# SPECIAL COMMISSION OF INQUIRY <br> 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 Friday, 19 July 2013 at 11.15am (Day 13)

Before Commissioner: Ms Margaret Cunneen SC<br>Counsel Assisting:<br>Crown Solicitor's Office:<br>Ms Emma Sullivan, Ms Jessica Wardle

MR KELL: Commissioner, could I quickly deal with one transcript correction which has been drawn to my attention. At page 1353, line 14, there should be an "A." inserted, so the word "Yes" is indicative of an answer rather than part of the question.

THE COMMISSIONER: Yes, that's quite right. Thank you Mr Kell , that change will be made.
<WILLIAM JOHN BURSTON, sworn:
[11.15am]
<EXAMINATION BY MR GYLES CONTINUING:
MR GYLES: Commissioner, can I revisit the section 23 question.

THE COMMISSIONER: Yes.
MR GYLES: Q. You were asked some questions yesterday whether you could recall any discussion with Bishop Malone, some time in 1996, around the time that you took over as vicar general, about whether to report the [AK] and [AL] complaints to the police and you said that you could not recall that?
A. Correct, yes.
Q. If those discussions had taken place, in the ordinary course of things, as between you and Bishop Malone at that time, can we take it that you would have provided your views to him on that question if he had asked you for them and that he would have taken those views, together with whatever other information he thought appropriate to take into account and then make a decision as to what to do about that?
A. Yes.
Q. The position as at 1996 was that to the extent that a decision needed to be made about whether or not or how to deal with the [AL] and [AK] complaints, vis-a-vis disclosure to the police, that was a matter for Bishop Malone to make a decision about?
A. Yes.
Q. It appears there seems to be a conflict in some of the answers you gave yesterday and I would just like to explore that a little bit. Could the witness, please, be given volume 4 of the bundle and could you, please,

Father Burston go to tab 283.
A. Sorry, 283?
Q. Tab 283. It is the letter you were taken to yesterday of 16 May 1996.
A. Yes.

MR GYLES: For the record, it is exhibit 108, Commissioner.

THE COMMISSIONER: Thank you, Mr Gyles.
MR GYLES: Q. Do you see that?
A. Yes.
Q. Do you recall being taken to this letter yesterday?
A. Yes.
Q. It is apparent, isn't it, on the face of this document that - first of all, is it the case that you told us yesterday I think that you had no independent recollection of preparing this letter?
A. Yes.
Q. As far as the letter itself is concerned, it is apparent from the fourth paragraph, isn't it, that this is your first contact with Father McAlinden in respect of this question of laicisation?
A. Yes.
Q. Because that's what you say to him?
A. Yes.
Q. You note this is your first contact for many years? A. Yes.
Q. You can assume that there is no previous correspondence authored by you to Father McAlinden in respect of this laicisation issue?
A. Yes.
Q. At that point in time?
A. Yes.
Q. What you tell Father McAlinden is that the bishop has decided to continue with the laicisation?
A. Yes.
Q. And that he's asked you to get in touch with canon law advisers for that purpose?
A. Yes.
Q. Indeed, if you go to the following page, which is behind tab 284, there is the second letter of 16 May, which was prepared either by or for you, to Monsignor Stinson in Dublin?
A. Yes.
Q. And which makes apparent that you had spoken to him prior to either preparing this letter or having this letter prepared for you?
A. Yes.
Q. You can assume that that is the extent of your correspondence in 1996 concerning the laicisation process; all right?
A. I think so, yes.
Q. You've told us you're not able to draw an independent recollection as to your state of mind at this time, but there's nothing in these two letters, is there, which would suggest to you that it was your belief at this time, ie, 1996, that the laicisation process was futile; that's the case, isn't it?
A. Yes .
Q. Indeed, these letters are inconsistent with that, aren't they, because if you had thought this process was futile, then what would be the point of having gone to the trouble of ringing Dublin to try to make arrangements to get Father McAlinden a canon lawyer; right?
A. Yes.
Q. And you understood that that was the next step in the process, as is apparent from your letter to him, that he needed a canon law adviser?
A. Yes.
Q. It is apparent that Bishop Malone had told you that he wanted to continue with this process?
A. Yes .
Q. And that he asked you to get in touch with canon law advisers for McAlinden?
A. Yes.
Q. And you did that?
A. Yes.
Q. You would agree that reconstructing, as you must, to give the Commissioner an idea of your state of mind based on this correspondence at the time you either prepared or had it prepared for you, it would be consistent with a belief that this process was a valid process which, if able to be brought to effect, might achieve the outcome that was desired?
A. Yes.
Q. Could you jump forward, please, to tab 304. Again, it is a document you'11 be familiar with from the questions you were asked yesterday.
A. Yes.
Q. You will appreciate that, so far as the documents are concerned, in the laicisation process, so far as the contemporaneous documents are concerned, they jump forward to the middle of 1999 ?
A. Yes.
Q. I think your evidence was yesterday that, again, you're not able to draw on an independent recollection as to your state of mind at the time you prepared this document and sent it to Mr Davoren?
A. That's correct, yes.
Q. Again, you're drawing upon, in effect, the contents of the document itself and the surrounding documents to try to reconstruct what your state of mind was?
A. Yes, yes.
Q. If you look at the two following documents, and again, you were taken to these documents yesterday, the following document is the document that you wrote. I'm sorry, could I deal with one matter with respect to the previous letter, that is, the letter at tab 304. Your evidence yesterday was that, as I understood it, your recollection didn't permit you to say whether or not Bishop Malone had asked you to send that letter. I think you said he may have, he may not have?
A. Yes.
Q. Do you have a recollection at about this time of Bishop Malone expressing to you his frustration with McAlinden's elusiveness and lack of cooperation in respect of the laicisation process?
A. I don't have a recollection of that, no.
Q. If Bishop Malone had given evidence to that effect, or assuming that Bishop Malone had given evidence to that effect in this Commission, you wouldn't challenge that, would you?
A. Sorry, if --
Q. If Bishop Malone has given evidence to that effect in this Commission --

MR KELL: I object to the question in that form. It is not proper to ask this witness to comment about the evidence of --

THE COMMISSIONER: The credibility, yes. Thank you, Mr Gyles.

MR GYLES: Q. Do you see document 304 is the letter you've written to Bishop McGuinness in Nottingham?
A. Sorry?
Q. Sorry, document 305, a letter of Tuesday, 10 August 1999. Do you see that?
A. Yes.
Q. This was the subject matter of some of the questions that Mr Kell asked you yesterday, and I think Ms Gerace and, indeed I think the Commissioner, about Father McAlinden not being an easy man to deal with?
A. Yes.
Q. What is apparent from this letter is that it was apparent to you, wasn't it, that by August of 1999, Father McAlinden was not only not enabling contact to be made to further progress the laicisation process by agreeing to have a canon law adviser appointed for him -A. Yes.
Q. -- right, but this letter is indicating that he's celebrating his golden jubilee of priesthood?
A. Yes.
Q. Despite his faculties having been withdrawn.
A. Yes.
Q. That obviously was a matter of concern to you in writing to tell the Bishop of Nottingham that in the way that you did?
A. Yes.
Q. If you are to assume that Bishop Malone asked you to prepare and send this letter, that would apparently be a matter of concern for him as well?
A. Yes .
Q. Agreed?
A. Yes.
Q. Then the following letter is a letter you wrote on the same day to Father McAlinden at the Skegness address in England?
A. Yes.
Q. What you say to him is that:

> I would suggest very strongly that you get
> in touch with me when you return to Australia [in connection with the canonical forum matters].

Do you see that?
A. Yes.
Q. You were suggesting to him, although perhaps in a polite way but in a way which you intended to convey to him that this was a matter that he needed to give serious attention to --
A. Yes.
Q. -- by the use of the words "suggest very strongly"?
A. Yes.
Q. This is indicative, isn't it, in 1999 of an attitude that for you, and to the extent that instructions were provided to you by Bishop Malone, there was extreme frustration as to McAlinden's both evasiveness by this time in 1999 - agreed --
A. Yes .
Q. -- and frustration with his failure to engage in the laicisation process?
A. Yes .
Q. You would agree with me that that understanding or belief as to his attitude in 1999 was very different, wasn't it, from what one might get from the correspondence in 1996?

MR KELL: I object.
MS GERACE: I object.
MR GYLES: I'11 withdraw the question. I'11 move on.
Q. You gave some evidence yesterday, when my learned friend Mr Kell was asking you some questions, at transcript page 1282. I will read it out to you. Mr Kell asked you:

Did you form the view --
Perhaps what I might do is ask you - so as not to confuse you - to go back to the 1996 correspondence, that is, tab 283.
A. Yes.
Q. I took you to that this morning and I think you agreed with me that the position as indicated by the correspondence, being that letter and the following letter, and your telephone call with Dublin, suggests that you, at this point in time, did not believe that this process of laicisation was futile. I think you've agreed with that this morning?
A. Yes.
Q. Indeed, Mr Kell asked you this yesterday at transcript 1282, line 27:
Q. Did you form the view at any time in 1996 or later that the attempt to laicisation McAlinden was futile?

Your answer was:
A. I don't know that $I$ formed that view, no.

Right?
A. Right, correct.
Q. Ms Gerace then returned to this issue - ie, your state of mind in 1996 as to whether the laicisation process was futile - and that exchange took place at transcript 1336 and following. I appreciate you don't have the transcript in front of you, and you don't need it for the purposes of my question. You were taken by Ms Gerace to tab 283, which is this document, and a series of propositions was put to you, that you have accepted that at the time you wrote this letter, you were aware that Father McAlinden had been stripped of his faculties and you agreed that that was because of concern of his having abused children and you answered, "Yes." This is at page 1336:

## Q. And that that abuse concerned sexual abuse of children?

There was then an objection taken, no doubt very properly, and then if we go to the bottom of 1337 , you were asked this:

> Q. It became apparent to you in 1996 whether information was either provided to you by the bishop or as a result of your inquiries in Ireland through this correspondence and the subsequent correspondence, that Father McAlinden was being a bit evasive in that process.

Do you see that?
A. No.
Q. I am sorry. You can assume that that's the answer you gave; right?
A. Yes .
Q. What was being put to you was on the basis of information provided to you by the bishop. Could we first deal with that. You are not able to recall, are you, any information being provided to you by the bishop in 1996 that he believed that the process that he asked you to continue was futile - in $1996 ?$
A. Sorry, the - I'm not sure --
Q. Can you have a look at tab 283 again?
A. Yes.
Q. What this letter indicates in the second paragraph is that the bishop has decided to continue the laicisation process; right?
A. Yes.
Q. And has asked you to get in touch with canon law advisers for that process?
A. Yes.
Q. Al1 right?
A. Yes.
Q. Those instructions are consistent, aren't they, with the process being one that was being approached, at least from your point of view, in a way that was seeking to progress that process - wasn't it?
A. Yes.
Q. Can we take it that you have no recollection at this time that despite the bishop having given you these instructions, that he said to you that the process was futile, he wouldn't have said that to you, would he?
A. No, he wouldn't.
Q. So to the extent when you answered Ms Gerace's question yesterday that you were relying on information provided to you by the bishop in 1996, you're not able to draw upon anything there, are you, as to a belief in 1996 that this process was futile; that's right, isn't it? A. That's correct.

