

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 Monday, 15 July 2013 at 9.55am
(Day 10)

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: Commissioner, the plan for today is that the
2 cross-examination of Bishop Malone will proceed until
3 completed. Then there will be an adjournment until
4 10 o'clock tomorrow morning to allow certain in-camera
5 hearings on relevant issues to take place during the middle
6 of the day, if we finish early, and this afternoon.

7
8 I have two documents I need to tender that I should
9 have tendered last Friday. The first is the document
10 behind tab 352, which is in volume 5. That's the letter
11 from the Archbishop of Perth to Bishop Malone, dated
12 28 June 2002.

13
14 THE COMMISSIONER: That letter will be exhibit 103.

15
16 **EXHIBIT #103 LETTER FROM THE ARCHBISHOP OF PERTH TO**
17 **BISHOP MALONE DATED 28/6/2002 (TAB 352)**

18
19 MS LONERGAN: The other is a document that appears in the
20 same volume behind tab 384, and that is the pastoral
21 message to the diocesan community from Bishop Michael
22 Malone dated 16 May 2003.

23
24 THE COMMISSIONER: That's 382, I think.

25
26 MS LONERGAN: No, it is 384 in my bundle.

27
28 MR HARBEN: It is in both.

29
30 MS LONERGAN: It is in both, is it? The email from the
31 front to Ms Thomas to the PSO isn't needed, but the
32 pastoral message of 16 May 2003 as well as the press
33 release of 14 May 2003, or the media release, and the press
34 release of 15 May, should all be tendered.

35
36 THE COMMISSIONER: Thank you, Ms Lonergan. The pastoral
37 message from Bishop Malone dated 16 May 2003, the statement
38 of 14 May 2003 by Bishop Malone, and the press release in
39 relation to the Ombudsman by the CCER will together be
40 admitted and marked exhibit 104.

41
42 **EXHIBIT #104 PASTORAL MESSAGE FROM BISHOP MALONE DATED**
43 **16/5/2003, STATEMENT OF 14/5/2003 BY BISHOP MALONE, AND THE**
44 **PRESS RELEASE IN RELATION TO THE OMBUDSMAN BY THE CCER,**
45 **DATED 15/5/2003 (TAB 384 AND TAB 382)**

46
47 MS LONERGAN: Thank you, Commissioner. I recall

1 Bishop Malone.
2
3 THE COMMISSIONER: Yes.
4
5 <MICHAEL JOHN MALONE, sworn: [9.57am]
6
7 MR HARBEN: Commissioner, I assume I don't need to revisit
8 section 23?
9
10 THE COMMISSIONER: Thank you, Mr Harben. That is noted.
11
12 MS LONERGAN: Commissioner, I have completed my
13 examination of Bishop Malone.
14
15 THE COMMISSIONER: Thank you. Mr Gogarty?
16
17 MR GOGARTY: Thank you, Commissioner, and I trust we'll be
18 off to a slightly more productive start than my earlier
19 efforts.
20
21 THE COMMISSIONER: Good luck.
22
23 <EXAMINATION BY MR GOGARTY:
24
25 MR GOGARTY: Q. Good morning, Bishop Malone.
26 A. Mr Gogarty.
27
28 Q. Bishop, did you ever, during your time as Bishop of
29 the Maitland-Newcastle diocese, do anything to dissuade me
30 from talking to the police?
31 A. Not at all, no.
32
33 Q. Thank you. Did you, in your capacity as Bishop of
34 Maitland-Newcastle, ever raise issues at the Conference of
35 Catholic Bishops regarding the claims against Father Jim
36 Fletcher?
37 A. I can't say that I was that specific, really
38 Mr Gogarty, about Fletcher in particular. I mean, I think
39 it was fairly common knowledge that the diocese of
40 Maitland-Newcastle had its fair share of paedophilia issues
41 to contend with; so, in a generic kind of way, it came up,
42 yes.
43
44 Q. It did come up?
45 A. It did.
46
47 Q. But you don't recall specifically talking about

1 Father Jim Fletcher?

2 A. No, I don't.

3

4 Q. Thank you. Do you think that his behaviour or the
5 claims against him might have been something that the
6 conference of Australian bishops would be interested in?

7 A. I'm sure they would have been interested in it, but
8 I didn't really think it was necessary for their reflection
9 really to go into that level of detail.

10

11 Q. Good, thank you. Bishop, after you became aware of
12 the 2002 allegations against Fletcher, did you check his
13 file to ascertain whether anyone had raised concerns with
14 your predecessor, Bishop Clarke?

15 A. No, I did not, Mr Gogarty, no.

16

17 Q. Why did you not do that?

18 A. Well, as I explained to counsel assisting the other
19 day, when it came to files generally, I found that to read
20 about these matters of sexual abuse to me were quite
21 sickening. I certainly opened files, as we established the
22 other day, but I did not sit down and actually study the
23 files in any exhaustive kind of way, so I did not see
24 anything of any previous allegations against him.

25

26 Q. Prior to you taking over from Bishop Clarke and in the
27 brief moments before he pointed out the secret briefcase
28 and took off like a rocket, did he give you any last words
29 of advice?

30

31 MR HARBEN: I object to that. Advice about the football
32 or, what? That's a very general question, Commissioner.
33 This is a specific inquiry and he's taking over as bishop.
34 I'm sure there might have been lots of things that might
35 have been spoken about.

36

37 THE COMMISSIONER: Of course.

38

39 MR GOGARTY: Commissioner, I was thinking specifically
40 about any advice regarding the priests who were about to
41 come under the control of Bishop Malone.

42

43 MR HARBEN: Again, I would object. There are many
44 priests.

45

46 THE COMMISSIONER: Can we confine it to the priests within
47 the term of reference.

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MR GOGARTY: I'll withdraw the question, Commissioner, thank you.

Q. Bishop Malone, when you told Jim Fletcher about the allegations against him, did you tell him he would be under closer scrutiny or supervision?

A. The level of supervision was fairly minimal, I'd have to say. You may have heard me mention that I visited the principal of the school and I advised him about the fact that Fletcher had been - that an investigation was beginning. In speaking with him, I said that Fletcher's activities around the school that were well known, in terms of he used to take reading groups and so on - I said they would need to be curtailed and that the principal would need to keep a close eye on Fletcher just to make sure that there was no conflict of interest between the investigation and Fletcher's appearance at the school.

Q. Certainly. Thank you. Did you, at any point after that, check, particularly with the principal of the school there, whether that sort of scrutiny was happening?

A. No, I didn't.

Q. Bishop, I think if I'm correct, it is exhibit 104, under volume 5, tab 384, which is the pastoral message to the diocese of 16 May 2003. Could you just see if you can find that?

A. Volume 5. What's the tab number again?

Q. Tab 384 I think it was, bishop. I'll just get you, if that's okay, to have a quick look at that.

A. Sure.

Q. Just let me know when you've done that, bishop.

A. Yes, I will.

Q. Have you found it?

A. Not quite yet. I'm here now, yes.

THE COMMISSIONER: Your message is on the next page, bishop.

THE WITNESS: Thank you.

MR GOGARTY: Thank you, Commissioner.

1 THE WITNESS: Yes, I have it, Mr Gogarty.

2

3 MR GOGARTY: Q. That's a pastoral message, bishop, to
4 the diocese which noted that you had stood Fletcher down
5 from ministry on 14 May 2003 following child sexual assault
6 charges against him resulting from a complaint in June
7 2002; is that correct?

8 A. Yes, that --

9

10 MR HARBEN: That's not right. That's not what it says.

11

12 MR GOGARTY: Q. Would you agree, Bishop Malone, that it
13 is a pastoral message from you to the diocese?

14 A. I do agree with that, yes.

15

16 Q. Would you agree that part of that message was you
17 responding to allegations in the media that you should have
18 stood Fletcher down earlier, and I quote you here:

19

20 *I sought advice from the NSW Professional*
21 *Standards Office ... and others. I also*
22 *consulted the Director of Catholic Schools*
23 *and the local School Principal ...*
24 *Based on the advice I received and an*
25 *assessment of the potential risk as per NSW*
26 *Child Protection Legislation, I decided to*
27 *leave Father Fletcher in place, aware also*
28 *of his poor health ...*

29

30 That's the way you read it there?

31 A. Yes, I can see that.

32

33 Q. Thank you. If, as stated in that pastoral message,
34 Bishop Malone, you were concerned about Fletcher's health,
35 were you not potentially worsening it by making him
36 stressed by virtue of telling him that he was under
37 investigation for child sexual assault?

38 A. That was of concern to me, yes.

39

40 Q. Again, if you were concerned for his health, would not
41 subsequently adding to his workload by expanding his parish
42 have potentially worsened his health?

43 A. Well, I would have hoped that it hadn't. That's why,
44 in my letter, I said to him, you know, "Please try to find
45 ways in which you can share this responsibility so that it
46 is not a burden on you."

47

1 Q. Bishop, you mentioned earlier in your evidence there
2 was a primary and secondary school within Fletcher's
3 expanded parish?

4 A. In Lochinvar, yes.

5

6 Q. Was there also an infant's school?

7 A. Yes, the infants and primary were together.

8

9 Q. In the same location?

10 A. In the same school, yes.

11

12 Q. In the same physical location?

13 A. The infants and primary school was on one side of the
14 New England Highway; the high school was on the other.

15

16 Q. Thank you. Bishop, that same pastoral letter of
17 16 May 2003 also referred, and again I quote, to:

18

19 *... the potential risk as per NSW Child*
20 *Protection Legislation ...*

21

22 Could you tell the Commissioner who undertook that
23 assessment and when?

24 A. The risk assessment would have been done by myself,
25 Mr Gogarty, yes.

26

27 Q. When did that happen, bishop, do you recall?

28 A. Probably it would have happened a little bit after my
29 writing or around about the time of my writing this
30 pastoral letter.

31

32 Q. My next question is what did it assess or indicate;
33 that it was effectively your opinion, having looked at New
34 South Wales child protection legislation - is that right?

35 A. Not really, no. I just - I needed to jot down a few
36 points as to some of the things that I needed to inform
37 Fletcher about, and to make sure that others who had any
38 contact with him were likewise informed about, so I jotted
39 down these points. They're in my own writing somewhere in
40 all of the files here.

41

42 Q. Yes, thank you, bishop.

43 A. The risk assessment, yes.

44

45 Q. Bishop Malone, in a media release dated 11 April
46 2005 - this was attributed to you and posted on your
47 website - you said this:

1
2 *... victims of sexual abuse and their*
3 *families must be supported by their parish*
4 *and community and not be subjected to*
5 *victimisation or damaging innuendo.*
6 *We must not let them be criticised or*
7 *ostracised for coming forward; in fact they*
8 *should be thanked for bringing abuse out*
9 *into the open.*

10
11 A. Yes.

12
13 Q. Why did you feel the need to issue that press release
14 at that time?

15 A. It was apparent around about the time of the
16 investigation into Fletcher that people were ostracising
17 the family of [AH] and of another family, and I'll have to
18 go to find it, but anyway --

19
20 Q. No, that's fine.

21 A. -- another family. There was, I think, some
22 intimidation of family members. I understand that a number
23 of parishioners, after mass, would ignore or shun the
24 families concerned. One family even had eggs pelted at the
25 house, as I did myself a little bit later on - my house was
26 pelted by eggs as well, in Hamilton. People were very
27 badly divided by all of this. There were those in favour
28 of Fletcher saying he was innocent, and those against, and
29 that often spilled over into, you know, quite rude
30 behaviour and sort of a quasi-violent behaviour with the
31 throwing of eggs, yes.

32
33 Q. Thank you, bishop. Would it be fair to say that,
34 by around the end of 2004, you had a conversion on the
35 road to Damascus, as it were, or perhaps the road to
36 Maitland-Newcastle?

37 A. Yes, it was growing certainly, Mr Gogarty, yes.

38
39 Q. So a switch from protecting the image of the church to
40 a firm stance on the protection of children and justice for
41 victims?

42 A. Yes, definitely.

43
44 Q. You even made a public statement to that effect; is
45 that correct?

46 A. I did, I did, yes.

47

1 Q. Would it also be fair to say you withstood your own
2 form of ostracisation? I think you just referred to your
3 house being pelted with eggs. I'm not sure when that
4 occurred, but you did withstand some form of ostracisation
5 from your colleagues for the stance you took towards the
6 end of your term as bishop?

7 A. Yes. It was not a - it was not an overt kind of
8 ostracisation, Mr Gogarty. As I mentioned to counsel
9 assisting the other day, it was more of an indifference
10 towards me and the things that I was saying, yes.

11

12 Q. Bishop Malone, in your experience, having met and
13 talked to victims of James Patrick Fletcher - I know there
14 have been others, victims of other priests, but I'm
15 specifically interested in the victims of Fletcher - could
16 you tell the Commissioner, in your observation, how child
17 sexual assault has affected those people?

18 A. Oh, yes, there's a whole raft of ways in which the
19 effect has taken place. The victims with whom I met, and
20 I met with many of them on many occasions, they were
21 extremely - extremely traumatised by the experience. They
22 felt they had been betrayed because a priest had done this
23 to them. They were also conscious of their families, maybe
24 yes, maybe not, believing them were they to come forward to
25 their families. So a number of them kept silence for a
26 number of years precisely for that reason. A number of the
27 victims also found it hard to hold down a job. They also
28 found it hard to hold down relationships and all of these
29 things created a very vulnerable sort of person who was
30 badly traumatised by the abuse.

31

32 Q. Bishop, it would be fair to say, I think, you and
33 I have had a number of exchanges over the years?

34 A. We have, yes.

35

36 Q. Do you think that those exchanges have contributed in
37 some sort of a positive way to your thinking about and your
38 response to the issue of childhood sexual assault?

39 A. Oh, I'm sure they have. I've been most affirmed and
40 I suppose I've learnt a lot from people like yourself and
41 others with whom I've met and that has contributed to my
42 changed attitude, yes.

43

44 Q. Good, thank you, Bishop Malone.

45 A. Thank you, Mr Gogarty.

46

47 MR GOGARTY: Those are my questions, Commissioner.

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THE COMMISSIONER: Thank you very much, Mr Gogarty.
Mr Bickford?

<EXAMINATION BY MR BICKFORD:

MR BICKFORD: Q. Last Wednesday. You were asked this question, it's page 816, on the 10 July transcript:

Q. In terms of files about priests of the diocese kept in the bishop's domain, if I can call it that - "domain" as in your personal office and filing cabinet --

A. Yes.

Q. -- were there only limited people who had access to that material?

A. Definitely were, yes. My vicar general, of course, had access to it and my personal assistant.

A. Yes.

Q. Do you recall giving that evidence?

A. I do.

Q. Your personal assistant was Ms Elizabeth Doyle?

A. Correct, yes.

Q. You had an executive assistant between 2003 and 2008; is that right?

A. I did, yes.

Q. You don't have to refer to that person's name. I think it's [BS] on the pseudonym list.

A. Yes.

Q. Is it fair to say that person also had access to those files that you were talking about?

A. It is fair to say that, yes.

Q. Was there also someone named Teresa Brierley who worked for the diocese?

A. Yes, there is.

Q. And she was vice chancellor of pastoral ministries?

A. She is that currently.

1 Q. She remains that today?
2 A. She does, yes.
3
4 Q. Do you recall in 2011 that she was also given access
5 to those files that we're talking about prior to your
6 retirement?
7 A. I'm finding it hard to remember the circumstances of
8 that, really.
9
10 Q. You retired about halfway through 2001?
11 A. About June, yes, through June 2011, yes.
12
13 Q. Is it something that you simply don't recollect at
14 all?
15 A. I don't recollect that she had access - well, that she
16 would have access, unless she asked specific permission
17 about something like that and it was given, yes, but my
18 memory is not clear on that.
19
20 Q. It is not clear on that?
21 A. No.
22
23 Q. Is it possible that she was given access before you
24 left and by "given access", you gave access to her?
25 A. That's possible, yes.
26
27 MR BICKFORD: Thank you, Commissioner. No further
28 questions.
29
30 THE COMMISSIONER: Ms Gerace?
31
32 MR GERACE: Commissioner, I need some time to set myself
33 up and have access to documents.
34
35 THE COMMISSIONER: Of course. I am across that. I beg
36 your pardon. Mr Skinner?
37
38 MR SKINNER: Thank you, Commissioner. I'll be brief.
39
40 **<EXAMINATION BY MR SKINNER:**
41
42 MR SKINNER: Q. Bishop, can I ask you a few questions
43 about your role and the role of bishops generally in the
44 Catholic Church.
45 A. I'll try to answer, Mr Skinner, yes.
46
47 Q. It is a bishop's decision as to how to discipline or

1 control the priests in any particular diocese, isn't it?
2 A. It is, yes.
3
4 Q. That includes decisions about withdrawing facilities?
5 A. Yes, the word is "faculties", really. It was a bit of
6 a --
7
8 Q. "Faculties", you're quite right. That was my
9 handwriting. Standing down priests from active ministry is
10 the decision of the bishop?
11 A. That's correct, yes.
12
13 Q. Laicisation ultimately is the decision of the bishop?
14 A. Unless the priest himself initiates that, yes.
15
16 Q. Things developed, I think, in relation to statutory
17 obligations. You say in exhibit 86, your statement of
18 June 2013 at paragraph 1.14:
19
20 *When Head of Agency status was moved by the*
21 *Ombudsman from the Catholic Commission for*
22 *Employment Relations to each diocesan*
23 *Bishop ...*
24
25 And so on?
26 A. Yes.
27
28 Q. That refers to that happening, doesn't it, that head
29 of agency status being changed --
30 A. That's correct, yes.
31
32 Q. -- under the legislation.
33 A. It did.
34
35 Q. What is that referring to? What is head of agency
36 status in that context?
37 A. According Ombudsman's legislation regarding matters
38 concerning children, each organisation nominates a person
39 who would be the responsible person for issuing directives
40 or taking the responsibility for actions by that
41 organisation. In the case of the bishops of New South
42 Wales, we, at a meeting, determined that the Catholic
43 Commission for Employment Relations would be our head of
44 agency, as that responsible person was called.
45
46 Q. When was that?
47 A. Oh, probably around the year 1999-2000. I'm a bit

1 unsure as to when that legislation came in.

2

3 Q. Then it changed, according to your statement, to make
4 it each diocesan bishop?

5 A. Well, that changed, yes, with the - the Ombudsman's
6 report of 2004 looked at ways in which CCER, in general,
7 had not lived up to its statutory obligations regarding
8 sexual abuse, being a bit deficient, it found, in training
9 and in systems around all of that area. So the report then
10 recommended that the head of agency status change from the
11 Commission to each individual bishop in his own diocese.

12

13 Q. I note from exhibit 100, and if you need to refer
14 to it, it is under tab 371 and 372 of volume 5, they
15 reproduce - it is in two parts. Most relevantly, it is the
16 second part of exhibit 100 I want to take you to, that is,
17 page 982 under 372. Can you see that?

18 A. This is the police child protection enforcement
19 document?

20

21 Q. Yes. That's a photocopy of a dissemination from the
22 Professional Standards Office to the NSW Police Service
23 Child Protection Enforcement Agency. Do you see?

24 A. I do, yes.

25

26 Q. Right at the bottom it indicates that the notifying
27 office is John Davoren?

28 A. Yes.

29

30 Q. It continues, "for the bishop of Maitland-Newcastle."

31 A. Correct.

32

33 Q. So, in effect, that was a notification by you as the
34 head of the diocese; is that correct?

35 A. It was, yes.

36

37 Q. Although statutory obligations and things like
38 dissemination arrangements with the police have evolved
39 over time, nonetheless, it has always been the bishop's
40 role to make decisions about disciplining priests in
41 dioceses in Australia, and in particular the
42 Maitland-Newcastle diocese; correct?

43 A. That's very true, yes.

44

45 Q. And that was true for you and for your predecessor
46 Bishop Clarke, wasn't it?

47 A. Yes, it certainly was, although with Bishop Clarke the

1 Professional Standards Office didn't exist.

2

3 Q. Things have developed; but, in whatever procedure is
4 around from time to time, it's ultimately the bishop's
5 decision, and always has been, as to disciplining priests;
6 correct?

7 A. True.

8

9 MR SKINNER: Thank you.

10

11 THE COMMISSIONER: Thank you Mr Skinner. Mr Cavanagh?

12

13 <EXAMINATION BY MR CAVANAGH:

14

15 MR CAVANAGH: Q. Bishop, there's only one area I want
16 to take you to. If it assists, you might want to get
17 volume 3, tabs 250 and 251. You will recall there were
18 letters that were sent in June 1995 to the Apostolic Nuncio
19 and to Father Castillo in the Philippines?

20 A. Just bear with me, Mr Cavanagh.

21

22 Q. Of course.

23 A. 250. Yes, I have it.

24

25 Q. You gave some evidence last week, and I should fess
26 up, that I'm limited because I don't have a physical
27 transcript, with me, but I think the transcript reference
28 is about page 791, at 25 to 30. You were asked some
29 questions about those letters in the context of a
30 discussion that you had with Monsignor Hart?

31 A. Yes.

32

33 Q. Do you recall that part of the evidence?

34 A. I do, yes.

35

36 Q. You referred to that discussion, and the answer that
37 you gave, page 791, to Mr Harben was:

38

39 *A. And some communication came through*
40 *from the bishop, I think, in the*
41 *Philippines and I discussed that with the*
42 *vicar general, Monsignor Hart, as to what*
43 *we would do with that since we were*
44 *accessing Bishop Clarke's official mail,*
45 *and he decided he said he'd write to the*
46 *bishop in the Philippines and I wrote to*
47 *the Nuncio in Canberra. That was around*

1 that McAlinden matter that first came up in
2 the June deans' meeting?

3
4 A. Yes.

5
6 Q. The discussion with Monsignor Hart occurred at a time
7 when you were the coadjutor bishop of the diocese?

8 A. It did, yes.

9
10 Q. You, I think also gave some evidence last week to the
11 effect that, in the role of coadjutor bishop, you
12 effectively, subject to Bishop Clarke, had all of the
13 powers of a bishop, of an auxiliary bishop, and in addition
14 you had the right of succession; is that correct?

15 A. That is correct.

16
17 Q. So, in effect, in Bishop Clarke's absence from the
18 diocese, you were the senior diocesan official?

19 A. I was, yes.

20
21 Q. The discussion that you had with Monsignor Hart in
22 your evidence last week you referred to, as I understood
23 it, was indicating that it was Monsignor Hart that gave
24 direction as to how the correspondence would be sent. Is
25 that what you intended by that evidence?

26 A. I don't know that Monsignor Hart necessarily was given
27 responsibility to send. I think we agreed that he would
28 write one way and I would write the other.

29
30 Q. Would it be more accurate to say that there was a
31 discussion and an agreement was reached as to the division
32 of responsibility for writing letters?

33 A. That would be accurate, yes.

34
35 Q. Thank you, Bishop Malone.

36 A. Thank you very much.

37
38 THE COMMISSIONER: Ms Gerace?

39
40 <EXAMINATION BY MS GERACE:

41
42 MR GERACE: Q. Bishop, could I ask some general
43 questions first. You were asked some questions about
44 communications with the bishops in Western Australia?

45 A. Yes.

46
47 Q. As at 1995, would it be fair to say that there were

1 three bishops in Western Australia?

2 A. 1995?

3

4 MR GYLES: Sorry, Commissioner, I have a concern about
5 what Ms Gerace's entitlement is to ask questions that don't
6 directly affect her clients. If there is a particular
7 issue that concerns her clients which involves some
8 challenge to the evidence of the bishop, then that's one
9 thing, but I'm concerned that Ms Lonergan has covered
10 matters very thoroughly. We've had additional questions
11 from Mr Gogarty and I'm concerned that we don't have a wide
12 ranging cross-examination of the witness.

13

14 THE COMMISSIONER: Yes. I haven't identified quite where
15 Ms Gerace is going. I will permit you to develop it,
16 Ms Gerace.

17

18 MS GERACE: Thank you, Commissioner. For the record,
19 I represent a number of victims as well as people who came
20 forward to the church with complaints. The actions or
21 otherwise of the church in relation to those complaints is
22 a general area of interest to all of those witnesses and,
23 in addition, specifically as to what the bishop did or
24 didn't do, and knew and didn't know, at the time he was
25 dealing with the matters concerning McAlinden is generally
26 of interest to those --

27

28 MS LONERGAN: Can I be heard on this issue? I very
29 briefly touched on, in effect, one letter involving the
30 Archbishop of Perth in a discussion this particular
31 witness, as it turns out from his evidence, had with him in
32 2002. Ms Gerace acts for three victims of McAlinden and,
33 in my respectful submission, this is a matter relevant to
34 her mandate in these proceedings and it is appropriate that
35 she delve further, if she needs to do so

36

37 THE COMMISSIONER: I was permitting her to do so. Thank
38 you, Ms Lonergan.

39

40 MS GERACE: Q. I'll rephrase the question, thanks to my
41 instructing solicitor. As at 1995, would it be fair to say
42 there were four bishops in Western Australia?

