SPECIAL COMMISSION OF INQUIRY

INTO MATTERS RELATING TO THE POLICE INVESTIGATION OF

CERTAIN CHILD SEXUAL ABUSE ALLEGATIONS IN THE CATHOLIC

DIOCESE OF MAITLAND-NEWCASTLE

At Newcastle Supreme Court
Court Room Number 1, Church Street, Newcastle NSW

On Wednesday, 31 July 2013 at 10.19am
(Day 20)

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC
                              Mr David Kell
                              Mr Warwick Hunt

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

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 1      MR HUNT:   Commissioner, I call Helen Keevers.
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 3      <HELEN KEEVERS, affirmed:                  [10.19am]
 4
 5      MR HUNT:   I'm sorry, could I just resolve something,
 6      Commissioner?
 7
 8      DR DWYER:   Commissioner, might I announce my appearance.
 9      My name is Dwyer.  I appear for Ms Keevers and I'm
10      instructed by Ms Evans.
11
12      THE COMMISSIONER:   Thank, you, Dr Dwyer.
13
14      MR HUNT:   There's going to come a point when I need to ask
15      for a short adjournment during my examination of the
16      witness to deal with an aspect that is emerging, if I can
17      express it that way.
18
19      <EXAMINATION BY MR HUNT:
20
21      MR HUNT:   Q.   Your name is Helen Keevers?
22      A.   It is.
23
24      MR HUNT:   I'm advised by Dr Dwyer that the witness does
25      not seek protection pursuant to section 23 of the Special
26      Commissions of Inquiry Act.
27
28      THE COMMISSIONER:   Thank you, Mr Hunt.
29
30      MR HUNT:   Q.   Ms Keevers, I want to show you a copy of
31      your statement that is in a redacted form and a copy for
32      the Commissioner.  Do you have before you a copy of a
33      statement that you prepared particularly for the Special
34      Commission and signed on 15 February 2013?
35      A.   Yes, I do.
36
37      Q.   Do you see that it has been redacted in relation to
38      either matters of confidentiality or matters that arguably
39      fall outside this Commission's terms of reference?
40      A.   Yes, I can see that.
41
42      Q.   When you set out to prepare your statement, were you
43      doing your best to be truthful?
44      A.   I was.
45
46      Q.   Were you doing your best to be accurate in terms of
47      matters that were within memory rather than subject to
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1   being able to check from documents and the like?
2   A.   Yes, I was trying to remember detail from some time
3   ago, but it's as accurate as I could remember.
4
5   Q.   Have you reread the statement recently?
6   A.   Yes, I have.
7
8   Q.   Do you remain satisfied that it's true and correct?
9   A.   I think it's probably still in there, but there was a
10   date that I was concerned that I think I would now like to
11   correct. That was a date that a survivor whose pseudonym
12   is [AL] told me that she came forward to the diocese and
13   I think I had said the date I believed was 1993. I now am
14   certain it was 1995.
15
16   DR DWYER: If I might assist, that's paragraph 67.
17
18   THE COMMISSIONER: Thank you, Dr Dwyer.
19
20   MR HUNT: Thank you.
21
22   Q.   That date in the third line of paragraph 67 should
23   more properly be 1995?
24   A.   That was the time I believe she made a formal
25   statement.
26
27   Q.   Apart from that amendment and accepting that the
28   document is significantly redacted, do you adopt the
29   contents of the statement as part of your affirmed evidence
30   today?
31   A.   I do.
32
33   Q.   I want to ask you some questions - have regard to the
34   statement if you want to as you answer these questions.
35
36   Perhaps the best course is that I propose to tender
37   the statement. I intend to lead some further evidence in
38   relation to paragraph 80 that might put some flesh on the
39   bones as to the way that the witness expresses herself at
40   paragraph 80.
41
42   THE COMMISSIONER: The statement of Ms Keevers of
43   20 February 2013 with annexures will be admitted and marked
44   exhibit 199.
45
46   MR SKINNER: No doubt that statement will be released, but
47   with the amendment just made orally by the witness to the

1   first sentence of paragraph 67 I wonder if the statement
2   could be so amended as well.
3
4   THE COMMISSIONER: Yes.
5
6   MR HUNT: The exhibit ought to have the numeral 3 in that
7   paragraph changed to 5 in a visible fashion.
8
9   THE COMMISSIONER: That will be done.
10
11   MR GYLES: I have an objection which I think can be dealt
12   with practically. It is to paragraph 81, Commissioner.
13   I don't have a difficulty with that going in as, in effect,
14   a submission by Ms Keevers but not as to evidence of the
15   fact. Obviously, this is something that you need to deal
16   with and you've got a large volume of material in front of
17   you which will enable you to do that and, to be of any
18   probative value, one would need to have far more
19   information.
20
21   THE COMMISSIONER: Yes, very well, Mr Gyles. The material
22   contained in paragraph 81 is a matter for evidence and
23   ultimately submissions, I think. Would you agree?
24
25   MR HUNT: Yes. As put it is a statement of the witness's
26   belief, and therefore, if you like, a submission. It might
27   be that I ask the witness some more questions as to why she
28   held that belief that might give greater weight to the
29   submission, but I accept that the way in which Mr Gyles
30   asks you to read that paragraph is appropriate.
31
32   THE COMMISSIONER: Yes. Do you go further than that,
33   Mr Gyles? Do you ask that it not be part of the tender?
34
35   MR GYLES: No, I would see it as in the category of
36   Ms Keevers sending a public submission saying, "This is
37   essentially a concern that I have."
38
39   THE COMMISSIONER: That is the way that paragraph will be
40   dealt with. Thank you, Mr Gyles.
41
42   MR HUNT: Thank you, Commissioner.
43
44   **EXHIBIT #199 STATEMENT OF HELEN KEEVERS, DATED 15/02/2013,**
45   **PLUS ANNEXURES**
46
47   MR HUNT: Q.   Ms Keevers, you graduated from Sydney

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 1    university with a degree in social studies in 1977?
 2    A.   I did.
 3
 4    Q.   You have other qualifications in business
 5    administration and as an accredited mediator?
 6    A.   Yes, I do.
 7
 8    Q.   Is it the position that you have had particular areas
 9    of specialty since you commenced to work using your social
10    work qualifications?
11    A.   I've pretty much always worked in the area of children
12    and families, with a particular reference to children at
13    risk and child protection.
14
15    Q.   Is it the position that you worked in various roles
16    within the Catholic system, if I can use that broad
17    expression, until you left the employment of the diocese?
18    A.   Yes.
19
20    Q.   Would you broadly - you've picked this out in your
21    statement - speak to the Commissioner about the different
22    roles and the kinds of work that you did for Centacare
23    before you came to work more directly with Zimmerman House
24    A.   I first went to work with Centacare, which is the
25    welfare arm of the diocese in 1978, not long after I had
26    graduated, after a brief period in NSW Health.  I worked as
27    a social worker there with children in family group homes,
28    in marriage counselling, in a whole range of walk-in
29    support for families.  I later came to specialise in the
30    area of out of home care particularly and in programs that
31    supported families to care for their children and I became
32    deputy director at one stage.  I was children's services
33    manager at the time that I took the position with the
34    diocese, so I was managing an out of home care program.
35
36    Q.   Some of the participants in out of home care
37    placements have been subject to sexual abuse within their
38    families?
39    A.   It's a very common reason for children coming into out
40    of home care.  That's not a decision that's taken lightly,
41    and we were always very careful to get expert supervision
42    around those matters, so I had child psychologists and
43    child psychiatrists give my whole team and myself regular
44    supervision around those matters.
45
46    Q.   In paragraph 10 and following you deal with the
47    foundation and establishment of Zimmerman House and your
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1 role within that foundation and establishment. Was your
2 first involvement more directly when you became involved in
3 the church's Towards Healing Professional Standards
4 Resource Group?
5 A.   Yes. Yes, it was. I was asked to join that group by
6 the bishop. There was an invitation, I guess, extended to
7 a range of people across the diocese who he believed had
8 the expertise to advise him on that group.
9
10 Q.   You detail amongst those Anne Gleeson from the
11 Catholic schools child protection unit, the person working
12 within the chancery with the pseudonym [BS], Sister Pauline
13 Egan, Dave Ryan, a retired police officer, Stephanie Thomas
14 who was Bishop Malone's media adviser, Father Bill Burston,
15 Peter Owens and Mark Sullivan, both of whom were
16 solicitors?
17 A.   Yes.
18
19 Q.   You understood from conversations with members of
20 those groups and things that you otherwise knew that you
21 were the only member of that panel who was not a devout
22 practising Catholic; is that the position?
23 A.   Yes.
24
25 Q.   You've used the term in paragraph 10 "Professional
26 Standards Resource Group".
27 A.   Yes.
28
29 Q.   And in paragraph 13 "the advisory panel". Are those
30 two phrases --
31 A.   They are synonymous, yes.
32
33 Q.   Interchangeable. Because Professional Standards
34 Resource Group is a term of art in a different fashion I'm
35 going to refer to that body as the advisory group.
36 A.   Okay.
37
38 Q.   Ultimately, it came about that Bishop Malone asked you
39 to take a leave of absence from Centacare to more deeply
40 study the child protection needs of the diocese?
41 A.   He did.
42
43 Q.   Did you come to understand from Bishop Malone what the
44 moving imperative was from his point of view to ask you to
45 undertake that work?
46 A.   Yes, I did. This panel was formed because there was,
47 I guess, within the church structures a wish to - an

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 1        instruction that the bishop gather around him people to
 2        advise him, but Bishop Malone was also deeply affected and
 3        confused around what he came to see as his very
 4        inappropriate decision making around the Fletcher matter
 5        and he --
 6
 7    Q.   Can I just ask you, the things you're saying now, are
 8        they derived from - I don't want to go to the particular
 9        conversation - conversation with him?
10    A.   They are derived from direct conversation with Bishop
11        Malone.  He had a very strong wish to get advice that was,
12        I guess, separate from the church around sound child
13        protection risk management.
14
15    Q.   Can I just ask you, when you say "separate from the
16        church", does that mean separate from others within the
17        diocese, separate from clergy, or from the bigger
18        structures, or how did you understand that?
19    A.   Separate from all of those things.  I sat quietly on
20        that panel for a short period of time, but I'm not someone
21        who can sit quietly and not speak when I see something I'm
22        concerned about, so I guess I became quite vocal on that
23        panel.  Bishop Malone listened very intently to the
24        suggestions and criticisms I made.
25
26    Q.   Initially before you undertook your six-month detailed
27        study, what was the focus of the advisory panel's work with
28        the bishop?
29    A.   The focus of that panel was pretty much to consider
30        any Towards Healing formal complaints regarding diocesan
31        personnel, clergy and non clergy, that came through the
32        Towards Healing process, through the New South Wales
33        Professional Standards Office.  The procedure was those
34        complaints would go formally to the New South Wales
35        Professional Standards Office and then they would be
36        directed to the bishop in each diocese to deal with, and
37        there was an instruction that the bishops each bring
38        together an advisory panel to assist them in dealing with
39        those matters.
40
41    Q.   At that initial stage, before you conducted your
42        review, was the advisory group simply doing that rather
43        than any kind of investigative function itself?
44    A.   No, that's - and it continued to do that pretty much -
45        it sat separate from the structures that we put in place.
46
47    Q.   When you were invited by Bishop Malone to undertake
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 1      the six-month study of the diocese child protection needs,
 2      what sort of access were you permitted to records within
 3      the diocese?
 4      A.    From fairly early on I was given pretty open access to
 5      records.  While I was undertaking that study, it was also
 6      the period immediately following James Fletcher's
 7      conviction and we had set up a support line and fairly
 8      quickly some allegations of concern about current clergy
 9      came into that support line.  So while I was conducting the
10      investigation, there was also a need to start dealing with
11      some current matters and I was given open access to
12      documents.
13
14      Q.    Did the terms of your engagement in that task permit
15      you to start to investigate or delegate investigation for
16      those new matters of concern that were coming to light?
17      A.    In the interim period before these structures
18      recommended by my study were put into place, the bishop put
19      together a small working party from the advisory panel and
20      that consisted of Anne Gleeson, Stephanie Thomas, myself
21      and [BS].  So we were asked to deal with those matters that
22      were arising while I was undertaking the study.
23
24      Q.    You had worked for Centacare first for a period
25      between 1979 and 1981?
26      A.    Yes.
27
28      Q.    You then returned to Centacare in 1999?
29      A.    Yes.
30
31      Q.    So by the time that you commenced your engagement with
32      the advisory panel initially in 2004, you had had
33      significant work within the diocese but through Centacare?
34      A.    Yes, through their welfare arm.
35
36      Q.    Had you had dealings with Father Bill Burston with his
37      Centacare hat on?
38      A.    Yes, he was my first director when I went to work
39      there.
40
41      Q.    Was there some sort of perception that you were an
42      outsider to these groups, even though you had been employed
43      for that period of time within the diocese?
44      A.    Very much so.
45
46      Q.    How was that manifested to you?
47      A.    Initially it was quite subtle.  It was even exclusion
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 1      from some of the rituals that took place before the
 2      meetings.
 3
 4      Q.   Does that mean prayers in plain language?
 5      A.   Yes, prayers or more elaborate rituals sometimes.  It
 6      was, I guess, side comments that suggested I didn't
 7      understand how the diocese worked and how it had worked,
 8      and I was given - when I moved into the role of the new
 9      structure, the complete investigation team from the
10      Catholic Schools Office was, I guess, parked underneath me
11      as their manager and they were quite resistant to what they
12      saw as an outsider taking over that management.
13
14      Q.   Did that relate particularly to the fact that, as it
15      were, education was their piece of turf and you were now
16      supervising them in that area?
17      A.   That was partly it, but there was also a very clear
18      subtext that they were all Catholics and I wasn't.
19
20      Q.   You've made some mention about your views about Bishop
21      Malone's motivations in having you make a review of the
22      child protection needs of the diocese.  Now might be an
23      appropriate moment for you to - throughout your statement
24      you've advanced some assessments about Bishop Malone's
25      motivations.  Would you speak across the period that you
26      were working at the diocese, starting in 2004, until you
27      separated from the diocese in I think 2008; is that right?
28      A.   2009.
29
30      Q.   I'm sorry, thank you.  Could you just say to the
31      Commissioner your view about the utility of the work that
32      Bishop Malone undertook and his motivations?
33      A.   Yes, I could.  I think by his own admission Michael
34      Malone would say he's not a perfect man and that he made
35      some major mistakes and those major mistakes were very
36      evident in his work with both the McAlinden and Fletcher
37      matters.  I did observe him as a person who honestly wanted
38      to learn what he had done wrong and honestly wanted
39      completely independent advice about what he should do in
40      the future.
41
42           I know that in his evidence he spoke of an epiphany
43      and I would guess I would like to think I was part of that
44      epiphany.  I'm not a Catholic and I didn't, I guess, offer
45      the respect, perhaps, that some members of the church may
46      offer to people in important places like bishops.
47      I understood the bishop employed me to advise him, and so
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 1      I advised him, even to the point of actively disagreeing
 2      with him and arguing with him at times, and often, after
 3      our arguments, he would ring me and say, "Yeah, okay, I get
 4      it now.  I understand."  He always listened and he began to
 5      try to really make things better.
 6
 7      Q.   Can I interrupt you to ask you one point of
 8      clarification before you go on.  You said that Bishop
 9      Malone wanted to get independent advice.  Did you perceive
10      that as including advice that was non clerical?
11      A.   Yes.  In fact, he would make comments about that.
12      There was certainly a lot of opposition to me being in that
13      role and the bishop defended my right to be in that role
14      and the importance of my independence.
15
16      Q.   I interrupted you when you were talking about Bishop
17      Malone.
18      A.   I guess what I was going to say was I observed a man
19      who was continually judged for the mistakes that he made,
20      and he did make big mistakes, but was also then judged from
21      within the church for the changes he tried to bring in.
22
23      Q.   Can we pick up a time frame about that in broad terms.
24      In the period until some time after James Fletcher had been
25      arrested or maybe carrying on through - you tell me - some
26      time during or after the trial process, is that the period
27      that you would say, moving backwards in time, he was
28      subjected to external criticism for his actions or
29      decisions?
30      A.   That external criticism always continued.  You know,
31      public perception outside of the church was fairly
32      unforgiving, and probably rightly so for the mistakes that
33      he made at that time.  So even when he was attempting to
34      bring in some fairly positive changes and creative
35      transparent process, he would be criticised within the
36      media, for example, about mistakes he'd made in the past.
37
38      Q.   Were you suggesting there was a point when there was
39      internal criticism of Bishop Malone's processes or
40      decisions?
41      A.   Yes.
42
43      Q.   That had not existed before?
44      A.   Yes.
45
46      Q.   Can you explicate that for the Commissioner?
47      A.   It was a growing criticism and a growing - I think
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1   obstruction is probably too strong a term, but a growing
2   resistance to the changes he wanted to bring about
3   I think the resistance heightened completely when he stood
4   alone in a packed cathedral in 2007 and told people that he
5   was no longer conflicted about where his allegiances lay
6   and he stood with survivors of abuse.
7
8   Q.   What I would like you to do is give you direction to
9   paragraph 18 and following of your statement. You indicate
10 that on 8 August 2005, after there had been an internal
11 recruitment process, you were appointed to something that
12 was originally known as the Diocesan Child Protection and
13 Professional Conduct Unit?
14 A.   Yes, a rather difficult --
15
16 Q.   It's a catchy title?
17 A.   The DCPPCU.
18
19 Q.   The DCPPCU was renamed Zimmerman House in 2008?
20 A.   It was.
21
22 Q.   Why was it renamed,unless that is a tautological
23 question?
24 A.   Apart from the fact that DCPPCU is a little hard to
25 say, there was a real move in 2008 to establish a system
26 that offered soft entry for survivors to come forward.
27
28 Q.   Just explain what you mean by that?
29 A.   Soft entry meaning a place where there were less of
30 the structures and constraints and systems that might
31 frighten survivors, so we actually opened a house offsite
32 away from diocesan premises. It was a former convent and
33 I personally removed all the crosses and icons and took
34 them back to the order and we had a delightful opening
35 ceremony where Mr Gogarty participated as a representative
36 of survivors.
37
38 Q.   Could you broadly speak to the work that the unit
39 initially did and then the work that it came to do at
40 Zimmerman House, just in short compass. It's detailed in a
41 fairly comprehensive fashion in your statement.
42 A.   There were a range of responsibilities that had to be
43 met by Zimmerman House. Firstly, it was very important
44 that we had appropriate structures and systems for dealing
45 with complaints of concern and for investigating those. We
46 also needed to have systems for appropriate screening of
47 personnel coming into the diocese for appropriate training

1 of diocesan personnel, and it was felt that it was also
2 very important, and it was a particular wish of Bishop
3 Malone's, that we establish a system that reached out to
4 survivors and encouraged them to come forward and supported
5 them.
6
7 Q.   I think experience showed that that approach meant
8 that a number of survivors came forward in relation to
9 clergy other than McAlinden and Fletcher?
10 A.   And, frankly, that took us completely by surprise.
11
12 Q.   When it came to the investigative work, did that have
13 some impact on the way you were able to prioritise
14 attention to current matters as opposed to matters of more
15 antiquity?
16 A.   Historical, yes. Fairly immediately we were inundated
17 with complaints and I think throughout the time of
18 Zimmerman House we undertook investigations of seven
19 clergy, four of which resulted in criminal prosecution.
20
21 Q.   I want to direct your attention now to some questions
22 about your understanding of who had access to various files
23 and who didn't within the chancery. First of all, that
24 period when you were undertaking your child protection
25 review more broadly before you were appointed to your
26 formal position, what kind of access did you have, in a
27 general sense, that is, did Bishop Malone ordain that there
28 were things you could see and things you couldn't see?
29 A.   No, he made it very clear I could see any documents
30 that were necessary, and in the time that the working party
31 was oversighting those investigations, any representative
32 of the working party had access to any relevant documents,
33 and then later in my role as manager of that service, I had
34 direct access to any documents.
35
36 Q.   When you first came to start that review, whilst you
37 might not have been an outsider to working in some fashion
38 within the diocese, you were an outsider to how the
39 chancery was set up when you first started that review?
40 A.   Oh, absolutely, absolutely.
41
42 Q.   Physically were there personnel files for individual
43 priests?
44 A.   Yes, there were.
45
46 Q.   Where were they located?
47 A.   In a filing cabinet in the bishop's office.