MS GERACE: May I make this objection. I wasn't asking about this process in that question that's being referred to. That was a different issue that was being put in that question.

MR GYLES: With all due respect, that doesn't matter. I'm dealing with the questions on the transcripts and an answer and I'm entitled to explore what the witness meant.

THE COMMISSIONER: Yes. I take your point, Ms Gerace, but I will permit Mr Gyles to explore that.

MR GYLES: Q. The next proposition is that it became apparent to you that McAlinden was being evasive as a
result of your inquiries in Ireland through this correspondence; right? So far as the correspondence in 1996 was concerned, we have you seeking to get in touch with McAlinden, in tab 283?
A. Yes.
Q. And then we have you writing to the monsignor of the diocese of Dublin?
A. Yes.
Q. As it happened, the letter that you wrote to Denis McAlinden was returned unopened by Pat Hallinan?
A. Yes.
Q. With "Address unknown" written across it?
A. Yes.
Q. Do you see that?
A. Yes.
Q. All that was indicating to you was that the address you had been given or the address that you used was not the correct address for Denis McAlinden at that time; that's right, isn't it?
A. Yes .
Q. To the extent that you could draw anything from the return of that letter unopened, it would be that the wrong address had been used and that --

MS GERACE: I object. There's another matter that is also the case. It may or may not be the case that it was the wrong address. It may be the case that the correspondence was not being answered. That is equally - it's not the only proposition that can be put about the return of that correspondence.

THE COMMISSIONER: The point you're making, Ms Gerace, is that McAlinden may have had Father Hallinan just write that on there.

MS GERACE: Precisely. That was in fact the address on the correspondence that's not in issue that has been provided. So there are many explanations for why it was returned, one of which may be that it was an incorrect address.

THE COMMISSIONER: All right. Thank you, Ms Gerace.
MR GYLES: It is the witness who is giving the evidence.
THE COMMISSIONER: Yes. We11, no doubt --
MR GYLES: In any event, I'm happy to go on.
Q. Did you appreciate the address that had been notified "care of Father Hallinan" had been described by Father McAlinden as a temporary address. Is that your state of mind or don't you have a recollection of that? A. My recollection would be that it was his temporary address.
Q. Thank you. And by "his" you mean that it was

Father McAlinden's temporary address --
A. Temporary address.
Q. -- but Father Hallinan's permanent address?
A. Father Hallinan's permanent address, yes.
Q. Thank you. Then the question goes on to talk about subsequent correspondence. Did you understand that to be the correspondence which I have taken you to this morning being the 1999 correspondence when obviously matters three years later had reached a point of real frustration on your part in terms of his evasiveness?
A. Yes.
Q. When you answered the question that it became apparent to you in 1996, that in answering that question you in fact relied upon information and correspondence that was known to you in 1999 and you didn't limit yourself to the position in 1996?

MS GERACE: I object. Where is the evidence for that? Where is the evidence? The answer --

MR GYLES: Well, I --
MS GERACE: No, could I be heard. The question was put very fairly to this witness yesterday about an opinion he held in 1996. The answer was given. This is evidence being given from the Bar table. As to the question about how it might have affected the answer, there's no suggestion by this witness there was any confusion in the
question being asked or the answer being given. It is an unfair question to be put in re-examination.

MR GYLES: In my respectful submission, I am entitled to ask what the witness understood by the meaning of the words in the question "the subsequent correspondence". If he understood that correspondence to be correspondence in 1999, then that must have affected the way in which he answered the question because he has given evidence - this follows on and this confusion gives rise to an
inconsistency where Father Burston has given one answer to Dr Kell in his questions on the same topic and a different answer later. When one looks at the transcript, it builds on a difficulty in this question, which is a reference to correspondence which postdates the relevant state of mind. I'm entitled to explore that, in my respectful submission.

THE COMMISSIONER: Ms Gerace, do you agree there were two different answers given?

MS GERACE: There may well be, but there may not be confusion. That's the vice in the way this is being undertaken in terms of the re-examination. There's no evidence at all that this witness resiled from the answer he gave to me; in fact, it underpins subsequent answers given by this witness about what he did in 1999 and that could have been done at an earlier stage.

The witness gave very clear evidence about views that he held about risks of offending and otherwise at the relevant time. There's no vice in that. There was no confusion. I put very squarely at line 12:

And that was an opinion you held at that time?

The answer was "Yes". There's no confusion in either my question or my answer. In fact, in the way the examination is being undertaken, it is a form of leading, in my view, and it is suggesting a potential area of confusion.

The witness is stuck with that answer. There's no confusion about it. In fact, subsequent questions were very fair and went back year by year about what he could have done at this time. There's just no confusion, in my view.

MR GYLES: Can I say a few things in response to that, but I'm happy to go after $\operatorname{Dr}$ Kell.

MR KELL: I support the tenor of my friend's objection. The answer that the witness gave was clear. The witness was asked whether it was an opinion he held in 1996 and the answer was "Yes." It is not re-examination. My friend is entitled to explore areas, but it should be done in a more direct fashion than by reference to the questions and answers directed to him yesterday.

THE COMMISSIONER: It was a most clear question and an unequivocal answer, wasn't it, Mr Gyles?

MR GYLES: Commissioner, you say it is a clear question, but what is meant by "subsequent correspondence"? "Subsequent correspondence" must mean the 1999 correspondence. For example, when we see that question that comes about four after that, at transcript line 19, my learned friend Ms Gerace puts this:

> And that in fact your correspondence
> to Ireland in 1996 further confirmed the view, didn't it, that you held that
> Father McAlinden did not intend to participate willingly in this [process]?

His correspondence into Ireland in 1996 was to a canonical adviser seeking the appointment of an adviser for Father McAlinden. There is absolutely nothing in that correspondence in 1996 which further confirmed any view about his intention to participate in this laicisation process. In fact, it is to the contrary. That is consistent with a view that there was --

THE COMMISSIONER: Except for this, Mr Gyles: the witness, Father Burston, may have still been going through the motions with his correspondence but, however, had formed a view already that it wasn't going to get anywhere.

MR GYLES: The difficulty is he cannot recall this and there has been a reconstruction of his evidence. In my respectful submission, it hasn't been done fairly and in a way - sorry, if --

THE COMMISSIONER: I don't know what you mean --

MR GYLES: I am not being critical of Ms Gerace, but there is an ambiguity in this question because it is not limited to correspondence in 1996 and there's reference to further correspondence, which must have been understood by him to be the 1999 correspondence where plainly they were raising concerns about the fact that he was evasive.

How possibly can my learned friend put that the 1996 correspondence, in the way she did, was further evidence? The question that's put there is that the correspondence to Ireland in 1996 further confirmed the view of his evasiveness. That is simply not open at all on that correspondence. There was one letter to Ireland in 1996 saying, "We need a canonical adviser for Father McAlinden. Are you able to assist?" The situation is we have a 77 or 78-year-old man with apparent difficulties with his memory, at least in his mind --

MR KELL: I object to what is essentially submissions being made at this point in time, particularly in the presence of the witness. The question that was asked by Ms Gerace yesterday was not dependent upon an earlier reference to "subsequent correspondence". It was simply asking the witness whether he was, in giving an answer in part, referring to the fact that it was unlikely that McAlinden was going to participate willingly in the process.

THE COMMISSIONER: The next question, that is the question at line 19, doesn't really advance that in any way.

MR KELL: My friend is entitled to explore the topic with the witness, but to do it by way of making submissions in an informative way is not going to assist you, Commissioner.

MS GERACE: Might I also just say that there was other information, not just the correspondence upon which that view could be formed. This witness gave evidence about his knowledge of those matters. Without going into too much detail on the record, there was all the knowledge about the fact that Father McAlinden was not conforming to restrictions, had moved away. That was all other information upon which the view could be available to him. The correspondence is one reference, yes, needless to say; but there was other information. The question and answer was plain, not by reference to any document, not misleading
in any way and answered unambiguously without hesitation.
THE COMMISSIONER: Yes. I fear that that is true, Mr Gyles.

MR GYLES: Those things currently stand. I can deal with this in submissions in due course. Father Burston has given evidence to $\operatorname{Dr} \mathrm{Kell}$ that had he not formed that view. He has given evidence this morning that he had not formed that view and he gave some evidence yesterday based upon --

THE COMMISSIONER: That he had.
MR GYLES: -- those questions and in that context, that maybe read as saying that he had. You, in due course, will have to deal with that. So there's no misunderstanding about the position we take about it, one needs to look at all of those questions, because as my learned friend in her submissions noted, that then forms a building block for various other questions. I am to deal with that submission. If I'm not being allowed to do it, I will not be criticised in due course by Ms Gerace for not doing that, if the record could reflect that.

THE COMMISSIONER: I understand that, Mr Gyles.
MR GYLES: Thank you.
Q. Could you go forward to 304, please, Father Burston. Again, this is a letter you're well familiar with from yesterday. I'm not asking you for your independent recollection of this, but if you can assume that Bishop Malone asked you to send this letter to Mr Davoren in connection with the matters set out in it; all right? A. Yes.
Q. Can we take it that you at that time, ie, 10 August 1999, believed that to be the appropriate avenue for providing information to the police?
A. Yes.
Q. If you go forward to tab 308, which is a letter of 24 August - this is again a letter I think you were taken to yesterday - we see that Mr Davoren has responded to you acknowledging that communication and saying that he passed the matter on to the police. Do you see that?
A. Yes.
Q. Can we take it that your state of mind as and from certainly August 1999 was that the [AL] and [AK]
allegations had been passed on by you through the PSO and Mr Davoren to the police?
A. Yes.
Q. You were asked some questions yesterday about whether that information could have been provided at an earlier time, for example, 1998 or 1997. Is it the case that, so far as you were concerned, that was essentially a matter for Bishop Malone as to whether he thought it appropriate to do that?
A. Yes.
Q. Could you go forward to 310. This is a statement of complaint which you may or may not recognise, concerning [AE] --
A. Yes.
Q. -- a McAlinden victim who came forward in October 1999. Do you have any independent recollection of that? A. No, I don't.
Q. Thank you. Do you have an independent recollection of seeing this statement of complaint?
A. No, I don't.
Q. Are you able now to draw on an independent recollection of a McAlinden victim coming forward at or within a few months of the report you'd made to Mr Davoren of the [AL] and [AK] allegations?
A. I have no recollection of that, no.
Q. If you go forward to tab 313, you will see that it is a letter you were taken to yesterday?
A. Yes.
Q. It is a letter of 8 October 1999 from Detective Senior Constable Watters?
A. Yes.
Q. One of the matters you were taken to concerned police seeking information about the current whereabouts of Father McAlinden. Do you recall that?
A. Yes.
Q. Can you please go back to 313. This is a document you will not be familiar with. It is a NSW Police Force COPS record. I'm sorry, 311. I am grateful to Mr Cavanagh. You won't be familiar with this document, I don't expect. It is the document behind tab 311?
A. Yes.
Q. If you go to the second page of that document, you will see about halfway down the page there is this entry:

The Catholic Church at Newcastle have been spoken to and the priest is still alive and living in the Newcastle area. He is currently out of the country and due to return in the next few weeks.
A. Yes.
Q. Et cetera. And disclosure made that there are other alleged incidents such as this. Do you see that?
A. Yes .
Q. It is apparent that communications had been made by the police directly with the church at that point; do you see that?
A. Yes.
Q. Can you recall whether you are the person who spoke to the police at that time?
A. I don't believe I was, but I can't remember.
Q. Thank you. Could you put that volume away, thank you, and could you go to volume 5, tab 386, please, Father Burston.
A. Yes.
Q. Do you see that's a statement you gave --
A. I'm having difficulty with the folder. Yes.
Q. You will see that's a statement that you gave to the NSW Police in respect of the Fletcher matter on 20 May 2003?
A. Yes .
Q. It is not necessary for you to go there, but you also, on 8 September 2003, at tab 409 of the same volume, gave a further statement to the police which the Commissioner
asked you about in one respect yesterday. Do you recall that?
A. Yes .
Q. Can we take it that in respect of each of those statements, you were asked by Detective Chief Inspector Fox to speak to him about putting on a statement in the Fletcher case?
A. Yes.
Q. And that you willingly cooperated with that process?
A. Yes.
Q. And that you gave these two statements?
A. Yes.
Q. And met with Detective Chief Inspector Fox for that purpose?
A. Yes.
Q. At the times that he wanted you to meet him?
A. Yes.
Q. Can we take it that you did not knowingly or intentionally withhold any information from him in respect of the Fletcher investigation?
A. Yes.
Q. That you didn't knowingly or intentionally hinder or obstruct the Fletcher investigation?
A. Correct.
Q. And so far as both of those statements are concerned, in the light of your evidence yesterday, you would agree, wouldn't you, that your memory of such matters, ie, the matters set out in those statements in 2003 before the number of operations you've had, would have been plainly better than it would be now?
A. Certainly, yes.
Q. In terms of your giving evidence in these proceedings, is it the case that you appreciate you commenced your evidence on Wednesday?
A. Yes.
Q. Is it the case that the Commission's lawyers asked you to come down and speak to them before you gave evidence and
you came down and met with $\operatorname{Dr} \operatorname{Kell}$ and Ms Wardle before you gave your evidence?
A. Yes.
Q. That was something --

MR KELL: Could I pause for a moment and ask my friend where he is going with this.

THE COMMISSIONER: Yes.
(Mr Kell and Mr Gyles confer)
MR GYLES: Q. You came down and spoke to those people about the evidence you were going to give - I'm sorry, you came down and saw them outside in one of the conference rooms and you discussed the evidence you were going to give?
A. In broad terms, yes.
Q. Having done that, you waited until it was your turn to give evidence?
A. Yes.
Q. In the course of that, and prior to giving your evidence, you were harassed, weren't you, by people outside the court? On Wednesday afternoon before you gave your evidence, people approached you outside the court?
A. They did, yes.
Q. Was that something that caused you stress prior to giving your evidence?
A. A certain - yes, a certain amount of stress.
Q. Was that something that rattled you to some extent?
A. A little bit, yes.
Q. You would agree that the process of giving evidence is stressful enough?
A. Yes.
Q. You've been doing it now for a relatively long period of time?
A. Yes.
Q. When you left court on the Wednesday afternoon after giving your evidence, you were confronted with --

MR KELL: Commissioner, I object, on the basis of relevance and also this is not going to matters that are going to assist you in assessing the witness's evidence or assessing the subject matter.

THE COMMISSIONER: I am aware of these matters, these very regrettable incidents.

MR GYLES: I'11 put the proposition. It is only about two or three questions away. I don't think there's any issue of fact about this happening.

MR KELL: I would also ask my friend to clarify whether what is actually be advanced is in the nature of an application that the witness, Father Burston, come back on another occasion at which time his recollection might be better because he has not in any way been stressed or subject to the matters --

THE COMMISSIONER: I did not anticipate that would be the --

MR GYLES: I don't make the application.
MR KELL: I don't understand that application to be made, but I think it should be made clear that such an application is not being made and that that would be a potential option.

MR GYLES: I'm not being critical at all, can I say, of any of the dealings of the Commission with this witness. A11 I'm seeking to do --

THE COMMISSIONER: I understand what you're doing Mr Gyles.

MR GYLES: Commissioner, you've seen many witnesses give evidence. You appreciate it is a stressful exercise to have to undertake.

THE COMMISSIONER: I certainly do Mr Gyles. I've given evidence myself,

MR GYLES: If it is not stressful enough, there are additional factors which have caused greater stress than this witness might otherwise have been subjected to in
the matters I have taken him to. One may well perceive that those matters themselves and the stress of giving evidence - something you may take judicial notice of - in effect, might even be more relevant here when you've got a man who is 77 or 78 years old being asked about events going back 20 or 30 years and where he has had, to his mind, what he regards as a cognitive difficulty in terms of memory.

THE COMMISSIONER: Yes. I understand you're putting those matters on the record, which may affect the evidence that Father Burston has been able to give and the way he has given it.

MR GYLES: Particularly if there is, in due course, a criticism of his memory.

MR KELL: Commissioner, I do object to this. These are effectively submissions being made from my friend.

THE COMMISSIONER: Yes. Were we going to go any further?
MR GYLES: At the moment I'm asking him to confirm as to what happened after court on Wednesday and whether that was something that he found stressful. I propose to ask him whether the process of the combination of those things and giving evidence and the stress that he has felt there may have affected, to his mind, his memory in giving his evidence.

That evidence goes in for what it is worth. However, Commissioner, you need to appreciate that if it is going to be alleged that he has been selective with his memory --

MR KELL: Commissioner, I do apologise for interrupting my friend. I might request a five-minute break during which I can take some instructions on the matters that have been raised.

THE COMMISSIONER: Very well, Mr Kell.
MR KELL: They are significant. A formal application isn't being made, but $I$ want to take some instructions on that point.

THE COMMISSIONER: Thank you. We will take a short break.

MR KELL: Commissioner, thank you for that time. It seems to those assisting that the diocese is contending that the witness's ability to fully assist the Commission has been compromised by events that occurred outside of court.

THE COMMISSIONER: Yes, I would agree, Mr Kell.
MR KELL: There may be a view available that in fact the witness's recollection has actually improved after those events, but that is a matter for submission at another time. I do observe that it is highly regrettable that this matter was not raised with those assisting as a matter on Thursday morning, for example, that it might impact on the witness's ability to provide reliable evidence to the Commission.

Part of our role in assisting you, Commissioner, is to ensure that there has been no unfairness that attends to any particular witness and also that the inquiry's processes are properly and fully observed. My proposal is to adjourn this witness's evidence, in those circumstances, to Friday of next week and continue the public evidence of Father Burston at that time. That will give the diocese, those assisting and all others concerned time to consider their position given what is now seemingly put forward, which is that this witness's evidence in part is seemingly not able to be relied upon because of certain events.

Commissioner, my submission would be that the witness's evidence be adjourned until next Friday and that there be some consequent adjustment to the witness list that can be notified to the parties later.

THE COMMISSIONER: Thank you, Mr Kell. Mr Gyles, as regrettable and unfortunate as it is for Father Burston personally, I propose that we postpone the rest of Father Burston's evidence until next Friday when I trust the distress of the incidents will have dissipated, In fairness to Father Burston, even though it must be an odious prospect for him to have to put in another week for it waiting to be all over.

MR GYLES: I wasn't intending to put the cat amongst the pigeons by these questions. I wished to make a submission as I think I outiined to you, Commissioner, that if

Father Burston is criticised in terms of his capacity to recall and the genuineness of that, we would put, for example, the stress of having to give evidence at his age and, as I say with at least his own perception of his cognitive issues.

The events outside the court, which are not in dispute, may have had some impact and that can be taken into account and no doubt, Commissioner, you can do that very fairly.

You've had the opportunity to spend the last three days reviewing this witness taking all of those things into account. That's as high as we put it. It is not put as a positive. This is dealing with the question as to a potential criticism of him and I wish to make that submission and it is not a question of giving him notice of that, with all due respect.

THE COMMISSIONER: Mr Gyles, there are a lot of things we can't change but perhaps we can do this: by next Friday, the stress of the most unfortunate, rude and regrettable events involving people who tried to bully and intimidate Father Burston may well be behind him, so he at least won't be labouring under that difficulty, and that is what will be done.

MR GYLES: If that's of assistance to you, Commissioner, then I am content with that course.

THE COMMISSIONER: Q. Father Burston, I am sorry that you will have to come back. I do hope you will be feeling calmer and less stressed next Friday. We'll try to just do it in one quick burst so that it can all be over for you then.
A. Thank you very much, Commissioner.
Q. Thank you, Father Burston. For the time being, you are excused.
A. Thank you.

MR KELL: Thank you Commissioner.
<THE WITNESS WITHDREW
MS LONERGAN: Commissioner, I call Monsignor Alan Hart.
<ALAN JAMES HART, sworn:
<EXAMINATION BY MS LONERGAN:
MR CAVANAGH: Commissioner, before my friend commences, could I indicate the monsignor seeks section 23 protection.

THE COMMISSIONER: Thank you, Mr Cavanagh.
MS LONERGAN: Q. Monsignor, your full name is Alan -A-L-A-N, James Hart?
A. It is.
Q. You're a monsignor currently incardinated to the Maitland-Newcastle diocese?
A. I am.
Q. You were ordained monsignor on 16 July $1966 ?$
A. That's true.
Q. I'm going to hand up to you or have handed up to you a copy of your "Notices of appointment" document from the diocese of Maitland-Newcastle and a copy for the Commissioner.
A. Thank you.
Q. Monsignor, does that document set out the basic history of your postings to parishes in the Maitland and then Maitland-Newcastle diocese?
A. Yes.
Q. It is up to date?
A. It's up to date.
Q. Thank you. Amongst other postings that you've held, Monsignor Hart, from 1 January 1987 to 1 January 1992, you were a member of the bishop's consultors and Council of Priests?
A. I was.
Q. A1so on 23 September 1990, you were appointed vicar general to Bishop Clarke?
A. That's true.
Q. That position continued unti1 31 December 1995, according to this document?
A. True.
Q. In that role, you were also an attender on occasion to the meeting of the bishop's deans?
A. Yes .
Q. Was that a regular occurrence that, as vicar general, you would attend the deans' meetings in those years you were vicar general?
A. Yes.
Q. Then there was a period in 1996, from June to December, where you were on leave entirely from the diocese; is that the position?
A. Yes. I had a sabbatical leave.
Q. In January 2001, you had five years again as a member of the Council of Priests at this time to Bishop Malone?
A. Malone.

MS LONERGAN: I tender that notice of appointment document, Commissioner.

THE COMMISSIONER: Thank you Ms Lonergan. The appointments document from the diocese of Maitland in relation to Monsignor Hart will be admitted and marked exhibit 119.