43 A. There were four. I've just been thinking how many
44 while you were --

45

46 Q. Would it be fair to say if a priest was working in a
47 parish or within one of those dioceses, it would be a fair

1 suggestion to make that the bishop would know about it?
2 A. Oh, for sure, yes, he would.
3
4 Q. In 1995 and the years subsequent, whilst you were the
5 bishop of Maitland-Newcastle, you would have had easy
6 access to be able to contact each of the bishops in Western
7 Australia?
8 A. I would have, yes.
9
10 Q. I will ask you, generally now, some questions about
11 1995 in terms of correspondence that you had with
12 McAlinden. I will ask you to have a look at tab 253 in
13 volume 3 of 7.
14 A. Yes.
15
16 Q. The document I next wish you to have a look at is at
17 tab 256, the deans' meeting notes of 2 August 1995.
18 A. Yes.
19
20 Q. Would you also then look at document 255, which is a
21 letter from Reverend Castillo to Monsignor Hart.
22 A. Yes.
23
24 Q. Do you have that document in front of you?
25 A. Which one?
26
27 Q. The document 255?
28 A. Yes, I have it here.
29
30 Q. As at 29 July 1995, the Reverend Castillo had written
31 to Monsignor Hart advising that Father McAlinden was
32 planning to leave the Philippines to travel to Ireland?
33 A. Yes.
34
35 Q. Would you now look at the following document at 256.
36 This is a meeting of the deans at which you were present on
37 or about 2 August 1995?
38 A. Yes.
39
40 Q. Would you look at point 2 under "Correspondence"?
41 A. Yes.
42
43 Q. Do you see there, in the second paragraph, it says
44 that the bishop - being either yourself, I assume, or
45 Bishop Clarke - indicated that Father McAlinden would be
46 arriving back in Australia on 5 August?
47 A. Yes, I see that here.

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Q. Would it appear, then, that some additional information had been brought to the attention of the bishop - either yourself or Bishop Clarke - that, in lieu of travelling back to Ireland, Father McAlinden would now be returning to Australia on 5 August?

MR HARBEN: I object to that. The question is framed on the assumption, by use of the word "additional", that the contents of tab 255 were in the possession of those attending the deans' meeting on 2 August. There's no evidence of that.

MS GERACE: I am happy to clarify that.

THE COMMISSIONER: Yes, thank you, Ms Gerace.

MS GERACE: Q. Are you able to assist us, bishop, as to whether or not the letter at tab 255, being a letter of 29 July 1995 from Reverend Castillo to Monsignor Hart, had been seen by you or was within the diocese by the time the deans met on 2 August 1995?

A. I'd have to say no to that because that letter from Father Castillo was received in our office on 16 August, you see at the bottom of the page.

Q. Thank you.

A. So, therefore, it certainly would not have been available for the deans' meeting.

Q. Thank you very much, bishop. Are you able to assist us in knowing where the information came from in paragraph 2 that Father McAlinden would be arriving back in Australia on 5 August?

A. No, I don't know that at all.

Q. Whilst we're on this document, you gave some evidence last week before the Commission in relation to concerns about the behaviour of [NP], who is mentioned in the discussion of business: Do you see that reference there?

A. Yes, I see that down the bottom of page, yes.

Q. You were asked some questions about your knowledge of problems of sexual abuse by clergy within the diocese at the time you became bishop and you said that in relation to [NP], they were suspicions only?

A. Correct, yes.

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Q. Can I ask you to just have a look at that second paragraph. The concern about suspicions was partly due to inappropriate behaviour or lack of appreciation of appropriate behaviour by [NP] that had been noted by those attending in these minutes of the deans' meeting on 2 August 1995?

A. Yes. The question you - in the nature of --

Q. No, I don't want to go into the matter.

A. Right.

Q. I want to expand upon the extent of the knowledge that you had at the time you became bishop about [NP]'s behaviour. On the last occasion, it was explored only to the extent that there were suspicions and I want to explore that further.

MS LONERGAN: Commissioner, this Commission is not examining [NP]'s behaviour. It may be Ms Gerace has a particular angle she wishes to pursue. May I have a brief chat?

THE COMMISSIONER: Yes, of course.

(Ms Lonergan and Ms Gerace confer)

MS GERACE: I will leave the matter.

THE COMMISSIONER: Thank you, Ms Gerace. Thank you, Ms Lonergan.

MS GERACE: Q. I want to ask you now about correspondence by you in relation to McAlinden in 1995. You were taken to a letter of yours, but, firstly, you were asked about a document appearing at tab 250, a letter from Monsignor Hart to Reverend Castillo dated 22 June 1995?

A. I have it here, yes.

Q. You were asked about specifically the line at the bottom, the second-last paragraph:

Failing this procedure those who have lodged complaints intend to consider instituting criminal charges and compensation charges against the Church.

1 A. Yes.

2

3 Q. Do you recall giving evidence that, in your opinion,
4 Monsignor Hart was prone to hyperbole in correspondence?

5

6 MR HARBEN: I don't think that was the evidence given by
7 this witness.

8

9 THE COMMISSIONER: Yes, I don't know if the witness
10 quite --

11

12 MS GERACE: Yes, it was. He said, "Monsignor Hart and
13 I were prone to hyperbole in our correspondence."

14

15 THE COMMISSIONER: I beg your pardon, if that's the case.
16 I didn't realise that it was quite so general and
17 inclusive. If that is the reference, Ms Gerace, I will
18 permit you to ask the question.

19

20 MR HARBEN: I think it is page 794.

21

22 MS LONERGAN: My recollection is, and reading the
23 transcript at page 794, I understood this witness's
24 evidence on the question of hyperbole to relate to this
25 witness's letter as well as a letter of Monsignor Hart's
26 rather than a broader comment that Monsignor Hart tended to
27 stray into hyperbole in correspondence.

28

29 MS GERACE: Commissioner, could I just have a moment?

30

31 THE COMMISSIONER: Yes, of course.

32

33 MS GERACE: I can't identify that reference. I'll ask the
34 question it in this way:

35

36 Q. Bishop, in relation to that statement there, "Failing
37 this procedure those who lodged complaints intend to
38 consider instituting criminal charges and compensation
39 charges again the Church", is it your evidence or do you
40 have any evidence to give about whether or not those
41 statements made by Monsignor Hart in his correspondence of
42 20 June 1995 are true or not?

43

44 A. I would have to say they're true, to my knowledge.
45 I would certainly never accuse Monsignor Hart of hyperbole.

45

46 Q. So you don't doubt from your perspective what
47 Monsignor Hart wrote in this correspondence on 20 June

1 1995, that failing the removal of Father McAlinden's
2 facilities in the Philippines, those who had lodged
3 complaints intended to consider instituting criminal
4 charges and compensation charges again the church?

5
6 MR GYLES: I object to the question. It is not for this
7 witness to comment upon what Monsignor Hart's state of mind
8 was.

9
10 THE COMMISSIONER: No.

11
12 MR GYLES: And it is not relevant as to whether he thinks
13 Monsignor Hart is telling the truth or not. That's a
14 matter for you, Commissioner. Monsignor Hart will be
15 giving evidence.

16
17 MS GERACE: Except this, Commissioner: as I understood
18 this witness's evidence, correspondence by Monsignor Hart
19 in relation to this matter was discussed with the bishop,
20 and it is relevant to what the bishop had to say about what
21 he knew about the victims and their intentions in or about
22 this time. There's been some confusion about the extent of
23 the bishop's knowledge about those matters and what he
24 believed about what [AK] and [AL] were intending to do in
25 1995.

26
27 MR GYLES: With all due respect, that doesn't make the
28 last question admissible. There are ways to ask admissible
29 questions to explore that issue.

30
31 THE COMMISSIONER: I understand that. Thank you,
32 Mr Gyles. Could you ask the bishop then, Ms Gerace --

33
34 MS GERACE: I will.

35
36 Q. This document was discussed with you, wasn't it,
37 bishop?

38 A. That document itself wasn't, but the division of
39 labour was. Monsignor Hart agreed to write to Castillo and
40 I agreed to write to the Nuncio. So he didn't run his
41 formula of words past me, as far as can I remember.

42
43 Q. Did Monsignor Hart discuss with you his understanding
44 that those who had lodged complaints intended to consider
45 instituting criminal charges and compensation charges again
46 the church?

47 A. I don't remember that he discussed that with me.

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Q. But it's possible that he did?

A. Possible, yes.

Q. Is it also possible that you were aware at June 1995 that that was in fact the case, that those who had lodged complaints intended to consider instituting criminal charges and compensation charges against the church if Father McAlinden did not have his faculties removed and returned to England?

A. I was not aware of that, no. Right through the process that we were speaking about last week of laicisation or 1044, or whatever it was, my understanding was always that [AK] and [AL] did not want the matter taken to the police, which is not to say that if there wasn't any action happening that they would have gone to the police.

Q. And that's precisely what I wanted to bring you to now, bishop. I want to put to you that Bishop Clarke told you when the complaints were made by [AK] and [AL], they wished the church to act on the matter and, at that stage, did not intend to take that the matter to the police?

A. That's my understanding --

MR HARBEN: I object to this. Is this an assertion from this examiner's instructions, because that's the way it's put, that Bishop Clarke has given that level of detail and instruction to this witness? That's a positive assertion.

THE COMMISSIONER: It is.

MS LONERGAN: I adopt Mr Harben's objection. Perhaps the question could be rephrased in a different manner, but putting Bishop Clarke's knowledge can't be admissible.

MS GERACE: I didn't. I put the matter: "Is it the case that Bishop Clarke told you that, in 1993 when the complaints were made by [AK] and [AL], they wished the church to deal with it firstly?"

MR HARBEN: That's not the question that was asked.

MS LONERGAN: That wasn't the question that was asked and also this witness wasn't present in 1993.

THE COMMISSIONER: No. However, I think you know how you can ask it, Ms Gerace.

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MS GERACE: Yes.

Q. When you were discussing the complaints by [AK] and [AL] with Bishop Clarke, did he advise you that the complainants [AK] and [AL] wanted the church to deal with McAlinden?

A. Yes, he did.

Q. And that, in that context and provided the church was doing so, did he also suggest to you that provided that was done, the matter would not go to the police?

A. I don't know that he put it quite like that. My understanding from him was that [AK] and [AL] did not want the police involved, but did want him to be stripped of his faculties and of his priesthood.

Q. The stripping of a priest's faculties is a rare event; is that right, bishop?

A. It is rare, yes.

Q. Was it also the case that, at some stage, Bishop Clarke told you that one of the victims, either [AK] or [AL], had come forward after it had been discovered that Father McAlinden was in fact or suspected of working in the Philippines?

A. I'm a bit unsure as to the timing of that.

Q. But at some stage - if you'd have a look at your correspondence at 251, your letter to Archbishop Brambilla?

A. Yes.

Q. If you look at the third paragraph, do you see there in your correspondence (suppressed) --

Sorry, could that not be published, the reference to the --

A. The person, yes.

THE COMMISSIONER: Yes.

MS GERACE: Q. It says:

(Suppressed) who has come forward is not satisfied with this reply and demands that a letter be produced indicating that Father Denis McAlinden has had the

1 *faculties of the San Pablo Diocese revoked*
2 *and that he will return to England.*

3
4 A. I read that, yes.

5
6 Q. Is that information you received in or about the time
7 of your correspondence?

8 A. I presume I must have because I've written about it,
9 yes.

10
11 Q. Were you also told at the same time that if the church
12 could not act on this matter, that there would be some
13 consideration for taking legal action against the church?

14 A. That's in the next line, yes. I have indicated --

15
16 Q. I just wanted to confirm that was information you
17 received as at that time.

18 A. Yes, as again I must have, I suppose, otherwise
19 I wouldn't have written it.

20
21 MS LONERGAN: I should make a formal application for a
22 non-publication order in relation to those two words that
23 fell from Ms Gerace.

24
25 THE COMMISSIONER: That noun will not be published.
26 I direct that now for the members of the press.

27
28 MS GERACE: Could I have a word with counsel assisting,
29 Commissioner?

30
31 THE COMMISSIONER: Yes.

32
33 (Ms Lonergan and Ms Gerace confer)

34
35 MS GERACE: Q. Bishop, can I ask you some further
36 questions about what Bishop Clarke told you, at or about
37 the time June 1995 through to the time you became bishop,
38 about McAlinden and the complaints by [AK] and [AL]. Did
39 Bishop Clarke tell you that when the complaints by [AK] and
40 [AL] were brought forward, he had referred the matter to
41 Father Lucas - those complaints to Father Lucas?

42 A. It did come in conversation, yes.

43
44 Q. In addition to that, did Bishop Clarke convey to you
45 that, as a consequence of Father Lucas investigating those
46 matters - I think you've already given evidence to this
47 extent - Father McAlinden also had a case to answer in

1 relation to the complaints?
2 A. I believe so, yes.
3
4 Q. You gave some further evidence on the last occasion
5 that shortly after the time you became aware his faculties
6 had been removed to exercise priestly ministries, you were
7 told - and this appears at T808.12 - that the removal of
8 his faculties concerned the sexual abuse of children; do
9 you recall giving that evidence?
10 A. Yes.
11
12 Q. And you gave further evidence that Father Lucas had
13 obtained admissions from McAlinden that he had sexually
14 abused children; do you recall that?
15 A. He gave those admissions to Bishop Clarke, yes.
16
17 Q. You were aware of that? You were told?
18 A. I was, yes.
19
20 Q. Was it also the case that Bishop Clarke informed you
21 at or about this time that the church had reached an
22 agreement with Father McAlinden to deal with the complaints
23 by, firstly, removing his faculties to exercise priestly
24 ministry, and, secondly, that he retire from Australia to
25 Ireland?
26 A. No, I don't remember being a party to that.
27
28 Q. Not that you were a party, but did Bishop Clarke tell
29 you that?
30 A. No, I don't recollect that.
31
32 Q. Would you have a look for me, please, at the document
33 appearing at tab 244, a letter from Bishop Clarke to
34 Reverend Brambilla?
35 A. The same volume?
36
37 Q. Same volume, bishop.
38 A. Yes, I have it.
39
40 Q. Is that a document you've seen?
41 A. Yes, I've seen it.
42
43 Q. Is that a document you saw in or about the time of
44 your deans' meeting in June 1995? Had you seen that by
45 that stage.
46
47 MR HARBEN: I think the meeting was in August.

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MS GERACE: There were two meetings, as I understood it. There was one in August. It is the same meeting.

Q. Had you seen that correspondence by the deans' meeting in August of 1995?

A. I can't remember that.

Q. Do you recall seeing this letter from Bishop Clarke to Reverend Brambilla when you became involved in that process of correspondence?

A. I have seen the letter, but the timing of when I saw it is very vague.

Q. So is it the case you're not able to assist us now as to when --

A. No.

Q. -- understandably, you first saw that correspondence?

A. I find it hard to remember what happened last week, let alone 18 years ago.

Q. I also want to be very clear - is it also possible then that you are not clear about whether or not you knew, as at August 1995, an agreement had been reached between the church and Father McAlinden that he was to be stripped of his facilities and to retire to England?

MR HARBEN: I think he's answered this question.

THE WITNESS: No, I don't.

MR HARBEN: This is the same question that was asked about four questions ago.

THE COMMISSIONER: Yes, when the witness said, "No, I don't recall that".

MR HARBEN: There was no ambiguity about that.

THE COMMISSIONER: Sorry, "I don't recollect that", in fact. Now you're putting a time on it?

MS GERACE: I am putting a time on that. I want to be clear about whether it could be something he knew that he now no longer recalls or there's uncertainty whether he knew it or not because it is significant in terms of some

1 other evidence.

2

3 THE COMMISSIONER: All right.

4

5 MS GERACE: Q. What I want to suggest, bishop, is that
6 when it was discovered that in fact Father McAlinden was
7 acting as a priest overseas, one of the complainants came
8 forward and indicated that the church needed to act
9 immediately?

10 A. Yes, I think so.

11

12 Q. And that if the church was not prepared to act, they
13 would need to take their own action in order to have the
14 matter dealt with?

15 A. Probably, yes. I wrote that in my letter.

16

17 Q. That's right. And that was part of the reasoning
18 behind the decision taken at the deans' meeting in August
19 1995 to proceed to laicisation of Father McAlinden?

20 A. I don't know that the deans' meeting came to that
21 conclusion but that, from my memory, Bishop Clarke spoke to
22 me about continuing the process later in the year.

23

24 Q. If you have a look at the document at 256, which is
25 minutes of the deans' meeting on 2 August 1995, do you see
26 under point 2, under "Correspondence" the final paragraph:

27

28 *It was resolved that we move towards a ...*
29 *procedure, since Father Denis would not*
30 *[conform] to the restriction placed upon*
31 *him by Bishop Leo.*

32

33 A. Yes, I see that.

34

35 Q. That was a meeting you attended?

36 A. I was there.

37

38 Q. That appears to record a resolution by those in
39 attendance at the meeting to adopt that procedure, doesn't
40 it?

41 A. It does, yes.

42

43 Q. And that it appears to be because consensus was
44 reached that it was necessary to act further because
45 Father McAlinden would not conform to the restriction
46 placed upon him by Bishop Clarke?

47 A. Yes, apparently, yes.

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MS LONERGAN: Can I take this opportunity to tender that minute of the deans' meeting, which I should have tendered last week.

THE COMMISSIONER: Yes, Ms Lonergan. What tab is it, please?

MS LONERGAN: It is tab 256 in volume 3.

THE COMMISSIONER: Thank you. The minutes of the deans' meeting held on 2 August 1995, which is tab 256, will be admitted and marked exhibit 105.

**EXHIBIT #105 MINUTES OF DEANS' MEETING ON 2/8/1995
(TAB 256)**

MS GERACE: Q. The procedure, can we take it, the deans resolved they would move towards was the procedure of laicisation; is that correct?

A. I don't recollect the word "laicisation" being used at that meeting, but obviously from the minute there was a resolution to certainly do something strong, yes.

Q. Do I take it that we can assume that whilst the minute itself does not record it, is it fair in your mind, bishop, that in fact what was being resolved was the movement to proceed to laicise Father McAlinden?

A. That's fair I'd say, yes.

Q. You said in your earlier evidence that procedure was one that had a virtually nil prospect of success?

A. Correct, yes.

Q. At the time the decision was being taken by the deans to act in August 1995, the deans were aware that Father McAlinden, at that stage, was not conforming to restrictions placed upon him by Bishop Leo?

A. Yes.

Q. Specifically continuing to act as a priest, notwithstanding the stripping of his faculties?

A. Yes.

Q. And in so doing, therefore, continuing to expose others to risk of offending by Father McAlinden?

A. Yes.

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Q. And that, at that stage, the only procedure adopted by the deans, in this correspondence at this stage, was a resolution to a procedure that, in your own opinion, had virtually nil prospects of success?

A. As I said, the word "laicisation" does not appear here in the minute, but I did say that obviously the deans were recommending that something strong be done in order to curtail McAlinden's activities. Laicisation was certainly a possibility, but as the legal representative for another party asked me the other day, there was another process, which she alerted us to, and which in fact Bishop Clarke had written to McAlinden about, and that was - I think it was canon 1044, which was another stripping --

MS GERACE: I don't think we've heard this evidence.

MS LONERGAN: This is a matter for an in-camera hearing and there should be no further evidence on this point.

THE WITNESS: I'm sorry.

MS LONERGAN: That's not your fault, bishop.

MR HARBEN: That raises this problem: it makes it very hard for the bishop - in the cross-examining of this witness - to confine it to a procedure called a laicisation procedure when there's an inability to explore what else may have been considered.

MS LONERGAN: Commissioner, could I have a word with my learned friend?

THE COMMISSIONER: Yes, Ms Lonergan. Thank you, Mr Harben.

(Ms Lonergan and Ms Gerace confer)

MS GERACE: Commissioner, this raises some difficulties in terms of my questions. I've just had a discussion with counsel assisting.

MS LONERGAN: One way about it may be to close the court and deal with it in camera. That's my suggestion.

THE COMMISSIONER: Right now?

1 MS LONERGAN: Commissioner, the best approach would be, at
2 this stage, to have the morning tea adjournment and then
3 we'll deal with it.

4
5 THE COMMISSIONER: Thank you. I will adjourn.

6
7 **SHORT ADJOURNMENT**

8
9 MS GERACE: Q. Bishop, just before we broke, I asked you
10 some questions about laicisation and the fact that the
11 prospects of that succeeding were virtually nil?

12 A. Yes.

13
14 Q. You were also aware, by the time you became bishop in
15 November 1995, that Father McAlinden had ignored the
16 process by which his faculties had been removed and
17 continued to act as a priest. Were you aware of that?

18 A. In the Philippines, that had been the case, yes.

19
20 MR HARBEN: I object to that. The question involved two
21 propositions. First, by the time he became bishop, he was
22 aware that the laicisation procedure prospects were
23 virtually nil, I think Ms Gerace said; and the second part
24 of the question adopts that knowledge for the purposes of
25 the second part of the question. My recollection of the
26 evidence is that that belief about the laicisation
27 procedure came later than the precise time he became
28 bishop. He may have had some view about the possibilities.
29 But certainly not in the strong terms put in that question.

30
31 THE COMMISSIONER: No doubt the view strengthened over
32 some period.

33
34 MR HARBEN: That's as I understood the evidence.

35
36 THE COMMISSIONER: Ms Gerace?

37
38 MS GERACE: Commissioner, I understood the bishop's
39 evidence to be that, even as at August 1995, he was aware
40 that the process of laicisation was one that had virtually
41 nil prospects of success. He has been fairly consistent on
42 that point.

43
44 THE COMMISSIONER: Yes. I understand that, by the time of
45 the deans' meeting, Mr Harben, that was a view that the
46 bishop in formed.

47

1 MR HARBEN: Except for this - he never once said that the
2 word "laicisation" was mentioned at the deans' meeting. In
3 fact, the only thing recorded in the minutes is a
4 procedure.

5
6 MS LONERGAN: Commissioner, I think there's some doubt
7 about that. The document appears to have a typographical
8 error, "legislation procedure", which clearly isn't correct
9 and what appears to be a correction, and with the letter
10 "L" or the letter "I" above it. It does appear that it was
11 at least discussed, but in what context is uncertain.

12
13 MR HARBEN: A minute from the meeting was read out
14 correctly by my learned friend in cross-examination. She
15 read as if that word was not in the minute. Because
16 clearly, it had been crossed out and the "L" --

17
18 THE COMMISSIONER: It has been replaced by someone, one
19 might think, Mr Harben, who was unfamiliar with the word
20 "laicisation".

21
22 MR HARBEN: No, or the "L" above the word "legislation",
23 that it is crossed out.

24
25 THE COMMISSIONER: Doesn't that suggest to you that
26 "legislation" is not the word, but the word that should be
27 there is a word with as many syllables perhaps starting
28 with "L"?

29
30 MR HARBEN: No, it suggests to me, with respect, that "L"
31 is the initial of the person correcting it, being Bishop
32 Leo Clarke. I thought that was why my learned friend read
33 it out in that form.

34
35 MS LONERGAN: There's no evidence there was a correction
36 by Bishop Clarke or that the "L" is his initial.

37
38 THE COMMISSIONER: I wouldn't accept that it was. It
39 doesn't look like his initials to me.

40
41 MS GERACE: The bishop's evidence was also that it was
42 fair to say that the procedure being discussed was the
43 laicisation. That was the evidence given just before we
44 broke.

45
46 THE COMMISSIONER: Yes.

47

1 MS GERACE: In any event, all I was doing was summarising
2 evidence given to come back to the next points. I don't
3 think there is anything controversial.
4
5 THE COMMISSIONER: No, that's true, Ms Gerace.
6
7 Q. Bishop, may I ask you --
8 A. Yes, Commissioner.
9
10 Q. -- do you think it is likely that that word was
11 "laicisation", that the word that should be there is
12 "laicisation"?
13 A. Actually, no, I don't.
14
15 Q. Thank you.
16 A. I think probably it might be some "legal" procedure
17 rather than "laicisation".
18
19 Q. Yes, but whoever was taking or typing the minutes has
20 mistakenly written "legislation" --
21 A. Yes.
22
23 Q. I beg your pardon, or has typed from, what, hearing
24 the --
25 A. Hearing the word.
26
27 Q. I will withdraw all of that and we'll start again.
28 Bishop Clarke didn't do his own typing, did he?
29 A. No, I don't think so.
30
31 Q. So someone has typed this document from what, minutes,
32 written minutes or was the typist present?
33 A. They were probably originally written minutes.
34
35 Q. So one could infer that that word - the word that's
36 been crossed out "legislation" - represents some longish
37 word that was written by hand during the meeting?
38 A. It may have, Commissioner.
39
40 Q. Although you were there, you cannot now recall what it
41 could be?
42 A. No, I can't recall.
43
44 Q. Thank you, bishop.
45 A. Thanks, Commissioner.
46
47 MR GYLES: On that topic, while you go to it,

1 Commissioner, the question which hasn't been asked is
2 whether it is the bishop's role to take minutes. That may
3 be something that needs to be addressed at some appropriate
4 time.