1
2   Q.   When you were given notional access to those files,
3   how did you get physical access to those files?
4   A.   I would either ask Bishop Michael to open the filing
5   cabinet for me when we were together in our regular
6   meetings, or I would access those through his secretary,
7   Elizabeth Doyle, who was instructed to open the cabinet for
8   me. It was not actually the personnel files as such but a
9   particular drawer that held complaint files.
10
11   Q.   I wanted to come to that. Would you sometimes, in
12   looking at matters, need to have resort to personnel files
13   to work out --
14   A.   Sometimes.
15
16   Q.   -- where a priest was at a particular time?
17   A.   That's right, what car they were driving, those sort
18   of things, yes.
19
20   Q.   When you're talking about complaint files, are you
21   talking about files that are grounded in a survivor
22   formally approaching the diocese through Towards Healing,
23   or are you talking about general files that contain adverse
24   material about particular priests?
25   A.   Both. So if there was a formal Towards Healing
26   complaint, it would be in that drawer, but also, there was
27   information in those drawers around - and I have to say it
28   wasn't often clear allegations, but any information of,
29   I guess, suspicion or concern would be kept in that drawer.
30
31   Q.   Did you come to understand that there were holdings
32   within the chancery that related to McAlinden?
33   A.   Yes, there was a quite considerable file in that
34   drawer relating to McAlinden.
35
36   Q.   That was a file that you understood to be independent
37   of his personnel file with the normal personnel material?
38   A.   I think so. I don't know that I ever saw his
39   personnel file.
40
41   Q.   When you say there was quite a file, would you
42   indicate what dimension that file would be?
43   A.   It was in an A4 folder, but that was - I'm not very
44   good at centimetres - I suppose it was about 3 or 4 inches
45   thick with all the papers inside it.
46
47   Q.   Say that again, I'm sorry?

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1    A.    It was about 3 or 4 inches thick with paperwork inside
2    it.
3
4    Q.    Was that part of your mission when you were
5    undertaking the child protection review to go through that
6    file?
7    A.    Not at that stage.  The review was really focused on
8    structures and the way the diocese was handling matters.
9    It was later in my role as manager of Zimmerman House and
10   the DCPPCU - it's very hard to say - that the bishop
11   actually asked me to go through that drawer and gradually
12   work my way through it to deal with any matters.  He was
13   concerned there might be matters in there that we hadn't
14   appropriately notified to authorities or had not been dealt
15   with completely.
16
17   Q.    Can you remember if that fell to you in relation to
18   past complaints about McAlinden, that there were things
19   that hadn't been fully --
20   A.    I have to say the McAlinden file was not one that
21   I gave great priority to, given that there were very
22   quickly seven matters of serious concern - of current
23   clergy.  The rhetoric that I had heard around McAlinden was
24   that it was known he was an offender.
25
26   MR GYLES:    I object to that.
27
28   MR HUNT:    I don't press it in that form.
29
30   Q.    I now want to ask you a mechanical question to see if
31   I've got the chronology right.  The way I read your
32   statement, in August 2004 you were appointed to the
33   advisory panel.  Some time fairly shortly after that, you
34   were invited by Bishop Malone to take a leave of absence
35   from Centacare and undertake the review before your formal
36   appointment to the diocesan child protection unit?
37   A.    Yes.
38
39   Q.    You undertook that review and then, after that, there
40   was an internal recruitment process?
41   A.    Yes.
42
43   Q.    Have I got the chronology right?
44   A.    That's what happened, yes.
45
46   Q.    The confidential files, so not personnel files, not
47   Towards Healing complaint files but files that related to
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1 confidential issues with priests, how were they referred to
2 around the chancery by the bishop or other administrative
3 staff when you arrived? Was there any kind of
4 particular --
5 A.   It's not terribly respectful, but they were called the
6 bad files.
7
8 Q.   Did you ever, in your conversations with Bishop
9 Malone, come to know anything about the existence, even if
10 it was back in history, of secret files?
11 A.   No, I wasn't aware, but to my understanding, the bad
12 files were the same as the secret files. I did learn later
13 that there was much more information I could access in
14 diocesan archives, and I was able to do that, but, yes,
15 they weren't kept - the archival documents weren't kept as
16 particular complaint files. It was more that through
17 research and digging through the archives, we could often
18 find further evidence.
19
20 Q.   Just to understand that, whether it was either in
21 relation to a Towards Healing complaint file or something
22 that piqued your interest in a bad file, you could then,
23 with the help of, say, Julie Craig, the archivist, go and
24 look at parish records or other diocesan --
25 A.   Julie Cox was the archivist.
26
27 Q.   You could go and look at other documents that would
28 either lend support or give a lie to things you were trying
29 to investigate?
30 A.   Yes.
31
32 Q.   I understand. Apart from the bishop and Elizabeth
33 Doyle, do you know of anyone else, during your period
34 working within the diocese rather than at Centacare, who
35 had physical access to the bad files?
36 A.   [BS] during his time there.
37
38 Q.   Once Zimmerman House was established, was there some
39 filing mechanism that meant that there was confidential
40 material filed at Zimmerman House physically?
41 A.   Yes, there was a locked file room at Zimmerman House
42 where we kept all investigation records.
43
44 Q.   Would those include reports and complaints by
45 survivors and then the investigation in relation to those
46 reports or complaints?
47 A.   Yes.

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 1
 2      Q.   Would those files include material duplicated from,
 3      say, the bad files in the bishop's office?
 4      A.   Yes.  If necessary, if I needed a whole file from that
 5      drawer, I would just put a file keeper in - just a piece of
 6      paper and mark it - you know, a cardboard keeper and mark
 7      it out to Zimmerman House, but at other times I simply
 8      copied aspects of those files and took them to Zimmerman
 9      House.
10
11      Q.   But sometimes you're saying you would extract things
12      from the physical file and take them away?
13      A.   Yes.
14
15      Q.   So you would have the only record of those at that
16      time?
17      A.   Yes.
18
19      Q.   That was something that was seen as permissible by
20      Bishop Malone?
21      A.   Yes.
22
23      Q.   So that wasn't a covert activity; that was just part
24      of the everyday activity?
25      A.   That's what I did in my job.
26
27      Q.   I understand.  You indicated that there was one source
28      of records within the diocese, to use that neutral
29      expression, that you didn't ever have access to, if it
30      might or might not have been relevant, which was broadly
31      Maitland Clergy Central Fund documents?
32      A.   Yes.
33
34      Q.   They were kept elsewhere within the Hamilton campus,
35      but not as part of the chancery?
36      A.   Yes, they were kept at Newcastle presbytery.
37
38      Q.   In paragraph 28 you detail the source of other
39      documents that in February you considered might have been
40      relevant to the Commission's investigative processes, which
41      were records held at the Professional Standards Office,
42      records held at Catholic Church Insurances, and records
43      held somewhere in a storage facility near the Australian
44      Catholic Bishops Conference in the ACT, which included, as
45      you understood it, records of Encompass?
46      A.   Yes.
47
```

1   Q.   I'm not going to go in to this in detail, but
2   Encompass broadly to your understanding was a treatment
3   facility for clergy that offended particularly in relation
4   to sexual matters?
5   A.   Yes, that's the reason it was set up.
6
7   Q.   And from your material you don't understand that James
8   Fletcher or Denis McAlinden ever had any formal engagement
9   with Encompass?
10   A.   No, I'm pretty sure they didn't. They didn't go to
11   Encompass.
12
13   Q.   Is it the position that in relation to survivors of
14   McAlinden that you have certain knowledge of particular
15   identified survivors and knowledge of the existence and
16   some contact with others beyond that identifiable group?
17   Is that a fair way to express it?
18   A.   Yes.
19
20   Q.   The people that you know and/or had direct dealings
21   with were [AJ], [AC], [AE], [AL] and [AK]?
22   A.   I never had any direct dealings with [AC] and [AE],
23   but I did see their formal Towards Healing complaint.
24   I did have contact with a range of other survivors of
25   McAlinden through attendance at a healing group that
26   Maureen O'Hearn convened at Zimmerman House. I met some
27   other survivors that way.
28
29   Q.   Was that before or after your separation from the
30   diocese?
31   A.   Before.
32
33   Q.   In terms of survivors of abuse by Fletcher, you know
34   of or have had dealings with three of those?
35   A.   Yes.
36
37   Q.   They are [AH], [AB], and Mr Gogarty.
38   A.   Yes.
39
40   Q.   Paragraph 43 effectively supplements some of the
41   evidence that you've already given in relation to your view
42   about changed attitude and commitment in Bishop Malone
43   during the period that you worked with him?
44   A.   Mmm-hmm.
45
46   Q.   One of your roles as the manager of Zimmerman House
47   was to advise him on reporting requirements when there were

1   complaints of abuse?
2   A.   Yes.
3
4   Q.   Was it your view that Bishop Malone steadfastly
5   adhered to reporting requirements when it was necessary for
6   either clergy or non clergy employed within the diocese to
7   be reported in relation to reportable incidents?
8   A.   Yes, it certainly was.
9
10   Q.   I don't want you to go into particular specifics, but
11   did the bishop give you any instructions on the way that
12   you ought to interact with law enforcement authorities,
13   that is, if the police came making inquiries about things,
14   what level of access or assistance was to be afforded?
15   A.   Complete access and, during the time that I worked
16   closely with Bishop Malone, he provided the detective in
17   charge of Strike Force Georgiana with a letter that said
18   they had complete access to any diocesan records and didn't
19   require a warrant, to come at any time.
20
21   Q.   Could you just give your attention to paragraph 67 of
22   your statement, which is on page 10. Broadly, you narrate
23   there your initial dealings and then developing
24   relationship with [AL], who was a survivor of McAlinden's?
25   A.   Yes.
26
27   Q.   In short, you describe becoming aware of a survivor
28   who was angry with the church authorities and making that
29   clear in terms of her written communications with people
30   within the diocese and otherwise?
31   A.   [AL] was demonstrating the rage-like behaviour we'd
32   often seen from survivors. She was very, very angry.
33
34   Q.   Were you, over time, able to make contact with, and
35   then, at least to your mind, develop a trusting
36   relationship with [AL]?
37   A.   Gradually, yes.
38
39   Q.   There was a point at which you introduced [AL] to
40   Bishop Malone?
41   A.   I did.
42
43   Q.   Is it your view that the way that he conducted himself
44   in relation to that exercise was a beneficial one?
45   A.   I think it was. He offered a very profound apology -
46   a very profound apology, and at that time I think that was
47   well received.

1
2   Q.   Is it the case that [AL] was seeking some kind of
3   contact or acknowledgment from other bits of the Catholic
4   hierarchy, if I can use that expression?
5   A.   [AL] had come forward in 1995 and made a formal
6   statement to an official in the diocese and she wanted to
7   know what had happened regarding that statement, what
8   action had been taken, but she never heard again, so she
9   wanted to know what had happened.
10
11   Q.   Did you ultimately come to have a discussion with
12   Bishop Malone about what might happen in relation to
13   certain documents that were directly relating to [AL]'s
14   contacts with the church hierarchy in 1995?
15   A.   I did. That was only after we'd made, or I'd
16   certainly made several attempts to contact church
17   authorities to ask them to speak to [AL] and, when we had
18   no success in that, I discussed with Bishop Malone how we
19   might begin to alleviate some of her distress and we
20   decided it would be important for her to have access to the
21   evidence that the church had at least tried to laicise
22   McAlinden.
23
24   Q.   How was that physically achieved, the provision of
25   that material?
26   A.   We gave her copies of documents to that effect from
27   the file.
28
29   Q.   And effectively Bishop Malone authorised you to copy
30   things that were within at least a portion of the
31   confidential file that related to McAlinden?
32   A.   Yes.
33
34   MR HUNT: Can I have a moment with one of my friends?
35
36   Q.   I think this is to counteract suggestions that might
37   have been made, at least privately. In paragraph 73 you
38   indicate that at no stage did you ever provide copies of
39   any documents to Joanne McCarthy.
40   A.   No.
41
42   Q.   I want to ask you a couple of questions about the
43   matters that you deal with at paragraph 77 of your
44   statement, against the backdrop of you indicating in
45   paragraph 74 and following that your view was that you had
46   significant support and almost compliance from Bishop
47   Malone in terms of his attitude towards reporting and

1   encouraging you toward more transparency within the
2   processes of the diocese in relation to child protection.
3   You had your own personal view that there was some
4   resistance to those initiatives within the diocese and
5   within sections of the clergy; is that a fair proposition?
6   A.   That is fair.
7
8   Q.   In paragraph 77 you talk about meeting with clergy of
9   the diocese at a retreat in September 2007 and that you and
10   a consultant solicitor by the name of Paul Davis gave a
11   presentation and the focus of the presentation was on
12   reporting responsibilities under the criminal and the civil
13   law?
14   A.   Yes.
15
16   Q.   And with a child protection focus obviously?
17   A.   That's right.
18
19   Q.   In relation to reportable incidents and what the
20   obligations were in fact?
21   A.   Yes.
22
23   Q.   You express yourself in this way at the last sentence
24   of paragraph 77:
25
26   *During the discussion at the time certain*
27   *clergy quoted Canon Law and its precedence*
28   *in Church matters.*
29
30   A.   Yes.
31
32   Q.   In context do we understand that that was a set of
33   discussions that involved a view being proposed that canon
34   law somehow took precedence over either criminal law or
35   civil law if it was outside of the church?
36   A.   Yes.
37
38   Q.   Are you able to briefly develop the way that was put?
39   A.   That retreat was held to, I guess, comfort clergy,
40   because yet another member, a very respected member of
41   their number had just been stood aside pending a serious
42   police investigation and there was distress at the fact
43   that this priest had been stood aside and, also, that there
44   had been an open communication about the fact that the
45   priest was stood aside pending an investigation. There was
46   a very clear message given to me from quite a few parts of
47   the diocese and from clergy that that decision was not in

1   keeping with the Towards Healing process and was not in
2   keeping with canon law. So it was actually in response to
3   that attitude that Paul Davis and I put together a
4   PowerPoint to explain the relevance of both civil and
5   criminal law in child protection matters, and presented
6   that at that retreat. There were certainly some members of
7   the clergy at that retreat who found that very difficult
8   information to absorb.
9
10   Q.   Did that attitude ameliorate further by the time you
11   left working with the diocese, do you think?
12   A.   In some quarters.
13
14   Q.   Are you able to indicate, given that you were, if you
15   like, at the helm of the child protection unit in the
16   period that you've described from 2005 to 2009, what the
17   practice was in terms of reporting matters to the police
18   that came to the attention of the diocese, that is,
19   allegations of child sexual abuse?
20   A.   It was practice to report any matter that constituted
21   a crime, with regard to behaviour towards children,
22   directly to the police.
23
24   Q.   Was that your practice, or was that an enshrined
25   procedural position?
26   A.   Throughout the whole time at Zimmerman House I guess
27   we were playing catch up, because the system was set up and
28   immediately began to receive many complaints before we'd
29   even written the policies and procedures. So the policies
30   and procedures were probably still in draft form when
31   I left. We were writing those. But that was a reflection
32   of the way we operated.
33
34   MR HUNT: What I hope to do, Commissioner, is deal with
35   one particular matter that is about direct interaction of
36   this witness with a police investigation and then I'm
37   hoping that we can have an early morning tea. I want to
38   take the witness to a few of the policies and emergent
39   materials that she just referred to, but I want to do that
40   after the morning tea adjournment if I could.
41
42   THE COMMISSIONER: All right, Mr Hunt.
43
44   MR HUNT: Q.   Ms Keevers, could you look at volume 7 of
45   those green folders that are beside you. Could you look
46   behind tab 499. I want to stress that I'm going to show
47   you a document that's not your document. Have you got that

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 1      document in front of you?
 2      A.   I do.
 3
 4      Q.   Would you turn to the second page, and that's a
 5      page that should have 1381 at the base.  Do you see that?
 6      A.   Yes, I do.
 7
 8      Q.   Quickly turn to the front page, do you see that this
 9      is a COPS report that relates to the police matter relating
10      to a survivor [AE]?
11      A.   Yes, I see that.
12
13      Q.   Turning to the next page, do you see a case narrative
14      entry that says:
15
16           Information from Helen Keevers is that the
17           priest --
18
19      If you accept from me that the priest here is McAlinden --
20
21           sought in this matter is suffering from
22           Cancer - possible terminal.  He can now be
23           found at St John of God Villa, McCourt
24           Street, Subiaco Western Australia.
25
26      A.   Yes.
27
28      Q.   Then there is some material about how you can be
29      contacted.
30      A.   Yes.
31
32      Q.   Seeing that now, could you tell the Commissioner,
33      first of all, that entry seems to relate to a contact that
34      you had with the police?
35      A.   Yes, it does.
36
37      Q.   I want you, first, to tell the Commissioner how you
38      came by the information and then what were the processes,
39      delays or permissions that were needed before you then
40      communicated that matter to the police, and why you
41      communicated it to the officer that you did?
42      A.   I had been aware from fairly early on that there was
43      an active police warrant out for Father McAlinden, but we
44      didn't know where he was.  I think it was Maree Lawrie, one
45      of the diocesan secretaries, who answered the phone from a
46      member of the faith community who was asking that a message
47      be passed on to the bishop that prayers be offered for
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1      Father McAlinden, who was dying in a nursing home.
2      Ms Lawrie put the phone call through to me.  I spoke to the
3      person and thanked them and took the address.  I hung up
4      and then I picked up the phone and I rang --
5
6      Q.   Pausing there for a minute, did you determine from the
7      member of the faith community whether they were local or
8      Western Australian?
9      A.   They were local.  They didn't want to give their name.
10     I hung up the phone and then I rang the most relevant
11     police officer I could think of, which was Detective
12     Sergeant Fox, as he then was.
13
14     Q.   Did you contact the bishop to get permission or get
15     his okay to contacting the police?
16     A.   No, I told him afterwards.
17
18     Q.   Why did you contact Detective Fox?
19     A.   I didn't want to just ring any police station and have
20     this message lost somewhere, and I knew from meeting Peter
21     Fox at the sentencing hearings of James Fletcher that he
22     would know about where these matters could be dealt with in
23     the Police Force, so I rang him for advice and he said he
24     was aware of the matter and could pass it on appropriately.
25
26     Q.   Thinking about the issue generally of McAlinden's
27     address, during the period that you were working for the
28     diocese directly as opposed to at Centacare, did you become
29     aware of any investigations to find out where McAlinden was
30     before this information came to your knowledge?
31     A.   No, no, I didn't, and I guess even I accepted the
32     belief that he was somewhere that we didn't know, so no.
33
34     Q.   You were never delegated to --
35     A.   Find him?
36
37     Q.   -- find him?
38     A.   No, no.
39
40     Q.   Is it the case that you didn't realise, if it be the
41     case, that Detective Fox had had previous involvement with
42     [AE]'s police matter; it was simply the synchronicity of
43     knowing Fletcher --
44     A.   No, I didn't.  I just wanted to speak to somebody who
45     would know where this information could go appropriately.
46
47     MR HUNT:   Is that a convenient time to have an early
```

