewhat suspect?  
14 A. Sir, my evidence has remained unchanged. I've told  
15 this court now - I've lost count of the amount of times -  
16 that it was prepared within two or three days. Again  
17 I reiterate, I said that in 2003 in a report to the  
18 Ombudsman. I sent the Ombudsman the disk that it was  
19 recorded on to confirm that I made those records within two  
20 or three days. I am exasperated explaining that, but I can  
21 only keep reinforcing it.  
22  
23 Q. Could I just explore that a little bit. You invited  
24 Bishop Malone in for an interview in May of 2003, didn't  
25 you?  
26 A. I invited him in to provide me with a statement, yes.  
27  
28 Q. And in the course of that interview, he told you about  
29 some approaches to him from various people, including -  
30 various people, is that right, prior to 2002?  
31 A. Sorry, I - I'm - hopefully we're on the same tack.  
32 Are you talking about the approach from Patrick Roohan?  
33  
34 Q. Yes.  
35 A. He did tell me that, yes.  
36  
37 Q. He volunteered that to you?  
38 A. Yes.  
39  
40 Q. He volunteered the Timoshenko name?  
41 A. Yes, he did.  
42  
43 Q. In fact, within two days of that statement being  
44 taken, he sent you a fax with some contact details about  
45 various people including those two people?  
46 A. Yes.  
47

1 Q. What I want to suggest to you is that that's the first  
2 time there had been any discussion between you and he about  
3 any approach regarding Fletcher to him prior to 2002?  
4 A. No.  
5  
6 Q. You learned, did you not, that Bishop Malone had  
7 spoken to [AH]'s mother? He was completely open about  
8 that?  
9 A. Yes.  
10  
11 Q. You learned, did you not, that during that discussion  
12 between [AH]'s mother and Bishop Malone that Bishop Malone  
13 had told her that he had in fact been to see Father  
14 Fletcher?  
15 A. Yes.  
16  
17 Q. So he was not hiding that fact?  
18 A. No.  
19  
20 Q. He wasn't hiding the fact that he'd mentioned to  
21 Father Fletcher that he'd told Father Fletcher there was  
22 some sort of police investigation?  
23 A. No.  
24  
25 Q. No secret was made about that?  
26 A. No.  
27  
28 Q. He also said, didn't he, that he had had a concern -  
29 he told you that he had a concern for Father Fletcher's  
30 health?  
31 A. Yes.  
32  
33 Q. Did you know, at that stage, that there was some issue  
34 before March of 2002 with Father Fletcher's health?  
35 A. I knew at some stage. I don't recall when, but it  
36 may have been - sorry, I think it was before I spoke to  
37 Bishop Malone, yes, I did learn, in talking to some  
38 persons, that he had, I believe, a heart problem.  
39  
40 Q. Did you understand that he'd had a stroke three years  
41 before and he was somewhat disabled?  
42 A. No, I don't know whether I understood that. I do  
43 remember someone telling me that he'd had a stroke.  
44 I don't know whether it was three years before and I don't  
45 recall someone saying he was somewhat disabled. But so far  
46 as being told, at some point of time prior to that, that  
47 he'd had a stroke, I do recall that.



1  
2 Q. In any event, leaving aside the specifics of this  
3 case, knowing what you either did then or subsequently  
4 learnt about Fletcher's health, Bishop Malone's concern for  
5 his welfare was understandable?  
6 A. Yes.  
7  
8 Q. When he told you that, you, however, put this to him:  
9 "By your actions, you may have alerted Father Fletcher to  
10 what was going on. The element of surprise is a legitimate  
11 investigative tool and your visit has effectively negated  
12 any advantage we had in that regard."  
13 A. Oh, yes, I said that to him.  
14  
15 Q. You said that to him?  
16 A. Yes.  
17  
18 Q. Or words to that effect.  
19 A. Yes.  
20  
21 Q. And he said words to this effect, "I'm sorry but that  
22 wasn't the intention", or something like that?  
23 A. Sorry, can you refer me to --  
24  
25 Q. Page 2.  
26 A. Yes.  
27  
28 Q. That was an immediate response, wasn't it?  
29 A. I believe so, yes.  
30  
31 Q. Do you remember Bishop Malone saying to you that he  
32 regarded the trip as also raising the possibility that if  
33 he mentioned [AH]'s name, Fletcher might well have made an  
34 admission about the matter himself?  
35 A. I can't remember the - it does say that somewhere  
36 and --  
37  
38 Q. In fairness to you, it is recorded in his statement in  
39 May of 2003. What I'm suggesting to you, in the discussion  
40 you had with him in March of 2002, that that is something  
41 that he raised with you?  
42 A. Sorry, June of --  
43  
44 Q. June 2002, that's something he raised with you?  
45 A. Yes, he did. He did raise that with me.  
46  
47 Q. You would have recognised that as something you