5

6 THE COMMISSIONER: Yes. Perhaps you will ask about that
7 when the time comes, Mr Gyles. Ms Gerace?

8

9 MS GERACE: Q. Bishop, you don't alter from the evidence
10 given by you prior to our break when I said to you it was
11 fair to say that the procedure being discussed at that
12 meeting was the procedure of laicisation, do you?

13 A. It is fair to assume that it may have been that, yes.

14

15 Q. It is also fair to say that, from your knowledge of
16 laicisation at August 1995, that was always going to be a
17 difficult procedure for the church to undertake?

18 A. I was not all that familiar with the laicisation
19 procedure myself in August 1995. It became more apparent
20 later on to me, from what I read or advice I received, that
21 unless the priest himself initiated that procedure, then it
22 had little chance of success.

23

24 Q. By the end of 1995, it was apparent to you that
25 Father McAlinden was not going to cooperate with that
26 procedure of laicisation, wasn't it?

27 A. It was always a possibility but, as I mentioned, the
28 exchange of letters seemed to indicate that he may have
29 been prepared to cooperate with the procedure.

30

31 Q. But you had your own suspicion by the end of 1995 that
32 that wasn't, in fact, the case?

33 A. Yes, always, yes.

34

35 Q. By the end of 1995, Father McAlinden had already
36 disobeyed or continued to practise as a priest in
37 disobedience to the removal of his faculties?

38 A. He had been exercising ministry in the Philippines.

39

40 Q. And he had returned to Australia, notwithstanding at
41 least on the correspondence you've now seen, an agreement
42 that he return to Ireland or England and live there?

43 A. Yes, it would appear that Bishop Clarke had some
44 information that he was coming back to Australia.

45

46 Q. And that, at the meeting in August 1995, a consensus
47 was reached by the resolution that those in attendance were

1 of the view that Father McAlinden would not confirm to the
2 restriction placed upon him by Bishop Clarke?

3 A. Yes.

4
5 Q. Can I take you to your knowledge of Father McAlinden's
6 whereabouts by the end of December 1995. Would you look
7 for me, please, at exhibit 78. I will ask that it be shown
8 to you. I don't think it is in those bundles. It will
9 need to be given directly to you.

10 A. Yes, I have it.

11
12 Q. That is correspondence addressed to you?

13 A. Yes.

14
15 Q. From Father McAlinden?

16 A. Yes.

17
18 Q. Do you see the writing on the top "Received 8 December
19 1995"?

20 A. Yes.

21
22 Q. Do you know whose initials appears there?

23 A. Yes, they're mine.

24
25 Q. They're your initials. So do we take that it you had
26 seen this document on or about that date, 8 December 1995?

27 A. Correct, yes.

28
29 Q. The address given by Father McAlinden is PO Box 305?

30 A. Correct, yes.

31
32 Q. Do you also agree that that correspondence records
33 there a visit to a doctor, a Dr A Pang in Western
34 Australia?

35 A. Yes, I --

36
37 Q. In the second paragraph?

38 A. Yes, I see that, yes.

39
40 Q. Does it also then discuss in the second-last paragraph
41 "the hospitality", if I can read the line, the paragraph
42 begins:

43
44 *My immediate plan, on advice, is to*
45 *go up-country from now till after Christmas*
46 *... [to] prepare for the next operation ...*
47

1 Does he also then provide you with some knowledge about
2 priests or areas or dioceses that he might have been
3 visiting or intending to visit?
4 A. It says in the letter that he was going to enjoy the
5 hospitality of some priests and it mentions Perth and
6 Geraldton dioceses.
7
8 Q. They're two of the four dioceses within Western
9 Australia?
10 A. They are, yes.
11
12 Q. In addition to a PO box in Western Australia, we have
13 some additional information that suggests other contacts or
14 persons who may know, potentially, where he is or where he
15 might be found in 1995?
16 A. Presumably, yes.
17
18 Q. Bishop, I'm going back, in terms of the minutes you
19 were just asked about - I should have asked this earlier -
20 being the deans' meeting of August 1995. Was there a
21 standard procedure for who took minutes at those meetings,
22 a standard person responsible for the taking of those
23 minutes?
24 A. Probably there was a minutes' secretary, but I can't
25 remember who that was.
26
27 Q. Was there a general practice by which minutes were
28 sent to you for approval?
29 A. Not that I can remember. They probably would have
30 been sent to Bishop Clarke for his approval.
31
32 Q. You were asked some questions when you first started
33 giving your evidence about the handover from Bishop Clarke?
34 A. Yes.
35
36 Q. You said at transcript 788, line 23, that you hoped
37 there would be a more solid handover and that any secret
38 documents might be shown to you, or at least you would be
39 pointed in the direction in which you might find them?
40 A. Yes.
41
42 Q. Can I deal now, firstly, with some questions about the
43 nature of the handover and other information that you had.
44 I'm asking you specifically about your knowledge, as at
45 November 1995, when you took over as bishop of the diocese?
46 A. Right.
47

1 Q. Do you understand the period I'm talking about, by the
2 time you commenced your formal role as bishop?
3 A. Yes.
4
5 Q. At that stage, you knew that Father McAlinden had had
6 his faculties removed?
7 A. Correct.
8
9 Q. And you had been told that by Bishop Clarke?
10 A. Yes.
11
12 Q. You knew from your own understanding that this was an
13 unusual and not so frequent procedure to be undertaken?
14 A. Correct, yes.
15
16 Q. Also is it fair to say that you knew this was one not
17 exercised lightly by a bishop?
18 A. Yes.
19
20 Q. You knew from the deans' meetings - this appears
21 at transcript page 787, line 42 and following - that
22 Father McAlinden had been removed for issues of sexual
23 abuse?
24 A. Mmm-hmm.
25
26 Q. That the abuse had been on children - yes?
27 A. Yes.
28
29 Q. And that, on your own evidence, you knew of two
30 complaints by [AK] and [AL]?
31 A. Correct, yes.
32
33 Q. You knew that Father Lucas had spoken to McAlinden and
34 obtained some admissions about his conduct?
35 A. Yes.
36
37 Q. You also were aware that the complainants were looking
38 to the church, to deal with McAlinden?
39 A. That's my belief, yes.
40
41 Q. And that at least there had been a suggestion that one
42 of the ways it could be dealt with was that McAlinden would
43 leave Australia and retire to Ireland, no longer acting as
44 a priest?
45 A. I don't know about that, yes.
46
47 Q. But leaving aside then the agreement about returning

1 to Ireland, it was that he was to no longer exercise his
2 functions as a priest?
3 A. Yes, correct.
4
5 Q. But you were also aware, by the time you took over,
6 there was reasonable belief that he was in fact still
7 acting as a priest?
8 A. I don't think he was acting as a priest when I took
9 over.
10
11 Q. In --
12 A. In November 1995.
13
14 Q. No, but prior to that, he had disobeyed the removal of
15 his faculties and had been exercising priestly functions in
16 the Philippines?
17 A. Correct. I knew that, yes.
18
19 Q. In terms of where to look, Bishop Clarke told you
20 about the existence of a large briefcase in the corner of
21 his room; do you recall giving that evidence?
22 A. He did, yes.
23
24 Q. Was it your belief that potentially that briefcase
25 contained some information of a confidential nature?
26 A. Yes.
27
28 Q. And that that confidential nature might concern the
29 evidence of priests within the diocese?
30 A. Quite possibly, yes.
31
32 Q. You knew, at that stage, of the existence of secret
33 files or that it was common knowledge from work around the
34 diocese that secret files might exist?
35 A. Yes.
36
37 Q. Also within your own office, which was former
38 Bishop Clarke's office, there were other filing records
39 kept there, weren't there?
40 A. There were, yes.
41
42 Q. When did Elizabeth Doyle commence her employment at
43 the diocese?
44 A. I think it would have been before my time, in 1994,
45 I think, from memory.
46
47 Q. So that Elizabeth Doyle, who became your secretary,

1 had also for a period been a secretary at the diocese to
2 Bishop Clarke?

3 A. She had, yes.
4

5 Q. You were also aware, were you not, that in or about
6 1988, some years prior to your appointment as bishop, a
7 Special Issues Committee had been set up by the church to
8 deal with special issues affecting bishops, firstly?

9 A. I wasn't aware of that in 1988, but I became aware of
10 it in 1995.
11

12 Q. At the time you became bishop, you knew there was a
13 Special Issues Committee?

14 A. Well, yes, I did, yes, because Father Lucas had been
15 part of that.
16

17 Q. Father Lucas had been a part of that Special Issues
18 Committee?

19 A. I believe so, yes.
20

21 Q. And that one of the special issues that the committee
22 looked at was the issue of how to deal with abuse by
23 clergy, sexual abuse by clergy?

24 A. Yes.
25

26 Q. In fact, one of the main issues looked at by the
27 Special Issues Committee was what advice should be given to
28 bishops about how to deal with allegations of sexual abuse
29 by the clergy?

30 A. I understand that, yes.
31

32 Q. You understood then - as at November 1995 - that that
33 was the reason for the Special Issues Committee even if you
34 did not know or were not aware of what specific advice had
35 been provided?

36 A. Yes, that's correct.
37

38 Q. When you were asked about not looking for documents
39 about McAlinden, you gave some general evidence about being
40 the bishop of a busy diocese. Do you recall giving that
41 evidence?

42 A. Yes, I do.
43

44 Q. Do you recall giving some evidence that you didn't
45 have time to trawl through the materials of the diocese
46 including the archives?

47 A. I was referring specifically to the archives, saying

1 that I didn't have the luxury of time to be able to dig
2 through those.
3
4 Q. But you had an assistant - you had a secretary,
5 Elizabeth Doyle?
6 A. I did, yes.
7
8 Q. You had a vicar general?
9 A. Yes.
10
11 Q. You could have asked either Ms Doyle or your vicar
12 general to undertake searches on your behalf, couldn't you?
13 A. I suppose I could have, but Elizabeth Doyle did not
14 have access to the secret files or to the files under
15 Bishop Clarke's administration. That was only when I came
16 along that I asked her to do that.
17
18 Q. So you did, at some stage, ask her to have access to
19 them later?
20 A. I did, yes, later.
21
22 Q. But that's something you could have done as at
23 November 1995?
24 A. I could have done, yes.
25
26 Q. You could have asked your vicar general to look for
27 that material, couldn't you?
28 A. I could have, yes.
29
30 Q. You were aware, as at 1995, from the matters you just
31 agreed you knew, that there may have been other documents
32 or potentially other documents that could be searched for
33 within your own archives?
34 A. In point of fact, I did not know that. The only
35 people I knew about were [AK] and [AL].
36
37 Q. From 1 November 1995, it was your responsibility from
38 that day onwards to make yourself familiar with all
39 information available about Father McAlinden?
40 A. Yes, I suppose so, yes.
41
42 Q. So that from the time you took over, any deficiencies
43 in the handover of Bishop Clarke were no longer relevant.
44 Do you accept that?
45 A. Yes.
46
47 Q. You were also asked last week whether you had any

1 personal - excuse me; I just want to be clear about this.
2 You had given some evidence that, by the time you took over
3 as bishop, there had been some general widespread publicity
4 or knowledge about the problems of sexual abuse within the
5 church from the Americas?
6 A. Yes, certainly from that, yes.
7
8 Q. You're also aware, on the evidence you have given
9 today, about the existence of a Special Issues Committee
10 set up in Australia for dealing with this problem?
11 A. Yes.
12
13 Q. You were aware from your time as coadjutor about the
14 allegations against McAlinden?
15 A. Yes.
16
17 Q. In your role as coadjutor, you were approached by
18 two parents who expressed concern about an overnight stay
19 had by their children with [NP]?
20 A. Yes.
21
22 Q. When you went on holidays in October 1995, Father
23 Vincent Ryan was arrested on charges of sexual abuse of
24 young boys?
25 A. Correct, yes.
26
27 Q. By the time you started as bishop in this diocese, you
28 were aware of a complaint against a priest for abuse of
29 young girls, Father McAlinden; secondly, the charging of
30 Father Vincent Ryan on charges of sexual abuse of young
31 boys; and complaints made directly to you by two parents
32 about their concerns of an overnight stay of their boys
33 with a third priest --
34 A. Yes.
35
36 Q. -- [NP]. Bishop, in those circumstances, it is
37 entirely unlikely that you did not, as bishop, make an
38 effort to look through the secret files or other documents
39 of the diocese to find out what was happening in your
40 diocese?
41 A. I'm unsure as to whether you want me to say "Yes" or
42 "No" to that.
43
44 Q. I'm putting to you that it was just not true that you
45 did not look for documents to understand what was happening
46 in your diocese in relation to sexual abuse by clergy?
47 A. In the case of Vince Ryan, he admitted his crimes and

1 the investigation that ensued was purely an investigation
2 for the purposes of sentencing. In the case of [NP], the
3 two people that came forward to speak with me were voicing
4 suspicions only about questionable behaviour. The only
5 other one was McAlinden.
6

7 Q. As at November 1995, Vincent Ryan had just been
8 charged. He hadn't made those admissions, had he?

9 A. I don't know that he - I'm not sure when he admitted,
10 but he did admit his crimes.
11

12 Q. I'm asking you about November 1995. Can I suggest to
13 you that, coming into your diocese in November 1995 with
14 the knowledge that you had about McAlinden, the suspicions
15 about [NP] and the recent arrest of Vincent Ryan, that
16 alerted you to a significant problem within the Hunter -
17 Maitland diocese of sexual abuse by clergy?

18 A. There was a significant concern about those three
19 priests, yes.
20

21 Q. In your diocese?

22 A. Well, of course.
23

24 Q. As at November 1995?

25 A. Yes.
26

27 Q. I'm suggesting to you further that any suggestion by
28 you that, in response to those matters, you did not take it
29 upon yourself to look through the secret files or other
30 documents of the diocese to check out what the problem was
31 and how significant it was should not be accepted by this
32 Commission.
33

34 MR HARBEN: Can I ask whether the examiner is putting for
35 the second time a positive assertion of untruthfulness?
36 She can only do that on her instructions, as I understand
37 it. The first time she put it, it wasn't true. The second
38 time is a form of words which means that, and if she's
39 doing that, she's putting a positive assertion presumably
40 on the instructions of those who instruct her.
41

42 MS GERACE: I'll withdraw it and rephrase it. Thank you,
43 Mr Harben.
44

45 Q. Bishop, can I suggest it is entirely improbable that
46 you, as the new bishop of the Hunter Maitland diocese, did
47 not, when you became bishop in November 1995, and alert to

1 the significant problems within your diocese, make every
2 effort to find out about the problem of sexual abuse within
3 your diocese?

4 A. Well, I certainly did not visit the files of those
5 three particular priests, at that point.

6
7 Q. Bishop, there was no reason why you couldn't have
8 visited those files?

9 A. I could have, yes.

10
11 Q. And you agree now you should have visited those files?

12 A. In the case of McAlinden, I was - I had enough to go
13 on because Bishop Clarke had told me about [AK] and [AL]
14 and we were proceeding, as we've discussed last week. With
15 regard to [NP], they were suspicions only, which I then
16 proceeded to speak to him about. In the case of Vincent
17 Ryan, there was no need to go to the file precisely because
18 he had been charged and had admitted, at some point early
19 in the piece, to his crimes.

20
21 Q. Do you accept or otherwise my suggestion that. Alert
22 to those problems within your diocese you should have
23 looked, if you did not in fact, look at those files?

24 A. Possibly I suppose, yes.

25
26 Q. You were asked some questions earlier on about your
27 knowledge of sexual abuse by clergy prior to becoming
28 coadjutor and prior to becoming the Bishop of Newcastle.
29 I'm going to take you to that question. I just want to
30 understand your answer a bit more. This appears at
31 page 821. At line 12, you were asked this:

32
33 *Q. Were the McAlinden accusations the*
34 *first time you'd heard of accusations of*
35 *sexual abuse on the part of a priest, a*
36 *Catholic priest?*

37
38 Your answer was, to clarify:

39
40 *A. In the diocese?*

41 *Q. At all?*

42 *A. Well, no. I mean, there had been*
43 *plenty of publicity from the United States*
44 *and from some other places about sexual*
45 *abuse by clergy, yes.*

46
47 A. Yes.

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Q. You were asked by way of further clarification:

Q. *In Australia, was he the first you heard about in Australia?*

A. *I don't know really.*

A. Yes.

Q. I want to be clear about your evidence. Prior to being appointed coadjutor of the Hunter Maitland diocese, or the diocese as it was known then, did you have any knowledge from personal experience of priests that you'd worked with being concerned about either their conduct around children or sexual abuse by them with children?

MR HARBEN: I object to this. This is some wide-ranging inquiry and my friend will probably say it has to do with some other issue about knowledge at that time. That's a matter for another forum, with respect. This inquiry has specific issues to develop and we're now being taken back to a time prior to any involvement with the Maitland-Newcastle diocese.

THE COMMISSIONER: And at a time when the bishop was not a bishop, but a priest.

MR HARBEN: That's right.

MS GERACE: I'll narrow it down. It is relevant in terms of the submissions that might be made in terms of the probability, or otherwise, evidence given by the witness about what searches he took or didn't take, and also in answer to suggestions by the bishop about his knowledge, innocuous or otherwise, about the problem of sexual abuse within the clergy. I'll put it more specifically.

Q. Let me go directly to my point, bishop. Whilst you were the priest at Gosford, was it the case that a Father Paul Evans was brought in to operate as your assistant priest within that diocese?

A. That's correct, he was.

Q. At the time that he was brought in to be your assistant priest, were you also aware that Father Evans had, just prior to that, been charged with sexual abuse of young boys?

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MR GYLES: I object. This has nothing to do with the four investigations that are the subject of this inquiry. It should not be given.

MS LONERGAN: Commissioner, there may be some way that it is relevant, which isn't obvious to me at this point. May I just have a quick conversation with Ms Gerace?

THE COMMISSIONER: Yes.

(Ms Lonergan and Ms Gerace confer)

MS GERACE: Commissioner, could I say why I say that is relevant?

THE COMMISSIONER: Yes.

MS GERACE: It is put on the basis that it may inform the Commission about the bishop's knowledge, prior to and just prior to, in the years preceding his appointment as coadjutor, and the fact that to the extent evidence has been given that at the time in 1995 he had little or otherwise knowledge of the problem of sexual abuse and, also, in terms of potentially - I don't know what he's going to say so it is a bit difficult without having something on the record - his involvement in the management of it. It is relevant to any suggestion by the bishop that he was entirely unprepared to deal with these matters when he became bishop or he had some innocuous knowledge of the problem prior to.

It goes also to the general question that this Commission will need to look at, namely, does it accept the bishop's evidence about what he did or didn't do in or about the time of his role of coadjutor or as bishop in relation to those early complaints. His general credibility on these matters is a matter that's being asked by the Commission and I wish to explore the nature of those questions that I put to him to understand what knowledge he brought about this problem to his role as bishop.

THE COMMISSIONER: What's the name of this priest?

MS GERACE: Father Evans.

MS LONERGAN: There's some potential relevance, having

1 heard Ms Gerace articulate her position. The answers may
2 lead to disclosure of certain actions that are directly
3 relevant to these terms of reference in terms of what was
4 or was not done by this witness. I won't say anything more
5 than that.

6

7 THE COMMISSIONER: Q. Bishop, did you know that Father
8 Evans was involved in criminal investigations into his
9 conduct?

10 A. No, Commissioner, I did not.

11

12 MS LONERGAN: Could I request a non-publication order over
13 that priest, only because we have no information regarding
14 that, and it may be the source of the information is
15 correct or incorrect. We have no way of looking further at
16 that at this juncture. .

17

18 THE COMMISSIONER: Father Evans was convicted, I think.

19

20 MS GERACE: Yes, he was convicted. At a subsequent date,
21 he was in fact convicted.

22

23 MS LONERGAN: I withdraw my application for
24 non-publication.

25

26 THE COMMISSIONER: I will permit you to ask your question,
27 Ms Gerace.

28

29 MS GERACE: Thank you very much, Commissioner.

30

31 Q. Bishop, is it your evidence that at the time
32 Father Evans was brought in as your assistant priest in
33 Gosford, you did not know that he had been charged with
34 offences involving the sexual abuse of children?

35 A. That is correct.

36

37 Q. Is it your evidence that at no time were any
38 suspicions about his behaviour or otherwise conveyed to you
39 as the priest in that parish?

40 A. The only --

41

42 MR GYLES: I object to that question. This is going
43 beyond the bounds of even the relevance articulated by my
44 learned friend.

45

46 THE COMMISSIONER: Conveyed to? Yes, we'll have to
47 narrow the time frame, please Ms Gerace; that is, when

1 Bishop Malone was the parish priest at Gosford.
2
3 MS GERACE: Q. Excuse me, bishop. I'll get the dates
4 correctly.
5
6 THE COMMISSIONER: There's probably no need for you to get
7 the dates, Ms Gerace, but to ask the --
8
9 MS GERACE: I can confine the issue.
10
11 Q. Confined to the time you were parish priest at
12 Gosford, at the time that Father Evans was transferred into
13 your parish and he - firstly, the assistant priest works
14 with the priest of the parish; is that correct?
15 A. Correct, yes.
16
17 Q. You worked with Father Evans?
18 A. I did.
19
20 Q. I'm asking you from the time that he was either being
21 transferred to you, you were advised that you were to
22 receive Father Evans as an assistant priest --
23 A. Correct, yes.
24
25 Q. -- through the subsequent years when he worked as your
26 assistant priest, did you have information conveyed to you
27 that raised concerns about Father Evans's conduct in terms
28 of sexual abuse of children?
29 A. I was unaware, as I mentioned a moment ago, of any
30 allegations around sexual abuse of children. The Bishop of
31 Broken Bay at the time, under whose authority I was at
32 Gosford, phoned me one evening, I remember it well, and he
33 said to me that he had a priest to appoint to me at Gosford
34 parish. He said there had been some issues, but there was
35 nothing to them and would I be prepared to accept him.
36 I said in reply, "If you think it's all right for him to be
37 here, then I'm happy to have him, yes", and that was the
38 extent of it.
39
40 Q. Is it your evidence he didn't convey to you what those
41 issues were?
42 A. That is correct, he didn't.
43
44 Q. Did the bishop ask you to keep an eye on him?
45 A. I don't recollect that, no.
46
47 Q. Just before the break, I was asking you some questions

1 about evidence you'd given about hyperbole in
2 correspondence. I was specifically asking you about a
3 document at 250. Would you look at that, please.

4 A. Yes, I've got it.

5

6 Q. I was asking you specifically about the paragraph,
7 "failing this procedure those who have lodged complaints",
8 and your evidence earlier this morning was that you had no
9 reason to doubt Monsignor Hart's truthfulness or otherwise
10 in that correspondence?

11 A. Yes, that's correct.

12

13 Q. Can I clarify then some evidence given by you on T819.

14 A. Yes.

15

16 MS GERACE: This was the part of the transcript I was
17 intending to take witness to earlier, but I couldn't find
18 it.

19

20 Q. You were being asked, at page 819 of the transcript
21 about that document, 250, and you were also being asked
22 about the nature of consultation with you. Do you see the
23 reference "After consultation with Bishop Michael Malone",
24 in the second paragraph?

25 A. Yes.

26

27 Q. Then you were asked:

28

29 *... and those who have lodged complaints*
30 *intend to consider instituting criminal*
31 *charges. Do you see that?*

32

33 A. I do.

34

35 Q. You answered, "Yes, I can."

36

37 MR HARBEN: Does the witness have the document?

38

39 MS GERACE: Yes, he has the document

40

41 Q. And:

42

43 *Q. And compensation charges?*

44

45

46 Then the question was put to you:

47

1 Q. *That suggests, doesn't it, that those*
2 *who have lodged complaints are considering*
3 *going to the police?*
4

5 Your answer on that occasion was:

6
7 A. *It could be seen to be that, but I did*
8 *mention that, you know, both Monsignor Hart*
9 *and myself were given to a little bit of*
10 *hyperbole in our respective letters.*
11

12 Do you now withdraw the suggestion that the comment in that
13 final paragraph about lodging complaints and criminal
14 charges, to the extent it could be read that your answer
15 was suggesting that, that that was hyperbole on
16 Monsignor Hart's position, you no longer adhere to that
17 view?
18

19 MR HARBEN: Commissioner, it is unfair in the extreme to
20 put that one question, relating it to the whole of that
21 paragraph because it all has to be read together, firstly,
22 with the two questions and answers that follow on page 819
23 but more specifically the answer that was specifically
24 referred to does two things: it says that the witness says
25 "I did mention that", and that's obviously a mention to his
26 previous evidence, so it has to be put in context, and that
27 previous evidence is at 794.
28

29 The second thing it refers to is specifically "we were
30 given to a little bit of hyperbole in our respective
31 letters". It is the whole of that material. My learned
32 friend can't just pick and choose.
33

34 MS GERACE: I didn't pick and choose. For the record,
35 I read all of those questions out to the bishop and to
36 suggest that I didn't is incorrect.
37

38 MR HARBEN: Did you read on page 819 the question that
39 followed the words "hyperbole in our respective letters",
40 did you?
41

42 MS GERACE: I haven't got to the point because you took
43 the objection.
44

45 MR HARBEN: That's why I took the objection because you
46 read the one question.
47

1 THE COMMISSIONER: Thank you, Mr Harben.

2

3 Ms Gerace, would you kindly perhaps read the question
4 and answer that you've already read followed by the
5 question and answer after that to the witness.