1   morning tea break, Commissioner. I was hoping we could
2   have until 20 to 12.
3
4   THE COMMISSIONER: I will adjourn until 11.40am.
5
6   **SHORT ADJOURNMENT**
7
8   MR HUNT: Thank you for the time, Commissioner.
9
10   Q.   Ms Keevers, can I go back and clarify a couple of
11   things arising from your evidence this morning, if I might.
12   A.   You may.
13
14   Q.   You indicated that when you contacted Detective Fox
15   with information about McAlinden's whereabouts in Subiaco
16   Western Australia, you did that and later reported to
17   Bishop Malone that that had happened.
18   A.   Yes.
19
20   Q.   What was his reaction when you did report that you had
21   been in contact with the police?
22   A.   He said, "Good."
23
24   Q.   Is it the case that now, absent looking at records,
25   you can't time with precision when it was that you received
26   the information about McAlinden's whereabouts and provided
27   it to Detective Fox?
28   A.   I couldn't remember the exact date. It would relate
29   closely to the date that he received the information.
30
31   Q.   I want to take you to some other documents to assist
32   you to refine any comment that you have to make about the
33   date. Would you look in volume 6. Can you leave volume 7
34   open for the moment and go to tab 473 in volume 6. Do you
35   see there that there is an email to you of 27 October
36   2005 --
37   A.   Yes.
38
39   Q.   -- from somebody in Perth?
40   A.   Yes, I can see that.
41
42   Q.   Do you see that attached is an email of 24 October
43   2005?
44   A.   Yes, I see that.
45
46   Q.   The email to you enclosing that is dated 27 October
47   2005?

```
 1        A.   Yes.
 2
 3        Q.   Would you now look back at the item that's in
 4        volume 7.
 5        A.   Yes.
 6
 7        Q.   There is a handwritten date alongside the narrative of
 8        your call to Fox providing that information; do you see
 9        that?
10        A.   Yes, I see that.
11
12        Q.   Is there any synchronicity between receipt of the
13        email that is behind tab 473 and the phone call to Fox
14        about the whereabouts of McAlinden?
15        A.   They seem to have come around the same time.
16
17        Q.   But the receipt of the email proved important to you
18        because ultimately that led to you being in contact with a
19        victim of McAlinden; is that right?
20        A.   This is the first contact we had from [AL].
21
22        Q.   [AL], that's right.  You already knew of McAlinden's
23        whereabouts and had told the police of that some time
24        before this contact?
25        A.   Not very long before, but, yes.
26
27        Q.   But certainly not on the same day?
28        A.   No.
29
30        Q.   In passing, when I asked you some questions about your
31        own practice at Zimmerman House of reporting to the police
32        and whether, with the practice of reporting criminal
33        matters involving allegations of child sexual abuse to the
34        police, you had a personal practice of doing that and
35        I asked you a question about whether there was a policy
36        position within the diocese in relation to that --
37        A.   Yes.
38
39        Q.   -- you said that the policy always remained a draft
40        while ever you were employed at the diocese.
41        A.   That's right.
42
43        Q.   So it was an issue that you continued to work on, but
44        the pressure of other things meant that it was never signed
45        off as a formal document?
46        A.   That's right.
47
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 1      Q.    Did you understand that, at least as far as your own
 2      practice and to your knowledge Bishop Malone's practice,
 3      you both adopted the same position, that there ought be
 4      reports to the police?
 5      A.    Absolutely.
 6
 7      Q.    What about more widely in the diocese, did you have
 8      any ability to assess what the attitude was more widely
 9      without there being a formal protocol in place?
10      A.    Well, part of our role was to provide education across
11      the diocese, so in all of the education we provided to all
12      parts of the diocese, we gave that message very clearly.
13
14      Q.    Can you look at one other document behind tab 474.
15      You'll see that this is a communication from somebody in
16      Perth, Sister Angela Ryan but you're copied in.  In the
17      third paragraph it says:
18
19              Helen has now notified the police of his
20              whereabouts.
21
22      A.    Yes.
23
24      Q.    The material where it says:
25
26              It appears that Denis McAlinden is a well
27              documented problem and the NSW police have
28              an outstanding warrant for his arrest
29              dating back to 1999.
30
31      Is that material that you suspect you passed on to
32      Mr Messer?
33      A.    Yes, I would have given him that information from the
34      McAlinden file.
35
36      Q.    Can I ask you now to turn two tabs back behind
37      tab 476.  The date is obscured, but it seems to say "9/11"
38      at the top of that handwritten note?
39      A.    It's actually my "4" - it says "4/11".
40
41      Q.    You have answered one of my questions.  That
42      handwriting and those initials suggest that's your
43      handwritten note; is that right?
44      A.    Yes.
45
46      Q.    So this is some time relatively shortly after you had
47      (a) come to know about the whereabouts of McAlinden; (b)
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1      told the police --
2      A.   Yes.
3
4      Q.   -- and (c) having your first contacts with [AL]?
5      A.   Yes.
6
7      Q.   This is a file note of somebody who was making an
8      inquiry of the whereabouts of McAlinden?
9      A.   Yes, it was someone who wanted to reach him, because
10     he was an old family friend.
11
12     Q.   You provided the address?
13     A.   Yes.
14
15     Q.   Is it the case that you didn't explore what the
16     position was about the old family friend or otherwise?
17     A.   No, I didn't, because - yes, it is interesting.
18     I didn't because the tone of the conversation with that
19     person was that there was an old and loved family friend
20     and they wanted to get in touch with him.
21
22     Q.   You didn't form any --
23     A.   I didn't suspect that --
24
25     Q.   -- subtext that they might be trying to find him as --
26     A.   No, not at all.  I thought it was a genuine request
27     from the way that --
28
29     Q.   Thank you.  I now want to ask you some questions --
30     A.   Can I close these now?
31
32     Q.   You may.  I tender tab 499 in volume 7, Commissioner.
33
34     THE COMMISSIONER:   Tab 499 will be admitted and marked
35     exhibit 200.
36
37     EXHIBIT #200 COPS ENTRY IN RELATION TO [AE]'S COMPLAINT
38     AGAINST DENIS McALINDEN (TAB 499)
39
40     MR HUNT:   I tender tabs 473, 474 and 476 additionally.
41
42     THE COMMISSIONER:   Tab 473 will be exhibit 201.
43
44     EXHIBIT #201 EMAIL FROM PETER MESSER TO MS KEEVERS
45     (TAB 473)
46
47     THE COMMISSIONER:   Tab 474, which is an email from Peter
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1   Messer to Angela Ryan with Ms Keevers copied in of
2   28 October 2005 will be exhibit 202.
3
4   **EXHIBIT #202 EMAIL FROM PETER MESSER TO ANGELA RYAN WITH**
5   **MS KEEVERS COPIED IN, DATED 28/10/2005 (TAB 474)**
6
7   THE COMMISSIONER: Tab 476, Ms Keevers' handwritten file
8   note of 4 November 2005, presumably, will be admitted and
9   marked exhibit 203.
10
11   **EXHIBIT #203 MS KEEVERS' HANDWRITTEN FILE NOTE DATED**
12   **4/11/2005 (TAB 476)**
13
14   MR HUNT: Q.   Picking up something the Commissioner just
15   said, we understand in context that the note that I took
16   you to with "4/11" at the top would necessarily have been
17   2005?
18   A.   I would think so.
19
20   Q.   Because you understand that later that year McAlinden
21   died?
22   A.   He died not long after.
23
24   Q.   I want to ask you some questions about what you say at
25   the end of paragraph 79 and then in paragraph 80. What you
26   talk about at the beginning of paragraph 79 is that you've
27   reviewed changes to the Towards Healing procedures online
28   and have seen that, since the review in 2010, those
29   procedures now advise contact persons taking complaints
30   that the church has "a strong preference" for criminal
31   matters being reported to the police and directs those
32   persons to report all potential crimes to the director of
33   the Professional Standards Office, who will then pass those
34   matters on to the police. Do you see that there?
35   A.   I do see that.
36
37   Q.   You then make reference to those procedures or
38   procedures similar to that not being in place when you were
39   taking Towards Healing complaints in 2003 and 2004.
40   A.   Yes.
41
42   Q.   To put that in context, that was at a time that you
43   were working at Centacare and you weren't yet involved in
44   the advisory panel and the other groups?
45   A.   That's right. Towards the last couple of years that I
46   was at Centacare, I actually served for a couple of years
47   as a contact person for Towards Healing.

1
2   Q.   You then go on to say at paragraph 80, and I just want
3   to clarify a couple of matters with you arising from this
4   opinion that you express at paragraph 80:
5
6   *According to the protocol at that time --*
7
8   Referring back to 2003 and 2004; correct?
9   A.   Yes.
10
11   Q.
12   *... I had to ask survivors to sign a*
13   *document saying they were not going to the*
14   *police before [there would be] any*
15   *discussion of "healing" ...*
16
17   Correct?
18   A.   That's right.
19
20   Q.   And at that time you equated "healing" as meaning,
21   among other things, financial settlement?
22   A.   That's right.
23
24   Q.   I want to take you to a couple of documents. Those
25   folders can now go away and if you could locate volume 4,
26   would you turn to tab 328, please, Ms Keevers. Do you see
27   there from the heading that that is a publication of the
28   Towards Healing principles and procedures dated December
29   2000?
30   A.   I do see that, yes.
31
32   MR HUNT: I tender the document at this stage,
33   Commissioner.
34
35   THE COMMISSIONER: The material behind tab 328, volume 4,
36   which looks to be a publication entitled "Towards Healing"
37   will be admitted and marked exhibit 204.
38
39   **EXHIBIT #204 DOCUMENT ENTITLED "TOWARDS HEALING" (TAB 328)**
40
41   MR HUNT: Q.   Within that document, Ms Keevers, could you
42   turn to the page that has 820 on the bottom.
43   A.   Yes.
44
45   Q.   Do you see the first heading on the top of that
46   page is "Criminal offences and the reporting of child
47   sexual abuse [continued]", et cetera?

1   A.   Yes, I see that.
2
3   MR HUNT: I'm going to show the witness another document.
4   This document, Commissioner, I have a copy for you as well.
5   It's tabbed in the way that the witness's copy is tabbed.
6   This is Towards Healing amendments in May/June 2003.
7   I tender that and then I'll take the witness to it. Can
8   I indicate, for the benefit of those at the bar table, the
9   item I now tender, which is the amendments, is not in the
10   bundle but copies are being provided to those at the bar
11   table.
12
13   THE COMMISSIONER: The document headed "Towards
14   Healing December 2000", which has been tabbed at appendix
15   37.2 is admitted and marked exhibit 205.
16
17   MR HUNT: It is tabbed for Ms Keevers and also for you.
18
19   As I indicated when I tendered it, the document is the
20   Towards Healing amendment May/June 2003.
21
22   **EXHIBIT #205 TOWARDS HEALING AMENDMENTS MAY/JUNE 2003**
23
24   MR HUNT: Q.   Ms Keevers, I am not going to hold you to
25   every word of the document, but I'm asking you to accept
26   the material that is tabbed in pink at appendix 37.2
27   represents an insertion of some material into text that
28   otherwise is identical, at least on this issue, between the
29   2000 protocol and the amendments.
30   A.   From my knowledge, yes.
31
32   Q.   Were you across this amendment as a taker of
33   complaints back then, or is this more something that you
34   became a student of later in time?
35   A.   This amendment is in 2003. I think I took the
36   complaints in 2003 and 2004. This amendment, if it is
37   different, is probably only slightly different to what it
38   replaced in the protocols before that.
39
40   Q.   What I'm suggesting to you is that the effect of
41   appendix 37.2 was to insert the clause to be signed that
42   you are broadly referring to in paragraph 80 of your
43   statement, that is, a document to be signed before a
44   complainant's matter was able to move forward through
45   Towards Healing?
46   A.   I think that's the same statement. It's certainly
47   very similar to the statement I recall. I'm not sure that

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1       a statement like this didn't also exist in the protocols.
2
3       Q.   Would you accept from me that it didn't?
4       A.   Okay, that's fine.  Then this must have been where
5       I saw it, yes.
6
7       Q.   Accepting for current purposes that there was no kind
8       of notation like this to be signed by a claimant or a
9       survivor in the 2000 protocol, knowing that piece of
10      information and then reading that clause, does that seem to
11      you to be the clause that you are talking about when you
12      deal with the comments that you make in paragraph 80 of
13      your statement?
14      A.   That would then be the clause.
15
16      Q.   Do you see that the clause invites this comment:
17
18           The Catholic Church has strongly urged me
19           to take my complaint to the Police or other
20           civil authority.
21
22      Is that what happened in practice in terms of your practice
23      of taking complaints in 2003 and 2004?
24      A.   Certainly I would urge people to do that and I would
25      hope that other contact persons urged people to do that.
26      I'm not sure - I couldn't say that that always happened.
27
28      Q.   In terms of the way you express yourself in
29      paragraph 80, is this the position, that your view was in
30      requiring people to sign this, if they were prepared to
31      sign this, the position was an either/or approach, that
32      either people accepted an urging to go to the police, or
33      they registered a complaint through Towards Healing, but
34      the effect of this clause was that they couldn't do both at
35      the same time?
36      A.   That's definitely how I understood it.
37
38      Q.   Was it your view in terms of the way this operated
39      that if somebody elected to go to the police in preference
40      to, at that point, advancing a matter through Towards
41      Healing, once the police processes were complete, that
42      person could elect to then exercise Towards Healing rights?
43      A.   They could certainly return then.
44
45      Q.   I want you to revisit one topic and then I will have
46      concluded the questions that I have for you, Ms Keevers.
47      You talked about being a member of the advisory panel and
```

1	then there being, if you like, a subpanel of the advisory
2	panel consisting of yourself, [BS], Anne Gleeson and
3	Stephanie Thomas, and that that subpanel was seized with
4	investigating matters; am I right in summary?
5	A. That was the interim arrangement, yes.
6	
7	Q. In terms of either the advisory panel itself or the
8	subpanel, the comments that you made earlier about there
9	being resistance to some of the notions that you expressed
10	and some of the positions that you took, was it your
11	perception that that affected the work of the panel or the
12	subpanel at that time in terms of the way things were
13	actually done, or was that just debate?
14	A. It was probably more debate at that time and
15	I certainly didn't see evidence of the same, I guess,
16	intractable position that I saw amongst the arguments with
17	the clergy.
18	
19	MR HUNT: That concludes the examination, Commissioner.
20	
21	THE COMMISSIONER: Thank you, Mr Hunt. Ms Gerace?
22	
23	MS GERACE: No, thank you, Commissioner.
24	
25	MR ROSER: No, thank you.
26	
27	MR GOGARTY: No thank you.
28	
29	<**EXAMINATION BY MR COHEN**:
30	
31	MR COHEN: Q. Ms Keevers, going back to your evidence of
32	this morning before the adjournment, you were asked a
33	number of questions by Mr Hunt. In particular, you gave a
34	long answer in response to a question as to what was Bishop
35	Malone's intention in forming the advisory panel. I'm
36	doing the best I can, and allowing for the fact that I'm
37	taking a note and there's no transcript, I recorded your
38	answer that the church instruction was that the bishop was
39	to have advice but also he was affected in relation to his
40	own mishandling of the Fletcher allegation. Do you recall
41	that evidence and that answer?
42	A. Yes, I do.
43	
44	Q. You indicated, also, that you became quite vocal and
45	that the bishop listened, but you became quite vocal within
46	the committee. Is that a correct understanding of your
47	evidence?

1   A.   Yes.
2
3   Q.   If you were the protagonist, who did you perceive to
4   be your antagonists on the committee?
5   A.   I don't think they were antagonists as such, but
6   perhaps I would - you know, one of the common criticisms of
7   some of the work that I did was that I didn't show gospel
8   values towards those accused. I would usually argue in
9   response to that that natural justice was important, but
10   gospel values shouldn't replace risk management. They were
11   conversations like that.
12
13   Q.   By "risk management" you meant what?
14   A.   Sound management principles about clergy being left in
15   ministry.
16
17   Q.   By circumstances of what risk?
18
19   MR GYLES: I object. Mr Cohen has a very narrow standing
20   in relation to TOR-2 and I'm concerned that the subject
21   matter of this question is not within his relevant interest
22   in this part of the inquiry.
23
24   THE COMMISSIONER: I don't know if your question was
25   completed. Were you going to explore what the risk
26   management --
27
28   MR COHEN: The answer seemed to be hanging in the air and
29   that is what I was endeavouring to --
30
31   THE COMMISSIONER: Yes, so you have a more expansive
32   answer there.
33
34   MR COHEN: Q.   You also gave some evidence in response a
35   question about the views of utility of Bishop Malone's work
36   and his motivations. You responded, amongst other things -
37   again, this is from my note and I apologise if it's not
38   completely accurate - that he, amongst other things,
39   honestly wanted to learn from what he had done incorrectly.
40   Do you recall that evidence?
41   A.   I do.
42
43   Q.   You identified, as I understood it, that you had
44   experienced some opposition to your participation in that
45   process. Who opposed that participation?
46
47   MR GYLES: I object on the same basis.