EXHIBIT \#119 APPOINTMENTS DOCUMENT FROM THE DIOCESE OF MAITLAND IN RELATION TO MONSIGNOR HART
(Transcript suppressed from page 1381, line 31 to page 1382, line 12)

MS LONERGAN: Q. I'11 come back to that evidence at a later point, Monsignor Hart. In terms of rumour about McAlinden having sexually abused children, your answer gave an impression that you may have heard something more in nature of rumour prior to the event you've just identified; is that the position?
A. Whispers.
Q. Whispers - from parishioners?
A. Parishioners.
Q. From other clergy?
A. No, not other clergy.
Q. Did you yourself confront McAlinden in terms of any whispers?
A. No.
Q. I don't want you to answer this question in terms of any content of what may have occurred or what you may have discussed, but is it the position that, at a particular point in time, you had a discussion with a person who was, at that time, incardinated to the Maitland-Newcastle diocese which gave you certain information about McAlinden's offending with small children?
A. Yes.
Q. Again, we'11 come back to that. In your role as the bishop's vicar general, did then Bishop Clarke convey any information to you regarding McAlinden or allegations made against McAlinden sexually abusing children?
A. The bishop filled in with my predecessor --
Q. I'm going to stop you there.
A. Yes.
Q. I'm specifically directing your mind to conversations you had with your bishop about that issue, if any?
A. No.
Q. Is it the position that at no point you, as Bishop Clarke's vicar general, had any conversation with the bishop regarding McAlinden having been accused of sexually abusing children?
A. True.
Q. You never had any conversation with him?
A. No.
Q. Not one word?
A. No.
Q. You're absolutely confident of that?
A. Yes.
Q. Would you agree with me that the knowledge, at least possessed by one other member of the diocese of Maitland-Newcastle to the effect that McAlinden had been accused of sexually abusing children was conveyed to you, is that not a matter that ought to have been discussed with the bishop given his role, discussed by you with the bishop?
A. Bishop Leo was very private.
Q. All right. Are you very private?
A. Yes.
Q. Your role of vicar general was to assist the bishop with his administration of the diocese?
A. Can I make a clarification, please?
Q. Yes, please do.
A. Please. I was the administrator of the procathedral, so when I became vicar general the bishop said to me, "I want you to remain as the administrator because that's your pastoral role." Then he defined my role as, more or less, because we had a synod coming up, to really encourage the laypeople to be involved in our diocese. There was a team doing that and he asked me to work with the team and that was ended up with this synod of 1992-93.
Q. Forgive me for cutting off anything further about that particular aspect of your role, but you were appointed the bishop's vicar general on 23 September $1990 ?$
A. True.
Q. The role of the vicar general is to assist the bishop, is it not?
A. It is.
Q. And part of the role includes assisting the bishop with management of members of the clergy of the diocese, if asked?
A. If asked.
Q. And attending to problems that arise in the diocese, including problems with clergy?
A. It is.
Q. It is your evidence, is it, that at no time did Bishop Clarke and you discuss any allegations relating to McAlinden sexually abusing children?
A. To my memory, no.
Q. You are aware, aren't you, that the bishop kept files, confidential files, regarding clergy of the diocese?
A. Once again, I had no concept. He never told me about the files. I never, ever accessed the files.
Q. I wasn't asking you about access. I was just asking you as to whether you were aware that Bishop Clarke kept a set of confidential files on priests of the diocese?
A. He never told me.
Q. No, I'm not asking you that either.
A. No.
Q. I'm asking you whether you were aware that he did so?
A. No, I wasn't.
Q. You're not aware?
A. No.
Q. When did you first become aware that Bishop Clarke did keep confidential files of the diocese?
A. It never arose.
Q. But you know Bishop Clarke kept confidential files on
priests of the diocese, don't you? You know it now?
A. I know it now.
Q. When did you become aware of that fact?
A. It was probably after I finished, because he didn't talk about them.
Q. After you'd finished, you mean after you completed your term as vicar general?
A. Being the vicar general, yes.
Q. Is it your evidence that you didn't know at any time whilst you served as Bishop Clarke's vicar general that he kept confidential files on priests of the diocese?
A. No, I didn't.
Q. You were not aware?
A. No.
Q. Bishop Clarke was succeeded by Bishop Malone. Did you become aware in Bishop Malone's time of the existence of confidential files regarding priests of the diocese?
A. No.
Q. No?
A. No.
Q. When did you become aware of the existence of confidential files about priests of the diocese?
A. I suppose when I was in Sydney with yourself.
Q. So is it your evidence that it wasn't until 2013 that you knew that there were any confidential files kept about priests at the diocese of Maitland-Newcastle?
A. Yes.
Q. What about non-confidential files about priests of the diocese? Were you aware they were kept at the Maitland-Newcastle chancery, personnel files?
A. Personnel files, yes, we've got all those things, yes.
Q. So it is your evidence, is it, that you knew there were personnel files, but you had no knowledge about confidential files?
A. Exactly.
Q. You're aware, aren't you, there was certain
documentation that existed and was kept by the diocese that refers to reports of McAlinden sexually abusing children?
A. No.
Q. You're aware of documents in which complaints are mentioned regarding McAlinden having sexually abused children. You're aware now?
A. Now? Now I am.
Q. You're aware, aren't you, that there was a letter between Monsignor Cotter and Bishop Clarke dating back to the 1970s where McAlinden having sexually abused children is discussed?
A. That was later.
Q. I'm not asking you when.
A. Okay.
Q. I'm just asking you whether you were aware?
A. I'm aware of that letter now.
Q. When do you say you first became aware of that letter?
A. Good question. Probably aware first time when it was printed in the Newcastle Morning Herald [sic].
Q. When was that?
A. It was when the issues of abuse started.
Q. Are you able to assist with what year you think that was that you saw that?
A. It had to be - it was in Paddy Cotter's time, so it would have been in the 1980s, the late 1980s.
Q. You think you saw the letter some time in the late 1980s?
A. Yes.
Q. Is that your answer?
A. Yes.
Q. What was your role at the diocese at the time? Were you a consultor or a member of Council of Priests and was it before you were appointed vicar general?
A. It was when the whole issue turned - started to develop about the sexual assaults.
Q. To be fair to you, in late 1995 there were also some issues raised about a priest of the diocese, Vincent Ryan, so you're not becoming confused about matters relating to that particular priest, are you?
A. No.
Q. It is your recollection, is it, that in the late 1980s somehow this letter between Bishop Clarke and Monsignor Cotter became public in some way in the newspaper?
A. I tried to think of what caused that paper to be released and I can't remember.
Q. Again, making sure that I'm fair to you, are you confident that it was the late 1980s where this happened, or could it have been at a different time?
A. It could have been at a different time.
Q. Your evidence today commenced with the assertion or the response to one of my questions that you first knew about accusations that McAlinden had been sexually abusing children when a certain event happened in 1990, when you took over as vicar general?
A. True.
Q. Would you agree with me that if you, in fact, knew about this letter between Monsignor Cotter and Bishop Clarke, that would suggest that you had knowledge and you knew about that in the late 1980s, that would suggest that you knew about things before you became vicar general?
A. It's got to be later then.
Q. It's got to be later. Thank you. I'11 have you shown a copy of that letter in a minute. In fact, I should have you shown a copy of that now. To your right there there's a series of folders. Can you reach for volume 1? I will get you to turn to tab 59. Do you see behind tab 59 -A. Tab 69?
Q. Tab 59.
A. Yes.
Q. It is a handwritten letter, but at the back of that tab there's a typescript which is bit easier to read. Just have a brief read of that letter to yourself. Is that the letter that you're talking about?
A. No.
Q. No?
A. No, I'm not talking about this letter.
Q. The letter that you were talking about is a letter between Monsignor Cotter and Bishop Clarke; that's been your evidence?
A. Yes.
Q. How can you be confident that it is not this particular letter that you're looking at now behind tab 59?
A. No, this is a different - a totally different letter.
Q. The one that you're referring to as having seen some time --
A. Later.
Q. -- later, as in later after you were appointed vicar general, did concern allegations of sexual abuse against McAlinden; you're confident of that?
A. From Monsignor Cotter?
Q. Yes.
A. Yes.
Q. And the circumstances in which you saw that was that it was published in the newspaper or parts of it were published in the newspaper?
A. Parts of it were published in the Newcastle Morning Herald.
Q. I am going to ask you during the luncheon adjournment to read that letter behind tab 59 carefully to yourself. It may be the situation that what you read were extracts from that letter and not the whole letter. We'll come back to that after the luncheon adjournment.
A. Thank you.
Q. I'11 keep going. You know, don't you, that McAlinden was charged with sexually abusing a child in Western Australia?
A. Yes.
Q. Are you able to say when you learnt of that fact?
A. Much later in the 90s.
Q. Who did you learn about it from or how did you learn about that?
A. The bishop, Leo Clarke.
Q. Which bishop?
A. Leo Clarke.
Q. You have given evidence this afternoon to the effect that you have never discussed allegations of McAlinden sexually abusing children with your bishop, Leo Clarke, but you have just given an answer to the effect that Leo Clarke told you that McAlinden had been in trouble for or was alleged to have sexually abused a child in WA. Have I misunderstood your evidence?
A. I interpreted your question, when we first spoke, that it was later, in my understanding.
Q. My question was a very general one and that was whether you had ever discussed with Bishop Clarke any allegations relating to Father McAlinden sexually abusing children and I emphasised "ever" and I think I put the question to you twice.
A. You did.
Q. I will go back to it. Did Bishop Clarke ever discuss with you allegations of McAlinden sexually abusing children? Can we take it from your answer that one answer is "Yes" because he talked to you about the Western Australian allegations?
A. He talked to me about that, yes.
Q. Tel1 us more about that conversation, when it occurred and who was present?
A. I would think, to the best of my ability, that it was when - in 1993.
Q. Were the circumstances that you had become party to particular knowledge about persons who alleged they had been sexually abused by McAlinden coming forward to you personally?
A. Yes.
Q. You say "I would think". Do you actually recollect having the discussion with Bishop Clarke in which he mentioned the allegations in Western Australia?
A. Yes.
Q. You're confident that that was the timing?
A. Yes, that is true.
Q. I'm just going to keep that in your memory, that particular conversation; we'11 come back to it. Were there any other conversations with Bishop Clarke that you had where you and he discussed allegations that McAlinden sexually abused children?
A. No.
Q. There was one conversation with him?
A. Yes.
Q. It was about the time you dealt with some other people coming forward, or another person coming forward?
A. Exactly.
Q. Do you have a pseudonym list with you in the witness box there? It should have a list of names and initials to one side as to who they are?
A. Yes.
Q. Is the person or one of the people you're talking about having come forward to you personally [AJ]?
A. Yes.
Q. I suggest to you that it was in February 1993 that she personally contacted you. Does that accord with your recollection or not?
A. Yes.
Q. It does?
A. Yes.
Q. To assist you, I'm going to have you shown a diary, your diary from 1993, the original of it, which will be handed up to you now, and also a photocopy for you to look at but it has had the name redacted. This is potentially to assist you with the dating of your interface with [AJ]. A. 5 February, I think. Is it the 5th?
Q. You've got a good memory. Do you recollect that or you've done a bit of research yourself in the interim?
A. No, I remember it.
Q. You recollect it?
A. I'm sure it was the 5th.
Q. I am just sending up the original diary and a photocopy for the witness and one for the Commissioner. Next to 5 February is a name, if you wouldn't mind looking at the original. Is that the person that you're thinking of?
A. Yes.
Q. There is a sign or time or some sort of notation next to the name. Please don't read the name out. We refer to her as [AJ] in these proceedings. Is that a time or a - A. A time, 7pm.
Q. You talked to her at that time. Does that accord with your recollection or is it something else?
A. Yes.
Q. Did she come to see you or did you have a phone call with her, or what was the position?
A. She rang up and I said for her to come up.
Q. Are you comfortable that that's the date on which you had this exchange with [AJ]?
A. Yes.
Q. And that the exchange was relating to her telling you that McAlinden had sexually abused her when she was a little girl?
A. Yes.