6

7 MS GERACE: Can I be heard on that point? I understand
8 the approach and I'm happy to take it, Commissioner. The
9 point is, on a rereading of the evidence on this point
10 about what was known about going to the police or
11 otherwise, it has been less than clear by the bishop.
12 There have been statements suggesting a position and then
13 that they may have known, they may not have known. Then
14 there was a direct answer to the suggestion that that
15 correspondence suggested that those who lodged complaints
16 were considering going to the police, and the answer given
17 by the bishop was:

18

19 *It could be seen to be that, but I did*
20 *mention that, you know, both Monsignor Hart*
21 *and myself were given to a little bit of*
22 *hyperbole ...*

23

24 THE COMMISSIONER: "In these letters".

25

26 MS GERACE: It was in this letter. He was asked
27 specifically about that paragraph. My point was that,
28 given the evidence given by the bishop this morning,
29 I wanted to be clear that he is no longer suggesting that
30 that final paragraph was an instance of that hyperbole.
31 There's nothing unfair about that proposition.

32

33 MS LONERGAN: In my respectful submission, Commissioner,
34 it would be fair to the witness to read the next two
35 questions and answers because, at the time he gave that
36 particular answer, I did delve into what was meant by the
37 "hyperbole" comment and asked for some context two
38 questions down and got a certain answer. It may make no
39 difference ultimately to what this witness gives by way of
40 reply but the next two questions and answers ought to be
41 read.

42

43 MS GERACE: I'll take that course.

44

45 THE COMMISSIONER: Thank you.

46

47 MS GERACE: Q. Following on from that question:

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Q. Is that statement in that letter inaccurate, in that those who had lodged complaints were not considering, as far as was known to you and in your discussions with Monsignor Hart, that they were not considering instituting criminal charges?

A. As far as I remember they were not wanting to go to the police, yes.

Q. So Monsignor Hart's letter where it states that they were considering instituting criminal charges is not true?

A. That's probably a bit strong. It might have been just to scare.

That's the fullness of the answer that you gave. Putting the question that I was asking, given the evidence you've given this morning about having no reason to doubt Monsignor Hart's truthfulness - the accuracy of Monsignor Hart's statements in that correspondence --

A. Yes.

Q. -- can we be clear in understanding that you do not wish the Commission to understand that the statement in that final paragraph, "failing this procedure those who have lodged complaints intend to consider instituting criminal charges and compensation charges against the Church" was, in your opinion, hyperbole by Monsignor Hart?

MR GYLES: I object. It is the same objection I took earlier. This witness cannot give evidence of what the person who wrote the letter believed or knew and the evidence is inadmissible. This witness's belief about the truth or otherwise is another matter, but he cannot give evidence in an indirect way of what Monsignor Hart's position was.

MS LONERGAN: Commissioner, there probably need to be a preliminary question in terms of conversations that this witness has already deposed to between himself and Monsignor Hart about the letters. That may deal with the objection of Mr Gyles.

MR GYLES: This was dealt with. The questions were asked and this topic has been dealt with.

THE COMMISSIONER: Yes. Ms Gerace, you'll still entitled

1 to know whether the bishop thinks that, from what he knows,
2 that would be overstating it slightly.

3
4 MS GERACE: That's all I'm asking.

5
6 Q. Bishop Malone, it's been difficult --
7 A. May I answer that?

8
9 Q. Yes, you may.
10 A. As I mentioned this morning, I would not accuse
11 Monsignor Hart of hyperbole, so my earlier reference to
12 "hyperbole", if it involved both letters, would be
13 inaccurate insofar as I certainly used a bit of hyperbole
14 in my letter, but I can't say that of Monsignor Hart.

15
16 MS LONERGAN: For the record, perhaps it could be
17 clarified which letter exactly it is the witness has been
18 directed to.

19
20 THE COMMISSIONER: That's exhibit 73, the letter of
21 20 June 1995 from Monsignor Hart to a priest in the
22 Philippines, Father Castillo.

23
24 MS GERACE: Q. Could I ask you briefly about [AJ]. Do
25 you want to have a look at the pseudonym list just so you
26 know what I'm speaking about?
27 A. Yes, I have it, yes.

28
29 Q. Bishop, can I ask you before we go to [AJ] - now that
30 you've had a look at that - in the diocese, there was a
31 finance committee; is that right?
32 A. That's correct.

33
34 Q. Was there an annual dinner of the finance committee?
35 A. We did in those earlier days, yes.

36
37 Q. Do you recall attending a finance committee meeting at
38 the Newcastle Club?
39 A. Vaguely, yes.

40
41 Q. Can I ask - and you can tell me whether you recall or
42 otherwise the year - did you attend a finance committee
43 dinner 2003 at the Newcastle Club?
44 A. I have no idea about the date but, yes, possibly.

45
46 Q. It is a long time ago.
47 A. Yes.

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Q. Do you recall that, on one of those dinners, you met [AJ]?

A. I can't recollect that I did, but if I was there and [AJ] was there, then I'm sure I would have.

Q. You knew of [AJ] separately, the existence of [AJ], by virtue of her relationship to [BS]?

A. Correct, yes.

Q. Can I put to you that, on a dinner in 2003, and I understand you don't recall that date, but in 2003, at a dinner at the Newcastle Club, you said to [AJ] something like, "I understand you're a victim of McAlinden"?

A. I can't remember saying that, but then again my memory of the evening is hazy as well.

Q. Is it possible that this conversation occurred?

A. It's possible. I mean, it sounds like a very insensitive thing to say and it doesn't sound like me, but I wouldn't want to muddy the waters with something that [AJ] may have said.

MS GERACE: Could I speak to my learned friend?

THE COMMISSIONER: Yes.

(Ms Lonergan and Ms Gerace confer)

MS GERACE: Commissioner, those are the questions.

<EXAMINATION BY MR BARAN:

MR BARAN: Q. I will try and be mercifully brief, bishop.

A. Thank you.

Q. Can I ask you a few questions about the Professional Standards Office whom I represent.

A. Yes.

Q. From at least your time as the bishop in the diocese, your experience with Professional Standards involved ongoing liaison and advice regarding complaints of misconduct by members of the clergy?

A. It did.

Q. More often than not, that would involve issues

1 touching upon sexual assault, child sexual abuse, that kind
2 of thing.
3 A. Correct, yes.
4
5 Q. Those particular issues sometimes involved police and
6 sometimes they did not?
7 A. Insofar as I used the good graces of the Professional
8 Standards Office to convey information to the police.
9
10 Q. Mr Davoren was the person who you were dealing with
11 from time to time at Professional Standards at least in
12 1997 onwards?
13 A. Correct, yes.
14
15 Q. In terms of Professional Standards and their role so
16 far as the retainer or employment of priests was concerned,
17 did Professional Standards have any role to play in that?
18 A. In the employment of priests?
19
20 Q. Yes.
21 A. Not really, no.
22
23 Q. When it came to issues about industrial relations or
24 internal matters that purely had something to do with the
25 priest and whether or not he was carrying out his functions
26 as a priest, that was something for you, I take it, or the
27 vicar general?
28 A. It was certainly something for me, yes. But just for
29 the record, for those purposes, a priest is not regarded as
30 an employee.
31
32 Q. I was trying to find the correct word and I failed
33 miserably.
34 A. But for the purposes of the Ombudsman's Act and for
35 taxation returns, the priest is regarded as an employee.
36 That's the anomaly of the whole thing.
37
38 Q. Again, those issues, such as matters to do with
39 whether or not a priest was to received a certain term or
40 condition in his or her engagement or whether or not
41 certain actions should be taken against the priest arising
42 out of employment, are not matters, so far as you were
43 concerned, that would involve the influence or the advice
44 of the Professional Standards Office; is that right?
45 A. That's correct, yes. I would have sought their advice
46 if I felt the need, but otherwise it was handled
47 internally.

1
2 Q. Can we then go, if we may, to exhibit 104, which is
3 volume 5, and that's tab 384.
4 A. Can you bear with me while I find it?
5
6 Q. Certainly. It is the second page of that document.
7 This is the pastoral message?
8 A. Yes, I have it, yes.
9
10 Q. This is the pastoral message dated 16 May 2003?
11 A. Yes.
12
13 Q. This followed upon the charging of Fletcher by police?
14 A. Right, yes.
15
16 Q. You set out there in the pastoral message what appears
17 to be a series of facts that occurred, namely, that
18 Fletcher was accused of certain matters, that the police
19 charged him on 14 May 2003, and then you go on to say that
20 he has been withdrawn from active ministry?
21 A. Yes.
22
23 Q. Just so I understand it, what does that mean in real
24 terms when you said that "the Father was withdrawn from
25 active ministry"?
26 A. That means he's unable to exercise any priestly duties
27 at all.
28
29 Q. And what was the difference between the withdrawal
30 from active ministry as opposed to standing down?
31 A. The same thing.
32
33 Q. The same thing?
34 A. Yes.
35
36 Q. Then if you go down the page, you address in the
37 bullet points there a series of issues touching upon the
38 victims, their families and also on Fletcher and how he was
39 maintaining his position of innocence?
40 A. Yes, correct.
41
42 Q. In the second-last paragraph on that page, you say
43 that you had sought advice from the New South Wales
44 Professional Standards Office Towards Healing process and
45 others?
46 A. Yes.
47

1 Q. When you said that, were you suggesting that you had
2 sought advice from the PSO itself or that you had actually
3 consulted the protocol, the then Towards Healing protocol?
4 What were you saying?
5 A. No. I was referring there to the fact that
6 I contacted John Davoren by phone.
7
8 Q. In addition to the conversation that you say you had
9 with Mr Davoren you were also, I take it, discussing this
10 matter with the vicar general?
11 A. I was, yes.
12
13 Q. And you were also discussing this matter - that is,
14 Fletcher - with the police?
15 A. Say again?
16
17 Q. Were you discussing the issue of standing down
18 Fletcher with the police?
19 A. No. No.
20
21 Q. But the vicar general, as best as you understood it,
22 was speaking to you on a regular basis regarding Fletcher
23 and what to do with him in terms of the issue of his being
24 stood down or not?
25 A. Yes. He was my closest confidant and we spoke about
26 that regularly, yes.
27
28 Q. In your statement, which is exhibit 85, at page 5,
29 this is the longer statement that you made in July of 2013?
30 A. Yes, I see.
31
32 Q. Could I take you to page 5, bishop. You go on there
33 at paragraph 6.2(v) to talk about a conversation that you
34 say you had with Mr Davoren regarding Father Fletcher and
35 him being stood down?
36 A. Yes.
37
38 Q. I don't want to be unfair to you, but was there any
39 record made of this particular conversation, either a file
40 note or a memo?
41 A. I'm afraid not.
42
43 Q. Is it possible that this particular conversation that
44 you referred to in 6.2(v) was a conversation that you had
45 with the vicar general, not with Mr Davoren?
46 A. My memory is that I spoke with John Davoren and this
47 is the gist of the conversation.

1
2 Q. The reason why I ask that is it just appears to be
3 that - correct me if I am wrong - historically speaking,
4 the PSO would not get itself involved in issues of whether
5 or not a priest would be stood down or not. They were more
6 involved in the complaints process and Towards Healing.
7 I'm just wondering whether or not, when you attribute this
8 particular conversation to Mr Davoren, you may be mistaken?
9 A. I have a memory that I rang him, and it's reflected in
10 my statement, as you're referring to, because I felt that
11 I just needed the advice of an outside independent kind of
12 person.
13
14 Q. Again, it is a long time ago and I don't want to be
15 unfair to you --
16 A. Thank you.
17
18 Q. -- but is it possible that the conversation you
19 attribute to Mr Davoren may have been a conversation that
20 you had with the vicar general?
21 A. That's not my memory.
22
23 Q. Was there any follow-up correspondence between you and
24 Mr Davoren after this particular conversation occurred
25 in --
26 A. No, not to my knowledge there wasn't.
27
28 Q. Do I take it that, based on what is contained in the
29 pastoral message; that is, the withdrawal from active
30 ministry and the standing down, as it is referred to, in
31 the statement - I think you said they are pretty much the
32 same thing?
33 A. Pretty well, yes.
34
35 Q. But either way, in your pastoral statement you've
36 said:
37
38 *In accord with normal procedures,*
39 *Father Fletcher has been withdrawn from*
40 *active ministry.*
41
42 One way or another he was in fact stood down?
43 A. Yes, correct.
44
45 MR BARAN: Thank you.
46
47

1 <EXAMINATION BY MR POTTER:

2

3 MR POTTER: Q. Bishop Malone, I also would like to ask
4 you some questions about those events in June 2002 as they
5 related to Father Fletcher.

6 A. Right.

7

8 Q. You've given evidence both in your longer statement
9 that my friend has referred to and orally to this inquiry
10 about those events?

11 A. Right.

12

13 Q. You also in 2003 gave accounts of those events to two
14 other sources, I suggest to you, the first being a
15 statement that you gave to the NSW Police in May 2003?

16 A. I made a statement to the police, yes.

17

18 Q. Secondly, you were interviewed by the New South Wales
19 Ombudsman in September 2003?

20 A. I thought it was probably more likely - yes, that
21 probably would be about right.

22

23 Q. I suggest it was 2 September 2003?

24 A. Was it? Okay.

25

26 Q. Can I take you first to the statement that you gave to
27 the police which was in May 2003?

28 A. Yes.

29

30 Q. There is a copy of that statement, I don't know if it
31 has been admitted into evidence, but it is at tab 390. It
32 is exhibit 87. Would you like to have a look at a copy of
33 the statement so can I ask you some questions about it?

34 A. 390, yes.

35

36 Q. This statement being made in May 2003 was, you would
37 agree, much closer to the events in mid-2002 than now?

38 A. Certainly, yes.

39

40 Q. What I'm asking you to accept - and you can read the
41 statement to see if this is it true - is that nowhere in
42 that statement do you refer to any conversation with
43 William Callinan, the school principal, in June 2002
44 regarding Father Fletcher. Would you like to check that?

45 A. Yes, I think you're right, yes.

46

47 Q. There's no reference in there to any visit to

1 Mr Callinan at the school in Branxton on 20 June 2002, is
2 there?
3 A. No. I don't think so, no.
4
5 Q. There's no evidence in that statement of any directive
6 that you gave to Mr Callinan to the effect that
7 Father Fletcher should stay away from the school, is there?
8 A. Not in this statement, no.
9
10 Q. And no reference in that statement to any direction
11 that you gave to Father Fletcher independently that he
12 should stay away from the school, is there?
13 A. No, there's not.
14
15 Q. May I now ask you some questions about your interview
16 with the Ombudsman that's in September 2003?
17 A. Right.
18
19 Q. You told the Ombudsman that, in June 2002, you had
20 told Father Fletcher to stay away from the school. Do you
21 recall that?
22 A. Well, yes, I - I do, I recall something along those
23 lines, yes.
24
25 Q. You also told the Ombudsman that you had not told
26 Mr Callinan that information. Do you recall that?
27 A. No, I don't recall that.
28
29 Q. You never mentioned to the Ombudsman that you had told
30 Mr Callinan not to allow Father Fletcher to come near the
31 school?
32 A. I don't remember that being discussed, no.
33
34 Q. Are you saying affirmatively that you recall it wasn't
35 discussed or you don't remember one way or the other?
36 A. I don't remember, yes.
37
38 Q. On Thursday counsel assisting the inquiry asked you
39 some questions about the evidence you've given of your
40 conversation with Mr Callinan in your statement to this
41 inquiry?
42 A. Right, yes.
43
44 Q. To assist you, would you like to look at your
45 statement to the inquiry. It is what is referred to as the
46 long statement, the 8 July 2003 statement.
47 A. Right.

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Q. It is in paragraph 6.2(vii).

A. On page 6.

Q. That's right. You there give some evidence about a conversation you say you had with Mr Callinan on 20 June 2002?

A. I do.

Q. It was suggested to you by counsel assisting the inquiry that your evidence there about that conversation was inconsistent with your decision not to stand Father Fletcher down in 2002?

A. I don't know about inconsistent with it. It was - it was going hand in glove with it, really.

Q. What I'm suggesting to you is that you accepted on Thursday that there was a fundamental inconsistency in your position in, on the one hand, not standing Father Fletcher down but, on the other hand, telling Mr Callinan that Father Fletcher shouldn't be allowed near the school. Do you recall giving that evidence?

A. I recall the subject being spoken about, yes.

Q. Do you accept still that it is fundamentally inconsistent to say, on the one hand, that he should not be stood down, as you say you did, and, on the other, to give the direction to the school principal, as you say you did, that he should not come near the school?

A. When I spoke to Mr Callinan, I had spoken to him about the fact that the police had asked that Fletcher be stood aside and I was still ambivalent about whether that would or wouldn't happen and I - because of the allegations against Fletcher, it seemed evident that Fletcher should not - or should discontinue his association with the school.

Q. What I'm suggesting to you is that, for consistency, that direction should have been given to Father Fletcher?

A. It was, yes.

Q. Another inconsistency in your approach, I suggest, was that, on the one hand, if you're telling Mr Callinan that Father Fletcher should not be near the school, on the other hand, you appointed Father Fletcher, the priest of the parish of Lochinvar?

A. Correct, yes.

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Q. You accepted on Thursday, I suggest to you, that it was inconsistent of you not to have given to Mr Callinan's counterpart at Lochinvar the same warning that you'd given to Mr Callinan?

A. I agree with that, yes.

Q. In light of those inconsistencies between the evidence which you gave closer to the time and your current evidence, and also what I've suggested to you are internal inconsistencies in your evidence, what I want to suggest to you is that you did not meet with Mr Callinan in June 2002 as you have suggested you did?

A. I'm sorry, but I have the memory that I did meet with him.

Q. I want to suggest to you that Mr Callinan was not at Branxton on that day, that at the time he was principal of two different schools. Do you know whether that was or was not the case, that he was the principal two of different schools?

A. Yes, he was, yes.

Q. One of those schools was St Brigid's primary school in Branxton; is that right?

A. Correct, yes.

Q. The other school was St Greta's infant's school - sorry --

A. It was at Greta, yes.

Q. -- St Mary's infants school at Greta?

A. That's right.

Q. Mr Callinan on that day, which is Thursday, 20 June 2002, was not at the school in Branxton but was in fact at the school in Greta?

A. My memory is that I met with Mr Callinan in the latter part of the school afternoon and I can remember vividly that the parents were gathering at the gates of the school to collect their children, so that's a clear memory for me.

Q. Your memory is that that was at Branxton?

A. That was definitely at Branxton, yes.

Q. What I want to further suggest is that you didn't communicate with Mr Callinan about Father Fletcher at all

1 in June 2002?
2 A. I did.
3
4 Q. And that certainly you did not tell Mr Callinan in
5 June 2002 that Father Fletcher should stay away from
6 schools?
7 A. I did tell him that.
8
9 Q. Your evidence that you've given about what happened on
10 20 June 2002 is based, is it not, on your diary entry from
11 that date?
12 A. Yes, that helps, yes. That's where I've got the dates
13 from.
14
15 Q. May I show you the diary.
16 A. (Handed to witness).
17
18 MR POTTER: To assist those at the Bar table, a copy of
19 the relevant pages, on my note, is tab 348.
20
21 Q. Would you go 20 June?
22 A. Yes, I have it here.
23
24 Q. You had a copy of that diary in May 2003 when you gave
25 your statement to the NSW Police?
26 A. This one? Yes, I would have, but I didn't have it
27 with me, I don't think.
28
29 Q. You didn't have it with you, but you had access to it?
30 A. Oh, yes. No, it was certainly in the office, yes.
31
32 Q. You also had access to it when you were interviewed by
33 the New South Wales Ombudsman on 2 September 2003, didn't
34 you?
35 A. Yes, I, in fact, showed them a copy.
36
37 Q. What I'm going to suggest is that, on 2 September
38 2003, when you were being interviewed, you were asked
39 whether there was any record of your conversation with
40 Mr Callinan?
41 A. Yes.
42
43 Q. And you said to the Ombudsman there might be something
44 in your diary?
45 A. Right.
46
47 Q. And that the following day, 3 September 2003, you

1 faxed a copy of the relevant page of your diary to the
2 Ombudsman?
3 A. Correct, yes.
4
5 Q. On the relevant page it says, does it not:
6
7 *Trip to Branxton to see Jim Fletcher.*
8
9 Do you see those words?
10 A. Yes.
11
12 Q. Then after that, in brackets, are the words
13 "+ Will C".
14 A. Yes, I see.
15
16 Q. Would you agree with me that the words in brackets are
17 in a different pen?
18 A. I'm not a calligrapher, but, no, I can't really see
19 that, but --
20
21 Q. Would you agree with me that those words have been
22 added to the end of the line?
23 A. I have no idea. That's my writing certainly, yes.
24 But, no, I don't know whether I used a different pen or
25 what or whether it was added later. I don't - I can't say
26 that. To me it all looks the same.
27
28 Q. It wasn't your practice, when writing your diary or
29 otherwise making file notes, to abbreviate people's
30 surnames, was it?
31 A. It depends on the - if I was making a file note,
32 I would use their names. In a matter like this, it was
33 simply a matter of jotting down something that happened.
34
35 Q. What I'm suggesting to you is that you jotted down
36 something after the event so that those words in brackets
37 "+ Will C" were added after 20 June; do you agree with
38 that?
39 A. I sort of made this little note when I got back to the
40 office on 20 June.
41
42 Q. I'm suggesting it was made later than that, in fact,
43 in September when you were asked about these events by the
44 Ombudsman; would you agree with that?
45 A. No, I would not agree with that, no.
46
47 MR POTTER: Does that need to be tendered?

1
2 MS LONERGAN: I tender the original of the 2002 diary of
3 the bishop.
4
5 THE COMMISSIONER: Just those pages, Mr Potter and
6 Ms Lonergan?
7
8 MR POTTER: Just that page.
9
10 MS LONERGAN: Yes, Commissioner, but I wouldn't suggest we
11 tear the page out. I'll tender the whole diary.
12
13 THE COMMISSIONER: I'm not going to do that. The page of
14 Bishop Malone's diary which includes 20 June 2002 will be
15 admitted and marked exhibit 106.
16
17 **EXHIBIT #106 DIARY OF BISHOP MALONE - ENTRY FOR 20/06/2002**
18
19 MR POTTER: Q. May I take you forward in time, bishop, to
20 March 2003?
21 A. Right.
22
23 Q. On 19 March 2003, you had a conversation on the
24 telephone with Mr Callinan. That conversation is referred
25 to in your longer statement at paragraph 6.2(ix), if you
26 would like to look at it?
27 A. May I look at it?
28
29 Q. Yes.
30 A. I see it. Number (ix).
31
32 Q. It is very briefly referred to there?
33 A. It is.
34
35 Q. I would ask you to expand on that conversation. What
36 I'm suggesting is that there were four things said during
37 that conversation by you to Mr Callinan. Firstly, you told
38 Mr Callinan that Father Fletcher was being stood down
39 because criminal charges against him were imminent. Do you
40 recall that?
41 A. No, I don't.
42
43 Q. Are you saying that you have a memory of that
44 conversation and you did not say that to him or that you
45 cannot recall whether you said that or not?
46 A. Well, I'm saying that, on 20 June 2002, I spoke to
47 Mr Callinan.

1
2 Q. Yes?
3 A. Yes. He seems to dispute that.
4
5 Q. He does, yes.
6 A. Yes.
7
8 Q. But I'm now asking you about 19 March 2003.
9 A. Right, the following year.
10
11 Q. Yes. I'm saying that, on that day, you had a
12 conversation on the phone with Mr Callinan?
13 A. This is to say that Jim - that Fletcher was being
14 stood aside.
15
16 Q. I'm suggesting that was one of the things you told
17 Mr Callinan on the phone on 19 March 2003?
18 A. Fine, yes.
19
20 Q. Do you have any recollection of saying that to him on
21 the phone?
22 A. It was in March, was it not, that Fletcher was stood
23 aside?
24
25 Q. I'm asking you about what you remember saying to
26 Mr Callinan on the phone?
27 A. I would have said that, yes.
28
29 Q. You would have said that?
30 A. Yes.
31
32 Q. The second thing that you said to Mr Callinan on the
33 phone on 19 March 2003, I suggest, is you told him that the
34 New South Wales Ombudsman's office was conducting an
35 inquiry into the handling of Father Fletcher in 2002?
36 A. Right.
37
38 Q. Do you remember telling Mr Callinan about that?
39 A. Possibly, yes. If I'd known that, I would have, I'm
40 sure.
41
42 Q. And that you further said to him that the Ombudsman
43 was not happy with how things had been handled in 2002.
44 A. Mmm.
45
46 Q. Do you recall telling Mr Callinan that?
47 A. Not exactly, but, yes, it is all part of the same

1 conversation.