1
2   THE COMMISSIONER: Mr Cohen, I think Ms Keevers did
3   indicate in general terms the opposition. I don't think
4   it's appropriate that you seek names, ranks and serial
5   numbers.
6
7   MR COHEN: Very well.
8
9   Q.   You also gave some evidence that it was intended that
10   there be reforms or changes. What reforms or changes was
11   it intended would arise?
12
13   MR HUNT: I rise to object. If this material is going to
14   assist you, Commissioner, in a broad fashion, then I'll sit
15   down, but it might be that Mr Cohen might be able to
16   articulate how this relates to his client's interests.
17   What I've endeavoured to do, given the detail that's in the
18   statement, is enliven matters that are broadly of interest
19   to the terms of reference in a general fashion.
20
21   It might be that Mr Cohen has some particular matters
22   that relate more particularly to Detective Chief Inspector
23   Fox's interest that he can illuminate by cross-examination,
24   but his right is not at large.
25
26   THE COMMISSIONER: Are you coming to something in relation
27   to that question?
28
29   MR COHEN: Yes, I'm getting to more detailed matters. It
30   seemed to be background, but I'll press on.
31
32   THE COMMISSIONER: Thank you, Mr Cohen.
33
34   MR COHEN: Q.   You gave some evidence about a discussion
35   with Bishop Malone in 1995 about the complaint brought
36   forward by [AL]. You indicated in your evidence - again,
37   I'm sorry, this is my best effort to record your answer -
38   that you had several attempts to have the church
39   authorities speak with [AL]. I take it that was at a time
40   before contact was made with police; is that so?
41   A.   I --
42
43   MR GYLES: I object. In terms of contact with the police
44   in respect of [AL], we know that goes back to 1999, which
45   is before Ms Keevers' time. I don't want there to be
46   confusion about it. In any event, what is the interest of
47   Mr Cohen's client in this topic? In terms of the

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 1      specificity of the question, it is quite important -
 2      identifying it by reference to that notification.
 3
 4      MR COHEN:   Q.   You identified that you endeavoured to
 5      have several attempts to have the church authorities speak
 6      with [AL].  That was your evidence - yes?
 7      A.   I think you said earlier that I discussed it with
 8      Bishop Malone in 1995.
 9
10      Q.   Yes.
11      A.   I didn't discuss it with him then.  That's when the
12      complaint was made by [AL].
13
14      Q.   I see; I misunderstood.
15      A.   I discussed it with him later when we had this contact
16      from [AL] and she was inquiring about what had happened in
17      1995.  Is that clearer?
18
19      Q.   Who were the relevant interlocutors that you wished to
20      have this discussion between [AL] and members of the
21      church - who were the persons?
22      A.   I'm not sure that I'm able to name them.  They were
23      outside of the diocese.
24
25      MR COHEN:   Excuse me, Commissioner.  Informed as I am by
26      the range of rulings that you've made about matters, I'm
27      just trying to see what I can pursue.
28
29      THE COMMISSIONER:   I'm glad, Mr Cohen.
30
31      MR COHEN:   Q.   You give some evidence in your statement
32      in paragraph 26 about the clergy fund.  Your statement is
33      now exhibit 199.  Did you have any specific understanding
34      of the operation of the clergy fund at the time that you
35      were in office at Zimmerman House?
36      A.   I didn't have a deep understanding of how it operated.
37      I understood that it operated fairly separate to the
38      diocesan offices and operated directly to - I thought there
39      was a connection with the Council of Priests.  It was
40      around funds used to essentially provide comforts for
41      clergy.  It might be used to assist them with the purchase
42      of cars or do up their apartment or --
43
44      Q.   What about plane tickets?
45
46      MR GYLES:   I object.  To the extent that topic is
47      relevant, it is well before Ms Keevers' time.  In any event
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 1    the evidence she has given is essentially secondary.  One
 2    would need to explore the basis.
 3
 4    THE COMMISSIONER:   You didn't really have anything to do
 5    with that, did you?  From what I understand from your
 6    statement, ma'am, you didn't have much to do with that fund
 7    or didn't have access to its records?
 8
 9    THE WITNESS:   I wasn't able to have access to its records.
10    At one stage I had need to investigate it, but I couldn't
11    get access to the records.
12
13    THE COMMISSIONER:   I don't know that Ms Keevers can take
14    that much further.
15
16    MR COHEN:   Q.   In paragraph 79 and paragraph 80 of your
17    statement you make reference to the procedures, and indeed
18    Mr Hunt has just asked you some questions about it.  Did
19    you ever experience any direction not to take a matter to
20    police yourself?
21
22    MR GYLES:   I object.  This on any view is not a topic that
23    Mr Cohen would have any standing to address.  This is going
24    to events in 2003 and 2004 at a time at which Ms Keevers
25    was at Centacare and has told you about she handled
26    matters or complaints that were made to her at that time.
27
28    MR COHEN:   With respect, that does an injustice to the
29    question.  The paragraphs --
30
31    THE COMMISSIONER:   I'm just rereading the paragraphs,
32    Mr Cohen.
33
34    MR COHEN:   They don't limit themselves to 2003 and 2004.
35    It is Ms Keevers' statement of her understanding of what
36    has become of the iterations of Towards Healing and she can
37    speak about these topics as to the time she was indeed in
38    office as the manager of Zimmerman House, in my respectful
39    submission.
40
41    THE COMMISSIONER:   So you wish to ask whether Ms Keevers
42    was ever directed not to take any matter to the police
43    while she was in that capacity?
44
45    MR COHEN:   Q.   In that capacity while you were manager of
46    Zimmerman House?  Do you have that question in your mind?
47    A.   I do, and I was never directed not to take a matter to
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1      the police.
2
3      MR COHEN:   Thank you.
4
5      MR HARBEN:   I have no questions.
6
7      MR GYLES:  I have one question, and it is probably because
8      I wasn't able to follow the evidence properly.
9
10     <EXAMINATION BY MR GYLES:
11
12     MR GYLES:   Q.   Do you have your statement there,
13     Ms Keevers?
14     A.   I do.
15
16     Q.   The sequence of events seems to be that, if you look
17     at paragraph 15, that you conducted a six-month study at
18     the invitation of the bishop between November 2004
19     and April 2005; do you see that?  That's paragraphs 15 and
20     16.
21     A.   That's right.
22
23     Q.   If you could then go to paragraph 22 --
24
25     MR HUNT:   If I might have a minute with my friend.
26
27     MR GYLES:   Q.   At paragraph 21 you then deal with your
28     role as manager of Zimmerman House?
29     A.   Yes.
30
31     Q.   You say in paragraph 22 that Bishop Malone asked you
32     to review files; do you see that?
33     A.   Yes.
34
35     Q.   Is that file review something you were asked to do in
36     your role as manager of Zimmerman Services, ie, something
37     that was done after the six-month study you had done which
38     you refer to in paragraphs 15 and 16?
39     A.   I was the manager of Zimmerman House rather than
40     Zimmerman Services.
41
42     Q.   I am sorry.  Thank you for that clarification.  All
43     I wish to --
44     A.   And I can answer your question.  The study was
45     conducted - the study was an investigation of diocesan
46     structures.  It wasn't relating to historical matters.  In
47     my role, once I was in the position of manager of Zimmerman
```

1   House, I was then asked to review historical matters.
2
3   Q.   So that was something that was undertaken by you some
4   time after 8 August 2005; is that correct?
5   A.   I would have to check what date it was that I was
6   appointed, but yes.
7
8   Q.   If you go back to the previous page, 18, it would
9   seem that was the --
10   A.   Yes, after that date, that's right.
11
12   MR GYLES: Nothing further.
13
14   DR DWYER: Nothing, thank you, Commissioner.
15
16   **<EXAMINATION BY MR HUNT:**
17
18   MR HUNT: Q.   I want to ask a couple of clarifying
19   questions to make sure I understand the position in
20   relation to Maitland Clergy Central Fund file access by
21   you.
22   A.   Yes.
23
24   Q.   Is it the position that you were, as a general
25   principle, not invited to have access to those files?
26   A.   Access to those files was refused to me.
27
28   Q.   And there was a specific case where you thought it was
29   important to an investigation that you look at those files
30   and particular access was denied on that occasion?
31   A.   There were two occasions, and it was denied on both
32   occasions. I was told the person in charge of those files
33   would look and let me know if there was anything relevant.
34
35   Q.   Did that happen, did you get a report back?
36   A.   I got a report back that nothing was relevant.
37
38   Q.   Are you able to indicate that you had a basis for
39   assuming that there might be something relevant in those
40   files at the time you made those two requests?
41
42   MR GYLES: I object. Ms Keevers has given the evidence
43   that she made a request. She wasn't given direct access.
44   She was told that someone would look and there would be a
45   report back. I think that's really as far as my learned
46   friend can take it.
47

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THE COMMISSIONER: Thank you. Mr Hunt, is this about one
of the priests in our terms of reference?

MR HUNT: I will find that out. I can understand why that
might be of concern to you, Commissioner, if it is not
about one of them.

Q.   You know there are two priests nominated in our terms
of reference of this Commission. Did either of these
inquiries relate to either of those priests?
A.   No.

MR HUNT: On that basis, I won't pursue it. That's the
re-examination. Might the witness be excused.

THE COMMISSIONER: Yes, thank you very much for your
evidence, Ms Keevers. You are excused.

<THE WITNESS WITHDREW

MS LONERGAN: I call Sean Tynan.

<SEAN PATRICK TYNAN, sworn: [12.39pm]

MR GYLES: Commissioner, could the witness take section 23
protection.

THE COMMISSIONER: Yes, thank you, Mr Gyles.

<EXAMINATION BY MS LONERGAN:

MS LONERGAN: Q.   Your full name is Sean Patrick Tynan?
A.   It is.

Q.   You are currently the manager of Zimmerman House or
Zimmerman Services?
A.   Yes.

Q.   And you also have an added title of coordinator for
commissions at the diocesan of Newcastle?
A.   Happily temporary.

Q.   Related to this Special Commission of Inquiry and the
Royal Commission?
A.   Yes.

Q.   Can we take it that you have some added duties

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1     relating to preparation of submissions and similar
2     documents for those Commissions?
3     A.   Yes.
4
5     Q.   Mr Tynan, you've prepared a statutory declaration
6     which you swore on 27 June 2013?
7     A.   Yes.
8
9     Q.   In that statutory declaration you have addressed
10    various questions that were raised by those who assist the
11    Commissioner regarding this Commission's work?
12    A.   Yes.
13
14    Q.   I'm going to hand you a copy of your statutory
15    declaration.  I note that there have been certain
16    redactions to the document for the purposes of this
17    morning's evidence.  I have a copy of that redacted
18    version.  There is also one for the Commissioner.
19
20         I'm going to ask you to look at that statutory
21    declaration and ask you to confirm that the contents are
22    true and correct.
23    A.   Paragraphs 58 and 61 have been subject to an updated
24    statutory declaration.
25
26    Q.   I'm just coming to that.  Thank you for your precision
27    with that.  On 29 July 2013 you prepared a further
28    statutory declaration to update the position in relation to
29    those two paragraphs?
30    A.   That's correct.
31
32    MS LONERGAN:   I'm having a copy of that handed up for the
33    witness and for you, Commissioner.  Commissioner, I tender
34    both statutory declarations as separate exhibits, please.
35
36    THE COMMISSIONER:   The statutory declaration by Mr Tynan -
37    the larger one - dated 27 June 2013 will be admitted and
38    marked exhibit 206.
39
40    **EXHIBIT #206 STATUTORY DECLARTION OF SEAN TYNAN, DATED**
41    **27/06/23013**
42
43    THE COMMISSIONER:   The supplementary statutory declaration
44    of Mr Tynan of 29 July 2013 will be exhibit 207.
45
46    **EXHIBIT #207 SUPPLEMENTARY STATUTORY DECLARATION OF**
47    **SEAN TYNAN, DATED 29/07/2013**
```

1
2   MS LONERGAN: Q.   Mr Tynan, you have a bachelor of arts
3   in psychology from the university of Newcastle and
4   completed that qualification in 1993?
5   A.   Yes.
6
7   Q.   Between 1993 and February 2006 you fulfilled a number
8   of roles in child protection including casework,
9   management, and other matters to do with child protection
10   and disability services in New South Wales?
11   A.   Correct.
12
13   Q.   Were they all government-related positions or were
14   some of them private?
15   A.   No, some of them were private. From 1993 until
16   I think it was 2004, I was with the Department of Community
17   Services, which was the statutory child protection
18   authority in New South Wales. From 2004 to 2006 I was what
19   was called the regional manager for out-of-care home for a
20   not-for-profit organisation called Life Without Barriers.
21
22   Q.   That was a non-government agency, that last
23   organisation?
24   A.   Yes.
25
26   Q.   In terms of child protection legislation, is it fair
27   to say that in that period - let's just focus on 1993
28   to February 2006 - there was an evolution in terms of
29   statutory obligations for reporting?
30   A.   Yes, there was. When I began in child protection in
31   1993, we were working under the 1987 Children Care and
32   Protection Act. That had some limited obligations around
33   mandatory reporting. There were very clear limits to that.
34   The 1987 Act was also, to the best of my recollection, the
35   first Act that specifically highlighted sexual assault as a
36   mandatory reporting requirement. Then, I believe, as a
37   direct consequence of the Wood Royal Commission, the
38   paedophile inquiry, the Children and Young Persons (Care
39   and Protection) Act 1998, which came into force in 2000,
40   introduced broad based mandatory reporting and in fact made
41   it a legal obligation.
42
43   Q.   I appreciate that you didn't work for Zimmerman House
44   or the diocese of Maitland-Newcastle until 2009, but are
45   you able to state, and please say if you can't, whether
46   there were any exemptions as you understood it for clerical
47   persons, that is, members of the clergy, in relation to