MS LONERGAN: Commissioner, I tender that diary extract.
THE COMMISSIONER: The extract from the diary of Monsignor Hart from 1993 will be admitted and marked exhibit 120.

EXHIBIT \#120 EXTRACT FROM THE DIARY OF MONSIGNOR HART FROM 1993

MS LONERGAN: Q. Just keep that diary extract with you and the original diary. I'll come back to that very shortly. Do you have a good recollection of what [AJ] told you during her discussion with you about what had happened to her and what she was requesting you to do?
A. A very clear understanding because I was horrified.
Q. You don't need to go into the details of the actual
nature of the sexual abuse.
A. Okay.
Q. Can you assist with what you recall was the outline of what she told you?
A. Yes - that she had been sexually abused.
Q. She told you how old she was when it happened, did she?
A. Yes.
Q. Did she ask you to do something about it?
A. She asked me to tell the bishop.
Q. And you did so?
A. I did.
Q. You did so within a short time frame of her telling you what she had told you?
A. The next day.
Q. At this stage you were already aware, weren't you, from a conversation you had with another person from the diocese, another clergy member, that there had been previous reports of McAlinden sexually abusing children, previous to [AJ] coming forward to you?
A. Oh, yes.
Q. In your conversation with Bishop Clarke, are you able to assist with what you talked to him about in terms of McAlinden and whether you mentioned that this person was an additional victim of McAlinden's sexual abuse?
A. She asked me to tell the bishop and the bishop had his committee, which is Father Brian Lucas and --
Q. Another person who you can't mention?
A. Yes.
Q. That's your recollection?
A. That's my recollection.
Q. Is there any documentation from that time upon which you base the recollection that the bishop had a committee that comprised of Father Brian Lucas and another person?
A. That was very clear when I first - when I took over.
Q. That's the way you remember things having been managed
at that time, is that the position?
A. Yes. The bishop had created that team with the person and then with Brian Lucas.
Q. What I want to suggest to you is that the other person in addition to Lucas that you think was part of the action at that time was actually not present in the diocese. Does that not accord with your recollection? Your recollection is that it was a committee comprising Father Lucas and another, the other person you have already identified? A. Yes .
Q. Just turning to your conversations with [AJ], did you tell [AJ] that you were going to take any particular course?
A. No, because she asked me to take it to the bishop.
Q. All right.
A. I asked her to go to the police, though.
Q. Monsignor Hart, do you say that your request to [AJ] that she consider going to the police was something that you raised with her in your first conversation with her?
A. Yes.
Q. That was a conversation on the phone, was it?
A. No, she came up.
Q. When she came up?
A. She came up to the bishop's house.
Q. Do you recollect what she said to you?
A. She didn't give me full explicit details.
Q. No, what she said to you in terms of her intention to go to the police or otherwise, I'm sorry?
A. Oh, sorry. I told her to go to the police and she said she didn't want to.
Q. Do you recollect whether [AJ] said to you words to the effect, "I want to get him off the street and stop him reoffending"; does that accord with your recollection?
A. Exactly.
Q. Yes?
A. Exactly.
Q. As the vicar general to Bishop Clarke, did you see yourself as having a role where you could assist in bringing about that outcome?
A. No, because he had his committee.
Q. But you could assist in terms of referring the matter to the bishop?
A. Yes, that's what I did.
Q. Did you as the vicar general see yourself as having that role only in terms of the ongoing management of this particular issue?
A. I was the administrator, so I tried to support her.
Q. Yes. A11 right.
A. It wasn't with the vicar general's hat on but because I was the administrator.
Q. And the person to whom she conveyed the complaint? A. Yes.
Q. At that time, early 1993, we've established, had you been given any particular training as to how allegations of sexual abuse on the part of clergy should be managed within the diocese?
A. No.

MS LONERGAN: Is that a convenient time, Commissioner?
THE COMMISSIONER: Yes, thank you Ms Lonergan.
Monsignor Hart, we will adjourn until 2 o'clock.
LUNCHEON ADJOURNMENT