2

3 Q. Was it true that, in March 2003, you were aware that
4 the Ombudsman was not happy with how matters relating to
5 Father Fletcher had been handled in 2002?

6 A. Yes, for sure, yes, I was.

7

8 Q. Was it also true that, at that time, there was some
9 criticism in the media of your role in dealing with Father
10 Fletcher in 2002?

11 A. Yes, I do.

12

13 Q. Is it right that, in March 2003, at the time of the
14 telephone call, you were worried that you were going to
15 come in for criticism over your decision to let Father
16 Fletcher remain as a priest in 2002?

17 A. I knew before that that I would be criticised for
18 that, yes.

19

20 Q. But at the time of this phone conversation I'm talking
21 to you about, you were aware that there was a good chance
22 that you were going to be criticised for your decision; is
23 that right?

24 A. For leaving him in place?

25

26 Q. Yes.

27 A. Yes, that had already happened. The parish was quite
28 divided through all that period.

29

30 Q. That was the second thing. The third thing you told
31 Mr Callinan in that phone call was you instructed him to
32 tell people that Father Fletcher was sick, to explain why
33 you had now decided to stand him down and he was not going
34 to be around?

35 A. I wouldn't have been that euphemistic to use
36 Father Fletcher's sickness as a reason for him not being
37 around. I mean, he was either charged or about to be
38 charged by the police.

39

40 Q. You say you wouldn't have been. What I'm suggesting
41 is that you did tell Mr Callinan, you directed him to tell
42 people that Father Fletcher was not well or that he was
43 sick?

44 A. To use that as an excuse?

45

46 Q. Yes.

47 A. No, I wouldn't have done that.

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Q. The fourth thing is that, in that conversation in March 2003, you told Mr Callinan that - you said to him that you and he had discussed Father Fletcher in June 2002?

A. Yes.

Q. Do you recall saying that to him?

A. I would have, yes.

Q. You said to Mr Callinan on the phone in March 2003 that when you had had the discussion in June 2002, you had discussed Father Fletcher continuing in his role as a parish priest and within the school?

A. No. It was on the morning of 20 June 2002 that Detective Chief Inspector Fox had come to see me to inform me that Fletcher was being charged, I think, and he advised me to stand Fletcher aside. He was quite strong in that. He said, of course, he couldn't force me to, but he strongly recommended it. So, on strength of that, I was beginning to make plans to stand Fletcher aside which were later negated, but we discussed all that last week. So, in speaking with Mr Callinan, I would have said that I'd been asked to stand Fletcher aside "but I'm not sure that I will at this point"; so that was still up in the air.

Q. What I'm suggesting to you is that, in the March 2003 conversation, you referred Mr Callinan back to what you said was the earlier conversation in June 2002 and that you said to Mr Callinan words to the effect of, "You and I discussed whether Father Fletcher should stay in the school in that earlier conversation"?

A. No, I don't know that that happened. It was simply a matter of letting Mr Callinan know the situation and my advice to him then was to be careful about allowing Fletcher to have access to the school.

Q. What I'm asking is whether, in your March 2003, telephone conversation you made any reference to Mr Callinan to that earlier conversation you say you had with him?

A. Probably, yes.

Q. That reference was the first time, I suggest to you, that you had raised this issue with Mr Callinan?

A. No, I disagree.

Q. And your reference to it in that phone conversation in

1 March 2003 was in order to try and spread responsibility
2 for your decision to let Father Fletcher remain in the
3 schools and in his role as parish priest?
4 A. Not at all. It was my call to stand or not stand
5 aside Fletcher. It wasn't Mr Callinan's call.
6
7 Q. In March 2003, as the bishop, you were in a position
8 of some power over a school principal within the Catholic
9 school system, were you not?
10 A. "Power" is not a word I would like to use - some
11 authority. The primary authority came from the Catholic
12 Schools Office and the directorate of the Catholic Schools
13 Office. I mean I had some authority over them, of course,
14 as well but I'm not one who necessarily uses that
15 authority.
16
17 Q. Is it correct to say that you ultimately controlled
18 the finances of the two schools, being St Brigid's and
19 St Mary's, in which Mr Callinan was the principal?
20 A. Through the Catholic Schools Office, yes.
21
22 Q. Would it be right to say that you as bishop would, if
23 you chose to exercise it, have the power to see that
24 Mr Callinan lost his job?
25 A. Oh, that's a bit tough. I suppose ultimately I had
26 that authority, but I'm not the sort of person who uses
27 authority like that.
28
29 Q. I'm not suggesting that you would, but I'm talking
30 about the structure of the system.
31 A. I suppose, yes.
32
33 Q. That structure, I suggest to you, made you confident
34 in March 2003, when you said to Mr Callinan, "You and
35 I discussed this last year", that he wouldn't question you
36 about that?
37 A. No, not really, no. I mean you're suggesting that
38 I've intimidated Mr Callinan and certainly I would never
39 have done that.
40
41 Q. I just want to ask you one further event, which has
42 already been touched on, which is the issue of the pastoral
43 message on 16 May 2003?
44 A. Right.
45
46 Q. I think it is part of exhibit 104 and it can be found
47 in volume 5, tab 384 at page 2. Would you like to look

1 that up?
2 A. Volume 5, yes, 384. Right.
3
4 Q. Can I take you on the first page of the message to the
5 paragraph which is third from the bottom. You've already
6 been taken to the first sentence of that paragraph, which
7 is about the New South Wales Professional Standards Office?
8 A. Yes.
9
10 Q. I want to take you to the sentence that says:
11
12 *I also consulted the Director of Catholic*
13 *Schools and the local School Principal at*
14 *the time and informed them of the*
15 *situation.*
16
17 A. Yes.
18
19 Q. The "local school principal" to whom you're referring
20 in the pastoral message dated 16 May 2003 was Mr Callinan,
21 wasn't it?
22 A. It was, yes.
23
24 Q. The "Director of Catholic Schools" was Mr Michael
25 Bowman; is that correct?
26 A. That's correct, yes.
27
28 Q. I'll suggest to you now, when you say in the pastoral
29 message that you had consulted the local school principal,
30 that was not correct; you had not in fact consulted him at
31 the time?
32 A. Maybe "informed" might have been a better word.
33 I mean, my relationship with Mr Callinan was open and
34 frank. I deal with people, you know, in a way that allows
35 them to disagree with me or whatever. Had I suggested to
36 Mr Callinan that Fletcher be stood aside at that point, he
37 would have had an opportunity to say, "I don't think that's
38 necessary" or, "Yes, I think it should happen".
39
40 Q. But your evidence earlier when I was asking you
41 questions was that the decision was yours?
42 A. It was.
43
44 Q. It was not taken in consultation with Mr Callinan -
45 you informed him?
46 A. Yes, "informed" would be a better word.
47

1 Q. As regards Mr Bowman, the most that you had said to
2 him at the time - and "at the time" I mean June 2002 - was
3 that there had been a sexual abuse allegation against a
4 priest?
5 A. Yes, I certainly said that.
6
7 Q. You didn't say to Mr Bowman the name of the priest,
8 did you?
9 A. I don't recollect that I did. I have no idea.
10
11 Q. You didn't tell Mr Bowman the nature of the
12 allegations against the priest?
13 A. Well, sexual abuse.
14
15 Q. You said you did detail the nature of the allegation?
16 A. I think so, yes.
17
18 Q. You didn't tell Mr Bowman that the allegations
19 involved a child, did you?
20 A. Sorry, involved a child?
21
22 Q. A child.
23 A. No, I don't know that I said that.
24
25 Q. And you certainly didn't seek any advice from
26 Mr Bowman about what you should do as regards
27 Father Fletcher, did you?
28 A. I don't know that I did. Perhaps "inform" might be a
29 better word there too.
30
31 Q. So the statement in the pastoral message about your
32 consultation with the director of Catholic Schools and the
33 local school principal, that, if I can I adopt one your
34 words, is in the nature of hyperbole, really, isn't it?
35 A. Only in the word "consulted" should be changed to
36 "informed".
37
38 Q. I'm suggesting that there was in fact no consultation
39 or even information of Mr Callinan at the time?
40 A. It was certainly information, yes.
41
42 MR POTTER: Would you excuse me for one moment,
43 Commissioner.
44
45 Q. I have one further question or one matter to ask you
46 about. In the next paragraph down, you say:
47

1 *Based on the advice I received and an*
2 *assessment of the potential risk ...*
3 *I decided to leave Father Fletcher in*
4 *place ...*

5
6 A. Yes.

7
8 Q. You're not suggesting there or now that you received
9 advice from Mr Callinan to that effect, are you?

10 A. No, I'm not suggesting that, no. It was my decision.

11
12 MR POTTER: That's all, Commissioner.

13
14 THE COMMISSIONER: Thank you, Mr Potter. I will adjourn
15 until 10 past 2.

16
17 **LUNCHEON ADJOURNMENT**

1 UPON RESUMPTION:

2

3 <EXAMINATION BY MR COHEN:

4

5 Q. Bishop, before the adjournment you gave some evidence.
6 I expect it is probably most fresh in your mind so I would
7 like to go to that first, if I may. Forgive me I don't
8 have the transcript, but my note of the evidence was that
9 Father McAlinden had been removed from faculty and he was,
10 in effect, confined to barracks. Is that the gist of what
11 you had to say?

12 A. I don't know about the "confined to barracks" bit.

13

14 Q. Well, the presbytery perhaps?

15 A. No, he had his faculties removed from him and, as far
16 as I know, he was living privately wherever he was living.

17

18 Q. But if it is the case that that's the apparent
19 position, if a priest in that situation doesn't cooperate,
20 no-one comes along from the diocese and grabs him by the
21 cuff and says, "Back to where you should be", do they?

22 A. No, we don't - we don't have that --

23

24 MR GYLES: I object. My concern is the status of Mr Cohen
25 in respect of asking these questions. I can understand
26 there were some matters concerning Detective Chief
27 Inspector Fox and Bishop Malone primarily concerning the
28 visit to the Braxton presbytery, to the extent there are
29 issues about that, but I would raise my concern about some
30 wider right to cross-examine on issues that you will need
31 to deal with, Commissioner, about which Detective Chief
32 Inspector Fox has, at length, given evidence and put in
33 public submissions about. That wouldn't entitle his
34 counsel to, in another forum in effect, advocate those
35 views.

36

37 THE COMMISSIONER: Thank you, Mr Gyles. Mr Cohen, is this
38 line of questioning concerning your client?

39

40 MR COHEN: It is again the difficulty with matters that
41 touch or concern such a matter. You will understand of
42 course, Commissioner, that Detective Chief Inspector Fox
43 had quite a significant interchange with Bishop Malone
44 about the issues in relation to Father Fletcher.

45

46 THE COMMISSIONER: Yes.

47

1 MR COHEN: But it is also the case that this relevant
2 inquiry is about the conduct of Father McAlinden and it is
3 my submission that such a question, albeit apparently not
4 regarded by my learned friend Mr Gyles to be innocuous,
5 nonetheless, is a question that goes to this general
6 proposition of the conduct of McAlinden and Fletcher in and
7 about their position in the diocese. I was simply inviting
8 the bishop to comment in that respect; that is to say, the
9 ostensible does not necessarily become the real. That's
10 point of the question. It seems to me that that must be of
11 assistance to you, Commissioner, but I can't take it any
12 further than that.

13
14 As to the limits upon which I can cross-examine or
15 not, those can't be a bright line, as would seem to be
16 implicit in what was motivating my friend to object.

17
18 THE COMMISSIONER: Doubtless, I would anticipate that the
19 witness will say something to the effect that it happened
20 so rarely or in his experience that he wouldn't really know
21 what happens. Anyway, I will permit you to see whether
22 that's the response.

23
24 MR COHEN: Q. Bishop, you almost gave an answer before
25 the objection, I think; is that right?
26 A. I started to say something, but I forget the question
27 and answer.

28
29 Q. The question is this one: having regard to your
30 evidence about what was the ostensible position with
31 respect to Father McAlinden, it was the fact, was it not,
32 that if he, as he chose to do, declined to observe the
33 spirit as well as the law of what had transpired with
34 respect to him --

35 A. Yes.

36
37 Q. -- nobody came along and felt his collar and said,
38 "Back to where you should be", did they, from the diocese?

39 A. Not in terms of location, no. It was --

40
41 Q. On any basis?

42 A. An exchange of letters was happening.

43
44 Q. That exchange of letters didn't have much in the way
45 of teeth, did it?

46 A. Not a huge amount.

47

1 Q. No teeth; it was completely toothless, wasn't it?

2

3 MR GYLES: I object. I object to this line of
4 questioning. We know when the diocese became aware of the
5 conduct of McAlinden in the Philippines, they did take
6 steps and they received assurances that he would not be
7 continuing to do what he was doing. It is entirely
8 improper and wrong to put a question on the assumption that
9 nothing was done.

10

11 MR COHEN: I didn't put it on that basis.

12

13 MR HARBEN: Can I join the objection. My learned friend
14 Mr Cohen is now seeking to become a general interrogator.
15 When I cross-examined his client, I confined that
16 cross-examination to two discrete areas, and it could only
17 be those areas that raise conflict in the evidence, if you
18 like, that he would be, in my submission, entitled to
19 address.

20

21 THE COMMISSIONER: Mr Cohen, whether or not it is
22 toothless, we know the efforts that were being made and we
23 know the bishop's level of confidence at the time that
24 those efforts were being made. Do you have another area to
25 ask the bishop about?

26

27 MR COHEN: I certainly do.

28

29 Q. In the lead-up to the discussion you had, bishop, with
30 Detective Chief Inspector Fox on 20 June 2002, there were a
31 number of events that occurred that informed your
32 understanding by 20 June 2002 about the affairs and conduct
33 of Father Fletcher. That's so, isn't it?

34

A. Yes.

35

36 Q. One of those elements was the material concerning
37 [AH]; that's correct to say, isn't it?

38

A. Hang on a second - yes.

39

40 Q. Initially, that material that you were provided in
41 respect of the circumstances of [AH] came from [BI]; that's
42 so?

43

A. Correct, yes.

44

45 Q. My purpose is to set the scene for the discussion with
46 DCI Fox in June of that year, but the highest that was
47 accorded to this information about [AH]'s allegations was

1 scepticism, wasn't it, prior to 20 June 2002?

2 A. Yes, yes, it was.

3

4 Q. Having regard to your evidence of last Friday, and I'm
5 sorry I can't take you directly to the transcript, the gist
6 of it was that there was inertia from some parts of the
7 diocese against moving against some of these allegations;
8 that's so, isn't it?

9 A. Can I ask you to explain that?

10

11 MR GYLES: I found it very hard to hear that question.

12

13 MR COHEN: I thought I was speaking straight into the
14 microphone. I beg your pardon.

15

16 Q. Allow me to repeat it, Bishop Malone.

17 A. Thank you..

18

19 Q. The situation was that, in the lead-up to this
20 discussion with DCI Fox, the circumstance, having regard to
21 your evidence of last Friday about, "I understand, I think
22 it is a fair label to put on it, the inertia of some people
23 in the diocese", there was not a cultural inclination
24 towards reporting and dealing directly with such matters,
25 was there? .

26

27 MR GYLES: I object. That is not a fair representation
28 of the evidence on Friday. That wasn't put as in the
29 period leading up to the bishop's trip to Branxton. It is
30 very unspecific, in any event.

31

32 THE COMMISSIONER: Who is the inertia from, Mr Cohen? On
33 whose part is there inertia?

34

35 MR COHEN: Q. You indicated last Friday, did you not -
36 I'm using the phrase "inertia" to illustrate a concept.
37 You put it last Friday, in evidence you gave in response to
38 questions from Ms Lonergan of senior counsel, did you not,
39 that you experienced if not inertia - my term - a certain
40 resistance from people in the diocese towards the quick and
41 direct and clear revealing of such abuse publicly; is that
42 right?

43 A. Yes, a moment ago the word we used was "scepticism"
44 around the allegations against Fletcher and I'd stand by
45 that. There was scepticism. If that's what you mean by
46 "inertia", then I would say yes.

47

1 Q. Again, leading up to this point in 2002, in June of
2 2002 when you were confronting what was being put to you by
3 DCI Fox, there was, indeed, a cultural disinclination
4 within the diocese to confront such matters, was there not?
5

6 MR BARAN: I object to that if it is going to extend to
7 the Professional Standards Office. That's, technically
8 speaking, part of this entire process and part of the
9 institution even though it is an independent office. If it
10 is going to extent to my client it should be far more
11 specific.
12

13 THE COMMISSIONER: You're saying, Mr Baran, that your
14 client has a cultural disposition to that very area?
15

16 MR BARAN: That's right.
17

18 THE COMMISSIONER: Mr Cohen, are you prepared to exempt
19 Mr Baran's client from that?
20

21 MR COHEN: Perhaps pro tem, Commissioner. For the
22 purpose of the question, I thought I had. I said "within
23 the diocese" and I'm not sure I understood that the PSO was
24 an integrated part of the diocese, but if that's so,
25 I stand corrected.
26

27 MS LONERGAN: I apprehended the question said, "in this
28 diocese" at the end, in which case my understanding is that
29 the PSO could not be included in the question.
30

31 MR COHEN: That's indeed what I thought.
32

33 THE COMMISSIONER: You're probably right, Mr Cohen, but
34 Mr Gyles might object.
35

36 MR GYLES: I object to the question. My objection to the
37 question is: is my learned friend talking about the period
38 after the allegation was reported to him and he travelled
39 to Branxton or --
40

41 MR COHEN: Q. I'm sorry. To make it clear, I thought
42 I had prefaced the question "in the lead-up to the
43 conversation wherein you had to confront what was put to
44 you by Detective Chief Inspector Fox". I'm sorry if
45 I didn't make it abundantly clear, but what I mean is up to
46 and including the period of time that finished at 20 June
47 2002. I apprehend that addresses Mr Gyles concerns, but do

1 you have the question in the way I intended it?

2 A. No, I --

3

4 MR GYLES: I do apologise. Is my learned friend talking
5 about the period - does the question relate to the period
6 between Bishop Malone being notified of the Fox allegation,
7 in the way that we know that he was, and him having his
8 meeting with Detective Chief Inspector Fox, or is it
9 intending to lead to an earlier period?

10

11 THE COMMISSIONER: I believe it is up to the trip to
12 Branxton. Is that right?

13

14 MR COHEN: Yes, that's so. Clearly it can only relate to
15 the bishop's experiences as and from the time he became
16 bishop, which means, I apprehend, November of 1995 and
17 onwards, up to this point in 2002. That's a seven-year
18 period. Maybe allow me to put this question, Commissioner.

19

20 Q. Bishop, in the period from when you commenced your
21 episcopacy and the time of having this meeting with
22 Detective Chief Inspector Fox in June of 2002, there was
23 enough time for you to come to an understanding of what the
24 cultural facets of the diocese were, what made it tick, so
25 to speak; is that a fair question?

26 A. To some degree, I suppose, yes.

27

28 Q. Against that background knowledge that you had, over
29 that seven years up to this point in time in June 2002, it
30 is fair to say, is it not, that there was then within the
31 diocese at this time - that is, when you were speaking to
32 DCI Fox - a cultural disinclination to reveal such matters
33 or report them to the police; that's so, isn't it?

34

35 MR GYLES: I object. My learned friend's questions relate
36 to the Fletcher investigation. You need to concern
37 yourself, Commissioner, with whether, during the course of
38 the Fletcher investigation, there was hindrance, assistance
39 or otherwise with respect to the police investigations by
40 church officials.

41

42 THE COMMISSIONER: Yes.

43

44 MR GYLES: The period before the Fletcher investigation
45 commenced can be of no relevance on the matters that are
46 relevant to this inquiry. They may be relevant to the
47 Royal Commission. There is a line of demarcation.

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THE COMMISSIONER: There is a bit of an overlap, Mr Gyles, with the McAlinden investigation which tends to take it back a bit before Fletcher. Indeed, it takes in all of that early period of the bishop's episcopacy.

MR GYLES: I don't take issue with that. My concern is that the interests that Mr Cohen has cannot be related to that. His issue is in relation to the Fletcher matter. You would appreciate that we've spent a great deal of time dealing with the McAlinden issues. A number of people have asked questions about it. It has been well covered. Again, it is a matter for you, Commissioner.

MR COHEN: I believe my friend and I are at cross-purposes. I thought I had settled the ground for the purposes of finding out what, if any, cultural inclination or disinclination was. I understood from my question that I framed it so it was focused upon the time at June 2002; that is to say, having regard to what the bishop understood to be this concept, what its effect was at that time. That was my intention in the question. It certainly isn't intended to be a freestanding wide-ranging inquiry about McAlinden.

THE COMMISSIONER: I will permit you to ask the question, Mr Cohen, on the basis that any cultural inclination or disinclination that arose with regard to McAlinden might also have affected responses to the Fletcher investigation.

MR COHEN: Thank you, Commissioner. I certainly intended it to be understood by the bishop, in appreciating my question, that these were cultural issues that informed some of the judgments he made.

Q. That must be right, must it not, Bishop Malone, that the cultural issues that arose in the diocese presumably had some effect and helped you to form your views? You had regard to them, I take it.

A. I'm a bit unsure what you mean by "cultural issues".

Q. Let me be fair to you. Any organisation, you'd accept, I take it, has a culture about it?

A. Sure, it does.

Q. It's made up of people rather than institutions?

A. Yes.

1
2 Q. Those people conduct themselves in a certain way and
3 have certain pattern of behaviour?
4 A. Yes.
5
6 Q. Those patterns of behaviour tend to be unique to the
7 institution; is that a fair summary?
8 A. I would agree with that, yes.
9
10 Q. Having regard to that view, presumably you identified
11 in your mind certainly cultural attributes or facets of the
12 Maitland-Newcastle diocese once you became its bishop and
13 once you got to know what made it tick from day to day; is
14 that a fair comment?
15 A. Yes, I was coping - trying to cope with that, yes.
16
17 Q. Presumably, it was different in Maitland-Newcastle
18 than, from, say, I believe your previous diocese where you
19 were a parish priest, which was Broken Bay; is that
20 correct?
21 A. Correct, that's right, yes.
22
23 Q. Should the Commissioner understand no two dioceses are
24 ever alike?
25 A. That's true.
26
27 Q. They're like snowflakes; they have different
28 interstitial patterns about them?
29 A. Different shapes, yes.
30
31 Q. My question was: in respect of Maitland-Newcastle,
32 at this time in 2002, was the case that there was a
33 tendency to circle the wagons with the guns pointed out?
34 A. It's probably a little strong to say that. You know,
35 I've testified before, last week particularly, that my
36 response to matters of sexual abuse was a kind of a growing
37 awareness - I think that was the phrase I used - and that a
38 applied too with the Fletcher matter. This was an
39 allegation against a priest that came out of left field, so
40 we needed to cope with that as was appropriate at the time.
41
42 Q. Having set up that background information now,
43 I propose, bishop, to take you to the particulars of the
44 conversation you had with DCI Fox on 20 June 2002?
45 A. Yes.
46
47 Q. What I need to do is, I'm afraid, somewhat

1 laboriously, in a cumbersome way, and in a way that you've
2 identified some of these procedures can be, is I need to
3 put the conversation to you and I propose to do that now.
4 At the threshold, it is a correct understanding of the
5 events of that day, is it not, that DCI Fox attended upon
6 you at the diocese offices?

7 A. Correct, yes.

8

9 Q. He was in the company of then Detective Senior
10 Constable Joy?

11 A. He certainly had someone with him. I've forgotten her
12 name, but, yes.

13

14 Q. You recall it was certainly a woman, don't you?

15 A. I do, I do.

16

17 Q. You were in the company of your vicar general,
18 Father Saunders; is that correct?

19 A. That's correct, yes.

20

21 Q. It was the four of you in the circumstances of this
22 meeting, I take it, in your study or office?

23 A. That's correct.

24

25 Q. When you gathered, you four, it was DCI Fox who said
26 in the first instance:

27

28 *As you are aware I am investigating sexual*
29 *abuse allegations made by [AH] against*
30 *Father Fletcher of Branxton.*

31

32 A. Yes.

33

34 Q. Your response was:

35

36 *Yes this is a very difficult situation.*
37 *I have offered the church's support to both*
38 *[AH]'s parents. You know [BI] works for us*
39 *here at the diocese office?*

40

41 A. Yes.

42

43 Q. That was said, wasn't it?

44 A. I think so, yes. It sounds accurate.

45

46 Q. DCI Fox responded to that proposition, "Yes"?

47 A. Yes.

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Q. You went on to say:

That is how I learned of this matter. [BI] came to me when he became aware that [AH] had gone to the Police with his allegation. He felt that it was his duty to inform me of the matter. I understand it is a very difficult situation for him here whilst at the same time being the father of a young man who has made this allegation. I have offered him and his family the church's full support.