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1      either of those two pieces of legislation?
2      A.   To the best of my recollection, under the 1987 Act
3      priests or clerics were exempt from parts of that reporting
4      requirement, but come the 1998 Act it was a broad based
5      requirement.
6
7      Q.   Mr Tynan, you commenced your work at the diocese of
8      Maitland-Newcastle as the manager of Zimmerman House
9      in September 2009?
10     A.   Yes.
11
12     Q.   At that point Zimmerman House provided a particular
13     centralised child protection service for those from the
14     Maitland-Newcastle diocese; is that right?
15     A.   That's right.
16
17     Q.   It also provided what are termed broadly healing
18     services.  Can you just outline very briefly what "healing
19     services" are?
20     A.   Healing services are those programs or services that
21     are offered that are directed towards people who have been
22     the victim of child sexual assault within the diocese, so
23     it's working not only with the person who was directly
24     assaulted or who we may term is the primary victim, but
25     it's also working with their family, and occasionally
26     extended family members, or who we may define as secondary
27     victims.
28
29     Q.   Did you replace a previous manager of Zimmerman
30     Services, that is, was there a previous manager whose role
31     you took over, or was yours a newly created role, to your
32     understanding?
33     A.   No, I took over the role - to the best of my
34     understanding, Ms Keevers was the manager and she finished
35     her role in approximately May of 2009 and I commenced near
36     the end of September.
37
38     Q.   In paragraph 9 of your statement - you have a copy of
39     that with you in the witness box - you mention that
40     in October 2009 there was under way work on a second
41     edition of a document titled Towards a Better Future.  Do
42     you see that?
43     A.   Yes, I do.
44
45     Q.   That had started in January 2009?
46     A.   Yes.
47
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```
 1    Q.   Was that something that Ms Keevers had started, or
 2    others, or don't you know?
 3    A.   I'm not sure specifically who the author or authors
 4    were, but it was certainly, as I understand it, generated
 5    from Zimmerman House.
 6
 7    Q.   Is that, the relevant parts of that document in terms
 8    of reporting obligations, annexed to your statement as
 9    annexure C
10    A.   Yes.
11
12    Q.   It's stamped "draft" in the version that's attached to
13    your statement.  Do you know whether it got past the draft
14    stage?
15    A.   To the best of my understanding it was never ratified
16    by the bishop or the executive.  It was a draft.
17
18    Q.   In terms of your understanding as to its circulation,
19    and whether it was used by any persons in the diocese, do
20    you know about that, or is that something you can't answer?
21    A.   I really couldn't answer that.
22
23    Q.   In terms of your job description as at the time you
24    started with Zimmerman Services, or started with the
25    diocese, your job description is in annexure A to your
26    affidavit?
27    A.   Yes.
28
29    Q.   Do you know who drafted that job description?
30    A.   I don't.
31
32    Q.   At that time Bishop Michael Malone was the bishop?
33    A.   Yes.
34
35    Q.   Was he the person who interviewed you for the job?
36    A.   And the entire executive, and I believe a gentleman by
37    the name of Paul Davies [sic].  I had a number of
38    interviews.
39
40    Q.   Without going into too much detail, I note that the
41    job description has a multiplicity of hats that you were
42    required to wear as described by that position description;
43    would you agree with that?
44    A.   Yes.
45
46    Q.   So you were required to prepare, negotiate and monitor
47    insurance matters, and that is identified as item 2.5, as
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 1      well as provide holistic healing as well as conduct child
 2      protection investigations, education and training and other
 3      requirements.  Did you form a view early on that there
 4      appeared to be some conflicts between these different roles
 5      that you were required to perform?
 6      A.   Yes, I did.
 7
 8      Q.   Can you outline how you saw that conflict and what it
 9      is that you did about it, if anything?
10      A.   The principal concern I had was the combination of
11      holistic healing and the role of child protection
12      investigations.  The issue for me was that, in holistic
13      healing, to do that properly you had to align yourself very
14      strongly with victims, with people who have been harmed,
15      but your role as managing investigations demanded that you
16      held a neutral position, that in fact you had no
17      preconceptions or intent; you just simply went where the
18      evidence took you.  And I couldn't - I couldn't reconcile
19      those two roles.
20
21      Q.   Did you raise that with somebody?
22      A.   I did.
23
24      Q.   With the bishop or --
25      A.   Yes.
26
27      Q.   Are you able to say now how early on you raised that
28      with him after your commencement in September 2009?
29      A.   To the best of my recollection, it was one of the
30      points of discussion at the last interview, and it
31      certainly was a discussion point through 2010 and into
32      2011.
33
34      Q.   In paragraph 10 of your statutory declaration, you
35      mention that until October 2009 Zimmerman House had been
36      responsible for investigation of all professional standard
37      matters for the diocese which included a large aspect of
38      aged care sector matters.  What do you mean by
39      "investigation of all professional standard matters"?
40      A.   I was referring to the draft policy, the document.  My
41      understanding is that would incorporate both reportable
42      conduct matters and matters that would fall under what
43      I would term "professional standards" - so breaches of
44      codes of conduct, which would include Towards Healing,
45      integrity in ministry, which began in 2004, or specific
46      codes of conduct relevant to, for example, the teaching
47      profession, et cetera.
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 1
 2     Q.   It wasn't confined to investigations of clerics?
 3     A.   That's my understanding.
 4
 5     Q.   Or that it was?
 6     A.   No, it was my understanding it included all those.
 7
 8     Q.   Thank you.  I'm sorry for asking you a question in the
 9     negative there.  Did it include investigation of
10     allegations of historical child sexual abuse?
11     A.   Yes.
12
13     Q.   How do you know that?
14     A.   From the practices that I was told of at the time when
15     I started.
16
17     Q.   You say in paragraph 10 that by October 2009 the scope
18     of services at Zimmerman House was reduced to child related
19     programmes.  Was that at your instigation, or was that
20     already happening?
21     A.   To be fair, I think it was already happening by
22     default because of some of the resource issues we had, but
23     I was - I was also very clear that aged care related
24     matters were outside my scope of expertise and I certainly
25     did not have the resources to address that larger sector.
26
27     Q.   You say in paragraph 11 that the staff at the time -
28     I think you are referring to when you started; is that
29     right, in September/October 2009?
30     A.   Sorry, which paragraph is that?
31
32     Q.   Paragraph 11.
33     A.   Thank you, yes.
34
35     Q.   You say the staff included one investigator who was a
36     highly experienced worker.  Who were you talking about
37     there?
38     A.   A gentleman whose name has just escaped me.
39
40     Q.   You say he was in transition across to --
41     A.   He was in transition across to work for the Anglican
42     diocese of Newcastle.  He worked for us two days a work.
43
44     Q.   Was he someone with a background in child protection
45     or police work or --
46     A.   He had a background in policing.
47
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1      Q.   He was a retired policeman; was that the position?
2      A.   To the best of my understanding, yes.
3
4      Q.   If you think of his name, could you get back to us
5      with that as your evidence proceeds.  And was it Michael
6      Elliott?
7      A.   Yes, thank you.
8
9      Q.   He no longer works for the diocese?
10     A.   No.
11
12     Q.   And then an administrative officer.  Was that somebody
13     who just attended to filing and limited matters of that
14     nature --
15     A.   Yes.
16
17     Q.   -- or was there a wider task?
18     A.   No, that was --
19
20     Q.   And a healing case manager.  Who was that at that
21     time?
22     A.   That was Maureen O'Hearn.
23
24     Q.   It was Maureen O'Hearn then, as now?
25     A.   As now.
26
27     Q.   In terms of how investigations of particular matters
28     were being carried out at the time you commenced, was it by
29     this gentleman who was just working the two days a week?
30     A.   It was, and Maureen on occasions assisted, and any
31     urgent work was done by fee-for-service investigators who
32     were hired in.
33
34     Q.   "Hired in", being outside the employment of the
35     diocese of Maitland-Newcastle?
36     A.   Yes.
37
38     Q.   Were these people of any particular religious faith?
39     A.   I wouldn't know.
40
41     Q.   So they were hired for the purposes of their skills
42     independent of anything to do with the diocese.
43     A.   Yes, they were hired because they were registered
44     investigators.  I believe some of them may have been
45     recommended through Towards Healing, others through other
46     means.
47
```

1   Q.   Did you, at the time you commenced, have a perception
2   as to the importance or otherwise of investigators being
3   from outside the diocesan structures, or did that view
4   evolve, or you don't hold that view?
5   A.   No, I've probably changed my mind - not changed my
6   mind, sorry. I've evolved my position on that through the
7   years. There was clearly an intent when I started that
8   matters involving clerics that Bishop Malone preferred to
9   have hired investigators, in other words, people who were
10   hired from outside the diocese.
11
12   Q.   Bishop Michael told you that was his preference, did
13   he? Is that your evidence --
14   A.   I couldn't point to a specific conversation, but
15   that's certainly my recollection.
16
17   Q.   That was from when you started, that that was in
18   place?
19   A.   Yes.
20
21   Q.   But you can't remember any specific discussions about
22   it.
23   A.   No, I can't.
24
25   Q.   You continued that approach yourself, did you?
26   A.   I did. I did, but that has modified somewhat now.
27
28   Q.   What do you mean by that?
29   A.   My view is, and my practice now is that, depending on
30   the seniority of the cleric and the severity of the
31   allegation will determine whether in fact we bring in a
32   hired investigator, or whether in fact I allocate the work
33   internally to the diocesan child protection unit.
34
35   Q.   We'll move on to the staffing of that now. In October
36   2009, you say in paragraph 13 of your statement, you
37   employed two additional investigators, one full time and
38   one four days a week.
39   A.   Yes.
40
41   Q.   Why did you employ extra staff?
42   A.   They weren't extra staff per se; they were just
43   getting the unit back up to its establishment.
44
45   Q.   I'm sorry, I didn't mean to imply that they were extra
46   by any stretch. But did you headhunt them in terms of a
47   proper job description and looking for somebody who had a

```
 1      background relevant to the tasks you wanted them to
 2      perform?
 3      A.    It was an open recruitment process, and we hired one
 4      person who came across from Centacare and one person came
 5      from Wollongong and had a police intelligence and welfare
 6      background.
 7
 8      Q.    So the person who came from Centacare, who was that?
 9      A.    Lisa Wollschlager.
10
11      Q.    In terms of her coming from Centacare, did she have a
12      child care and protection background?
13      A.    Yes, she did.  Sorry, I should have also said, again
14      to the best of my recollection, she had some experience
15      with DoCS as well.
16
17      Q.    The person from Wollongong, was that Mr Muxlow?
18      A.    No, that was a lady by the name of Zoe Trypas.
19
20      Q.    Did she have a child care and protection background?
21      A.    She had a background - a welfare background, but also
22      she had worked as a police intelligence analyst, I think
23      the term was.
24
25      Q.    Did those people have job descriptions when they were
26      hired?
27      A.    Yes.
28
29      Q.    Did you train those two people as to what their
30      obligations were within the organisation?
31      A.    Yes.
32
33      Q.    In paragraph 14 you talk about a restructure in June
34      2011 and a renaming, but in terms of the restructure, how
35      was it restructured and why was that done?
36      A.    On 27 June we actually physically moved from Zimmerman
37      House to a new address, and that was the trigger point for
38      the restructure and renaming.  The restructure involved
39      separating the healing service, renaming most of the
40      positions - separating the healing service so that it no
41      longer answered to me, it answered it to the
42      vice chancellor of pastoral ministries.  However, they were
43      still co-located and they were still supported and funded
44      through the Zimmerman budget.  So the relationship with
45      myself went from being a line management relationship to a
46      collegiate relationship where they were free now to - or
47      more free to fully advocate on behalf of their clients.
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1
2      Q.    Was this part of your resolution of the conflict issue
3      that you saw at the beginning?
4      A.    Yes.
5
6      Q.    Who was the vice chancellor of pastoral ministries?
7      A.    Teresa Brierley.
8
9      Q.    Is she still working for the organisation?
10     A.    Yes, she is.
11
12     Q.    Paragraph 15, I'll ask you some questions about that
13     and then we'll pause for the luncheon adjournment if that
14     suits the Commissioner.  You talk about the
15     responsibilities as manager of Zimmerman Services.  One of
16     the responsibilities you identify is "to ensure that the
17     diocese meets its moral imperative and legislative
18     requirements".  Focusing on the moral imperative, what do
19     you mean by that?
20     A.    By that I mean that, as I see my role and the role of
21     Zimmerman Services, our primary responsibility is to
22     protect children, and by that I mean to prevent, as far as
23     is humanly possible, any further abuse, or to at least
24     minimise incidences of abuse, but it is also to ensure that
25     we address the harm that has been caused by past failures.
26
27     Q.    Does the moral imperative include an aspect of
28     ensuring matters are reported to outside authorities such
29     as the ombudsman and the police?  Is that part of the moral
30     imperative, or are you talking about something else?
31     A.    I would consider that part of the legislative
32     requirement, but to be sure there is also, I believe, an
33     obligation for this diocese in particular to ensure that we
34     have open and transparent relationships with police.
35
36     Q.    Given what you've outlined as being the moral
37     imperative, can we take it that that applies to all
38     employees of the diocese?
39     A.    I'm sorry, I'm not sure I understand.
40
41     Q.    You say that there's an obligation or a responsibility
42     "to ensure that the diocese meets its moral imperative and
43     legislative requirements to protect the children of the
44     Diocese and support the Diocese to meet its enduring legacy
45     of the harm", et cetera.  Can we take it that it is your
46     understanding that the moral imperative applies to all the
47     employees of the diocese?
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 1      A.   Yes, but with a caveat that it's not a uniform
 2      imperative, so those who have greater expertise obviously
 3      have a greater role in undertaking that role, but everybody
 4      shares some part of it, yes.
 5
 6      Q.   So, for example, somebody who works in the diocesan
 7      child protection unit would have an increased moral
 8      imperative compared with a junior teacher in a Catholic
 9      school?
10      A.   Yes.
11
12      Q.   You gave an answer to the effect that this diocese in
13      particular has a moral imperative.  What do you mean by
14      that particular statement?
15      A.   I'm referencing the diocese's particular history,
16      which of course is partly the subject of this particular
17      inquiry.
18
19      MS LONERGAN:   Would that be a convenient time,
20      Commissioner?
21
22      THE COMMISSIONER:   Yes, 2 o'clock.
23
24      LUNCHEON ADJOURNMENT
25
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 1      UPON RESUMPTION:
 2
 3      MR HUNT:   Commissioner, Dr Dwyer and her instructing
 4      solicitor asked if I would apologise.  They are no longer
 5      required and they have therefore gone back to Sydney.
 6
 7      MS LONERGAN:   Before I recall Mr Tynan, there has been a
 8      request from the media for access to exhibits 198 to 205
 9      inclusive, if those at the bar table could let those
10      assisting you know by 4.15pm whether there is any objection
11      to that access.
12
13      THE COMMISSIONER:   You are bound by your former oath, as
14      I'm sure you'll appreciate.  Thank you, sir.
15
16      MS LONERGAN:   Q.   Mr Tynan, do you have your statutory
17      declaration still in the witness box with you?
18      A.   I do.
19
20      Q.   In the part of your statement headed "Services
21      provided by Zimmerman Services" you outline the three
22      different aspects, in particular that Zimmerman Services
23      offices are structured as separate units.  Could you
24      outline briefly what the diocesan child protection unit
25      does as opposed to the healing and support aspects and the
26      Insights aspects, so starting with the diocesan child
27      protection unit?
28      A.   The diocesan child protection unit is the principal
29      component or at least the largest component of Zimmerman
30      Services.  It involves or includes a team of investigators
31      and they've got a number of functions, the most important
32      of which is a function called intake.  That's where an
33      individual investigator is rostered on to be available for
34      any member of the diocese to contact them and to assist
35      that member and support that member in working through any
36      child protection concerns they have.  That process captures
37      the information, records it, analyses it, and through
38      intake, we endeavour to ensure that all the appropriate
39      external statutory authorities and internal authorities are
40      made aware of any concerns that are within a piece of
41      incoming information.
42
43      Q.   Intake can form all sorts of things - it could be a
44      phone call, it could be a Towards Healing complaint
45      document, it could be a letter; is that right?
46      A.   That's correct, it's any information that comes to the
47      notice of Zimmerman Services.
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Q.   The reference to conducting a particular investigation
by the DCPU, you mention in the last sentence of
paragraph 18:

> *These may be conducted under Part 3A of the*
> *Ombudsman Act 1974 or the relevant codes of*
> *conduct for an employee of the Catholic*
> *Church [as referred to in] Towards Healing,*
> *Integrity in Ministry and Integrity in the*
> *Service of the Church.*

Just focusing on the Ombudsman Act and the part 3A inquiry,
can you outline how that would work in terms of complaints
made that are to do with child sexual assault for a clergy
member?
A.   Child sexual assault would be considered one of the
more serious allegations that would reach the DCPU. That
would, by its nature, trigger an obligation for us to
report to the New South Wales ombudsman within 30 days that
a reportable conduct matter has come to our attention.
Now, I premise that by saying that that individual who is
alleged to have committed that conduct has to be an
employee at the time of us becoming aware of that
information.

Q.   Can I ask you, does it apply to persons who are
deceased at the time the report comes in, or not?
A.   No.

Q.   Keep going.
A.   So the person has to be an employee at the time. Now,
"employee" has a different meaning to what would be the
normative industrial relations meaning of "employee". It's
very specific under the Ombudsman Act. By its nature it
involves clergy who are involved in any form of child
related ministry, so certainly anybody in a parish who is
involved in a Catholic school, as is the structure within
the church, would be considered an employee under 3A.

Q.   The comments about the Towards Healing process that
may need to be followed, does that include lay people and
clergy depending on the nature of the complaint, or is it
always clergy?
A.   No, it can involve lay people, but it's primarily of
course designed around clergy and religious.

```
1      Q.    Integrity in Ministry is that clergy only?
2      A.    That's clergy and religious but not lay people.  Lay
3      people are covered by Integrity in the Service of the
4      Church.
5
6      Q.    Is there any clergy aspect to Integrity in the Service
7      of the Church, or not?
8      A.    No, not really.
9
10     Q.    In terms of the actual investigations conducted, is it
11     the position that there is an investigation into the
12     alleged perpetrator and the acts complained of?
13     A.    The investigation is an allegation-based process, and
14     one of the important things - one of the important
15     learnings that came out of the Wood Royal Commission and
16     what occurred prior to that was there's no test of - what's
17     the best word to use - there's no credibility test.  So an
18     allegation is taken on its face and we do not test it for,
19     you know - to see how credible it is.  We have to
20     investigate it if it falls within the parameters, and
21     that's a really important point, because what the Royal
22     Commission showed us was that there was a history of adults
23     dismissing children's concerns or allegations, and so this
24     process doesn't allow that to happen.
25
26     Q.    That doesn't allow it to happen even if the person
27     reporting is an adult, about an historical matter?
28     A.    It is irrespective.  The investigation is to test
29     whether there is sufficient evidence on balance of
30     probabilities to sustain an allegation or otherwise, so
31     there's no - it's certainly not at the criminal standard.
32     Then of course there is the interface between what may be a
33     reportable matter to what may also be a criminal matter.
34
35     Q.    If the matter is a criminal matter, is it the process
36     at Zimmerman Services that there will be certain action
37     taken in relation to it, in terms of reporting?
38     A.    Yes.
39
40     Q.    What is that?
41     A.    Up until the last few days, if the person was alive
42     and there was an allegation that constituted a potential
43     criminal matter, that was reported to the police.  From the
44     diocesan child protection unit, that either went to the
45     relevant strike force, if we were aware of such a strike
46     force, or it would go to the crime manager for the manager
47     LAC, the local area command.  We do that to ensure the
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information - I think Ms Keevers made mention of this. To ensure the information is not lost at a lower level, it goes to the crime manager who has sufficient seniority to ensure it's managed appropriately.

Q. Just as a point of clarity, when you say the matters go to police, these matters go via the diocesan child protection unit to the police?
A. Yes, sorry, I should have been more clear.

Q. Is that so there is a central location within the diocese to keep management and records of that type of interface with the police?
A. Yes.

Q. Mr Tynan, priests are responsible to the bishop; is that the position?
A. Yes.

Q. How is the situation managed now in terms of a priest having been accused child sexual abuse in terms of him being allow to continue in ministry or otherwise?
A. The role of manager of Zimmerman Services acts as the day-to-day delegate of the head of agency. Clause 6 of the Ombudsman Regulation 2011, originally it was '05, makes the bishop the head of agency for each of his dioceses. So the manager of Zimmerman Services acts as the day-to-day delegate, therefore it is that manager's responsibility to undertake a risk assessment process of whoever, irrespective of whether they are a priest or a principal or a teacher or a foster parent, as to whether, based on the information available, they pose an unacceptable risk to remain in their current position and --

Q. Is that review documented, Mr Tynan?
A. Yes, it is. It is documented and it has to be submitted to the ombudsman.

Q. Is there another review process by the ombudsman to ensure what is being done is appropriately thorough or what happens at that point?
A. Any matter that's reported to the ombudsman, so any reportable conduct, is subject to review by the ombudsman and for allegations involving sexual abuse, as a rule, the ombudsman will initiate an oversight which is allowed by section 25E, to the best of my recollection, under the Act, so they issue a letter saying that they are paying

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 1      particular oversight to that matter, which then requires us
 2      to provide them briefings as they request.
 3
 4      Q.   Healing and support, is that a department that is run
 5      currently by Ms O'Hearn?
 6      A.   Yes, it is.
 7
 8      Q.   We'll be hearing from evidence from Ms O'Hearn
 9      tomorrow, but in broad terms how is work allocated to
10      Ms O'Hearn?
11      A.   When an intake matter is received, if there is an
12      allegation of an adult having been the victim of child
13      sexual assault, they are referred to Ms O'Hearn and, for
14      the most part it's - I mean obviously it's a voluntary
15      service, so they are made aware of the service and then
16      it's entirely up to them whether they choose to avail
17      themselves of it or not.
18
19      Q.   Does Ms O'Hearn have any role in investigation of the
20      accused persons?
21      A.   No, absolutely not.
22
23      Q.   Her role is kept separate and focused on the victim or
24      survivor of any particular abuse; is that the position?
25      A.   Yes, Ms O'Hearn is there to support and advocate on
26      the part of the victim.
27
28      Q.   Does she on occasion advocate in a way that causes
29      review of processes or review of approaches in other parts
30      of the diocese for these issues?
31      A.   I'm sorry, I'm not sure what you mean.
32
33      Q.   In terms of what is proposed by Ms O'Hearn or
34      advocated for by Ms O'Hearn, does that, on occasion, lead
35      to a further analysis of processes and a consideration of
36      the matters raised?
37      A.   Yes, it can, yes.
38
39      Q.   Is it fair to say that Zimmerman Services continues to
40      review its processes to try and improve the child
41      protection aspects?
42      A.   Absolutely, yes.
43
44      Q.   Even up to as recently as the middle of this year?
45      A.   Yes.
46
47      Q.   The Insights program, is that more an intellectual
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 1        approach to how these issues can best be dealt with in the
 2        community or is it something more concrete than that?
 3        A.   Insights is what I would classify as an experimental
 4        program to try and address the harm caused to faith
 5        communities and, also, to address some of the concerns that
 6        I've heard raised in this inquiry around the reluctance of
 7        some parishioners to accept or believe the allegations that
 8        are made against perhaps the most beloved priest that they
 9        have known for a long time.  And it goes to perhaps trying
10        to undo some of the communal grooming that some predators
11        are able to undertake.
12
13        Q.   You see it as part of Zimmerman Services' role to
14        educate in that way the broader Catholic community of the
15        diocese rather than just keeping it in-house to the staff
16        at the diocese?
17        A.   I believe it's Insights' role.  Zimmerman Services
18        supports Insights through funding through our budget, but
19        Insights was designed, and remains an independent group of
20        volunteers.  I'm one of those volunteers, because I think
21        it probably offers, as I said, the most innovative and
22        constructive way forward for that more holistic discussion
23        around our history.
24
25        Q.   Without identifying any particular names, are some of
26        the people involved in that, families of victims of abuse
27        in the past?
28        A.   Yes, they have been.
29
30        Q.   Can I just ask you a question about the
31        vice chancellor of pastoral ministries, who is that?
32        A.   Teresa Brierley.
33
34        Q.   In paragraph 15 of your statement, just briefly
35        backtracking, you mention that you manage civil claims
36        brought against the diocese by victims of child sexual
37        abuse committed by diocesan personnel.  I don't want you to
38        go into any detail about this, but is it the position that,
39        in that role, you have on occasion had to look at some
40        insurance issues related to these matters?
41        A.   Yes, I have.
42
43        Q.   Again without going into any specific detail, if you
44        would not mind looking at a letter in volume 6, tab 484.
45        It is a letter dated 1 February 2008 from Catholic Church
46        Insurances to Bishop Malone.  I'll just give you a moment
47        to have a look at that.
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1       A.   Yes.
2
3       Q.   Have you seen that document before today?
4       A.   Yes, I have.
5
6       Q.   Do you remember the circumstances in which you saw it,
7       and by that I mean was it in your professional role at the
8       diocese?
9       A.   It was in my professional role at the diocese.
10
11      Q.   It's addressed to Bishop Malone.  Do you remember
12      discussing it with him?
13      A.   I don't.
14
15      Q.   In terms of, broadly speaking, the content, it's
16      referring to the position of Catholic Church Insurances
17      that they won't cover claims relating to McAlinden?
18      A.   That's right, yes.
19
20      Q.   You were aware of that in your business dealing with
21      the civil claims side of things?
22      A.   Yes.
23
24      Q.   The reason they have given for not being prepared to
25      cover claims relating to McAlinden is the letter from
26      Monsignor Cotter to Bishop Clarke in May 1976?
27      A.   Yes.
28
29      Q.   You, of course, have seen that letter?
30      A.   Yes, I have.
31
32      MS LONERGAN:   Commissioner, I tender the letter of
33      1 February 2008 behind tab 484.
34
35      THE COMMISSIONER:   The letter to Bishop Malone from
36      Marita Wright of the Catholic Church Insurances Limited
37      will be admitted and marked exhibit 207.
38
39      MR GYLES:   I have not raised this with my learned friend.
40      I don't object to the tender of it, but as to whether it
41      should be a confidential exhibit, I need to get
42      instructions on that.  There may be other claims.  If my
43      position could be reserved about that.
44
45      THE COMMISSIONER:   Very well.  Ms Lonergan, are you
46      content to mark it for identification at this stage?
47
```