## UPON RESUMPTION:

MS LONERGAN: Q. Monsignor, before the luncheon adjournment, I was asking you some questions about two conversations. First of all it was the one that you had with [AJ]?
A. Yes.
Q. First of all, there was a conversation on the phone, was there not, with [AJ]?
A. No, that was the request to come and see me.
Q. Yes, but that was a phone call --
A. That was a phone call.
Q. -- to come and see you and then there was an in-person discussion with her?
A. That afternoon.
Q. We looked at your diary, which seemed to show 7 pm next to the time at which she came to see you?
A. Correct.
Q. So when you say "that afternoon", you mean 7 pm ?
A. Yes.
Q. The conversation on the phone with [AJ], do you recall any aspects of that conversation now?
A. It's my recollection, "I need to come and see you."
Q. Did you ask her what about?
A. No.
Q. Why not?
A. I usually don't ask people - just come and see me.
Q. You already knew [AJ]?
A. Oh, yes, she was a parishioner.
Q. She was somebody you found to be a truthful and open type of person?
A. Wonderful lady.
Q. So [AJ] came to see you at your residence or at the presbytery you were in, or where did she come?
A. The bishop's house.
Q. Do you recall the content of your discussion with her at the bishop's house now?
A. Yes. She wanted to tell me she had been physically abused.
Q. Did you ask her questions about the details?
A. No.
Q. Did you ask her anything regarding whether the abuse involved any particular kind of activity?
A. All she said was, "I just want it to go to Bishop Clarke."
Q. Did you tell her anything that you knew about previous complaints of sexual abuse by McAlinden?
A. Not at that meeting.
Q. Are you confident that you didn't tell her anything about previous complaints against McAlinden at that meeting?
A. Was that the second meeting?
Q. This is the meeting when she came up to the bishop's house?
A. There were a number of meetings.
Q. We'll come to the other ones then, but are you confident that at this first meeting, the one we've looked at as having occurred at 7 pm on 5 February, based on your diary note, you're confident you didn't say anything at that meeting about previous complaints about McAlinden sexually abusing children?
A. Not to my memory.
Q. You say there were other discussions with [AJ]. Are you able to say how long after she first came to see you at the bishop's house these other discussions occurred?
A. What we did, I told Bishop Leo.
Q. Yes?
A. He then sat with his team, which is Father Lucas --
Q. I'm going to stop you there. Were you party to any discussions Bishop Leo had with anybody else other than you about how to manage [AJ]'s complaints?
A. No.
Q. We won't take any evidence from you about those, but what you can give evidence about is what Bishop Leo told you he'd done. Did he come back and report to you about what he had done in terms of responding to what you told him about [AJ]?
A. He just said, "I put it into place, put it into the order."
Q. Did he tell you what steps were going to be taken in terms of raising it with McAlinden?
A. No.
Q. Did you know where McAlinden was at the time [AJ] made this complaint to you?
A. No.
Q. You didn't know?
A. No.
Q. Are you sure you didn't know?
A. No.
Q. He wasn't in the diocese at the time. He wasn't physically present; you know that, don't you?
A. Not to my - I don't believe he was in the diocese.
Q. You don't believe?
A. I don't believe he was in the diocese at the time.
Q. Was he somebody you knew by running into him at priests' meetings or diocesan meetings in the past, that is, before 1993?
A. He was - I was down the other end of the diocese. He was always up the top usually, so I didn't meet him very often at all.
Q. But you had met him?
A. Oh, yes.
Q. Did you have an opinion prior to 1993 about him, putting aside what you had heard regarding assertions he may have sexually abused children?
A. He was an Irishman: that's about it.
Q. Do you know whether he had had more assignments to different parishes than the average priest of the diocese? Are you able to form a view about that, or were you able to
in 1993?
A. No. He was moved around a lot.
Q. As the vicar general to the bishop, did you have any role in keeping track of where different priests were located; that is, priests who were still incardinated to the Maitland-Newcastle diocese?
A. You mean the placement of priests?
Q. Yes.
A. That was for the deans. The deans used to do that.
Q. You were a dean while you were a vicar general?
A. Yes.
Q. So part of the operation of the deans, of which you were one, was to keep track of where priests were in terms of their placements?
A. To give advice to the bishop where they should be placed because if a parish becomes vacant, the deans had a say.
Q. To do that, you would need to know where different priests were already, wouldn't you?
A. Oh, yes.
Q. You must have, in that role as a dean, had some idea as to where McAlinden was in at least the period that you were a dean, 1990 to 1995?
A. Yes.
Q. From that point of view, in the usual course, you would have known where McAlinden was in early 1993, wouldn't you?
A. I couldn't remember now where he was, but --
Q. That's all right, but you would have had within your means an ability to go and find out where he physically was?
A. Yes.
Q. Does this ring a bell: McAlinden was actually in Western Australia at the time these events came up with [AJ] telling you that she had been abused? Does that ring a bell?
A. I think she told me that's where he was.
Q. Oh, she told you?
A. I think so.
Q. Do you agree with me that you would have been able to look up some records to find out where he was, records available to you at the diocese?
A. I never looked up any records.
Q. No, that's not what I'm asking you.
A. No.
Q. I'm asking you whether you would have been able to do so?
A. No, because I never touched the records.
Q. I'm not asking you whether you did it. What I'm asking you is whether you would have been able to find out from records at the diocese where he was in February 1993?
A. No.
Q. So you've given evidence you were a dean?
A. Yes.
Q. And the deans were able to give the bishop advice as to where priests should be --
A. According to their ability.
Q. You've got to let me finish questions or we're going to have a very tortuous afternoon.
A. Okay.
Q. Monsignor, as a dean, you were able to advise the bishop or you were expected to advise the bishop as to where priests should be moved to?
A. Exactly.
Q. Part of that process must be, must it not, some sort of knowledge as to where priests were so they could be moved or not moved, as the case may be?
A. Then it became a dialogue.
Q. No, I'm asking you about the theoretical possibility. I don't need to know how it was done, but that you would need to know where they were?
A. Oh, yes.
Q. And within the diocese documents, that could easily be
made available to you as vicar general would include information where McAlinden was in February 1993?
A. But I didn't look them up.
Q. You have said that now three times.
A. I know.
Q. I'm asking about availability of records. Is there any reason you are resisting --
A. No, no.
Q. -- entertaining my questions and answering it?
A. No. We just didn't do it.
Q. I'm not asking you whether you did it. The diocese keeps records about where priests are, doesn't it?
A. Well, they're published. They're published in our booklets.
Q. You had access to those, didn't you?
A. Yes.
Q. So you could have looked up where McAlinden was, couldn't you, in February 1993?
A. February 1993?
Q. Yes?
A. Yes.
Q. You could have asked the bishop "Where's McAlinden?" I'm not asking you whether you did. You could have?
A. I could have.
Q. You would expect the bishop to know where he was, at that point, February 1993, wouldn't you?
A. Possible.
Q. You would expect him to know?
A. Yes.
Q. I'm not asking whether he did know, but you would expect him to know?
A. I'd expect him to know, yes.
Q. Is there any reason why you're resisting these questions?
A. No.
Q. No? Okay. Do you recall that McAlinden was in fact formally recalled from Western Australia by Bishop Leo?
A. I don't recall that, no.
Q. I suggest to you that that's what happened and the records show - and I'11 show the records to you that indicate that - that Bishop Leo contacted one of the bishops in Western Australia and asked that McAlinden be sent back to New South Wales. You're nodding. None of that rings a bell?
A. No.
Q. Did you have any role in speaking to McAlinden about [AJ]'s allegations?
A. No.
Q. Why not?
A. It wasn't my role, according to what Leo had established.
Q. Given [AJ] came directly to you to complain about what had happened, did you see it as part of your role to communicate back to her what was being done in relation to McAlinden?
A. From a pastoral point of view, yes.
Q. From a pastoral point of view, you made it your business, didn't you --
A. I did.
Q. -- to find out what was being done?
A. I tried to keep her informed of what was happening.
Q. Were you concerned that this now appeared to be a further complaint from someone you found a very good style of person, a reliable person?
A. My word.
Q. That she had been sexually abused by McAlinden?
A. Yes.
Q. You're nodding "Yes"?
A. Yes.
Q. That concerned you that he might abuse other children?
A. Yes.
Q. Did it concern you that you didn't know where he was and he may be abusing children where he was?
A. Well, that didn't come into my mind.
Q. You've given evidence that you had a conversation with Bishop Clarke where you conveyed to him what [AJ] had told you?
A. Yes.
Q. Was there anyone else present for that conversation?
A. No.
Q. Just you and him?
A. Yes.
Q. Did you take any notes --
A. No.
Q. -- about what [AJ] told you?
A. No.
Q. Did you make any notes of your conversation with Bishop Clarke?
A. No.
Q. Did he make any notes of his conversation with you?
A. Not to my knowledge.
Q. Are you able to say how long after you first raised [AJ]'s complaint with Bishop Clarke that he got back to you with any information about what he was doing about the matter?
A. I know that he contacted Father Brian.
Q. You know that because he told you he did that?
A. He told me.
Q. Do you know what sort of time lapse there was between you telling Bishop Clarke about the matter and him telling you?
A. It was fairly quick.
Q. Did he tell you what he had asked Father Brian to do? A. No. He just said he'd done what we'd asked, but she had to come and see him first.
Q. "She" being [AJ]?
A. Yes.
Q. Had to go and see Bishop Clarke?
A. Yes.
Q. And tell what had happened to her?
A. Yes.
Q. Do you know whether that happened?
A. Well, I didn't check up.
Q. Do you know whether [AJ] was in fact interviewed by Father Lucas?
A. That became part of the process.
Q. When you say "That became part of the process", do you know that in fact occurred?
A. It did.
Q. How do you know that?
A. Because she wasn't happy.
Q. And you know she wasn't happy because she told you?
A. Yes.
Q. She told you that she'd had a call or some sort of interface with Father Lucas?
A. Yes.
Q. What did she say to you about that that made you believe she wasn't happy?
A. She said that he was short and abrupt.
Q. Did she outline for you what the interface with Father Lucas had been; that is, was it by fax, meeting, phone call, email? What was the interface?
A. My understanding was it was mostly through phone calls.
Q. Through phone calls?
A. Yes.
Q. Do you have an opinion yourself as to the appropriateness or otherwise of that being an approach to interview somebody about the matter she had raised with you?
A. No, I didn't think it was appropriate.
Q. You did not?
A. No.
Q. Why not?
A. Because I think she needed to be given some type of pastoral care.
Q. Did you express any view to her regarding what she told you was Father Lucas's approach?
A. No.
Q. Did [AJ] tell you whether she was asked to prepare any sort of formal statement or document setting out her assertions about McA1inden, at this time, 1993?
A. My understanding was that she was asked to do that.
Q. Can we take it from your answers that you don't recollect now any particular conversation with Bishop Clarke where he told you, or anyone told you for that matter, that McAlinden was to be recalled from Western Australia?
A. No.
Q. Do you know whether McAlinden came back into New South Wales in response to a request by Bishop Leo in 1993 or not? I'm just asking you whether you know.
A. No, I don't know.
Q. Did you, in your follow-up conversations or meetings with [AJ], tell her anything, on your recollection, about what the church had done in terms of confronting Father McAlinden about the allegations she'd made?
A. Would you mind repeating that question?
Q. Did you have any conversation with [AJ] where you conveyed to her what the church officials had done in terms of confronting McAlinden with the allegations she'd made? Do you recollect any conversation where you told her those things.
A. I don't. No, I don't.
Q. As I understand your evidence today, you don't
actually recall - correct me if this is wrong - being told what other church officials decided to do in terms of confronting McAlinden?
A. Exactly.
Q. Would you accept from me that, in 1993, around about the time all this was happening, you may well have been told but you've just forgotten now?
A. Yes.
Q. I'm not being critical when I say that.
A. No, no.
Q. You're not deliberately forgetting what happened -A. No.
Q. -- or failing to tell us what you recall?
A. No.
Q. You just don't remember? All right. But you do acknowledge you had a number of phone calls with [AJ] where you tried to keep her informed with certain matters relating to McAlinden?
A. Exactly.
Q. Do you recall being told by Bishop Clarke what plans, if any, were to be made to manage McAlinden?
A. No.
Q. Didn't you want to find out what pl ans were being made
in relation to McAlinden given your evidence today about
[AJ]'s concerns and your sharing of those concerns about McAlinden?
A. Once again I repeat that, as far as I was concerned, it was his team that was looking after it, not me.
Q. I understand that, but didn't you, as part of your role and your interface with [AJ], want to inform her what the plans were?
A. My word, and I tried to pastorally look after her.
Q. Sure, but more importantly, she was concerned that he not reoffend; that's the position, isn't it?
A. Oh, yes, she talked about she wanted a safe house.
Q. You were concerned that he didn't sexually abuse any other little girls?
A. Yes.
Q. So you would have wanted to know what was happening
with him, wouldn't you, to make sure that he was at least removed from situations where he could abuse children?
A. True.
Q. Didn't you find out from the bishop what was being done with McAlinden?
A. My understanding was do they know where he was at that time?
Q. It is your evidence, is it, that there was no contact made with McAlinden at or about the time [AJ] made her complaint to you?
A. Not to my knowledge.
Q. Are you absolutely sure about that?
A. Once again, I wasn't a part of the inner circle.
Q. No, I understand that, but you have given evidence on oath today that you wanted to assist [AJ]?
A. I did.
Q. With the pastoral care?
A. Yes.
Q. And you wanted to assist [AJ] and address your own concerns about McAlinden not being able to reoffend?
A. Yes.
Q. Would you agree with me that part of McAlinden's ability to access children was his being a priest?
A. Yes.
Q. And that's a trusted person?
A. Yes.
Q. And someone who would be trusted around children?
A. Yes.
Q. Were there discussions between you and Bishop Clarke about removal of faculties from McAlinden?
A. The bishop did it of his own will.
Q. I'm not asking about --
A. Yes.
Q. -- who did it, but there were discussions, weren't there, with you?
A. No.
Q. No discussions with you about that?
A. No discussion.
Q. Even though you were his vicar general?
A. Yes.
Q. No discussion at all?
A. No discussion.
Q. Did you know that McAlinden had his faculties removed in February 1993 or not?
A. Yes .
Q. You did know?
A. After - after it had happened.
Q. After it had happened?
A. Yes.
Q. Yes?
A. But not before.
Q. Maybe we're not understanding each other. I'm not asking you whether you were party to the decision making about the faculties being removed. What I was asking you was whether you knew his faculties had been removed and the answer to that is "Yes"?
A. Yes.
Q. After it had been done?
A. After it was done, yes.
Q. Did you prepare the decree removing the faculties?
A. No.
Q. Who did?
A. The bishop I believe.
Q. And you saw it?
A. No.
Q. You never saw the decree?
A. No.
Q. You have never seen it, even since then?
A. No, no.
Q. But you know it happened?
A. Yes.
Q. Who told you it happened?
A. I think the bishop said it.
Q. To you?
A. Yes.
Q. Was anyone else there when he told you?
A. No.
Q. Was that a short time or a long time or how long after [AJ] had come to you with her initial complaint did he tell you that McAlinden's faculties had been removed?
A. My memory would be that it happened fairly quickly.
Q. For McAlinden's faculties to be removed he had to sign a document saying he agreed to that, didn't he?
A. He would have.
Q. "He would have". And you say you've never seen that document. I'll show you a document in a minute just to check your recollection on that.
A. Good.
Q. But you became aware, from what Bishop Clarke told you, that McAlinden was no longer allowed to exercise his faculties?
A. True.
Q. Can you explain what that means in terms of what he's allowed to wear or do?
A. It's not so much what he wears but not allowed to celebrate the sacraments.
Q. He's allowed to wear priestly garb and the white collar and all of that?
A. Yes.
Q. Did you discuss with Bishop Clarke any view you held as to the adequacy or otherwise of what was being done? A. No.
Q. You didn't?
A. No.
Q. You offered no opinion by Bishop Clarke about it?
A. I wasn't asked to. Once again I'm going back to his committee.
Q. Did the deans discuss - the deans of which you were one - what had been decided in terms of managing McAlinden?
A. It probably came up at a deans' meeting and the bishop probably informed the deans.
Q. Yes.
A. Which he would have done.
Q. The usual course would be that it would be documented in a minute, is it, in a minute of the deans' meeting, that McAlinden's faculties had been removed?
A. Should be.
Q. Could you have a look at one of the folders to your left, tab 212, which appears in volume 3. I'11 take you through some of the correspondence there.
A. What page, please?
Q. It is at tab 213. Just let me know when you've turned that up.
A. Yes.
Q. You'11 see that's a reference to a decree having been issued by Bishop Clarke?
A. Yes.
Q. Dated 23 February 1993; do you see that?
A. Yes.
Q. That's got a signature there that appears to say
"D McAlinden". Were you familiar with McAlinden's
signature at the time, 1993?
A. Signature?
Q. Yes.
A. Yes, from the letters that he wrote.
Q. So you know that's his handwriting?
A. Yes, that's his handwriting.
Q. Could you turn back to tab 212. Do you see that's a
letter dated 27 February 1993 by Bishop Clarke, stating that "In the light of your health" - this is to Father McA1 inden?
A. Sorry, what is it?
Q. Tab 212, just one tab in front of the one you're looking at?
A. 212?
Q. Yes. 27 February 1993, so the same date as the decree we've just been looking at.
A. Hang on. Right.
Q. It says:

In the light of your health, I hereby confirm your retirement from priestly ministry.