You said that, didn't you?

A. I think so, yes.

Q. DCI Fox responded:

Other than to say that I am investigating sexual abuse allegations against Father Fletcher I am not able to disclose any specifics of the allegations.

That was the position he put to you, wasn't it?

A. Yes, I think so, yes.

MR HARBEN: Could I just clarify - it may be obvious in the way the questions are being asked - as to whether the witness is being asked to identify the words read out to him as being the exact questions and the exact answers in that form or whether he is being asked whether he has a recollection of that fact. It is unclear. The witness is listening to the content of a long answer, for example, and giving some general reply. I think in fairness to everybody --

THE COMMISSIONER: That's a fair point, Mr Cohen.

MR COHEN: I'm not sure I can understand how there can be any misunderstanding. When I put the passage, I then say, "That was said, was it not, or words to the effect?" I'm not sure I understand see how that can be misconstrued.

THE COMMISSIONER: I think you must, in view of the evidence as to when these notes were made, add "words to that effect", Mr Cohen.

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MR COHEN: I thought I had. I am so sorry, Commissioner.

MR HARBEN: I did not hear those words and if my learned friend said that, I have no reason to object. My point is whether it is being put to him that those were the exact words. If it is "words to that effect", then I don't object.

MR COHEN: I had understood that I had said that.

Q. So you're not misled, bishop, I'm putting to you a transcript of a conversation and I'm inviting you to accept or reject what I'm putting as accurate?

A. I'm in agreement with you so far, Mr Cohen.

Q. I'm delighted, bishop, thank you. Your response to the last proposition by DCI Fox, which was, "I can't disclose specifics", was, "Yes, I understand that. You must do your job of course." That was also said, was it not?

A. Yes, I would agree with that.

Q. And DCI Fox then went on to say:

*Have you ever had concerns about
Father Fletcher prior to this incident?*

Your response was:

No, not before [BI] approached me.

That was said, wasn't it?

A. I have issue with that. That's DCI Fox's recollection of that conversation. It wasn't mine. I say that because I made a statement then to DCI Fox the following year.

Q. In May of 2003?

A. Correct, yes - and the statement begins by naming some people who had in fact spoken to me about Fletcher prior to these events. For me to say no, that I had no knowledge would have been wrong. Therefore, I'm suggesting that DCI Fox asked me that question at the beginning of my making a statement at the police station the following year.

Q. Let me put this proposition to you - I'll repeat what

1 Detective Chief Inspector Fox has recorded and then put a
2 proposition to you.
3 A. Right.
4
5 Q. I put it to you that he said to you --.
6
7 MR HARBEN: Could I ask whether the witness could be shown
8 this document. It is very difficult to be remembering a
9 long question and long answer.
10
11 MR COHEN: It is exhibit 49, Commissioner.
12
13 MS LONERGAN: I agree with that, Commissioner.
14
15 MR COHEN: I'm not sure, Commissioner, whether that robs
16 you of the opportunity to follow the text of this.
17
18 THE COMMISSIONER: No, I have it here, Mr Cohen.
19
20 MR COHEN: Q. Bishop, would it assist you to have an
21 opportunity, because it is a lengthy document, to read it
22 first and then me return to the questions?
23 A. I have seen this document.
24
25 Q. Yes, indeed, but what I'm asking you now is: would it
26 assist you now, as you sit in the witness box, to have
27 another opportunity to reread the document and then I'll
28 continue with the questions or should I press on?
29 A. No, no, I'm happy for you to go on, thank you.
30
31 Q. Very well. Do you see on page 1, at about not quite
32 halfway down is the reference to yourself saying, "No, not
33 before [BI] approached me"?
34 A. Yes, I see that.
35
36 Q. I understand that you debate the accuracy of that,
37 I understand your evidence. Can I ask you in respect of
38 that proposition, is it not the case that [BI] approached
39 you, as I understand your evidence, in about January of
40 2001?
41 A. Oh, yes. No, that happened, certainly, yes.
42
43 Q. Having regard to that, "not before [BI] approached me"
44 could indeed, and must on that evidence, refer to material
45 that was provided to you some 17 months prior, must it not?
46 A. Not necessarily, no. There was another person who
47 came forward prior to [BI] speaking with me in 2001.

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Q. Also January 2001?

A. I don't know. It's in my police statement. I don't know that I'd put a date on it, but I think I put something in a file note in my file about that particular information that was given to me, which I followed up. I'm inclined to think, Mr Cohen, that this really does refer to my statement and the beginning of the statement rather than the conversation.

Q. I understand your position, thank you. I'll press on. The next proposition I'm putting to you is that DCI Fox said to you:

I have learned through [BJ] that you met with Father Fletcher to discuss this allegation.

A. Yes.

Q. Do you accept that?

A. I do.

Q. And your response was:

Yes, I telephoned her after my meeting with Father Fletcher to offer my sympathy and the church's assistance through any difficult times ahead. She welcomed my offer of support and the church will be organising some counselling for her.

That was said in those terms, was it not?

A. I understand that was accurate.

Q. Detective Chief Inspector Fox went on to say:

I am pleased to hear that, however I am more concerned about the actual meeting with Father Fletcher.

Your reply - and again I'm asking you to either except accept or reject it - I put to you, was this:

The church must be concerned for all parties involved. Father Jim was offered our support as well. He has not been a

1 *well man. He suffered a stroke a number of*
2 *years ago and I spoke to him about this and*
3 *asked how he was going. I have put him in*
4 *touch with some fellow priests for support*
5 *through this time.*

6
7 A. Yes.

8
9 Q. You said as much, didn't you?

10 A. Yes, I agree with that.

11
12 Q. Pausing there, can you enlighten the Commissioner as
13 to who the fellow priests were?

14 A. Certainly I discussed all of this matter with my vicar
15 general at the time, Father James Saunders.

16
17 Q. Who was there with you at the time?

18 A. He was, yes. Father Bill Burston was also available
19 for some kind of advice through this and I think, for a
20 period of time, around about this time, both Father
21 Bill Burston and Father James Saunders were
22 co-vicars-general together. The other was Father Des
23 Harrigan, a personal friend to Fletcher.

24
25 Q. Am I right in understanding - if I just pause there -
26 apart from Father Harrigan - or perhaps including him but
27 certainly as I understand, apart from Father Harrigan - all
28 those other gentleman, all those other priests, were
29 senior members of the diocese and advisers to you?

30 A. Yes.

31
32 Q. They would be in the old days consultors; is that
33 right?

34 A. I didn't speak to them as consultors, but simply as my
35 advisers who were close to hand.

36
37 Q. But at that level of seniority?

38 A. Oh, yes.

39
40 Q. Is that a way of understanding it?

41 A. Yes, for sure.

42
43 Q. If I may return to exhibit 49, Detective Chief
44 Inspector Fox went on to say to you:

45
46 *What did he say to you in regard to the*
47 *allegation that he had sexually abused*

1 [AH]?

2

3 Your response was:

4

5 *Very little other than to deny the*
6 *allegation. I don't know much of the*
7 *allegation myself and we did not go into*
8 *detail about it.*

9

10 A. Yes.

11

12 Q. You said as much, didn't you?

13 A. I would say so, yes.

14

15 Q. Detective Chief Inspector Fox said to you:

16

17 *Did you tell him that the matter had been*
18 *reported to the police and there was an*
19 *investigation?*

20

21 And this now is over the page. Your response was:

22

23 *Yes. This was only done because of our*
24 *concern for his welfare.*

25

26 A. Yes.

27

28 Q. Do you recall?

29 A. I do.

30

31 Q. That was said, was it not?

32 A. I think so, yes.

33

34 Q. Detective Chief Inspector Fox went on to say to you:

35

36 *That may be so, but you have by your*
37 *actions alerted Father Fletcher to what is*
38 *going on. The element of surprise is a*
39 *legitimate investigative tool and your*
40 *visit has effectively negated any advantage*
41 *we had in that regard.*

42

43 Your response, I put it to you, was:

44

45 *I am sorry but that was not our intention.*

46

47 Those word were said, weren't they?

1 A. I think so, yes.

2

3 Q. At this point - I'll ask you to have regard to your
4 recollection - the record is that - is it Monsignor
5 Saunders or Father Saunders?

6 A. No, he was Father sunders.

7

8 Q. I should say this is because all of this conversation
9 was in the immediate hearing, not just of yourself and
10 Detective Chief Inspector Fox, but Father Saunders and
11 Detective Senior Constable Joy; that's so, isn't it?

12 A. It was so.

13

14 Q. There was no point where any of the four disappeared
15 from the room?

16 A. No, there wasn't, no.

17

18 Q. Father Saunders said:

19

20 *We were concerned about the police arriving*
21 *on his doorstep and taking him without*
22 *anyone knowing. He is not very well and*
23 *this would have a very bad effect on his*
24 *health. You have to understand he has been*
25 *a very ill man.*

26

27 At which point Detective Chief Inspector Fox responded:

28

29 *We are not like the Gestapo arriving in the*
30 *middle of the night and dragging him off to*
31 *a cell somewhere. That is not how we do*
32 *things. I am aware of his poor health and*
33 *something like that would not have*
34 *occurred. It was and remains my intention*
35 *to contact this office or someone within*
36 *the church when it is time to speak to*
37 *Father Fletcher to arrange support for him.*
38 *I would welcome someone being present when*
39 *I speak to him and that is a mandatory*
40 *option open to him. However, this may not*
41 *occur for some time yet.*

42

43 Those words were spoken, weren't they?

44 A. Yes, I remember those, yes.

45

46 Q. It was the case that that's how it occurred, wasn't
47 it?

1 A. It was.
2
3 Q. Then you rejoined the conversation by saying:
4
5 *So will you let us know when you go to*
6 *speak with Father Fletcher?*
7
8 DCI Fox said, "Yes"?
9 A. Yes.
10
11 Q. Do you recall at this point Father Saunders said a
12 prayer?
13 A. No, I don't, no.
14
15 Q. But it is likely he did, I take it?
16
17 MR HARBEN: I object to that. On what basis could that be
18 put? There's no basis for that proposition.
19
20 MR COHEN: I was not about to say it was unlikely,
21 Commissioner, but I can if my friend wants to.
22
23 THE COMMISSIONER: The bishop can't recall, Mr Cohen.
24
25 MR COHEN: If the Commission pleases.
26
27 THE COMMISSIONER: It doesn't assist.
28
29 MR COHEN: Q. Bishop Malone, in any event, next in the
30 conversation you were the next to speak:
31
32 *Do you know when that might be?*
33
34 DCI Fox responded:
35
36 *We have a lot to do first.*
37
38 I should identify there's a spelling error there clearly.
39 Well, do you recall Detective Chief Inspector Fox saying
40 "We have a lots to do first"?
41 A. Not "a lots", no.
42
43 Q. Very well.
44 A. I'm happy to say there's a typo there.
45
46 Q. The conversation was:
47

1 *We have a lot to do first. I would not*
2 *expect that to happen for some weeks or*
3 *even months. I assure you that we will*
4 *make some contact with the church around*
5 *that time so that we can deal with*
6 *Father Fletcher in as compassionate a*
7 *manner as possible.*

8
9 A. Mmm-hmm.

10
11 Q. Your response:

12
13 *I thank you for that.*

14
15 A. Yes.

16
17 Q. That conversation occurred, didn't it?

18 A. Yes, I'm happy to agree with that.

19
20 Q. Then Detective Chief Inspector Fox put this to you:

21
22 *Had you approached the Police Service or*
23 *myself before speaking to Father Fletcher,*
24 *this would have been explained to you.*
25 *Unfortunately, you didn't give us that*
26 *opportunity. I would have preferred you*
27 *speak to me before you did anything and*
28 *I could have explained all of this.*

29
30 And your response was:

31
32 *We were just trying to act in the best*
33 *interests for all concerned.*

34
35 A. Yes.

36
37 Q. You understood then, didn't you, that DCI Fox was
38 saying that if you'd spoken with him or someone from the
39 Police Service first, you wouldn't have made the error of
40 disclosing these things to Father Fletcher?

41 A. Yes.

42
43 Q. That's right, isn't it?

44 A. That's how I understood his words, yes.

45
46 Q. Then DCI Fox went on to say to you:

1 *In your conversation was Father Fletcher*
2 *aware of a Police Investigation before you*
3 *raised the subject with him?*

4
5 Your response:

6
7 *No. I don't believe so.*

8
9 Do you accept those words?

10 A. I do.

11
12 Q. And:

13
14 *In view of that would it not have been*
15 *wiser to not mention the investigation to*
16 *him?*

17
18 Your response was, in the manner of a question:

19
20 *Sorry?*

21
22 Do you accept that?

23 A. I do.

24
25 Q. DCI Fox said:

26
27 *If you had not told him there was a Police*
28 *Investigation he may not have been upset or*
29 *distressed and therefore negate any need*
30 *for concern over his welfare in the first*
31 *place?*

32
33 A. Mmm-hmm.

34
35 Q. Your reply:

36
37 *I see what you mean. I did not mean for*
38 *that to occur, our concern was for his*
39 *welfare.*

40
41 A. Yes.

42
43 Q. That was said, wasn't it?

44 A. I believe so, yes.

45
46 Q. Detective Chief Inspector Fox went on to say:

47

1 Yes but that also had the effect of telling
2 Father Fletcher that there was a police
3 investigation. If someone like
4 Richard Carleton was to interview you,
5 I doubt that he would be as accepting of
6 that explanation. It could be suggested
7 that the purpose of your visit had the
8 effect of warning Father Fletcher. Having
9 been forewarned, he then had the
10 opportunity to get his story sorted out
11 before the Police arrived to speak to him.

12
13 Your response:

14
15 I hope no-one would view it that way. That
16 was not our intention.

17
18 Those words were spoken, weren't they?

19 A. Yes, I'm happy to accept that.

20
21 Q. Detective Chief Inspector Fox went on to say:

22
23 I understand what you're saying but can you
24 understand that this could be the
25 perception?

26
27 Your response:

28
29 I am sorry if that is how it is viewed.

30
31 Do you accept those words?

32 A. Yes, I do.

33
34 Q. Detective Chief Inspector Fox then said:

35
36 I will probably need to get a statement
37 from you at some stage in relation to your
38 conversation with Father Fletcher.
39 Whatever he told you is admissible at court
40 and may have to be given in evidence.

41
42 You replied:

43
44 I understand and am happy to do that. Just
45 contact me when you need that to happen.

46
47 You accept that?

1 A. I do.
2
3 Q. I take it by virtue of the fact that that's what
4 occurred, is it not, in May of 2003?
5 A. That's correct, yes.
6
7 Q. Detective Chief Inspector Fox said:
8
9 *Thank you. Just before we finish I would*
10 *like to discuss with you what is to occur*
11 *with Father Fletcher whilst this*
12 *investigation continues.*
13
14 Your reply:
15
16 *I was going to ask him to take a period of*
17 *leave.*
18
19 Those words were spoken?
20 A. I think so, yes.
21
22 Q. Detective Chief Inspector Fox replied:
23
24 *I would ask that the church give*
25 *consideration to removing Father Fletcher*
26 *from his position until we resolve what is*
27 *to occur.*
28
29 Allow me to pause there. First, that was said, wasn't it?
30 A. I think so, yes.
31
32 Q. And you had a clear understanding that, while he was
33 being respectful and deferential in his language, you
34 understood he meant, "Stand him down. That's what we
35 want"?
36 A. I did, yes.
37
38 Q. That was your clear understanding, wasn't it?
39 A. It was clear, yes.
40
41 Q. If I can return to the narrative, you went on to
42 inquire of Detective Chief Inspector Fox:
43
44 *As I said earlier this could be a matter of*
45 *months. I cannot put a time on it at this*
46 *stage.*
47

1 Then you inquired of Detective Chief Inspector Fox:

2

3 *Do you have concerns for other persons?*

4

5 Detective Chief Inspector Fox said in reply:

6

7 *I don't have any information that he is*
8 *committing any offences at the present*
9 *time. The allegations I am investigating*
10 *are very serious and relate to when this*
11 *complainant was a child. There may not be*
12 *any further complaints now, but how would*
13 *you feel if another incident arises during*
14 *our investigation? Sometimes there is just*
15 *the one victim, but we know from incidents*
16 *like Vince Ryan that there are often many*
17 *victims.*

18

19 Excuse me. I'm sorry, bishop, I think I have gone too far
20 ahead. Allow me to withdraw that question, Commissioner,
21 and approach it in this way.

22

23 I'm sorry, I'll start again. I went slightly off
24 track. Allow me to correct it and approach it this way:
25 I'll repeat two short sentences and inquire of you if they
26 were said. You said to Detective Chief Inspector Fox:

27

28 *How long would you expect that to take?*

29

30 DCI Fox said:

31

32 *As I said earlier this could be a matter of*
33 *months. I cannot put a time on it at this*
34 *stage.*

35

36 That was said, was it not?

37

38 A. I think so, yes.

39

40 Q. You said to DCI Fox:

41

42 *Do you have concerns for other persons?*

43

44 And his reply:

45

46 *I don't have any information that he's*
47 *committing any offences at the present*
time. The allegations I am investigating

1 *are very serious and relate to when this*
2 *complainant was a child. There may not be*
3 *any further complaints now but how would*
4 *you feel if another incident arises during*
5 *our investigation?*

6
7 If I may pause there, that much was said, was it not?

8 A. Yes, I think so.

9
10 Q. I understand you must do the best you can and having
11 regard to the fact that this conversation is now as much as
12 11 years ago --

13 A. Sure, yes.

14
15 Q. -- but you accept that those were the words used,
16 don't you?

17 A. I'm happy to accept them.

18
19 Q. DCI Fox went on to say:

20
21 *Sometimes there is just the one victim but*
22 *we know from incidents like Vince Ryan*
23 *that there is often many victims. I am*
24 *concerned in that respect. I know*
25 *Father Fletcher is still in the Branxton*
26 *Parish and as such, has contact with the*
27 *Catholic School there and probably other*
28 *children's groups. I would feel better*
29 *[if] --*

30
31 There's another typographical error, I pause to say.

32
33 *.. [if] he was removed from the parish and*
34 *placed into an office role here at the*
35 *diocese or somewhere else where he would*
36 *have a minimum of contact with children.*

37
38 Q. Those words were spoken to you by Detective Chief
39 Inspector Fox?

40 A. I think so, yes.

41
42 Q. You were saying you feel he should be relieved of his
43 position. That is to say, you said those word, to which
44 DCI Fox replied:

45
46 *I would. I cannot force you to do that.*
47 *I don't have that power but I would*

1 *strongly suggest it to you. Ultimately it*
2 *is a decision for you and the church to*
3 *consider.*

4
5 Those words were spoken?

6 A. I accept that, yes.

7
8 Q. You responded:

9
10 *There is a presumption of innocence until*
11 *proven guilty.*

12
13 Did you not?

14 A. Yes, I did say that.

15
16 Q. Were you advised that that was the position by any
17 particular person?

18 A. I don't think so, no. At this stage, the meeting with
19 Detective Chief Inspector Fox was all about standing
20 Fletcher aside from ministry and also him expressing his
21 disappointment that I had been out to see Fletcher and
22 warned him about things. I don't recollect seeking any
23 advice at that point.

24
25 Q. Is it just your personal knowledge about the concept
26 of the presumption of innocence in these circumstances or
27 were you told that by some third person?

28 A. No, I understood it; it is a fairly basic platform in
29 the Westminster law.

30
31 Q. But, in the circumstances of this priest not being
32 stood aside, you were saying "There is a presumption of
33 innocence until proven guilty." Is that something that
34 just was conceptually familiar to you or had somebody said
35 to you, "Bishop, in these circumstances, the presumption
36 must be that there's a presumption of innocence"?

37 A. No, a person had not said that to me. It came from
38 within my own head.

39
40 Q. Then Detective Chief Inspector Fox said to you:

41
42 *Absolutely, but there is also a duty of*
43 *care to the community and your parish.*
44 *I would hate for something adverse to occur*
45 *whilst this matter is still being examined.*
46 *I can tell you that I have charged a Police*
47 *Officer for a sexual offence and he was*

1 *removed from general policing duties in the*
2 *community and confined to a station until*
3 *the matter was resolved in court.*

4
5 Do you recall those words?

6 A. I think so.

7
8 Q. He - that is DCI Fox - went on to say:

9
10 *I have also charged school teachers with*
11 *sexual offences and the Department of*
12 *Education in each case removed them to the*
13 *District Head Office to perform*
14 *administration duties away from children*
15 *until it was resolved.*

16
17 Do you recall those words?

18 A. Yes, I think so.

19
20 Q. They were said in that way, weren't they?

21 A. I think so.

22
23 Q. He concluded his remarks by saying:

24
25 *These are standard practices for most*
26 *government departments. On each of those*
27 *occasions there was a presumption of*
28 *innocence but the safety and welfare of the*
29 *community had to take precedence. I can*
30 *only ask you to consider doing the same.*

31
32 Your response was:

33
34 *Very well.*

35
36 That's where the business of the meeting concluded, is it
37 not?

38 A. Pretty well, yes.

39
40 Q. Apart from the usual pleasantries on departure?

41 A. Pleasantries, "thanks for coming", yes.

42
43 Q. "Call again"?

44 A. So to speak.

45
46 Q. You indicate in your further supplementary statement
47 which is exhibit 86 - do you have that handy in the witness

1 box?

2 A. I do. Yes.

3

4 Q. You have indicated in paragraphs 1.1 and 1.2, the
5 subparagraphs of paragraph 1 on the front page of that
6 document, that you visited Father Fletcher after receiving
7 information with respect to the alleged abuse of [AH], from
8 two sources?

9 A. Yes.

10

11 Q. First from [BI] and then from Detective Inspector
12 Peter Fox?

13 A. Yes.

14

15 Q. You then go on to say:

16

17 *I believed in visiting Fletcher that the*
18 *Towards Healing document provided that when*
19 *an allegation was made against a Priest the*
20 *Priest should be informed of the allegation*
21 *as soon as possible.*

22

23 That belief, was that a consequence of reading the document
24 or an understanding provided to you by some third person?

25 A. No, I had read the document, yes.

26

27 Q. Did you apprehend that you had some sort of discretion
28 about just which of its terms, if any, you could apply or
29 depart from?

30 A. As I go on to say, it was a mistaken reading of the
31 Towards Healing document and that would have been the 2000
32 version, iteration.

33

34 Q. You accept you didn't mention anything about the
35 Towards Healing document in your discussion with DCI Fox on
36 20 June?

37 A. No, I don't. No, I don't think so.

38

39 Q. There was no explanation given to him about your
40 underlying conceptual motivation for the way you were
41 approaching these things, was there?

42 A. I don't think that came up, no.

43

44 Q. In paragraph 1.3 of your statement in exhibit 86, you
45 go on to say:

46

47 *To understand my visit to Father Fletcher*

1 *you need to understand the relationship*
2 *between a Bishop and his Priests.*

3
4 You didn't inform DCI Fox about that issue either, did you?

5 A. No, I didn't, no.

6
7 Q. You didn't say to DCI Fox that you hoped to obtain
8 admissions from Fletcher, did you?

9 A. I can't recollect whether I did say that to him or
10 not.

11
12 Q. You accept that he hasn't recorded that as a
13 proposition you enunciated to him?

14 A. It is not in that document that we've just gone
15 through, no.

16
17 Q. Did you make a lengthy file note at the time of the
18 meeting on 20 June 2002?

19 A. With Detective --

20
21 Q. With Detective Chief Inspector Fox?

22 A. No, I did not, no.

23
24 Q. You told the Commissioner last week in evidence - for
25 the Commissioner's benefit and those at the Bar table the
26 reference is transcript page 928, that's a transcript of
27 11 July 2013 and, relevantly, lines 13 to 18. The gist of
28 your evidence, I think I can limit it to the phrase, is
29 that you said you were "scared stiff" about the possibility
30 that Fletcher was a paedophile?

31 A. Did I say that? Yes.

32
33 Q. You did?

34 A. Okay, right.

35
36 Q. You also said - apparently, in terms of the way you
37 expressed this proposition, at least on my reading of the
38 transcript and perhaps other will object if I have this
39 wrong - that you were also scared stiff about other victims
40 coming forward. Do you recall that evidence?