1   MS LONERGAN: No, I tender it as a public exhibit at this
2   stage. We can have a discussion about it later if
3   necessary.
4
5   THE COMMISSIONER: About its release?
6
7   MS LONERGAN: Yes. Thank you, Commissioner.
8
9   **EXHIBIT #208 LETTER FROM BISHOP MALONE TO MARITA WRIGHT**,
10   **CATHOLIC CHURCH INSURANCES LIMITED, DATED 1/02/2008**
11   **(TAB 484)**
12
13   MS LONERGAN: Q.   Mr Tynan, I'm going to move on just to
14   broadly cover issues of location and storage of documents
15   and files. You can close that up. You've put some detail
16   in your statement regarding particular steps taken to
17   secure various files and documents. Can you outline for
18   the benefit of those in court why you have attended in
19   particular to those matters of storage and location and
20   security of files?
21   A.   When I started in my role, concerns were raised with
22   me about the security of information held by Zimmerman
23   House at that point, and those concerns appeared to be
24   borne out through a series of newspaper articles that
25   appeared in, to the best of my recollection, late April/May
26   of 2010.
27
28   Q.   Did you become concerned that documents were being
29   leaked or accessed in a way that was not in keeping with
30   how they should be kept?
31   A.   Yes.
32
33   Q.   You refer in paragraph 45 of your statement to there
34   now being a particular procedure via which files that are
35   held by the child protection unit can be accessed?
36   A.   That's correct.
37
38   Q.   And that's adhered to as far as you know?
39   A.   To the best of my knowledge. Certainly when I'm in
40   the office they are.
41
42   Q.   The bishop's special issues files, you mention the
43   existence of these special issues files having been stored
44   in the bishop's office in Hunter Street, Newcastle West,
45   but who titled them "special issues files", do you know?
46   A.   Look, I don't. I could postulate, but --
47

```
 1      Q.   No, don't postulate.  Your understanding is only
 2      limited people have access to that material?
 3      A.   That's my understanding.
 4
 5      Q.   Did you yourself have access to them?  Have you had
 6      access to them in your time as manager of Zimmerman
 7      Services?
 8      A.   Upon request.
 9
10      Q.   Is it the position that certain matters that were in
11      the bishop's special issues files regarding McAlinden have
12      been copied across to the Zimmerman Services files, are you
13      able to say?
14      A.   My understanding is that the special issues file was
15      in fact physically taken from the bishop's office prior
16      to my commencement, and that it formed in fact the
17      Zimmerman Services file - or Zimmerman House file.
18
19      Q.   Are you able to say whether the same occurred in
20      relation to the Fletcher file?  If you're not able to say,
21      please say so?
22      A.   No, I'm not able to say that.
23
24      Q.   Is it your understanding that the bishop's special
25      issues files were stored under the name of each particular
26      clergy member to whom they related?
27      A.   Not under the name - under a code.  It was, I think,
28      alphanumeric, so D1 or D2 or A1, something like that.
29
30      Q.   They wouldn't necessarily have on the outside "Father
31      X"?
32      A.   Not to the best of my recollection, no.
33
34      Q.   In paragraph 56 - I just want to get your expansion on
35      a matter that you raise there - you say.
36
37           ... prior to the Diocesan Investigations
38           Policy --
39
40      which you refer to in paragraph 53 of your statement as
41      being first drafted and circulated in March 2011 --
42
43           there was no approved policy addressing the
44           issue of reporting allegations of child
45           sexual abuse to the NSW Police Force.
46
47      Do you see that?
```

1   A.   Yes.
2
3   Q.   Is it the position that you had an understanding that
4   reports were still made. It's just there wasn't a formal
5   policy that had been documented?
6   A.   Yes, my understanding is that prior to my arrival,
7   reporting to the police was occurring, and it was occurring
8   in an efficient and effective and appropriate manner.
9
10   Q.   The need for an approved diocesan investigation policy
11   where this was addressed, what was the origin of that?
12   A.   It's my view that you have to spell out the rules to
13   keep people as safe as possible, because all of us, as
14   human beings can, you know, get lazy or take short cuts or
15   be under pressure from multiple demands on our time, so if
16   we don't spell out what we have to do, we can fail to do
17   that.
18
19   Q.   Annexure D to your statutory declaration is the "NSW
20   Ombudsman Child Protection in the Workplace" extract that's
21   been in place since 2004. Is that something that you have
22   ensured is circulated amongst those who need to know its
23   contents in the diocese?
24   A.   Yes.
25
26   Q.   In terms of a matter that's raised on what is page 41
27   of your statutory declaration under the heading "What is
28   child sexual assault", you'll see there is a series of
29   propositions there, including the difficulties that people
30   have, in this case talking about children, with reporting
31   sexual assault allegations and, also, that there can be a
32   recanting on occasion, that there are certain factors that
33   affect people, in this case children, reporting sexual
34   assault such as pressure from the perpetrator, pressure
35   from family and anxiety about the investigatory procedures.
36   Given your background and experience of these matters, are
37   you able to say whether some or any of these factors apply
38   to adults who report sexual assault - sexual offences to
39   authorities?
40   A.   With the caveat that I would defer to the much greater
41   expertise of Ms O'Hearn, I believe that is applicable to
42   adults, yes.
43
44   Q.   If you would not mind looking at annexure E, which you
45   deal with in paragraph 53, and it's the diocese of
46   Maitland-Newcastle investigations policy. Is it the
47   position that this particular policy that you've extracted

```
1      here is a child protection unit document as opposed to a
2      whole diocese document?
3      A.   Yes.  The investigations policy is a specialist policy
4      that is applied to the DCPU.
5
6      Q.   This is a policy that you regularly update, do you, to
7      ensure that staff who work at the DCPU are aware of their
8      obligations?
9      A.   Yes.
10
11     Q.   I have just one or two more things.  There were a
12     couple of matters that you corrected in your subsequent
13     statutory declaration.  In paragraph 61 of your first
14     longer statutory declaration, you have noted that you
15     assisted in arranging certain interviews with the police?
16     A.   I'm sorry, I lost that.
17
18     Q.   You have mentioned that you assisted in arranging
19     certain interviews with the police in paragraph 61.
20     A.   Yes.
21
22     Q.   You've corrected that in your subsequent statutory
23     declaration because there is a word "not" missing?
24     A.   Yes.
25
26     Q.   It was the position, was it, that diocesan personnel
27     had their own direct arrangements made with the staff of
28     that particular investigation?
29     A.   That's correct.
30
31     Q.   You've gone to the trouble of preparing this later
32     statutory declaration to ensure that what's in your
33     original longer statutory declaration is appropriately
34     updated to include the latest edition to the child
35     protection concerns policy, or the reporting child
36     protection concerns policy of the diocese?
37     A.   Yes, and the investigations policy.
38
39     MS LONERGAN:   Those are my questions.
40
41     THE COMMISSIONER:   Mr Roser?
42
43     MR ROSER:   No, thank you.
44
45     MS GERACE:   No.
46
47     MR GOGARTY:   No.
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 1
 2      MR COHEN:   No, thank you.
 3
 4      MS NEEDHAM:   No.
 5
 6      THE COMMISSIONER:   Mr Gyles?
 7
 8      <EXAMINATION BY MR GYLES:
 9
10      MR GYLES:   Q.   Mr Tynan, do you have your statement there
11      in front of you?
12      A.   I do.
13
14      Q.   Can I direct your attention to paragraph 31.  You
15      speak about intake and its significance in promoting
16      cultural change; do you see that?
17      A.   Yes.
18
19      Q.   And it being one of the main preventive strategies?
20      A.   Yes.
21
22      Q.   What is the cultural change that you're attempting to
23      promote in that way?
24      A.   Done properly, intake can be a form of really brief
25      therapy.  It's an opportunity to engage with individuals
26      within the diocese, firstly, to reinforce every
27      individual's role and importance in protecting kids.  It
28      demonstrates that we take any allegations of child abuse
29      seriously and that we listen to what's being said.  It also
30      allows the duty worker, the member of the diocesan child
31      protection unit, to provide some ongoing education to that
32      individual.  So it has a number of positive consequences
33      quite separate from its primary functional purpose, and
34      that is to capture, record, analyse and respond to
35      information.
36
37      Q.   Is it the case that in terms of promoting cultural
38      change and transparency and the like, educating those
39      working in the diocese is something that you consider to be
40      an important thing?
41      A.   It's one of our primary functions.
42
43      Q.   In discharging that function and in seeking to bring
44      about that outcome, in your role do you deal with people
45      working within the diocese?
46      A.   Yes.
47
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1      Q.   Does that include working with clerics?
2      A.   Yes.
3
4      Q.   Are you able to tell the Commissioner your experience
5      in your time at Zimmerman Services as to the attitude you
6      see, at the coalface, and come across in terms of matters
7      of reporting, transparency, importance of child protection
8      and the like in terms of your dealings with clergy and
9      clerics?
10     A.   Sorry, did you mean comparative to when I started to
11     now, or just now?
12
13     Q.   Either way, Mr Tynan, if you think it's helpful.  If
14     there has been a change and that's relevant, you're welcome
15     to give that evidence.
16     A.   When I began my role, there was a degree of concern as
17     to Zimmerman House and the service as a whole.  There was a
18     view that there was an inherent bias within it.  I'm not
19     saying that's a valid concern, I'm just saying it was a
20     concern.  And what we've endeavoured to do is to
21     demonstrate that we approach every allegation, every
22     incident from a neutral position, and the evidence takes us
23     where it takes us.  So I guess in those intervening years,
24     my experience is that the clergy of the diocese have become
25     much more engaged in ongoing child protection, certainly
26     comparative to when I started.
27
28     Q.   On a day-to-day basis or in the work that you do, do
29     you see a resistance on the part of clergy in terms of the
30     emphasis you seek to give to the importance of that issue?
31     A.   I don't experience it, no.
32
33     Q.   If you could go to paragraph 32 of your statement, you
34     talk about ethos.  Have you included ethos because that's
35     something that you regard as being important in terms of
36     the unit over which you are responsible?
37     A.   Yes.
38
39     Q.   You say you've endeavoured to establish an ethos of
40     professionalism within Zimmerman Services in the way that
41     you've identified - peer review, transparent operations,
42     close cooperation with the statutory authorities and the
43     like, and including ensuring procedural fairness.  That's
44     something that you've endeavoured to establish.  Do you
45     feel that you have made progress in that endeavour?
46     A.   Yes, we've made progress.  Yes.
47
```