1 understood because the element of surprise you regarded as  
2 part of a legitimate investigative tool that you used?  
3 A. I think most people understand and accept that, yes.  
4  
5 Q. So it is possible, isn't it, that being surprised with  
6 that sort of information may well have triggered some sort  
7 of an admission by Fletcher?  
8 A. From a police officer?  
9  
10 Q. No, no, from Bishop Malone.  
11 A. Again, that's a - you know, sir, I can only say that  
12 that's a debatable aspect as to who puts that --  
13  
14 Q. It might be misguided.  
15 A. -- and the response. All I can say is that that's  
16 what Bishop Malone told me and I've recorded it as such.  
17  
18 Q. You were concerned that the opportunity of speaking to  
19 Fletcher first had been taken away from you?  
20 A. Yes.  
21  
22 Q. But, at the time that Bishop Malone travelled to see  
23 Fletcher, you weren't in a position to speak to him, were  
24 you?  
25 A. I wasn't prepared to speak to him at that stage,  
26 that's correct. I was in a position to, but I elected not  
27 to.  
28  
29 Q. When you say you were in a position to, do you mean a  
30 position to as a consequence of you being a police officer?  
31 A. No. What I mean is if I'd have gone out there on  
32 4 June, I would have felt that it would have been  
33 premature.  
34  
35 Q. In other words, you weren't ready to speak to Fletcher  
36 at the time that Bishop Malone went and visited him?  
37 A. Yes.  
38  
39 Q. I take it you're agreeing with my question?  
40 A. Yes.  
41  
42 Q. That you were not ready?  
43 A. Yes.  
44  
45 Q. So your state of readiness really depended upon the  
46 length of time it took you to finalise your investigation  
47 in terms, in particular, of obtaining a proper statement

1 from [AH]?  
2 A. Yes.  
3  
4 Q. And while ever that was happening, you would have  
5 assumed that Fletcher would have maintained or retained his  
6 position as he had been doing for some years before?  
7 A. Yes.  
8  
9 Q. So that if there was some risk, for example, of him  
10 immediately offending, that's a risk that would have been  
11 continued because unfortunately the state of the police  
12 investigation wasn't advanced enough?  
13 A. I take your point, sir, and --  
14  
15 Q. That's right, isn't it?  
16 A. -- it was for that very reason that I had originally  
17 planned with [AH] to have his statement done expeditiously  
18 in the next week or two so that we could facilitate that  
19 process occurring.  
20  
21 Q. Whatever time it took, Fletcher would have been able  
22 to continue doing whatever it is he was doing?  
23 A. As in being the parish priest?  
24  
25 Q. Yes.  
26 A. Yes. Yes.  
27  
28 Q. You see, your concern that you've expressed in this  
29 "I said/he said" document - and correct me if I am wrong -  
30 was that in terms of the logistics of this case, the  
31 opportunity that you wanted to surprise Fletcher in terms  
32 of the ongoing investigation had been taken away from you:  
33 that was the thrust of what you were saying to him, wasn't  
34 it?  
35 A. Yes.  
36  
37 Q. You weren't concerned, on the other hand, that the  
38 longer the investigation went, if there was a risk from  
39 Fletcher, it would have continued as well?  
40 A. No, that's not what I'm saying, sir.  
41  
42 Q. The thrust of what you said to Bishop Malone, as you  
43 say you recorded on 20 June 2002, was your concern for the  
44 integrity of the case?  
45 A. What I'm saying, sir, is that I spoke to [AH] on  
46 3 June. We had made arrangements, as I explained earlier,  
47 for him to go and grab some dates with the intention that