41 A. I don't know about being scared stiff about other
42 victims coming forward.

43
44 Q. Would it assist you to see the --

45 A. Did I say that?

46
47 THE COMMISSIONER: Mr Cohen, frankly, the bishop only said

1 "scared stiff" once. And he referred to the possibility of
2 yet another person coming forward after he was asked about
3 Fletcher. I took that to mean - and I think it is
4 reasonable - that it was about another perpetrator coming
5 forward, not about another victim coming forward. If I am
6 wrong, perhaps we ought to clarify it.

7
8 MR COHEN: Yes. I must say I read it distributively.

9
10 THE COMMISSIONER: We'll ask the bishop to tell us which
11 of us is correct.

12
13 MS LONERGAN: Perhaps reading the transcript would clarify
14 it.

15
16 THE COMMISSIONER: Perhaps I could hand a copy of it to
17 Bishop Malone.

18
19 MS LONERGAN: Yes, that would be appropriate

20
21 THE COMMISSIONER: Q. Bishop, might I refer you to lines
22 13 to 18 of this page, which is page 928.

23 A. Yes. I have read it, yes.

24
25 MR COHEN: Q. Is the correct understanding of that,
26 bishop, that those words, particularly as they follow the
27 phrase "scared stiff" are to be read distributively; that
28 is to say, you were scared stiff about both of those
29 things?

30 A. About both, another paedophile case as well as another
31 victim coming forward?

32
33 Q. Yes.

34 A. No, I'm bit unsure as to what I might have been
35 referring to there. Certainly I was scared stiff that he
36 might have been a paedophile. I don't know why I would
37 have added about the possibility of yet another person
38 coming forward.

39
40 Q. It wasn't hyperbole, was it?

41 A. I don't think so, Mr Cohen, no.

42
43 Q. You clearly had a concept and a meaning in your mind
44 when you gave that evidence?

45 A. Yes. Yes.

46
47 Q. Is it not fair to say the better way to read that

1 evidence and that passage of your evidence is that you're
2 referring to being scared stiff about both those things?
3 A. Yes, it's quite possible, yes.

4

5 Q. You also indicated, I think in that same passage, but
6 certainly you made reference in your evidence to there
7 being some smoke around about the allegations involving
8 Fletcher. Do you recall that?

9 A. I remember using the word "smoke". Yes, it is in the
10 next few lines.

11

12 Q. That was not fumata bianca, was it?

13 A. What?

14

15 Q. White smoke?

16 A. I see what you mean. No. Thank you. It wasn't white
17 smoke. I mean, there was sort of suspicions about him.

18

19 Q. Those suspicions, having regard to your evidence were
20 as at 2001, weren't they, when they first arose?

21 A. Yes.

22

23 Q. Wasn't it the case that by 17 months later, by June
24 2002, the smoke had turned into a raging inferno - wasn't
25 it?

26 A. It wasn't quite raging at that point. There had been
27 those couple of reports earlier on, one of which could not
28 be corroborated, the other one coming from [BI]. It was
29 certainly gaining some momentum, I'd have to say.

30

31 Q. It was the momentum of a forest fire, wasn't it?

32

33 MR GYLES: I object.

34

35 THE COMMISSIONER: These sorts of analogies don't really
36 assist, Mr Cohen.

37

38 MR COHEN: If the court pleases.

39

40 Q. But the primary concern you had at this time, was it
41 not, was to avoid scandal to the church? Wasn't that so?

42 A. It was a consideration. Whether you'd say it was
43 primary or not is another matter, because I was still in
44 that frame of mind where, if it was possible to sort of
45 handle these situations without creating too much scandal,
46 then so be it. That does not necessarily mean it was a
47 primary consideration. It was an important consideration.

1
2 Q. Handling these circumstances without scandal has, as
3 its necessary corollary, the avoiding of any penetration of
4 sunlight on to the circumstance; isn't that right?
5 A. Not really, no, no. I mean, that was going to happen
6 inevitably, but it was to try to - trying to handle the
7 situation in such a way to minimise the damage.
8
9 Q. This was not due to any lack of realisation of how
10 thoroughgoing were the crimes of Fletcher at this time, was
11 it?
12 A. I didn't know what the crimes of Fletcher were at that
13 point.
14
15 Q. You had formed the view when you were scared stiff,
16 weren't you, that he was a paedophile?
17
18 MR HARBEN: I object to that.
19
20 MR GYLES: I object to that.
21
22 THE COMMISSIONER: That's not the evidence really. The
23 bishop was scared stiff of another person coming forward.
24 It is nothing to do --
25
26 MR COHEN: Very well.
27
28 Q. You were scared stiff that he was a paedophile,
29 weren't you?
30 A. Well, it certainly crossed my mind, yes.
31
32 Q. In a way that loomed large in your thinking, didn't
33 it?
34 A. Yes. I mean, there was not sufficient evidence yet in
35 my mind that he was, but then again, the jury was out as to
36 whether he was or not.
37
38 Q. Ultimately, they weren't, were they?
39 A. It was possible.
40
41 Q. But ultimately they weren't, were they?
42 A. Weren't out - the jury? That happened later, yes.
43
44 Q. You indicate, by your paragraphs 1.7 and 1.8 of your
45 statement, which is exhibit 86, that you were motivated by
46 pastoral concern for Fletcher in a potentially difficult
47 situation?

1 A. Yes.

2

3 Q. And the possibility of extracting an admission?

4 A. Yes.

5

6 Q. Did it not occur to you what mattered was that the
7 police have access to this information and that they
8 undertake that process?

9 A. Obviously that should have been the outcome, yes, but
10 it wasn't. You know, the relationship between the priest
11 and the bishop was such that I felt that I needed to offer
12 whatever support I could to Fletcher. As I mentioned
13 there, and gave evidence last week, that relationship is
14 based on a kind of a brotherhood between priests sharing in
15 the sacrament of Holy Orders; but as well as that, as
16 Fletcher's superior, in that sense, I thought that my
17 mentioning the fact that an allegation had been made
18 against him might trigger an admission, as had happened in
19 the case of Vince Ryan.

20

21 Q. Did you hope for a Perry Mason moment, did you?

22 A. I don't think that's fair.

23

24 MR HARBEN: I object.

25

26 MR COHEN: Q. What was your thinking because you're not
27 a trained investigator?

28 A. No, I know that - I'm not.

29

30 Q. You can't have harboured a realistic expectation that
31 he was going to change the habits of lifetime and fess up
32 to you?

33

34 MR GYLES: I object.

35

36 MR HARBEN: I object.

37

38 THE COMMISSIONER: We don't know James Fletcher's lifetime
39 habits in relation to honesty. Mr Cohen.

40

41 MR COHEN: Excuse me, Commissioner. I'm just checking to
42 see if I've missed anything.

43

44 Q. In paragraph 1.10, again in exhibit 86, you indicate
45 that, in 2002, you had not arrived at the realisation that
46 sexual abuse by clergy within the church was endemic. When
47 did you arrive at that proposition?

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MR GYLES: I object. It doesn't follow from what he said there that he had the alternative view at some other point. In any event, it is irrelevant.

MR COHEN: I'm just testing the evidence, Commissioner. That would seem to be a proposition that's enunciated in prospective terms.

THE COMMISSIONER: Mr Cohen, we have had from the bishop his journey, if you will, from that point. I don't think he has ever suggested that there was one day when he completely changed.

Q. Is that correct, Bishop Malone?

A. Yes, Commissioner, that's correct.

Q. It's been a gradual process and no-one could put a date on when you reached any particular point in this long realisation or whether, indeed, you came to that realisation at all; is that right?

A. I have given evidence, Commissioner, when asked by counsel assisting was there a moment when there was an epiphany in my understanding of these matters and I've identified around about 2004 as that awareness, that awakening in me.

THE COMMISSIONER: I don't think we can get any more specific than that, Mr Cohen.

MR COHEN: Q. Other than, at that point, you changed from church first to victims first; is that a fair way to put it?

A. I did, yes.

Q. Can I ask you, having regard to the first sentence in paragraph 1.10, is it the case that you never arrived at the realisation that there was an endemic problem with sexual abuse by clergy?

A. I did arrive at that awareness, yes, I'm saying that.

Q. That was in 2004, was it?

A. Roughly, yes.

Q. You accept by your evidence that you gave, I believe this morning, but certainly on Friday, in answer to questions by Ms Lonergan, that there has been ostracism of

1 victims by the broader members of the church, whether they
2 be clergy or lay believers; is that right?
3 A. Yes. There have been incidents of that, sadly, yes.
4
5 Q. Has that ostracism extended to you personally?
6 A. I've already given evidence.
7
8 MR GYLES: I object.
9
10 MS LONERGAN: I object. This has been covered in quite
11 some detail.
12
13 MR COHEN: I have no further questions.
14
15 THE COMMISSIONER: Thank you, Mr Cohen. Mr Saidi?
16
17 MR SAIDI: I have no questions.
18
19 THE COMMISSIONER: Mr Gyles?
20
21 **<EXAMINATION BY MR GYLES:**
22
23 MR GYLES: Q. Bishop, you gave some evidence last
24 Wednesday afternoon concerning some of the dealings you had
25 with Bishop Clarke after his retirement; do you recall
26 that?
27 A. Yes, I do.
28
29 Q. You were asked whether you visited him. In your
30 response - at page 795-796 - in terms of the frequency of
31 visits, you said:
32
33 *A. Yes, it wasn't regular, but I would*
34 *have certainly visited him on a number of*
35 *occasions when he lived up at Nelson Bay*
36 *and then later when he moved into the*
37 *retirement village.*
38
39 A. Correct, yes.
40
41 Q. Assuming that he retired towards the end of 1995?
42 A. Yes.
43
44 Q. He died in 2006?
45 A. Yes.
46
47 Q. It was about a 10-year period and your recollection is

1 that he lived for part of that at Nelson Bay?
2 A. Yes.
3
4 Q. And later moved to a retirement village?
5 A. Correct, yes.
6
7 Q. You visited him in both locations?
8 A. In both places. I wasn't a regular visitor, but I did
9 visit him in both places, yes.
10
11 Q. Thank you. You were asked, during whether any of
12 those visits, you discussed with him allegations of sexual
13 abuse and the like - this is at transcript 797 - and your
14 response was:
15
16 *A. No, I didn't. You know, the man was*
17 *retired and he made it very clear that when*
18 *he retired, he was out of it.*
19
20 A. Yes.
21
22 Q. What you're saying is you didn't think he would be
23 prepared to discuss those matters with you and didn't want
24 to?
25 A. Well, no.
26
27 Q. But you gave him the courtesy of not doing that?
28 A. Correct, yes. I mean I wouldn't appreciate it if
29 I was quizzed, say, by the present bishop, Bill Wright,
30 about matters that had been dealt with and water had gone
31 under the bridge and I'd moved on - the diocese had moved
32 on.
33
34 Q. In terms of his recollection of matters going back in
35 the years while he was bishop, you're not able to say, are
36 you, what his knowledge of those matters was because you
37 didn't discuss them?
38 A. No.
39
40 MS LONERGAN: I object. The questions that I asked were
41 in relation to McAlinden. They were confined. If my
42 questions of this witness are being used as the basis for
43 the current questions, that isn't a correct appreciation of
44 the evidence that was given before. If it is a new topic
45 altogether, then I don't object.
46
47 MR GYLES: I'm not constrained by the previous

1 questioning. My question is - and I think it follows
2 essentially from what the bishop has said - given he did
3 not ever discuss matters going to Bishop Clarke's time,
4 that he's not in a position to comment as to what
5 Bishop Clarke's recollection was in respect of those
6 matters.

7
8 MS LONERGAN: The basis of my objection was that my
9 learned friend took Bishop Malone to a particular part of
10 the transcript where questions were asked regarding
11 conversations about McAlinden.

12
13 THE COMMISSIONER: Yes, perhaps you can expand on that.

14
15 MR GYLES: I don't want to take a lot of time over it.

16
17 Q. You were asked some questions about whether or not
18 matters of sexual abuse concerning McAlinden were discussed
19 with you when you visited Bishop Clarke after you became
20 bishop. Do you recall that?

21 A. I do.

22
23 Q. Your response was:

24
25 *You know ... he made it very clear to me*
26 *that when he retired, he was out of it.*

27
28 A. Correct.

29
30 Q. The first point is: can we be confident that, first
31 of all, you didn't raise any matters concerning McAlinden
32 with him?

33 A. Yes.

34
35 Q. Would that go so far as to include matters going
36 beyond McAlinden, ie, matters of sexual abuse generally;
37 that was not something you discussed with him after you
38 left?

39 A. I don't --

40
41 MS LONERGAN: I object. The evidence was given shortly
42 after the questions about McAlinden that there was
43 discussion about Fletcher. So, if Fletcher is also going
44 to be put to one side, then the question --

45
46 MR GYLES: Could I please ask my questions.

47

1 Q. My question is: did the matters that you discussed
2 with the bishop, after you became bishop and he left,
3 extend to matters relating to sexual abuse concerning any
4 priest?
5 A. No, except the Fletcher matter, I brought that up with
6 him.
7
8 Q. And that was in the context of Fletcher having been
9 charged, was it?
10 A. Yes, he'd long been charged by this time and I was
11 saying to Bishop Clarke something like, you know, "You
12 wouldn't believe what's been happening with regard to
13 Fletcher, would you?" And he said, "No, I wouldn't." So
14 we sympathised with one another, as it were, over that.
15
16 Q. And that was the extent of the discussions you had?
17 A. Yes, it was.
18
19 Q. Over that 10-year period?
20 A. Yes, correct.
21
22 Q. Thank you. You would agree, wouldn't you, so far as
23 McAlinden is concerned, that because you had no discussions
24 with Bishop Clarke about McAlinden in the period after
25 2005, you are simply not in a position to comment upon his
26 recollection as to McAlinden matters?
27 A. No, I'm not, no.
28
29 Q. You gave some evidence about him getting a little
30 vague about things. Do you recall that?
31 A. Yes.
32
33 Q. You gave evidence of the situation where he left the
34 shower running?
35 A. Yes.
36
37 Q. Do you recall that?
38 A. I do recall that, yes.
39
40 Q. Can we take it that he was in a vague stage by that
41 time, obviously?
42 A. Yes. After that incident, I mentioned it to one
43 of the priests who was acting as a quasi-carer for
44 Bishop Clarke, and it was soon after that that he was moved
45 from a self-care unit across into a hostel room in the same
46 retirement village.
47

1 Q. Do you have any recollection as to when that was?
2 A. No idea.
3
4 MS LONERGAN: I object. This evidence has already been
5 given. The question has been asked and the witness, at
6 page 796, line 38, said.
7
8 Say, 2005 probably.
9
10 THE COMMISSIONER: Yes.
11
12 MR GYLES: That question has not been asked, with all due
13 respect to my learned friend.
14
15 MS LONERGAN: It has been asked.
16
17 MR GYLES: The question is: does Bishop Malone recall
18 when it was that Bishop Clarke was moved from one part of
19 the retirement village to the self-care retirement village
20 to the hospice?
21
22 MS LONERGAN: I apologise.
23
24 THE COMMISSIONER: I will permit that.
25
26 MS LONERGAN: It has not been asked. Mr Gyles is correct.
27
28 THE WITNESS: I think he was in the hostel section for
29 maybe 12 months or thereabouts, so it would have been
30 around about 2005.
31
32 MR GYLES: Q. Thank you. Doing the best you can, would
33 you have visited him once a year, once every six months?
34 Can you give us an idea of how often you --
35 A. The frequency probably would be more like once every
36 six months, yes.
37
38 Q. Thank you. You were taken today to the document which
39 is at tab 256, exhibit 105, and you would recall it is the
40 minutes of the deans' meeting on 2 August 1995?
41 A. Yes.
42
43 Q. Perhaps if you're able to turn up volume 3 and go to
44 that document, tab 256.
45 A. Yes, I have it.
46
47 Q. You'll see that the document is obviously recorded as

1 minutes. On the following page, you will see the minutes
2 have been signed by Bishop Clarke and dated; do you see
3 that?
4 A. Correct, yes.
5
6 Q. They are dated 3 October 1995?
7 A. Yes.
8
9 Q. Is it consistent with your recollection of the
10 record-keeping of such minutes that they would be confirmed
11 at the following meeting?
12 A. That's normally the case, I think.
13
14 Q. Thank you. If you see, for example, in the second
15 paragraph of these minutes here, the bishop had asked that
16 the minutes of the previous meeting be amended? It doesn't
17 matter what it was, but you'll see that that's something
18 that was noted.
19 A. Yes. Right, I see that.
20
21 Q. Is it your recollection in terms of the way the
22 minutes of such meetings were recorded that the bishop,
23 Bishop Clarke, would not be the one who would prepare the
24 minutes?
25 A. No, he would not have been the one to prepare them,
26 no.
27
28 Q. Is the position that someone else would prepare
29 the minutes, and they would be provided to, obviously,
30 Bishop Clarke, among others, for confirmation?
31 A. For ratification, yes, that's correct.
32
33 Q. And that process we see working in the minutes of this
34 meeting where the minutes of the previous meeting were
35 amended by the bishop; do you see that?
36 A. I see that, yes.
37
38 Q. Here we see that, in the paragraph that you were taken
39 to earlier, that there's been a word crossed out?
40 A. Yes, I see it.
41
42 Q. The word "legislation"?
43 A. In paragraph two, the final paragraph.
44
45 Q. That's right. Then we see these minutes being
46 confirmed ultimately on 3 October 1995?
47 A. Yes.

1
2 Q. So would you agree that, in terms of the preparation
3 of these minutes, the likely sequence of events was that
4 the meeting took place and was recorded by someone other
5 than Bishop Clarke?
6 A. Right.
7
8 Q. That the minutes were then subsequently provided to
9 persons including Bishop Clarke?
10 A. Yes.
11
12 Q. And then confirmed at the following meeting?
13 A. Yes, right.
14
15 Q. The minutes record the bishop, as in Bishop Clarke,
16 indicating that McAlinden would arrive back in Australia on
17 5 August, and that is, 5 August 1995; do you recall that?
18 A. Yes, I see that.
19
20 Q. You were asked some questions, I think by Ms Gerace,
21 as to possible inquiries that could have been made
22 thereafter?
23 A. Mmm-hmm.
24
25 Q. You were taken to exhibit 78, which is not in the
26 bundle. It is a handwritten letter from you, an extensive
27 handwritten letter, which I don't propose to take you to.
28 It is from McAlinden to you dated 5 December, received by
29 you on 8 December 1995. It is a letter in which he
30 responds - I think it is a letter you described as him
31 possibly, I think, being canonised at the end of it? In
32 any event, it is a letter in which he puts his case in
33 respect to the various canons that have been breached?
34 A. Yes, I recollect that, yes.
35
36 Q. What he records in that letter is that, on leaving the
37 Philippines - he confirms in this letter that he's leaving
38 the Philippines and the plan had been to retire to Ireland?
39 A. Yes.
40
41 Q. But because of medical issues, he returned to Western
42 Australia?
43 A. Right.
44
45 Q. Is that consistent with your recollection of the
46 letter?
47 A. Yes, it is, yes.

1
2 Q. The address given in the letter is a post office box
3 at Jolimont in Western Australia?
4 A. Yes, I recollect that.
5
6 Q. He tells you that he's going up country "from now
7 until Christmas"?
8 A. Yes, I saw that, yes.
9
10 Q. As far as his whereabouts is concerned, would you go
11 to volume 4. You can put the last volume away, for my
12 purposes anyway, please, bishop, and go to tab 277.
13 A. Yes, I have that.
14
15 Q. Would you have a look at the letter. I'll draw your
16 attention to some parts of it. It is written with the
17 address simply of "Perth WA"?
18 A. Yes.
19
20 Q. On 27 February; do you see that?
21 A. I do.
22
23 Q. McAlinden tells you or he's informing you in this
24 letter that he's about to leave for Ireland?
25 A. Yes.
26
27 Q. As had been foreshadowed in the previous letter I've
28 just taken you to?
29 A. Yes.
30
31 Q. He says he hasn't got any fixed address in Ireland; do
32 you see that?
33 A. Yes.
34
35 Q. But he gives you a temporary address care of Father
36 Pat Hallinan; do you see that?
37 A. I can, yes.
38
39 Q. Can we take it that upon receipt of that letter, that
40 would have been your state of knowledge as to McAlinden's
41 whereabouts at or at least shortly after 27 February 1996?
42 A. Certainly, yes.
43
44 Q. That he had left WA and was heading back to Ireland?
45 A. Yes.
46
47 Q. He didn't have a fixed address there, but he was

1 giving you a temporary address where he may be able to be
2 contacted, being the Tipperary address?
3 A. Correct.
4
5 Q. Could you go forward, please, in this same volume, to
6 283.
7 A. Right.
8
9 Q. You will see a letter was written by the vicar
10 general, Father Burston, at your request, and the address
11 we see in that is the address which was given in the letter
12 I have just taken you to?
13 A. Yes, I can see that.
14
15 Q. Namely the Tipperary address?
16 A. Yes.
17
18 Q. You'll see that there is a copy of that letter, which
19 is immediately behind it, indicating that the original was
20 returned unopened by Pat Hallinan?
21 A. Yes.
22
23 Q. With "Address unknown" written across it?
24 A. I see that.
25
26 Q. In terms of your state of knowledge as at the time
27 this letter was returned to you unopened, which looks to be
28 some time in July, the position was that he told you, when
29 leaving the Philippines, he was intending to go to Ireland?
30 A. Right.
31
32 Q. But he hadn't gone immediately to Ireland because of
33 medical issues that needed dealt with in Western Australia?
34 A. Correct.
35
36 Q. That he returned to Western Australia for a relatively
37 short period while those matters were dealt with?
38 A. That's so.
39
40 Q. He then told you he was going back to Ireland?
41 A. Yes.
42
43 Q. It became apparent, didn't it, from this letter being
44 returned unopened by, it appears, Father Hallinan, that the
45 address that had been given was not an address that enabled
46 you to contact him?
47 A. Correct, yes.

1
2 MR GYLES: I do propose at some point that they be
3 tendered, that is, the documents I've just taken the bishop
4 to, but we can do that at some appropriate time.
5
6 THE COMMISSIONER: Yes. Very well.
7
8 MS LONERGAN: I will tender those, Commissioner. I will
9 get a list from Mr Gyles and tender them at the end of his
10 examination.
11
12 THE COMMISSIONER: Thank you, Ms Lonergan.
13
14 MR GYLES: Q. You gave some evidence, bishop, about
15 considering in late 1996 whether you should go to the
16 police in respect of [AL] and [AK]'s complaint. Do you
17 recall that?
18 A. In 1996?
19
20 Q. Yes.
21 A. Yes.
22
23 Q. Your decision, I think, was that you shouldn't do that
24 because of their wishes that they didn't want you to do
25 that?
26 A. That was my understanding, yes.
27
28 Q. You said that you had some discussions with
29 Father Burston on that issue?
30 A. Yes.
31
32 Q. Your evidence with respect to those discussions wasn't
33 put forward on an "I said/he said" basis?
34 A. No, I don't think so, no.
35
36 Q. In fact, you used the words, "I presume I would have
37 had those discussions", and the words, "I would have had
38 those discussions"?
39 A. All right, yes.
40
41 Q. Would you agree with me that the use of those words is
42 consistent with you not having a direct memory of those
43 conversations which may have taken place now about 17 years
44 ago?
45 A. I agree with that, yes.
46
47 Q. You're not able to call upon any contemporaneous

1 document which recorded those in a contemporaneous way?
2 A. No, I'm not.
3
4 Q. It is obviously a long period of time - it is
5 obviously long ago, isn't it?
6 A. It is, yes.
7
8 Q. Sitting there now, the best you can really do is to
9 say that you think it is possible, or even likely, that
10 you had such conversations, but you're not able to be
11 definite about it?
12 A. I would agree with that, yes.
13
14 Q. So you would agree that it is possible that those
15 conversations did happen and it is possible that they
16 didn't happen?
17 A. Mmm-hmm. Yes.
18
19 Q. If you had had a conversation with Father Burston at
20 about that time concerning the matter of reporting the [AL]
21 and [AK] complaints to the police, despite the wishes, as
22 you understood them --
23 A. Yes, yes.
24
25 Q. -- that's a decision that you would have made having
26 regard to, for example, any input you'd got from the vicar
27 general?
28 A. Yes, I dare say.
29
30
31 Q. You may have sought legal advice about it if you were
32 considering that position?
33 A. I don't know that we did, but certainly --
34
35 Q. But if you had considered it - what I'm really putting
36 to you is that the decision you had to make, you would have
37 informed yourself in the way you considered appropriate?
38 A. Yes, correct.
39
40 Q. Then you would have made the call one way or the
41 other?
42 A. Yes, correct.
43
44 Q. That really remained the position, didn't it, up
45 until, for example, 1999, when you informed or directed
46 Father Burston to get in contact with the PSO?
47 A. Correct, yes.