1   Q.   You were asked some questions about the use of
2   external investigators in some circumstances. I think your
3   answer to Ms Lonergan was that it depended upon the
4   severity of the allegations and the seniority of the person
5   involved. If Zimmerman Services became aware of
6   allegations of the type that we have been dealing with in
7   this Commission, namely, the sorts of allegations
8   concerning McAlinden and Fletcher, would they, in the way
9   things are done today under your stewardship, be matters
10   that would be of sufficient seriousness whereby you would
11   have an external investigator involved?
12   A.   Obviously the initial investigation would be conducted
13   by police, assuming they were alive at the time of course,
14   and we would, as a matter of course, engage an external
15   investigator to then - or because the police conduct an
16   investigation doesn't relieve us of our obligations under
17   part 3A of the Ombudsman Act, we would have to follow that
18   up with our own investigation. That would be conducted by
19   an external investigator.
20
21   Q.   Is it the case that an issue that you need to have
22   careful regard to is allowing police investigations to be
23   undertaken in a way which is free from hindrance or
24   disturbance by any investigations that you do?
25   A.   Yes.
26
27   MR GYLES: I have no further questions. Thank
28   you, Commissioner.
29
30   MS LONERGAN: I have no re-examination. Could Mr Tynan be
31   excused.
32
33   THE COMMISSIONER: Yes, of course. Thank you very much
34   for your evidence, Mr Tynan. You are excused.
35
36   **<THE WITNESS WITHDREW**
37
38   MR KELL: Commissioner, I call Dr Rodger Austin.
39
40   **<RODGER JOSEPH AUSTIN, sworn:**   **[2.52pm]**
41
42   **<EXAMINATION BY MR KELL:**
43
44   MR KELL: Q.   Your full name is Rodger Joseph Austin?
45   A.   Yes.
46
47   Q.   You have, among other qualifications, a doctorate in

```
 1      canon law?
 2      A.   I do.
 3
 4      Q.   I'll hand you a copy of a report and a qualifying
 5      letter.  I'll hand a copy also to the Commissioner.  I'll
 6      come back to your qualifications and expand on those
 7      shortly.  You prepared a report for the inquiry dated
 8      3 July 2013?
 9      A.   I did.
10
11      Q.   You've got a copy of the report before you now?
12      A.   I have, yes.
13
14      Q.   Do you hold the opinions expressed in that report?
15      A.   I do.
16
17      Q.   For the purpose of preparing that report, you were
18      also provided with a qualifying letter from the Crown
19      Solicitor's Office?
20      A.   I was.
21
22      Q.   Dated 19 June 2013?
23      A.   That is correct.
24
25      MR KELL:   Commissioner, I tender the report of Dr Austin
26      dated 3 July 2013.
27
28      THE COMMISSIONER:   Dr Austin's report will be admitted and
29      marked exhibit 209.
30
31      **EXHIBIT #209 REPORT OF DR AUSTIN, DATED 3/07/2013**
32
33      MR KELL:   I also tender the letter from the Crown
34      Solicitor's Office dated 19 June 2013.
35
36      THE COMMISSIONER:   The letter from the Crown Solicitor's
37      Office to Dr Austin of 19 June 2013 will be exhibit 210.
38
39      **EXHIBIT #210 LETTER FROM THE CROWN SOLICITOR'S OFFICE TO**
40      **DR AUSTIN, DATED 19/06/2013**
41
42      MR KELL:   I'll deal with one other documentary matter at
43      the moment.
44
45      Q.   If you could jump to page 12 of your report,
46      Dr Austin, in paragraph 18 you refer to a 1962 document,
47      which is an instruction issued by a body within the
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 1      Vatican?
 2      A.   That's correct, yes.
 3
 4      Q.   I'll hand you a document and hand a copy to the
 5      Commissioner.  Are you able to identify that document which
 6      I have now handed to you as being the document to which you
 7      make reference in page 12?
 8      A.   Yes, that is from the Vatican website.
 9
10      Q.   That is the 1962 instruction?
11      A.   The 1962 instruction.
12
13      Q.   Is it the position, as indicated in your report, that
14      that document has some relevance in terms of canon law with
15      the position from 1983 up to 1995 at least?
16      A.   Yes.
17
18      MR KELL:   Commissioner, I tender that document as well.
19
20      THE COMMISSIONER:   The document entitled 6
21      check"Instruction of the Supreme Sacred Congregation of the
22      Holy Office" and other titles will be admitted and marked
23      exhibit 211.
24
25      EXHIBIT #211 DOCUMENT ENTITLED "INSTRUCTION OF THE SUPREME
26      SACRED CONGREGATION OF THE HOLY OFFICE"
27
28      MR KELL:   Q.   Dr Austin, you have a degree in theology?
29      A.   I do, yes.
30
31      Q.   Obtained in 1967?
32      A.   Correct.
33
34      Q.   From what institution was that obtained?
35      A.   It was the ecclesiastical theology faculty in Sydney,
36      which was the seminary at St Patrick's College at Manly.
37
38      Q.   You later obtained a doctorate in canon law?
39      A.   That is correct.
40
41      Q.   When was that?
42      A.   That was in 1972, postgraduate studies were 1968 to
43      1972 at the Pontifical Urban University in Rome.
44
45      Q.   As you indicated that was located --
46      A.   That's 1972 I obtained the doctorate.
47
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 1      Q.   And located in Rome?
 2      A.   In Rome.
 3
 4      Q.   In 1967 you were ordained as a Catholic priest?
 5      A.   That's correct.
 6
 7      Q.   In 2004 you ceased to be a priest?
 8      A.   That's correct.  I received a dispensation from
 9      obligations arising from ordination.
10
11      Q.   That was a voluntary process undertaken by you?
12      A.   That's called laicisation.  It is a voluntary process.
13
14      Q.   So that was a process of laicisation in 2004?
15      A.   Yes, that's correct.
16
17      Q.   We'll come back to that concept.  During the period in
18      which you were a priest, did you hold particular
19      ecclesiastical offices?
20      A.   Yes.
21
22      Q.   I'll come to those.  In which diocese were you
23      incardinated with?
24      A.   I was incardinated into the diocese of Wollongong.
25      After returning from Rome in 1972, I held various offices
26      such as chancellor, bishop's secretary, diocesan secretary,
27      College of Consultors, Council of Priests.
28
29      Q.   Those positions were all in the diocese of Wollongong?
30      A.   Yes.
31
32      Q.   Did you ever have the role of a parish priest?
33      A.   No.  I was never appointed a parish priest.
34
35      Q.   Rather, your skills as a canon lawyer were used by the
36      diocese in other roles?
37      A.   Diocesan administration.
38
39      Q.   I understand.  Is it the position, Dr Austin, that you
40      have never held any role within the Maitland-Newcastle
41      diocese?
42      A.   I've never held any role in this diocese.
43
44      Q.   And similarly that you have never had any involvement
45      in relation to any church process or canonical process
46      relating to either Father Denis McAlinden or Father James
47      Fletcher?
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1      A.   Never had any role in anything in respect of those
2      matters.
3
4      Q.   Doctor, in terms of ceasing to be a priest in 2004,
5      that was a voluntary step undertaken by yourself?
6      A.   That is correct, yes.
7
8      Q.   That related to personal choices that you were making
9      at that time?
10     A.   Yes, correct.
11
12     Q.   Looking ahead?
13     A.   Yes.
14
15     Q.   Was it the case that you subsequently became married?
16     A.   That is correct.
17
18     Q.   And took a different course in life?
19     A.   That's correct.
20
21     Q.   But since that time you've also been able to utilise
22     your canon law skills in particular roles
23     A.   Yes, since that time I've continued working as a
24     consultant canonist for a variety of people and
25     organisations.
26
27     Q.   Does that include utilising those skills as an
28     advocate in canon law tribunal processes?
29     A.   Yes.
30
31     Q.   Do you also have a civil law degree as well as a canon
32     law degree?
33     A.   No, I don't have a civil law degree.
34
35     Q.   From 1972 to 1976 you lectured in canon law?
36     A.   That is correct.
37
38     Q.   That's at Catholic theological institutes?
39     A.   There were three that I lectured at during those
40     years.
41
42     Q.   Again, just looking at the period of time before you
43     ceased to be incardinated, or ceased to be a priest, from
44     1979 to 2004 you were a judge of the Ecclesiastical
45     Regional Tribunal?
46     A.   That is correct, yes.
47
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 1      Q.   What is that tribunal?
 2      A.   That tribunal is called the Regional Tribunal of
 3      Sydney, which covers all the dioceses in New South Wales
 4      including Canberra-Goulburn and part of the ACT as well.
 5
 6      Q.   Is that a tribunal that administers effectively canon
 7      law?
 8      A.   No.  The tribunal is the church's mechanism for
 9      conducting judicial processes, so it administers the law in
10      that sense, but it's structured as a tribunal and the
11      ministry of the tribunal is a judicial ministry of the
12      church.
13
14      Q.   Is that a tribunal that from time to time would be
15      able to entertain penal processes under canon law relating
16      to misconduct by particular priests?
17      A.   Yes.  Since 1972 it's been the sole tribunal of the
18      Catholic Church in New South Wales, so it's competent to
19      hear those cases.
20
21      Q.   Just going back to your background, you were also,
22      from 1989 to 1991, assistant secretary at the Australian
23      Catholic Bishops Conference in Canberra?
24      A.   Yes.
25
26      Q.   During that time, or during that early period of time,
27      did you have some involvement in providing input in
28      relation to what later became the 1992 protocol issued by
29      the ACBC in relation to dealing with allegations of
30      criminal behaviour relating to church officials?
31      A.   Yes.
32
33      Q.   What was that involvement?
34      A.   In 1988 the Bishops Conference set up what they called
35      a special issues subcommittee, which was to look at this
36      question of abuse, and in 1991 the Bishops Conference, in
37      collaboration with the conference of superiors of religious
38      institutes in Australia issued a protocol for handling or
39      dealing with issues of abuse by clergy and religious.  They
40      didn't publish it.  It was a document that was for bishops
41      and superiors only and it was 1991 - April 1991 that
42      started.  I finished my time at the conference at that
43      time, but in the ensuing months I was asked to do some
44      revision of that document and that document, with more
45      added than what I did, was then revised and presented -
46      approved by the bishops and religious superiors in April
47      1992.
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1
2     Q.    Is it a fair characterisation that you had some
3     involvement in what were initial or preliminary drafts of
4     the document?
5     A.    That's correct.
6
7     Q.    Others had input as well?
8     A.    That's correct.
9
10    Q.    Then after a period of time, you ceased to have input?
11    A.    That's right, yes.
12
13    Q.    Others including bishops continued to have input?
14    A.    Yes.
15
16    Q.    And that evolved into a document that became the 1992
17    protocol?
18    A.    1992, yes.
19
20    Q.    We've referred to you having a doctorate in canon law
21    and to the tribunal being in a process to administer, as it
22    were, aspects of canon law.  For the benefit of some of
23    those in the courtroom today, and it may be almost A, B, C
24    for yourself, Dr Austin, could you describe what canon law
25    is in sort of summary basic terms?
26    A.    Well, the church understands itself to be a society,
27    an organisation, and that it has its own law, which it has
28    had from the time of the Old and New Testaments, so it has
29    built up over all those decades and centuries it's body of
30    law.  So the basic law of the church then is the law that
31    has been promulgated by the relative legislative
32    authorities within the church and it relates to the
33    structure of the church, the constitution of the church and
34    its governance and the way it operates, and relates then to
35    not only those who are ministers, ordained people, but also
36    all the members of the church.
37
38    Q.    Is it the primary means by which the actions of
39    members of the church are regulated, as it were,
40    internally?
41    A.    Yes.  In terms of, if you'd like to make a distinction
42    between their response to the call to be a Christian and a
43    Catholic and a member of the church at that level, but in
44    terms of the juridical life of the church, yes, it becomes
45    the main source of that.
46
47    Q.    Is it also true to say that canon law is substantially
```

1 codified and that there is a 1983 code of canon law that
2 has application?
3 A.   Yes, that is correct. The First Vatican Council of
4 1869 to 1870 asked for the revision of church law which
5 prior to that time was not codified. Then they produced
6 what we call the first code of canon law, the 1917 code of
7 canon law.
8
9 Q.   That's the description that's commonly given to it,
10 the 1917 --
11 A.   The 1917 code, yes. That was revised after the Second
12 Vatican Council, 1962 to 1965. We refer to that as the
13 1983 code. It was a revision of the existing one.
14
15 Q.   Is it the position that the 1983 code of canon law
16 continues to apply?
17 A.   Yes, it does.
18
19 Q.   Subject to whatever amendments --
20 A.   Amendments, et cetera.
21
22 Q.   -- and additional directives, and so on, that might
23 apply?
24 A.   Yes. I think it's also important to point out that
25 the code of canon law is not the summary of every law of
26 the church. There are laws outside of the code which also
27 come under the name of canon law because there is
28 ecclesiastical law, the law of the church, but it's not
29 just the code of canon law that contains laws.
30
31 Q.   Is an example of what you're referring to the 1962
32 instruction which I've handed to you and you're able to
33 identify?
34 A.   Yes, an instruction is a document that helps implement
35 the law so it does have legal standing in that sense.
36
37 Q.   I want to ask you about some core concepts under canon
38 law which relate to matters that the Special Commission has
39 heard evidence about. I'm just going to ask you at a
40 general level. The first is the concept of a diocese.
41 I wonder if you could explain under canon law what the
42 concept of a diocese is, just in brief terms?
43 A.   The church is a total community of people divided into
44 groupings that we call dioceses. A diocese for - let's
45 also use the word "particular church" as distinct from the
46 "universal church". Each diocese, as a rule, is based on
47 territory, so it's the people living within a certain

1   territory who belong to that diocese.
2
3   Q.   For present purposes where we are located at the
4   moment, we're physically within the diocese of
5   Maitland-Newcastle?
6   A.   That is right. You see it described by certain
7   territories that are identified when a diocese is
8   established. Sometimes they are amended, et cetera. So
9   it's people who reside, who are domiciled in that
10   territory, who belong to this diocese. The Roman pontiff
11   appoints a bishop to be the chief pastor of that diocese,
12   so that the bishop is accountable to the Roman pontiff.
13   He's his highest superior, if you like.
14
15   Q.   I'll ask you about the role under canon law of the
16   bishop of a diocese.
17   A.   The bishop has three basic roles. One is to teach the
18   faith of the church. Another one is to be leader of the
19   worshipping community and a third part is to govern the
20   community, not just by making laws, but by example by
21   exhortation, et cetera. They are three aspects of the one
22   ministry, if you like.
23
24   Q.   Is it a fair description that, under canon law, the
25   bishop is entrusted with the task of shepherding the
26   parishioners with the cooperation of the parish priest?
27   A.   That's right. Both the teaching of the church and the
28   law of the church use that phrase, that the pastoral care
29   of the people is entrusted to the bishop, who shepherds and
30   nurtures the people through preaching the word of God, the
31   celebration of liturgy, et cetera, with the cooperation of
32   the priests.
33
34   Q.   Turning to the parish priest, I wonder if you could,
35   in brief terms, assist with a description of the
36   relationship under canon law between the parish priest on
37   the one hand and the bishop of the diocese on the other
38   hand?
39   A.   Dioceses are created so that the task of teaching of
40   people and worshipping and governing can continue in small
41   groups. So a diocese is a community of communities, the
42   parishes. A bishop appoints a parish priest to be the
43   pastor, the shepherd of that community, and for that group
44   of people the parish priest fulfils the same three roles
45   that the bishop does for the whole diocese - to be a
46   teacher of the faith, a priest of worship, and to lead the
47   people in governing the parish community.

1
2   Q.   Under canon law is there effectively a duty of
3   obedience of the parish priest to the bishop or is that too
4   simplistic a view?
5   A.   No. Every priest is obliged to show obedience to his
6   bishop, no matter whether he has an appointment or not.
7   The relationship between a parish priest and a bishop takes
8   on a further dimension, that a parish priest is subject to
9   the authority of the bishop in fulfilling his duties as
10   parish priest. So there is a question of general obedience
11   if you like, and then the specifics of it, fulfilling the
12   obligations under the authority of the bishop, as holding
13   the office of parish priest.
14
15   Q.   The obligations upon a parish priest under canon law
16   are to celebrate mass, are they?
17   A.   Yes - well, if you look at it in the three terms of
18   preaching the word of God, then he has to be faithful to
19   the teaching of the church in that, and the bishop has to
20   make sure that what he preaches is the faith and teaching
21   of the church; in worshipping that he celebrates the
22   liturgy of the church in accordance with the liturgical
23   laws of the church; and that he rules or governs the
24   community then in accordance with basically the laws that
25   relate to the laws of the organisation of a parish and all
26   that that involves.
27
28   Q.   Are there obligations under canon law on the bishop to
29   permit a priest to celebrate mass and to engage with
30   parishioners in that fashion? We'll come later to some
31   potential restrictions, but is there a starting point of an
32   obligation on the bishop to assist his priests in doing so?
33   A.   The bishop has a role of supervision, if you like, or
34   oversight of the parish priest fulfilling his duties.
35   There is in canon law a provision that a bishop would visit
36   parishes throughout the diocese over a period of time, and
37   that pastoral visit, as it's referred to, is meant to visit
38   the community, not only to visit the parish priest, but
39   people within it, to simply see how is this community
40   living out its calling to be a community within this part
41   of the diocese.
42
43   Q.   Just a couple of more concepts. The concept under
44   canon law of ordination, is that effectively the
45   commencement date for a person to act as a priest, to
46   fulfil the role of a priest?
47   A.   Ordination involves three stages - one is ordination

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1   as a deacon, then ordination as a priest and then
2   ordination as a bishop. The Catholic teaching is there is
3   one sacrament of orders and there are three grades, if you
4   like, a hierarchy of grades. So a deacon is an ordained
5   and a deacon can do certain things. Then a person is
6   ordained to a priest. Then from that time on, he can
7   fulfil priestly function, but for some functions he needs
8   to be empowered by the bishop of the diocese and that's
9   what we call faculties.
10
11   Q.   We'll come to those in a moment. Is it the case that
12   every priest has to be incardinated to a particular
13   diocese?
14   A.   Every priest must be incardinated to a diocese or to a
15   religious congregation. The canon law talks about you
16   can't have a surplus priest, which means you can't have
17   people wandering around unattached.
18
19   Q.   Even if a priest is physically at a different
20   location, unless his incardination changes in some way, he
21   remains, as long as he's a priest, incardinated to a
22   particular diocese?
23   A.   Yes, unless following the procedures, he moves to
24   another one, but the concept of incardination is a
25   permanent commitment and linked with that particular church
26   or diocese.
27
28   Q.   You made brief reference to faculties. That's a
29   concept under canon law, is it?
30   A.   It is, yes.
31
32   Q.   What are the faculties that a priest enjoys under
33   canon law?
34   A.   A priest does not need permission to celebrate the
35   Eucharist, but to preach he has to be - the law itself says
36   if you're ordained a priest, then you can preach the word
37   of God. The previous canon law required a bishop to give
38   you that faculty, but that's changed. If a priest comes to
39   a diocese, whether he's incardinated into it or he is
40   coming to work in it, then he needs the authorisation of
41   the bishop to do certain things. That's to hear the
42   confession, it's to celebrate marriages. They are the
43   sorts of things that require faculties to be empowered to
44   do it within this diocese.
45
46   Q.   Does it extend to celebrating mass?
47   A.   The law itself allows him to celebrate. He doesn't