1 that week and the following we would hopefully complete his  
2 statement and allow me, at the earliest opportunity, to go  
3 out and speak to Fletcher and if there was sufficient, as  
4 it ultimately turned out to be, to arrest him.  
5

6 I take on board your point that that would have  
7 allowed a small window where he would have remained in the  
8 parish with my knowledge. It is a difficult situation  
9 where there's a balance; but, for that very reason, I tried  
10 to minimise that time as much as possible.  
11

12 The conversation later on that occurred on 20 June  
13 had changed the situation because once I discovered that  
14 Bishop Malone had forewarned Fletcher and he'd - then not  
15 only did Fletcher know there was a police investigation but  
16 the bishop and so many within the parish and diocese knew  
17 there was a police investigation. The urgency, number one,  
18 was still there, but, unfortunately, as a result of that  
19 process, the victim, as I explained earlier, was in no fit  
20 state to be able to come in in the following week and do  
21 his statement, as we had originally planned. And that was  
22 the reason I met with Bishop Malone on the 20th saying,  
23 "Well, listen, I don't know how long this is going to take,  
24 but now that you do know and now that this is going to take  
25 longer because of your actions, you need to immediately  
26 remove him from the schools and from contact with  
27 children."  
28

29 Q. But you didn't say that to him? You didn't say to  
30 Bishop Malone, "As a consequence of your actions, this is  
31 going to take longer," did you, inspector?

32 A. I didn't say that to him, no.  
33

34 Q. I note the time, but there's one thing that's for  
35 sure, that following the visit by Bishop Malone to  
36 Father Fletcher in June of 2002, from that moment on  
37 Fletcher was under scrutiny, wasn't he?  
38

39 MR COHEN: I object. There's no evidence about that in  
40 terms of that question. That's unknowable.  
41

42 THE COMMISSIONER: Mr Fox may know. I will allow it,  
43 Mr Harben.  
44

45 MR HARBEN: Q. From that moment on --

46 A. I recall the question.  
47

1 Q. -- Fletcher was under scrutiny, wasn't he?  
2 A. Sir, scrutiny from whom and what sort of scrutiny?  
3  
4 Q. Well, from you?  
5 A. Not from that moment on, no. He was under scrutiny  
6 from me the day the victim came in.  
7  
8 Q. Let me rephrase: from the moment that Bishop Malone  
9 visited Fletcher, he was aware that, from then on, he was  
10 under scrutiny?  
11  
12 MR COHEN: I object. The witness can't know that.  
13  
14 THE COMMISSIONER: Mr Harben, perhaps you could put --  
15  
16 MR HARBEN: That's precisely the point of his evidence,  
17 Commissioner.  
18  
19 THE COMMISSIONER: Well, it is --  
20  
21 MR HARBEN: He's carrying out an investigation. He's  
22 complaining that Fletcher has been told of a police  
23 investigation.  
24  
25 THE COMMISSIONER: Yes.  
26  
27 MR HARBEN: It follows.  
28  
29 THE COMMISSIONER: Well, that the witness would expect  
30 that Fletcher would know he's under scrutiny from the  
31 moment that --  
32  
33 MR HARBEN: You've put it far better than I did,  
34 Commissioner, thank you.  
35  
36 THE WITNESS: I would expect so, sir.  
37  
38 MR HARBEN: Is that a convenient time, Commissioner?  
39  
40 THE COMMISSIONER: Thank you, Mr Harben. 10 o'clock  
41 tomorrow morning.  
42  
43 **AT 4.05PM THE COMMISSION WAS ADJOURNED TO**  
44 **THURSDAY, 4 JULY 2013 AT 10AM**  
45  
46  
47

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