1
2 Q. Equally, to the extent that there were discussions
3 between you and Father Saunders or Father Burston in
4 respect of the rumours that you've given evidence about
5 today concerning Fletcher before 2002, as to the way in
6 which those rumours ought to be dealt with and, again,
7 subject to consultation with the vicars general or others,
8 that was ultimately a decision for you to make as to how to
9 deal with those matters?
10 A. I would say so, yes.
11
12 Q. The same would apply, wouldn't it, as to the decision
13 made to leave Fletcher in his role after you became aware
14 that the police investigation was underway?
15 A. It was ultimately my decision, yes.
16
17 Q. Going to Branxton to see Fletcher, that was something
18 that was your decision?
19 A. Correct.
20
21 Q. Obviously Father Saunders went along with you, but it
22 wasn't his idea; do you agree with that?
23 A. I think it was my idea, yes.
24
25 MR GYLES: I have no further questions, thank you
26 Commissioner.
27
28 THE COMMISSIONER: Thank you, Mr Gyles. Mr Harben?
29
30 MR HARBEN: Thank you Commissioner. Could I just have one
31 moment?
32
33 THE COMMISSIONER: Yes. Mr Doherty, you didn't have any
34 questions, did you?
35
36 MR DOHERTY: No, Commissioner.
37
38 MS LONERGAN: Commissioner, while Mr Harben is attending
39 to taking instructions, could I tender the documents behind
40 tab 277 and 283 as separate exhibits. They're the
41 documents that Mr Gyles just took the witness to regarding
42 the location of McAlinden.
43
44 THE COMMISSIONER: Yes. Thank you, Ms Lonergan. The
45 letter from Denis McAlinden to Bishop Malone of 27 February
46 1996 will be admitted and marked exhibit 107.
47

1 **EXHIBIT #107 LETTER FROM DENIS MCALINDEN TO BISHOP MALONE**
2 **OF 27/2/1996 (TAB 277)**

3
4 **THE COMMISSIONER:** The letter to Denis McAlinden from
5 Father William Burston of 16 May 1996 and the copy
6 indicating its return unopened, will be admitted and marked
7 exhibit 108.

8
9 **EXHIBIT #108 LETTER TO DENIS McALINDEN FROM FATHER WILLIAM**
10 **BURSTON OF 16/5/996 AND THE COPY INDICATING ITS RETURN**
11 **UNOPENED (TAB 283)**

12
13 **<EXAMINATION BY MR HARBEN:**

14
15 **MR HARBEN:** Q. Bishop, you were shown a document which
16 has been called in this inquiry the "I said/He said"
17 document?

18 A. Yes.

19
20 Q. You were asked a number of questions about it, in
21 particular, whether you agreed or disagreed with what you
22 were shown.

23 A. Yes, that's right.

24
25 Q. When was the first time you'd seen that document?

26 A. The first time I saw that document was looking through
27 some of the paperwork in your office when we were
28 discussing this matter.

29
30 Q. When you were asked to read it, did you have any
31 recollection of the form of the questions that you were
32 reading in front of you or not?

33 A. I did, once I - once I had started to read, my memory
34 was jogged by what Detective Chief Inspector Fox had
35 written.

36
37 * Q. Was it jogged as to the general content of the
38 conversation or was it jogged as to the precise wording of
39 either the questions or the answers?

40
41 **MR COHEN:** I object. I took the bishop at length, and
42 carefully, through every passage and there is no warrant,
43 apart from one sentence, for this to be impugned, in any
44 way.

45
46 **MR CAVANAGH:** I can't hear, Mr Cohen.

47

1 THE COMMISSIONER: Mr Cohen, in every question that you
2 put to the bishop, whether it was in terms or understood,
3 it was "words to that effect", wasn't it?
4

5 MR COHEN: No, I said those words each time. Those words
6 were said; "Yes" was the answer, with the exception of one
7 sentence.
8

9 THE COMMISSIONER: I had understood that we had an
10 agreement at the start that your questions were meant to be
11 "words to that effect".
12

13 MR COHEN: I'm sorry, we were at cross-purposes. I had
14 understood that that was not acceptable and that I had to
15 put whether they were the words or not, not to the effect.
16

17 THE COMMISSIONER: Mr Cohen, we all know that there was
18 some period between these words being uttered and their
19 being committed to a paper record.
20

21 MR COHEN: A paper record, yes, but --
22

23 THE COMMISSIONER: You can't possibly contend for the
24 view, can you, that it is word perfect, but for --
25

26 MR COHEN: No, I don't suggest that. What I'm suggesting
27 is that I put the words today to Bishop Malone and, on each
28 occasion I put them, with the exception of one sentence,
29 I received an affirmation that those words were correct.
30 There is not a warrant for what my friend appears to be
31 endeavouring to undertake, which is to assert that "This is
32 all a bit vague and you didn't really mean that, did you?"
33

34 THE COMMISSIONER: Thank you, Mr Cohen. I don't
35 understand that's what Mr Harben was putting.
36

37 MR HARBEN: Could I have that question read, please,
38 Commissioner.
39

40 (Question marked * read)
41

42 MR HARBEN: Q. Bishop, did you hear that question being
43 reread?

44 A. I did.
45

46 Q. Are you able to answer that?

47 A. Well, I understood that it was a record of

1 conversation, you know, based on Detective Chief Inspector
2 Fox's memory of the conversation. I could not accept it as
3 a record where every word is accurate. I would have
4 accepted it as a memory of his to say that words to this
5 effect had been said.
6

7 Q. Was that as to the actual words that were repeated to
8 you or as to the content of the discussion that is found in
9 both the questions and answers?
10

11 MR COHEN: I object. That is latent with ambiguity. Are
12 we talking about when I was cross-examining or are we
13 talking about at the time instructions were first given to
14 my friend?
15

16 MR HARBEN: No.
17

18 Q. You understand, bishop, that I'm asking you about when
19 the questions and answers were read to you by Mr Cohen were
20 you accepting, when you said answers such as, "I'm happy to
21 accept that" or "I think so", were those answers in
22 relation to the precise words that were being read to you
23 or was it as to the general content of those questions and
24 answers?
25

26 A. They were with regard to the general content of the
27 questions and answers.
28

29 Q. Thank you. You took issue with one aspect of that in
30 particular?
31

32 A. I did, yes.
33

34 Q. Is that because you were conscious at all times that
35 there had been some approach to you which had been
36 investigated by you in years before? That was in relation
37 to any - I'll turn it up. Just bear with me, bishop. Do
38 you have the document there?
39

40 A. The document of Detective Chief Inspector Fox?
41

42 Q. Yes.
43

44 A. No, I don't have it in front of me. Oh, yes, I do.
45 It was presented a little earlier this afternoon. Yes,
46 I have it now, yes.
47

48 Q. You were asked - I think it appears on the first page.
49 The question reads:
50

51 *Have you ever had concerns about*

1 *Father Fletcher prior to this incident?*

2
3 Do you see that question?

4 A. I do, yes.

5
6 Q. And there is a recording of an answer:

7
8 *No, not before [BI] approached me.*

9
10 Firstly, at the time you spoke to Detective Chief Inspector
11 Fox, some prior approach had been made to you which had
12 been investigated in the way you have revealed in your
13 evidence?

14 A. Yes, that's right.

15
16 Q. Do you say, if asked that question, you would not have
17 withheld that information from the chief inspector?

18 A. No, if he'd asked that question I would have mentioned
19 the two people who had reported matters to me.

20
21 Q. Indeed, when you look at your statement of the
22 following May --

23 A. Yes.

24
25 Q. -- those matters are specifically referred to,
26 aren't they?

27 A. They are, yes, in the opening statement.

28
29 Q. In addition to that, in your statement, which is
30 exhibit 87, on page 3, it records:

31
32 *Since Jim Fletcher was a personal friend to*
33 *the [AH] family I thought that revealing*
34 *the name of the complainant might trigger*
35 *in Jim Fletcher a possible admission of*
36 *inappropriate behaviour.*

37
38 A. Yes.

39
40 Q. That's what you record in your statement in May 2003?

41 A. Yes.

42
43 Q. Firstly, are you able to recall whether that appears
44 in your statement as a consequence of some direct question
45 to you or not?

46 A. No, I'm not able to say, I don't think, there.

47

1 Q. Do you say that was in your mind when you went to see
2 Father Fletcher?
3 A. Yes, I'd say it was. It was part of my thinking.
4
5 Q. Do you remember or not whether that was part of the
6 discussion with Detective Chief Inspector Fox in June of
7 2002?
8
9 MR COHEN: I object. I asked that question and got a
10 definitive answer.
11
12 THE COMMISSIONER: What was the "definitive answer"?
13
14 MR COHEN: I recollect it as being "No" to the question
15 put in those terms, or very similar.
16
17 THE COMMISSIONER: I will allow Mr Harben to put it again.
18
19 MR HARBEN: Q. Do you recollect whether that came up in
20 the discussion between you and Detective Chief Inspector
21 Fox in June of 2002, or can't you recollect?
22 A. No, I don't - I don't remember that it did come up in
23 that discussion.
24
25 Q. You have been shown during the course of today's
26 evidence a pastoral message --
27 A. Yes.
28
29 Q. -- which is dated 16 May 2003. It is exhibit 104 and
30 it appears at tab 384 of volume 5. Firstly, what did you
31 understand as the normal custom for the distribution of
32 material such as that pastoral message?
33 A. The normal custom with regard to the distribution of a
34 pastoral message, media releases and so on, was that copies
35 of the statement would be sent out to all of the clergy of
36 the diocese, to the heads of religious congregations, to
37 the heads of department in the chancery area and beyond, at
38 head office, and then the bodies that receive copies of
39 those statements would more often than not send them out to
40 their membership.
41
42 Q. Did that membership include the schools?
43 A. Catholic Schools Office received a copy of that, yes,
44 and their custom was to send that statement out to all of
45 the schools.
46
47 Q. Did that include the principals?

1 A. Yes, very much so, yes.

2

3 Q. Does that general description, which you've just
4 given, encapsulate the term "diocesan community" which
5 appears in the email sending the material to the PSO?

6 A. It does, yes.

7

8 Q. Following the distribution of the pastoral message,
9 did Mr Callinan ever ring you up and object to handing the
10 pastoral message out to the parishioners or the members of
11 his area of the diocese because of anything in it?

12 A. No, no, he did not.

13

14 MR HARBEN: I have no further questions.

15

16 MS LONERGAN: Could we have a five-minute adjournment?
17 I just want to raise a matter with my learned friend
18 Mr Harben.

19

20 THE COMMISSIONER: Yes.

21

22 **SHORT ADJOURNMENT**

23

24 **<EXAMINATION BY MS LONERGAN:**

25

26 MS LONERGAN: Q. Bishop, you gave some answers in
27 response to some questions asked by Mr Gyles regarding your
28 understanding that [AL] and [AK] in 1996 did not wish to
29 take their complaints about McAlinden to the police?

30 A. Yes.

31

32 Q. Did you yourself talk to [AL] or [AK] in 1996 or 1995?

33 A. No, I'd say not. I only met [AL]. I never met [AK].

34 I would have met [AL] once Zimmerman House had been
35 under way, so more than likely around about 2006 or so
36 I would have met her for the first time.

37

38 Q. Is it fair to say the basis of your understanding as
39 to what [AL] and/or [AK] wanted in terms of reporting their
40 complaints to the police was based on what somebody else
41 told you?

42 A. Yes, Bishop Clarke had told me that that was their
43 wish.

44

45 Q. Thank you. When Zimmerman Services or Zimmerman House
46 was set up in about 2005 --

47 A. Correct, yes.

1
2 Q. -- did you instruct staff of Zimmerman House or any of
3 your staff to trawl the archives to find anything regarding
4 McAlinden to put into material to be held by
5 Zimmerman House?
6 A. No, I didn't, no.
7
8 Q. Did you give staff from Zimmerman House a copy of the
9 bishop's file, as it then was, or the confidential file
10 regarding McAlinden at the time Zimmerman House was set up
11 or shortly after?
12 A. I'm a bit unsure about that, but there was a very open
13 relationship between myself and the director of
14 Zimmerman House and I'm sure if that had been requested, it
15 would have been easily given.
16
17 Q. Is it fair to say that the attitude you had in 2005
18 was that Zimmerman House should have access to any material
19 about McAlinden if it assisted in the way they were dealing
20 with his victims at the time?
21 A. Yes, any material to anything really.
22
23 Q. You were asked some questions about the minutes of the
24 deans meeting in August 1995?
25 A. Yes.
26
27 Q. I will just take you to that. I'm going to ask you
28 some questions about the persons listed as being in
29 attendance. It appears behind tab 256 in volume 3.
30 A. Yes, I have it.
31
32 Q. Do you see that, apart from yourself and
33 Bishop Clarke, there's Monsignor Hart?
34 A. Yes.
35
36 Q. And the deans are listed as Monsignor P Simms - is he
37 still alive?
38 A. He is, yes.
39
40 Q. T Brady?
41 A. Yes, he also is alive.
42
43 Q. R Callinan?
44 A. Yes, him also.
45
46 Q. G Nugent?
47 A. No, George has died.

1
2 Q. And Father Saunders we know is alive.
3 A. Yes.
4
5 Q. From your recollection at that time, did any of those
6 persons whose names I've just drawn your attention to
7 perform the role of secretary of the deans?
8 A. One of them would have, for sure, but I have no idea
9 which one.
10
11 Q. Are you able to assist with the handwriting of the
12 letter - it is a bit of a big ask, I know - above the word
13 "legislation" that has been crossed out? Do you see
14 there's what appears to be a letter or a scribble?
15 A. Yes, I see that. No, I --
16
17 Q. Are you able to assist?
18 A. No, I have no idea how that - who wrote that.
19
20 Q. You answered some questions raised this morning by
21 Mr Gogarty regarding what risk assessment you did regarding
22 Fletcher?
23 A. Yes.
24
25 Q. You will agree with me that your evidence was that you
26 did that risk assessment some time early in 2003, perhaps
27 about March; is that your evidence?
28 A. Well, yes and no. Again, I'm a bit unsure because
29 I didn't date that handwritten note.
30
31 Q. Yes.
32 A. I'm wondering to myself whether it might have been
33 produced as a result of the Ombudsman's inquiry which
34 happened a bit later in 2003.
35
36 Q. Could I get you to close up the volume you've got open
37 and go to tab 338 which is in volume 5.
38 A. Yes.
39
40 Q. Behind that tab there's a selection of your
41 handwritten notes?
42 A. Yes, that's mine.
43
44 Q. Are they the notes you were just talking about as ones
45 that you think may have been made about the time of the
46 Ombudsman's inquiry?
47 A. Yes, I'm inclined to think that's probably more

1 accurate.

2

3 Q. On pages 942 to 944 of the transcript last Thursday
4 I asked you a series of questions about those handwritten
5 notes?

6 A. Yes.

7

8 Q. Your answers were to the effect that although you
9 couldn't pinpoint when individual entries were made, at
10 least, at your best estimate, none of them predated 2003;
11 is that a fair summary?

12 A. Yes, I'd say that's a fair summary.

13

14 MS LONERGAN: Commissioner, I tender the documents behind
15 tab 338 to be described as "Miscellaneous notes by
16 Bishop Malone regarding Fletcher from 2003".

17

18 THE COMMISSIONER: Yes. Thank you, Ms Lonergan. Those
19 miscellaneous notes regarding Fletcher will be admitted and
20 marked exhibit 109.

21

22 **EXHIBIT #109 DOCUMENTS DESCRIBED AS "MISCELLANEOUS NOTES BY**
23 **BISHOP MALONE REGARDING FLETCHER FROM 2003" (TAB 338)**

24

25 MS LONERGAN: Q. You were asked some questions regarding
26 a conversation you say you had with Mr Callinan in
27 June 2002. Do you recall that?

28 A. Yes.

29

30 Q. You gave evidence to the effect that present with you
31 on the day you travelled out to speak to Fletcher at
32 Branxton was your vicar general Father Saunders?

33 A. Correct, he was, yes.

34

35 Q. You also gave evidence to the effect that you didn't
36 take Father Saunders with you to the school to have the
37 discussion with Mr Callinan?

38 A. That's correct, yes.

39

40 Q. Did you discuss with Father Saunders the contents of
41 your discussion with Mr Callinan after you had met with
42 Mr Callinan?

43 A. I could have said something on the way back in the car
44 perhaps when we headed back to the office after we'd seen
45 Fletcher. I don't remember having done so but the chances
46 are that that was said.

47

1 Q. The chances are quite high, are they not, because he
2 was your vicar general and he would have needed to know?

3 A. Yes, that's right.

4

5 Q. Particularly, given that you had put certain
6 limitations on what Fletcher was allowed to do in terms of
7 his ministry?

8 A. Yes.

9

10 Q. You agree with me that the odds are high you would
11 have discussed it with Father --

12 A. I think so, yes.

13

14 Q. As I understand your evidence, you don't actually
15 recollect doing so?

16 A. No, not in as many words, no.

17

18 MS LONERGAN: Commissioner, other than one matter I will
19 go to, unless there are any further questions that you wish
20 to take the witness to --

21

22 THE COMMISSIONER: Thank you, Ms Lonergan, there are.

23

24 Q. Bishop, I wonder if you would be so kind as to give me
25 your views on a couple of matters?

26 A. Certainly, Commissioner, if I can.

27

28 Q. Thank you so much. Do you believe that the incidence
29 of clergy child sexual abuse was greatly out of proportion
30 in the diocese of Maitland-Newcastle than, say, in other
31 dioceses, or is it something of the same order?

32 A. Commissioner, I can't really speak for other dioceses
33 because I don't have a firsthand knowledge of the number of
34 cases that they may or may not have had. Certainly,
35 I think the volume of cases that we had in
36 Maitland-Newcastle diocese from my understanding, and it is
37 a personal observation, did outweigh cases from other
38 diocese, yes.

39

40 Q. Because, of course, you were a priest for over
41 30 years in dioceses outside Maitland-Newcastle; that's
42 right, isn't it?

43 A. I was, yes, that's correct.

44

45 Q. And you didn't become aware, I expect, in those times,
46 and perhaps it was because of the time, of anything like
47 the scale in other places?

1 A. No. You know, I didn't have any position of
2 responsibility in those other places where I'd been, apart
3 from being the local priest or parish priest, so I wasn't
4 really a party to some of the inner knowledge that might
5 have been in the hands of the bishop.
6

7 Q. Yes. Can I ask you then, even though it is not clear
8 whether the incidence was of much greater amount in this
9 diocese, but is there something different about the diocese
10 of Maitland-Newcastle from other dioceses that you've been
11 in? For example, is there a greater proportion of Catholic
12 people in the population?

13 A. I'd say not. The way the early settlers kind of
14 settled in their various communities often divided into
15 religious groupings. Catholics would settle in Maitland,
16 for argument's sake; Anglicans would settle in Morpeth; the
17 town of Gloucester was a very Anglican town, and still is
18 to a large degree; so there were those natural kind of
19 divisions that separated communities one from another.
20

21 Q. Do you believe that there was a very much larger
22 proportion of vocations to the clergy from the people of
23 Maitland-Newcastle compared to other areas of Australia?

24 A. I know that there was a period of time from say the
25 mid-1950s to say the late 1960s, say, a period of ten to 15
26 years, where vocations generally across the board were very
27 high. I mean, that was the era that I became a priest,
28 for example, during that time, and there were a number of
29 vocations from Maitland, as it was known then, probably out
30 of proportion to the vocations that are appearing now
31 certainly, and at one point at the height of its history
32 the Maitland diocese had, so I was told, something like 120
33 priests and I would think that a lot of the parishes that
34 were established by the bishops at the time were to give
35 some of these priests a job. Little country settlements
36 had a priest in residence or a parish priest and nowadays,
37 of course, that would never happen, but back in those days
38 when there were plenty of priests it did happen.
39

40 Q. Thank you, bishop, that's of some interest.

41 A. I'm not quite sure what it means.
42

43 Q. Of course, it may be that the incidence of clergy sex
44 abuse is on a par here as it is with other dioceses.

45 A. Possibly.
46

47 Q. And that it has only been uncovered because of

1 circumstances that have evolved or because some of the
2 victims have been more willing to speak out than in other
3 areas.

4 A. Yes.

5
6 Q. Or it may be that if there was a particular problem
7 here, that it is being addressed certainly.

8 A. If there was a problem, I'm unaware as to its nature
9 exactly. It's a puzzle.

10

11 Q. Thank you very much. I just thought I would ask you,
12 bishop, in case there was anything further that you could
13 assist us with.

14 A. Thank you very much.

15

16 Q. Thank you very, very much for your evidence and for
17 putting up with some very long days.

18 A. Thanks, Commissioner.

19

20 MS LONERGAN: Commissioner, I understand that
21 Bishop Malone would like to make a statement that he has
22 prepared.

23

24 THE COMMISSIONER: Yes, bishop, by all means.

25

26 THE WITNESS: May it please you, Commissioner, and the
27 Commission and ladies and gentlemen. I just have a
28 prepared statement to conclude my public evidence.

29

30 I thank Commissioner Cunneen and members of the
31 Special Commission for giving me an opportunity to make a
32 prepared statement as I conclude my public evidence.
33 I also commend the Commission for conducting a thorough and
34 wide-ranging inquiry.

35

36 My 17 years as bishop of the diocese of
37 Maitland-Newcastle saw a gradual awakening in me to the
38 horror of sexual abuse in the church. During those years
39 the diocese moved from shock and disbelief to an angry
40 rejection of such criminal behaviour of some clergy and
41 church personnel.

42

43 Any organisation runs the risk of becoming a cold and
44 indifferent bureaucracy and that includes the
45 Catholic Church. In such a bureaucracy its leaders can
46 spend more time protecting the organisation than lovingly
47 serving the faithful men and women who constitute it. When

1 this happens, vulnerable children and adults can fall
2 through the cracks. Their deep needs remain unmet and, as
3 we have found, even criminally exploited.
4

5 Constant vigilance and authentic accountability can
6 mitigate the tendency to exploit. Church leaders, most of
7 whom are wonderful committed people, must be transparent
8 and put in place processes and procedures which genuinely
9 protect the young and vulnerable.
10

11 Fortunately, here in the diocese we saw the need to do
12 just that and put in place an effective Child Protection
13 Unit now known as Zimmerman Services. Since 2005 the
14 diocese, through this unit, has attempted to redress past
15 failures and neglect by offering effective training of
16 church personnel, prompt attention to cases of abuse,
17 support for victims, and healing for fractured families and
18 communities.
19

20 It will probably take some years to rebuild lost
21 confidence in the Catholic Church. Healing and
22 reconciliation can come about when people see that things
23 are different and that their genuine needs are met in an
24 open and compassionate way. I pray daily for the victims
25 of sexual abuse, asking God to grant them peace of mind,
26 healing and reconciliation with all people, including the
27 Catholic Church.
28

29 Bishop Bill Wright, the current bishop of
30 Maitland-Newcastle, made a heartfelt apology at the opening
31 of phase 2 of this inquiry. I welcome his apology and add
32 my own sincere sorrow that any actions of mine may have
33 added to the pain of victims and to their families and this
34 includes a flippant comment of mine late last week when
35 I spoke of not destroying secret documents. My words then
36 were insensitive and I apologise.
37

38 The evils of sexual abuse should never have happened
39 but they did. With better systems in place, may they never
40 happen again. Thank you, Commissioner.
41

42 THE COMMISSIONER: Thank you so much, bishop.
43

44 MS LONERGAN: Commissioner, may I inquire of Bishop Malone
45 whether he is prepared to have that statement tendered as
46 an exhibit as part of his evidence to assist this
47 Commission's inquiries?

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THE WITNESS: By all means, yes.

MS LONERGAN: I tender a copy of Bishop Malone's statement.

THE COMMISSIONER: Thank you, Ms Lonergan. Bishop Malone's statement of this afternoon will be exhibit 110.

EXHIBIT #110 PUBLIC STATEMENT BY BISHOP MALONE

MS LONERGAN: Can Bishop Malone be excused?

THE COMMISSIONER: Yes, thank you very much, bishop.

MS LONERGAN: Commissioner, I should say, before I have you excuse the witness, that he is excused from the public hearing. There will tomorrow morning be further private hearings conducted and it is proposed that the public hearing continue at 2pm tomorrow to allow various private hearings to be conducted in the morning.

THE COMMISSIONER: Q. Yes. Thank you so much, Bishop Malone.

A. Thanks, Commissioner. Thank you very much.

<THE WITNESS WITHDREW

MS LONERGAN: Commissioner, it should be noted that the next witness will be Father Saunders at 2pm tomorrow in public.

THE COMMISSIONER: Thank you, Ms Lonergan.

MS LONERGAN: I should also note for the record that there has been a request by the media for access to copies of exhibits 102 to 109 inclusive. Could we be informed by 4.30 whether there's any objection to those exhibits being released?

THE COMMISSIONER: Thank you. I will adjourn.

**AT 4.12PM THE COMMISSION WAS ADJOURNED TO
TUESDAY, 16 JULY 2013 AT 2PM**

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