Do you see that?
A. Yes.
Q. What health problems did McAlinden have in February 1993, to your knowledge?
A. I wouldn't have a clue.
Q. Yes. You didn't know about any?
A. No.
Q. Is it the position that he didn't have any particular health problems that would have prevented him from exercising his priestly ministry?
A. I wouldn't have a - I don't know.
Q. Do you see the next bit:

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

Do you see that?
A. I do.
Q. Father B Lucas isn't a medical practitioner, is he, to your knowledge?
A. No, a canon lawyer.
Q. Is it reasonable to take it that that is a reference to the process you've already been giving evidence about that was related to the sexual abuse complaint by [AJ] against McAlinden?
A. Yes .
Q. Do you have any idea why, in the first paragraph, Bishop Clarke uses the term "In the light of your health"?
By that I mean did he have any discussion with you about why he was going to put things in those terms in this letter?
A. No.
Q. Knowing Bishop Clarke as you no doubt did, is that a coy way of referring to his known propensity to sexually abuse children, and by "his" I mean McAlinden's?
A. It sounds likely.
Q. And then he goes on to explain:

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

From your answers a few questions back, does this letter not mean that he ought not aware priestly clothing such as the white collar or crosses?
A. But, see, he hasn't been laicised.
Q. No, I understand that, but just in terms of your understanding of what the removal of faculties meant and what this letter is meant to say?
A. Removal of faculties means just remove - you can't do this.
Q. Looking at this letter, you wouldn't agree --
A. No, I wouldn't have --
Q. -- with Bishop Clarke's --
A. He's not right in that.
Q. -- interpretation of what was required at that point?
A. No.
Q. In your opinion, by that stage, there were a number of
assertions, in terms of what you knew at least, that McAlinden had sexually abused children?
A. Yes.
Q. One of the reports was from someone who you found reliable?
A. Yes.
Q. Would you agree with me that that appears to be a not unreasonable additional requirement that Bishop Clarke put in there?
A. It is.

MS LONERGAN: I tender the letter behind tab 212, together, Commissioner, with the decree behind 213 which is referred to in the letter.

THE COMMISSIONER: Ms Lonergan, I think tab 212 is exhibit 61 already.

MS LONERGAN: I've just been reminded by Mr Gyles that it is already exhibit 61.

THE COMMISSIONER: His voice must be louder than mine.
MS LONERGAN: I will try and restore my own credibility by adding the decree behind tab 213 to exhibit 61.

THE COMMISSIONER: Very well. That will now be part of exhibit 61. Thank you Ms Lonergan.

EXHIBIT \#61 ADDITION OF THE DECREE DATED 27/2/1993 PREPARED BY BISHOP CLARKE (TAB 213)

MS LONERGAN: Thanks to Mr Gyles for pointing out that matter.
Q. Behind tab 210 - and I'11 get you to turn to it in a minute, but before $I$ go to it, at about the time you had at least one discussion, if not more, with Bishop Clarke about how to manage [AJ]'s complaints, did you discuss with Bishop Clarke whether there were any guidelines or protocols or documents that could assist the bishop in dealing with these kinds of complaints?
A. No, I didn't. That was Brian Lucas's --
Q. That was handed over to others, so you didn't need to
discuss it?
A. No.
Q. Have a look at the document behind tab 210. First of a11, I want you to read it to yourself and ask you whether you have seen it before. By "before" I don't mean in the last week or two.
A. I have seen this letter before.
Q. When did you see it?
A. I couldn't actually give you a date.
Q. Did you have any part in preparing the letter?
A. No.
Q. Are you able to say whether you saw it about the time these events were being attended to?
A. No.
Q. Are you able to say in what circumstances you saw the 1etter?
A. No.
Q. In the third last paragraph you see, however, there's a reference to telling McAlinden, by way of this letter, that it is necessary for him to contact and see Father Brian Lucas, et cetera. Do you see that there?
A. I do.
Q. That, at least, is consistent with what you understood was, in broad terms, to be arranged?
A. That's right.
Q. But by Bishop Clarke?
A. Yes.
Q. The handwriting down the bottom:

Letter to have been handed to Denis - but not necessary once Admin Decree finalised.

Do you see that?
A. Yes.
Q. That's Bishop Clarke's handwriting, is it?
A. Yes.
Q. Did you personally have any role in arranging, as one of the deans consulted or as the vicar general, where McAlinden would next be posted to or would be posted to as at February 1993?
A. My understanding was that Denis and Father Lucas were trying to work some system out.
Q. Some arrangement?
A. Some arrangement.
Q. For where Denis could go?
A. Yes.
Q. Your understanding came from what information?
A. The way that things were done; that's what Brian would have done.
Q. How did you know as at February 1993 the way things were done? Someone must have told you, would you agree? A. Most probably Leo.
Q. I beg you pardon?
A. Most probably Leo.
Q. Leo Clarke?
A. Clarke, yes.
Q. To clarify, this was the first priest that you'd had any involvement with in the Maitland-Newcastle diocese who had been accused of sexually abusing children?
A. Yes.
Q. Do you recall any information being conveyed to you by Bishop Leo Clarke that McAlinden was to be given a one-way ticket to the United Kingdom?
A. I never knew anything about that ticket.
Q. Putting aside whether you knew anything about the ticket as such, did you know anything about a decision being made that McAlinden be sent overseas so he was away from the diocese?
A. I could only interpret that in the sense of [AJ] saying she wanted him to go to a safe house.
Q. What I'm talking about isn't [AJ]'s wishes, but what you understood to be the decision-making process and effect of it that was undertaken by those who were acting with or
on behalf of Bishop Clarke?
A. He was driving - to my understanding, he was driving the agenda by saying he wanted to go to (suppressed).
Q. He being McAlinden?
A. Yes.
(Transcript suppressed - page 1415, 1 ine 8 to line 13)

MS LONERGAN: Q. Monsignor, you have an understanding then, do you, that McAlinden was part of a proposal or arrangement that he leave the country; is that the position?
A. Yes.
Q. Leave Australia?
A. Yes.
Q. And live overseas?
A. Yes.
Q. And not come back to the diocese? Was that part of your understanding or not?
A. No, I wouldn't say it was my understanding.
Q. At that time you were an administrator of the sick priests fund, the Maitland clergy sick priests fund; is that the title of the fund?
A. Yes, you're right, but I wasn't on that committee.
Q. You weren't on the committee of the Maitland Clergy Central Fund?
A. No.
Q. But you were on the committee of the Sick and Retired Priests Fund as at 1993?
A. True.
Q. Given that Father McAlinden or McAlinden had been deemed by Bishop Clarke by the letter I've just shown you to have been a sick priest, would you agree with me that management in terms of any stipend payable to him by the
diocese would have gone through the Sick Clergy Fund? A. Yes.
Q. Do you recollect having any particular administrative or other role in providing funds or documenting any provision of funds to McAlinden after February 1993?
A. It would have been Tom Brennan or Father Austin Hayes who ran that, and they didn't get a stipend but they got a food allowance.
Q. That was a certain amount per month, was it?
A. Exactly.
Q. Have a look at a series of letters behind tabs 214 , 215 and 216.
A. Yes.
Q. Do you see they're three letters dated 5 March 1993?
A. Yes.
Q. And they appear to be --
A. Father Austin Hayes, yes.
Q. I'm not suggesting that you wrote any of them or that they're directed to you, but would you agree with me that those three letters appear to be making arrangements for McAlinden to receive ongoing stipends from the Sick Clergy Fund?
A. True.
Q. And also some stipend relating to retirement from active priestly duties?
A. That's what we do.

MS LONERGAN: I tender those, Commissioner.
THE COMMISSIONER: Thank you Ms Lonergan. Tab 214, 215 and 216 ?

MS LONERGAN: Yes, as one exhibit, is my suggestion.
THE COMMISSIONER: The three letters behind those tabs dated 5 March 1993 from Bishop Clarke and respectively to Father Hayes, Father Brennan and to McAlinden will be admitted and marked exhibit 121.

MS LONERGAN: Mr Kell has informed me that the letter to

Father Brennan is already exhibit 62. Could we make the other two letters the new exhibit, if that is suitable, Commissioner.

## EXHIBIT \#121 LETTER FROM BISHOP CLARKE TO FATHER HAYES, DATED 5/3/1993 (TAB 214); AND LETTER FROM BISHOP CLARKE TO DENIS McALINDEN DATED 5/3/1993 (TAB 216)

MS LONERGAN: Q. Would you turn to the documents behind tab 219. Do you see the document that appears to be a faxed message cover sheet to your attention and it's got page 442 down in the bottom middle of the page?
A. Yes.
Q. Are you able to assist with why you were receiving this information from or on behalf of the chancellor's secretary in Nottingham?
A. My understanding of that was it didn't work out when he went back to (suppressed) and I then - because the bishop was away at this time and I faxed this to - I faxed this to get some information and support from Father Lucas: "Who do we talk to?" Father Lucas provided this information.

MR CAVANAGH: Commissioner, could I just interject for a moment? The question that Ms Lonergan put was that that fax came from Nottingham. It might potentially be misleading because the header does not say that.

MS LONERGAN: Yes. I withdraw the question. I was confused about the addressing of the document.
Q. I do seek your assistance with getting this straight, Monsignor Hart, if you don't mind. At the very top line, it looks like there is a fax transmission date, 25 March 1993. Do you see that?
A. True.
Q. Does that accord with your recollection as to when you were corresponding with Bishop Clarke to sort out McAlinden's accommodation situation in the United Kingdom?
A. The bishop was away.
Q. Yes. The question goes a little further than that.

That date, 25 March, does that accord with your recollection as a time that you were assisting or facilitating accommodation issues that McAlinden was having
in the United Kingdom?
A. He was having problems, yes, and I asked Father Brian Lucas did he know anybody over there who could give us some information.
Q. You were facilitating the position of a priest of the diocese, albeit a sick one - you're nodding "Yes".
A. Yes.
Q. Whilst your bishop was absent?
A. Yes.
Q. There's an address given there for the bishop in

Nottingham. It was provided to you by someone who is expressed to be the chancellor's secretary and it appears to be coming from the Archbishop's House in London. Do you see that?
A. That's 443 , is it?
Q. Still page 442.
A. 442. Yes.
Q. Are you able to assist with what you were organising there, if anything, with that information?
A. We were asking for a place where he could be looked after.
Q. That was the information that was provided?
A. Yes.
Q. Again, we need your assistance with the significance, or otherwise, of the next document. It is a letter of 1 April 1993 apparently prepared by Bishop Clarke. Given that your evidence is that the bishop was away on 25 March 1993, is this letter of 1 Apri1 1993 one that you prepared on his behalf or was the bishop back?
A. I haven't written that - that's Leo.
Q. How do you know?
A. The way he writes.
Q. Did you on occasion when you were Leo Clarke's vicar general write correspondence for him under his name or not?
A. No.
Q. If you wrote correspondence for him while he was away,
you would write it as yourself?
A. Under my name.
Q. Have you seen this letter before today?
A. No.
Q. Not at all?
A. No.
Q. Do you see in the third paragraph there's mention of McAlinden having admitted that he offended in this manner, that is, concerning his behaviour with small children?
A. Yes.
Q. And that he claimed he had not offended over the past five years. In relation to that information, did Bishop Clarke tell you that that had happened, that McAlinden had admitted in engaging in this behaviour?
A. At any time you mean; Leo told me any time?
Q. Let's start with at any time.
A. Yes, he did.
Q. He did?
A. Yes.
Q. Did he tell you around about early 1993 that McAlinden had admitted to this kind of behaviour?
A. Yes.
Q. We can take it from your evidence, can we, that McAlinden never admitted it to you?
A. That's right.
Q. But you never questioned him personally about it?
A. No.
Q. Did Bishop Clarke tell you to whom this admission had been conveyed by McAlinden?
A. No.
Q. Do you recollect?
A. No, I don't.
Q. Did Bishop Clarke discuss with you sending this particular letter of 1 April 1993 to the Bishop of Nottingham?
A. No.
Q. Behind that letter is a letter from the Bishop of Nottingham to Bishop Clarke, do you see?
A. Yes.
Q. It is noted as received on 18 Apri1 1993. Is that Bishop Clarke's handwriting, that notice that it was received on 18 April 1993?
A. Yes, that's Leo's writing.
Q. Again, have you seen this letter before?
A. No.

MS LONERGAN: Commissioner, I should tender, first of all, the fax sheet to Monsignor Hart.

THE COMMISSIONER: Yes. The fax from the Archbishop's House in London to Monsignor Hart of 25 March 1993 will be admitted and marked exhibit 122.

EXHIBIT \#122 FAX FROM THE ARCHBISHOP'S HOUSE IN LONDON TO MONSIGNOR HART DATED 25/3/1993

MS LONERGAN: I will separately tender the letter of the Bishop of Nottingham of 6 April 1993.

THE COMMISSIONER: The letter from the Bishop of Nottingham to Bishop Clarke of 6 April 1993 will be exhibit 123.

EXHIBIT \#123 LETTER FROM THE BISHOP OF NOTTINGHAM TO BISHOP CLARKE DATED 6/4/1993

MS LONERGAN: Q. Did you have any conversations with Bishop Clarke as to the need or otherwise to notify any diocese to where McAlinden was going of the fact that he had made admissions about sexually abusing children?
A. I left that to - that was Leo and Brian Lucas.
Q. Did you represent to [AJ] anything about arrangements that were to be made relating to McAlinden in early 1993? A. My remembrance of my conversation was she was looking for a safe house.
Q. Yes.
A. That's what she wanted.
Q. Yes, but did you represent to her or tell her what you understood the arrangements were to be regarding McAlinden?
A. Yes. I told her that she was going - he was going to (suppressed) - (suppressed) place.
(Transcript suppressed - page 1421, 1 ine 7 to 10)

MS LONERGAN: Q. Did you tell [AJ] that McAlinden would be going to England or the United Kingdom?
A. I can't remember whether I told her that.
Q. Can I suggest to you that records indicate that on a date in March, around about 25 March - Mr Kell will turn up the exact date for me - McAlinden flew to the United Kingdom. Is that consistent with your recollection, that he flew to the United Kingdom, or do you say you had no knowledge of when or where he went?
A. I had no knowledge.
Q. No knowledge. If it is suggested that you said to [AJ] that, "He will go to England where (suppressed) is and live there," you'd deny you said that, in 1993, around about February/March 1993?
A. No, that's where he wanted to go.
Q. I understand that, but did you tell [AJ] that?
A. Yes.
Q. So you did know where he was going to go?
A. Yes. Sorry.
Q. You knew that he ended up there?
A. Yes.
Q. Yes.
A. Yes.
Q. Because you got the fax we've just been looking at.
A. Yes .
Q. Do you know how the airfare McAlinden, of necessity, must have paid was paid?
A. I don't know.
Q. No idea?
A. No idea.
Q. Is it the usual practice of the Maitland Clergy Central Fund to pay for priests' airfares?
A. No.
Q. Do you know of it ever happening that the Maitland Clergy Central Fund has paid for a priest's airfare A. Not to my knowledge.
Q. You would know that, wouldn't you, given the roles you've had with it over the years?
A. Yes.
Q. You are absolutely confident that it has never happened?
A. Yes.
Q. And if it had happened, it would be a most exceptional circumstance?
A. Exceptional.
Q. But you deny that it has ever happened?
A. As far as I know.

MR CAVANAGH: I object to that, Commissioner. I don't think he denied it. He said he had no recollection.

MS LONERGAN: He said as far as he knows.
MR CAVANAGH: I beg your pardon.
MS LONERGAN: Q. That's a perfectly legitimate answer, if I may say so, monsignor. Could you get out volume 1 of the material to your left, if you haven't already got it, and turn to tab 63?
A. Sorry?
Q. Volume 1. Just before you scan that document which is a little hard to read, you've given evidence that the first you knew about allegations of McAlinden sexually abusing children was at a particular time you've identified in 1990 and in particular circumstances?
A. Yes.
Q. Your handover as vicar general or the handover to you?
A. Yes.
Q. Are you able to say whether the years in which or the year in which these previous offences were alleged to have been committed was conveyed to you as part of that information or not? Just say the year, if you know it.
A. No.
Q. You don't know. Did you know that there were allegations made about McAlinden sexually abusing children in 1976?
A. No.
Q. That was a bad question. Did you come to learn that there were allegations made that in 1976 McAlinden sexually abused a child or children in the Forster-Tuncurry area?
A. I learned that from Paddy Cotter's letter.
Q. That's the letter that you read?
A. Yes.
Q. The letter that you say isn't the letter that I showed you earlier today?
A. Yes.
Q. We'11 come back to that letter. Thank you for reminding me. The letter that you refer to as you having seen, there was reference in there to abuse in the Forster-Tuncurry area by McAlinden?
A. Yes.
Q. It happened in 1976, on your understanding?
A. Yes.
Q. Just have a look at this travel receipt. Do you see it suggests that on 3 November 1976 a ticket was purchased or a date for travel identified for a one-way airfare, or an open ticket at least, from Brisbane to Port Moresby? Do you see that?
A. Yes.
Q. And for Port Moresby to Kerema?
A. Yes.
Q. The handwritten note down the bottom says - there is a word that's partly obliterated - "by cheque from M Clergy

Central Fund". Do you see that?
A. I do.
Q. And that suggests, doesn't it, that the Maitland

Clergy Central Fund paid for a one-way ticket for McAlinden from Brisbane to Kerema in New Guinea?
A. Yes.
Q. Are you surprised about the existence of that document?
A. I am.
Q. And it would be very much out of the ordinary for the clergy fund to pay for something like this?
A. My word.
Q. I beg your pardon?
A. My word.
Q. I'm not suggesting you knew about this in 1976 yourself?
A. No.
Q. You weren't an office holder on the Clergy Central Fund in 1976?
A. True.

MS LONERGAN: I tender that, Commissioner.
THE COMMISSIONER: Thank you, Ms Lonergan. The receipt or invoice from the Pan Australian Travel Agency Pty Limited of 28 October 1976, which appears behind tab 63 , will be admitted and marked exhibit 124.

EXHIBIT \#124 INVOICE FROM THE PAN AUSTRALIAN TRAVEL AGENCY PTY LIMITED DATED 28/10/1976 (TAB 63)

MS LONERGAN: Thank you, Commissioner. Could we have a five-minute adjournment just to deal with some housekeeping matters and so $I$ can instructions from those who instruct me?

THE COMMISSIONER: Yes.
SHORT ADJOURNMENT
MS LONERGAN: Commissioner, I have a proposal. The
position is that this Commissioner and many people at the Bar table have been sitting and attending in camera hearings to very late hours this week, including on one night to 10 pm . There is a great deal of other work going on behind the scenes and there are certain matters those who instruct me need to attend to during business hours this afternoon. It is proposed, unless there's violent disagreement at the Bar table, that we conclude the public evidence of Monsignor Hart for this afternoon to recommence next Tuesday at 10am.

THE COMMISSIONER: Are there any comments from counsel?
MS LONERGAN: They are all remarkably silent for a change, Commissioner. It is proposed that the following occur: on Monday various in-camera hearings will be proceeding. It was initially proposed that there would be in-camera hearings on Thursday and Friday as well.

The plan is now altered to continue the public hearings as continually as we possibly can. We will now commence next Tuesday, at 10am, continuing Monsignor Hart's evidence and keep going on with the public hearings for the rest of that week, sitting each day.

THE COMMISSIONER: Q. Monsignor, I am sorry, that you'11 have to come back on Tuesday. I hope it's not too inconvenient.
A. I'11 have to get rid of one funeral, actually.
Q. Will you? I am very sorry about that.
A. That's all right.

MS LONERGAN: Q. If it is of any comfort, Monsignor, you would have needed to come back on Tuesday even if we had gone for another 45 minutes.
A. That's all right.

MS LONERGAN: We thank you for your cooperation there.
Can I also note the assistance and flexibility of all legal representatives with the difficult juggling of multiple in-camera hearings and also the high level of assistance and cooperation in terms of matters such as tendering documents and other issues.

Commissioner, I have a document to tender. That is
the relevant extracts from the Ombudsman's report which has been referred to in the evidence of various witnesses and I tender that document now.

THE COMMISSIONER: Thank you. That extract from the Ombudsman's report will be exhibit 125.

## EXHIBIT \#125 EXTRACT FROM OMBUDSMAN'S REPORT

MR GYLES: Commissioner, we don't object to the report.
If, in due course, it is relied upon, we may wish to consider our position about the status of the findings, et cetera, but that can be dealt with in submissions.

THE COMMISSIONER: Thank you, Mr Gyles.
MS LONERGAN: The other matter I should raise, Commissioner, is that members of the press have requested access to exhibits 120 to 124 inclusive, if those at the Bar table could let us know if they have any objection to that by a quarter to four.

THE COMMISSIONER: Yes. Thank you, Ms Lonergan.
MS LONERGAN: Commissioner, in terms of other public-hearing witnesses, we will proceed with the current order in the list as already prepared, subject to a few exceptions which will be notified to parties. A new list will be published on the website by close of business today.

As often occurs in matters of this complexity, for witnesses to be properly examined about the details that need to be examined upon, it takes a little longer than expected and we appreciate the forbearance of the witnesses and those at the Bar table to enable this important examination to be completed as fully and thoroughly as possible.

Commissioner, I also have one more request from the press and that is whether exhibit 125 could also be released on the same conditions as those I have already mentioned.

THE COMMISSIONER: Yes. Thank you, Ms Lonergan.
MS LONERGAN: That is everything for today.

THE COMMISSIONER: May I also add my thanks to all of the practitioners who have been working so hard and working sometimes very, very long hours and well into the night, something that doesn't happen very often in any courts in this state these days and so it is very good of you all to participate so enthusiastically.

I also thank of course the Sheriff's officers and ask the officer present to pass on my thanks to all the other Sheriff's officers and of course the transcription reporters for their assistance; they also assisted us late into the night.

I would ask all the practitioners to thank all of your clients and all the witnesses who have also had to come along sometimes at inconvenient times and stay for very long hours. Thank you, Ms Lonergan.

MS LONERGAN: Commissioner, could I also note that we thank the public for being so flexible about the open door/close door parts of the inquiry and appreciate their support and understanding of the need for that kind of process to take place.

THE COMMISSIONER: Yes, thank you to all the ladies and gentlemen present for your forbearance and understanding. I wish everyone a good weekend. Thank you.

AT 3.23PM THE COMMISSION WAS ADJOURNED TO TUESDAY, 23 JULY 2013 AT 10AM

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