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1      have to be given permission to do that.  The law says,
2      though, he can be prevented but he doesn't have to get
3      permission to do it.
4
5      Q.   In terms of the concept of withdrawal of faculties,
6      that's a concept under canon law?
7      A.   That's correct.
8
9      Q.   Does that involve the bishop of the diocese in which
10     the priest is incardinated taking certain steps in relation
11     to the priest?
12     A.   A priest doesn't have a right to faculties.  It's not
13     a right, it's a free grant by the bishop.
14
15     Q.   So it's in the nature of a privilege rather than a
16     right?
17     A.   Yes, and it's necessary for the priest to fulfil
18     priestly ministry.  A bishop must make a judgment that this
19     particular priest is suitable to exercise the ministry and
20     is suitable to preach, or whatever.  Equally, he has to
21     make a judgment, if circumstances arise, that he may not be
22     suitable.  So he makes a judgment to give faculties and he
23     can make a judgment to take them away.
24
25     Q.   Is that something that is largely within the power and
26     discretion of the bishop to do?
27     A.   Totally.
28
29     Q.   At any particular time?
30     A.   At any particular time.
31
32     Q.   Is the consequence of withdrawal of faculties that the
33     person the subject of the withdrawal remains a priest?
34     A.   Correct, yes.
35
36     Q.   Remains incardinated to the diocese?
37     A.   Remains incardinated.
38
39     Q.   Remains able to continue to wear priestly garb?
40     A.   Yes.
41
42     Q.   Is that person able to celebrate mass in a private
43     capacity?
44     A.   Private capacity, yes.
45
46     Q.   But not a public --
47     A.   Not a public one.
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1
2      Q.    Within the church on the weekend?
3      A.    No.
4
5      Q.    One of the aspects that you deal with in your report
6      is the interface between canon law on the one hand and what
7      might be referred to as civil law on the other hand.
8      A.    Yes.
9
10     Q.    That is to say, secular law?
11     A.    Right.
12
13     Q.    I'm going to come to a specific question but before
14     I do that, I'll ask you about one further canon law concept
15     which we have heard some references to at the inquiry
16     recently, which is celebret - the concept of celebret?
17     A.    Yes.
18
19     Q.    Could you explain for the benefit of those present and
20     the Commissioner what that concept entails under canon law?
21     A.    If a priest was going to go to other dioceses, then he
22     would be given a document, which is called a celebret,
23     signed by the bishop usually or the vicar general, saying
24     that basically he was in good standing and he could be
25     welcomed into the other church to celebrate, et cetera.
26     That didn't give him the faculties he required in the other
27     diocese, but it did say he was in good standing.
28
29     Q.    It's equivalent to - is this a fair characterisation -
30     a combination of something like identification papers plus
31     a character reference?
32     A.    A character reference, a testament that he's in good
33     standing.  In Australia, because seminaries were only few
34     and far between, originally priests from the various
35     states, et cetera, all knew each other.  People travelled
36     across and virtually knew priests right across the board.
37     If priests travel, particularly overseas, celebrets are
38     required for identification and that purpose, yes.
39
40     Q.    Has that always been the case that celebrets have
41     always been required?
42     A.    Yes.
43
44     Q.    But you indicate that it is not necessarily the case
45     with interstate?
46     A.    It's not necessarily the case.  In New South Wales,
47     because there was only one seminary years ago, everybody
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 1      would have known everybody.  But a priest can't operate
 2      outside without people being able to say he's in good
 3      standing and that's the way it was --
 4
 5      Q.    Is that a matter that's in fact mandated by the code?
 6      A.    No.
 7
 8      Q.    Or is that a matter of practice rather --
 9      A.    It is a matter of practice.  That's not written in the
10      code of canon law, but it's a practice that has been in
11      place for many, many years.
12
13      Q.    Is the form of the celebret defined in some manner, or
14      is effectively a letter of good standing --
15      A.    It's a letter of good standing saying that the priest
16      enjoys the faculties of the diocese to which he belongs,
17      that he's going with permission of the bishop and that
18      he's - it's basically a request to accept him wherever he's
19      going particularly to celebrate the Eucharist.
20
21      Q.    Something in the nature of a letter of good
22      standing --
23      A.    Yes.
24
25      Q.    -- rather than following a particular legal format
26      under canon law?
27      A.    Yes.
28
29      Q.    That would effectively amount to what you understand
30      to be a celebret?
31      A.    Yes.
32
33      Q.    Let me ask you about the concept of laicisation.
34      That's a concept recognised under canon law?
35      A.    It is, yes.
36
37      Q.    Is it the case that that is a voluntary process?
38      A.    That's correct.
39
40      Q.    What does that entail, the concept of laicisation?
41      A.    There are regulations relating to the process.  Canon
42      law speaks about the way in which a priest can in fact be
43      dispensed from his obligations just in a general statement
44      saying you have to get permission from the Roman pontiff.
45      Outside of the canon law, there is a whole procedure for
46      that to be followed in which the bishop is responsible -
47      normally the bishop into which diocese you are incardinated
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 1    or it could be wherever the person happens to be living at
 2    the time - to get documentation drawn up which requires a
 3    curriculum vitae, a whole presentation of the history of
 4    the person, et cetera, leading to "This is a free decision,
 5    and I'm making this request for dispensation from all
 6    obligations."  That documentation - records from the
 7    seminary, et cetera - all that is put together and the
 8    bishop then adds his opinion.  That is then sent off to
 9    Rome.
10
11    Q.   I want to ask about the comparison between laicisation
12    and withdrawal of faculties.  I'll ask about time periods
13    in a minute.  Is it the case that laicisation is results in
14    a more permanent state of affairs?
15    A.   Laicisation is a permanent state of affairs.
16
17    Q.   So from the time that the laicisation is granted, if
18    that's the right terminology, the person ceases to be a
19    priest?
20    A.   The person ceases to operate as a priest, he can do
21    nothing.
22
23    Q.   He can no longer wear priestly garb?
24    A.   That's correct.
25
26    Q.   Or no longer properly wear priestly garb?
27    A.   That's correct.
28
29    Q.   And can no longer call himself a priest?
30    A.   Not only that, but the document that comes back from
31    Rome also restricts his role within the church.  If I could
32    use my own personal example, with the document - it's not
33    for me personally, but for everybody - I cannot lecture in
34    tertiary ecclesiastical institutes.
35
36    Q.   I think you've indicated that the process of
37    laicisation involves or depends on, does it, cooperation
38    from the priest concerned?
39    A.   Yes.
40
41    Q.   And without that cooperation the laicisation process
42    can't be completed; is that the case?
43    A.   Yes, it must be his own personal petition.
44
45    Q.   Has that been the case in the 1990s?
46    A.   Always been the case.
47
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1   Q.   I started to ask you about the interface, if you like,
2   between canon law on the one hand and civil law or secular
3   law on the other hand?
4   A.   Mmm-hmm.
5
6   Q.   That might be a big topic. I'm going to ask you in a
7   minute about how that topic relates to any obligations that
8   might be about reporting certain conduct to the police, but
9   at a general level are you able to give some assistance to
10   us on the interface and whether, in a sense, one trumps the
11   other, that is to say, that secular law obligations, if
12   they specifically apply, trump, for example, canon law
13   obligations? Is that something you are able to assist
14   with?
15   A.   I'll try to answer that. Basically we have two
16   societies - we have, if you like, the secular society and
17   we have the church as a society, each with their own sets
18   of rules, each with their own basic legal systems, and the
19   church would understand that its legal system is internal
20   to it and it operates by that. Since the 11th century the
21   church has referred to laws made by secular authorities as
22   the civil law, not a distinction between civil and criminal
23   but just in a general sense.
24
25   There are really two systems at work and therefore
26   they do interface, and interface in many different ways.
27   One of the references I made in my report was to canon 22
28   which talks about the church saying that in looking at its
29   legal system, it will actually use the civil law that is in
30   force in the particular country as its own for particular
31   things, and I gave a couple of examples. That's the most
32   important interface, if you like.
33
34   Q.   Can I ask whether there are any aspects where canon
35   law purports to override civil law obligations? Is that a
36   feature at all of canon law, or is that not a phenomenon
37   that you encounter in canon law?
38   A.   Basically canon law is the law of the church and how
39   the church lives. So it's not saying this is more
40   important than that, but there can be conflicts in some
41   cases, obviously.
42
43   Q.   Is it the case that, as a general proposition, when
44   there is conflict, civil law effectively trumps canon law?
45   Is that a fair proposition?
46   A.   I think it would be more correct to say that if one is
47   a member of the church and is bound by canon law, they have

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 1      that obligation to follow that, and that may well then put
 2      them in a position of conflict with the civil law, but I
 3      don't think it's true to say that one is more important or
 4      less important than the other.  I think it's an
 5      acknowledgment that there are two systems that sometimes
 6      simply do not coincide.
 7
 8      Q.   That's at a sort of general theoretical level?
 9      A.   Yes.
10
11      Q.   I'm going to come to the specific in a different
12      context.  I'm going to ask you whether in relation to the
13      issue of reporting allegations of child sexual abuse to the
14      police, does canon law purport to place any restrictions on
15      either a priest or a bishop that might prevent them in some
16      way from reporting allegations to the police?
17      A.   I probably need to answer that in terms of the law
18      under the 1917 code - from 1917 to 1983.
19
20      Q.   I'll direct your attention at the moment to the 1980s
21      and 1990s, so in that sort of broad span of years.  Then
22      I'll ask you whether there have been any developments in
23      the last decades
24      A.   Under the 1983 code, the Catholic Church says nothing
25      about obligations to report matters under the civil law.
26      It simply says that is a matter for the civil law, that's
27      not a matter for the church.  There are no restrictions
28      upon a priest or a bishop reporting allegations of sexual
29      abuse to the civil authorities.
30
31      Q.   Under the 1983 code?
32      A.   Under the 1983 code.  I do refer in my report to two
33      statements, one made by the Congregation of the Doctrine of
34      the Faith where it explicitly said we must cooperate in the
35      reporting of these crimes to the secular authorities.  If
36      you look for a restriction, if I could just put it into
37      that context, if the bishop or the priest received the
38      information about the abuse in the process of hearing
39      confession, then that's a restriction, because canon law
40      says a confessor must not break --
41
42      Q.   All right.  So --
43      A.   That's another issue altogether.
44
45      Q.   Putting to one side that specific issue of a
46      confession, putting that to one side, it's the case, is it,
47      that under the 1983 code, the canon law does not in any way
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 1    prevent a church official from reporting matters to the
 2    police?
 3    A.    No, it does not prevent it at all.
 4
 5    Q.    Is it similarly the case that even going further than
 6    saying there is no prohibition that canon law effectively
 7    provides, that, in those sorts of circumstances, a church
 8    official should comply with the civil?
 9    A.    I think that's a conclusion that one would have to
10    draw.
11
12    Q.    And that's the case under the 1983 code?
13    A.    Yes.
14
15    Q.    And similarly under the 1917 code?
16    A.    The 1917 code was somewhat different, because under
17    the 1917 code - this goes back to the Middle Ages - clerics
18    had the privilege of the forum.  In other words if you were
19    a cleric, then you would only appear if you committed any
20    sort of a crime before an ecclesiastical trial, not before
21    the civil courts or secular courts.  That privilege, as
22    they call it, the privilege of the forum, is in the 1917
23    code.
24
25        So when it spoke then about the sorts of issues that
26    are under discussion here, the sexual abuse, it said that
27    that was a crime in the mixed forum - it was a matter that
28    civil law dealt with and it was a matter that canon law
29    dealt with.  In that case, particularly if the person
30    making the complaint was a lay person, they should take it
31    to the civil courts, if they got permission from the bishop
32    to do so, and even if they didn't, the cleric should comply
33    with the summons to the civil court.  That was a slightly
34    different context, but that context went with the 1983
35    code.
36
37    Q.    I think I'll call upon your assistance with a couple
38    of other canon law concepts as well.  I wonder if you could
39    assist us in terms of canon law and the role of the vicar
40    general.  Is that a role that's recognised under canon law?
41    A.    It's obligatory on every bishop to appoint at least
42    one vicar general.
43
44    Q.    What does canon law require a vicar general to do?
45    A.    The vicar general has the same authority or the same
46    powers as the diocesan bishop, except for those things that
47    the law itself says only the diocesan bishop can do, or
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 1      certain things that the bishop may say, "I'm reserving that
 2      to myself in this particular diocese."
 3
 4      Q.   When you say there are certain things that are limited
 5      by the code only to the bishop, is that a matter that you
 6      can quickly address?
 7      A.   Yes.  A simple example would be talking about Catholic
 8      schools in a diocese, it says the diocesan bishop can issue
 9      directives regulating all Catholic schools.  When the code
10      uses the phrase "the diocesan bishop can", that means it
11      belongs to him alone.  He can certainly delegate that, if
12      he wishes, to a vicar general or someone else, but it
13      belongs by law to himself.
14
15      Q.   Putting to one side that situation, is it the case
16      that the vicar general is effectively the alter ego of the
17      bishop?
18      A.   Yes, and it makes it clear that when the law is
19      talking about the vicar general fulfilling his roles, he
20      has the authority of the bishop, but in relation to all the
21      diocese, that when he's actually doing that, he acts with
22      the mind of the bishop as well.  So it's really keeping in
23      concert with the bishop on that.
24
25      Q.   Is there a sort of geographical requirement that the
26      vicar general has certain powers only when the bishop is
27      physically not present within the diocese, or is that not a
28      restriction on the vicar general?
29      A.   No, the vicar general and he's always the vicar
30      general, and it doesn't matter whether the bishop is in or
31      not in the diocese.  For him to exercise his authority is
32      not dependent upon that as a matter of law.
33
34      Q.   Is it also a fair description to refer to a vicar
35      general as being the second in charge of a diocese?
36      A.   It's a fair description.
37
38      Q.   And a person that shares in the authority of the
39      bishop in governing the diocese?
40      A.   The word "vicar" means that, in the church's
41      construct, there is authority that belongs to an office;
42      like the office of bishop or vicar general, that's called
43      ordinary because it belongs to the office.  We also talk
44      about the bishop's authority being ordinary and proper
45      which it means it's his own, it belongs to him.  The vicar
46      general is called the vicar because it is vicarious.  It is
47      really the bishop's authority that he's using when he acts
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 1      in accordance with his duties as vicar general.
 2
 3      Q.   I want to also you ask about the concept of an oath of
 4      secrecy that's sworn by priests.  Is that a matter that is
 5      dealt with by canon law or is it dealt with by other
 6      aspects of church affairs?
 7      A.   In certain circumstances an oath of secrecy or, more
 8      correctly, confidentiality is to be taken.  That applies,
 9      say, to people working in tribunals, for example, and other
10      offices.  So there are some things that are subject to
11      confidentiality.  Perhaps I should explain it.  The law of
12      the church, the original language of the law is Latin, and
13      to interpret the law, one must read the Latin text, but
14      sometimes English translations don't always - we have used
15      words that have a slightly different meaning.  You'll find
16      that in the various English translations, even they don't
17      agree with themselves, because they will use a word that
18      means more to that local church than elsewhere.  So when we
19      speak about secret things or secrecy, we should really be
20      using the word "confidentiality" in terms of our English.
21
22      Q.   That's a general proposition --
23      A.   That's a general proposition.
24
25      Q.   -- in terms of where the code refers to concepts by
26      reference to "secret"?
27      A.   Yes.
28
29      Q.   Such as, for example, secret archives?
30      A.   Secret archives, yes.
31
32      Q.   It's a reference, is it, to matters that are
33      confidential rather than matters that are intended to be
34      hidden in some way?
35      A.   Yes.  One example, to explain, if they conduct a
36      process looking for priests suitable to be considered for
37      the appointment of bishops, if a consultation process is
38      done, that's always done under secrecy, an oath of secrecy,
39      which simply means this is highly confidential.  That's how
40      we would use the word "secrecy".
41
42      Q.   Is an oath of secrecy taken by every person who
43      becomes a priest?  Is it something that --
44      A.   It depends on the office that one holds or what the
45      particular thing is.  It's not a general thing that every
46      priest takes by virtue of ordination.
47
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 1    Q.    But if you hold particular diocesan office, you may be
 2    required to take an oath of secrecy?
 3    A.    Yes.
 4
 5    Q.    And that would include a vicar general?
 6    A.    It would include a vicar general, yes.
 7
 8    Q.    Does canon law or church law impose any obligations
 9    that would supersede civil law in any respect in terms of
10    an oath of secrecy?
11    A.    I don't believe it does at all.
12
13    Q.    So, for example, anyone who had previously taken an
14    oath of secrecy and who was then required to give evidence
15    in a civil court - tell me if this is wrong as a
16    proposition - would not be restrained by canon law or
17    church law from giving full evidence?
18    A.    I think that if it was a matter where the law clearly
19    said that - I'm thinking, for example, of tribunal work
20    where this confidentiality is involved, if it was said that
21    what you learned in that process had to be given under
22    civil law, my view would be that one would seek to be
23    dispensed from that obligation in that particular case.
24
25    Q.    Dispensed from the church law obligation?
26    A.    Yes, so the church law obligation could be dispensed
27    with.
28
29    Q.    And to certainly notify the civil law authority if
30    there were any restrictions?
31    A.    Yes.
32
33    Q.    You mentioned the concept of secret as entailing under
34    canon law typically an element of confidentiality.  I want
35    to ask you about the concept of secret archives which you
36    touch upon in your report.  I wonder if you could explain,
37    in short terms, what the concept of a secret archive is
38    under canon law?
39    A.    Every diocese has to have archives that are what we
40    call general, so that's the ordinary day-to-day running of
41    the diocese.  This is --
42
43    Q.    That's the general administration?
44    A.    General administration.  There's also supposedly to be
45    kept historical archives, but there's also then what the
46    law talks about is the secret archives, and that both the
47    general archives and the secret archives are under the
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 1      control of the bishop.  The general archives, the
 2      chancellor of the diocese is the person with hands-on
 3      responsibility for that, but the secret archives is the
 4      responsibility of the bishop.  So "secret" simply means
 5      that certain matters are kept, because they are highly
 6      confidential, in this particular part of the archives, the
 7      secret archives, and that access to those is only given
 8      with the permission of the bishop.
 9
10      Q.   Is it the case that you would expect to include within
11      the secret archives any documents that related to
12      allegations of sexual misconduct on the part of a priest?
13      A.   Yes.
14
15      Q.   So any reports or allegations of sexual abuse of
16      minors by priests?
17      A.   Yes.
18
19      Q.   That's a document that would be expected to be within
20      the secret archives?
21      A.   That's correct.  If you look at the canons relating to
22      the investigation, if information is received by a bishop
23      about an alleged abuse, and a process is done of
24      investigating that, those documents are to be kept in the
25      secret archives, by law.
26
27      Q.   Are the secret archives typically physically close to
28      where the bishop is physically located within the chancery
29      of a diocese?  Is that something on which you are able to
30      assist?
31      A.   The law talks about the archives, within the general
32      archives, a place set aside, that is, also for the secret
33      archives, provided it can't be sort of picked up and taken
34      away, sort of thing.  The other view is that there would be
35      general archives that would be in the chancellor's office
36      or the general diocesan office for everyday work, and the
37      secret archives would be kept apart from that.  Quite
38      clearly only the bishop has access to that; except if the
39      diocese is vacant, there is no bishop at the time, the
40      administrator then is the one who has that, but he must
41      account to the new bishop for his access to that.
42
43      Q.   Is it the case when you indicate the bishop has access
44      to it, that he is the person who has responsibility for
45      keeping the secret archives?
46      A.   Yes, he has full responsibility for the secret
47      archives and for their custody.
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```
1
2      Q.     He has the power to let other people have access to
3      the secret archives?
4      A.     Yes.
5
6      Q.     Within a typical diocesan structure, would there be
7      particular people who might have access to the secret
8      archives from time to time in the general functioning of
9      the diocese?
10     A.     People wouldn't have access generally.  They would
11     have to always be authorised by the bishop to have access.
12     But I would think that in the secret archives would also
13     be - for example, if a priest has some mental illness or
14     something, he has been under therapy, he has been cared for
15     and reports were given by that, that information should not
16     be available in the public archives, that should be in the
17     secret archives, so that only the bishop can authorise
18     people to access it.  People may need to do that, but the
19     law says they are not allowed to take documents out of the
20     secret archives.
21
22     Q.     I think you've given evidence that the vicar general
23     is a person who shares in the authority of the bishop?
24     A.     Yes.
25
26     Q.     This is a general proposition:  is the vicar general
27     the type of person who may be expected to be recognised
28     under canon law as a person who might have access to
29     the --
30     A.     A person who could be delegated to do that, yes.
31
32     Q.     Sorry, just wait until the end of the question.  Is
33     the vicar general a person who might be expected,
34     consistent with canon law requirements, to be someone who
35     may have access to documents within the secret archives as
36     a general proposition?
37     A.     Yes, with permission of the bishop.
38
39     Q.     So in all cases, it requires the permission of the
40     bishop?
41     A.     Yes.
42
43     Q.     Your report also addresses the question of any
44     requirements to destroy documents within the secret
45     archive?
46     A.     Yes.
47
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 1      Q.    I want to ask you if you can expand for the
 2      Commissioner on whether there are requirements under canon
 3      law that documents either be retained or destroyed when
 4      such documents are in or form part of the secret archives?
 5      A.    The only documents that are in the secret archives
 6      that should be destroyed or are to be destroyed are the
 7      ones referred to in canon 489 paragraph 2.
 8
 9      Q.    That's a matter that you address on page 20 of your
10      report?
11      A.    Yes, that is correct.  The law talks about destroying
12      documents ten years after the person who has been found
13      guilty of the crime has died, or if a person has died, then
14      they destroy them, but if the person is still alive, then
15      after ten years they destroy them.
16
17      Q.    Are they any documents that are within the secret
18      archive that fit that category, or are they documents that
19      must have resulted from criminal cases?
20      A.    Yes, they are a very narrow group of documents,
21      because canon 482 says that it's documents that arise from
22      an ecclesiastical trial in which a penalty has been given
23      and there's been what they call a definitive sentence given
24      in that trial.  So it's only those documents.  It's not
25      reports that a bishop may have got from people about a
26      priest's behaviour or something that have been put in there
27      because of the confidential nature of them.  It's only one
28      group of documents, and they are documents arising from a
29      trial that has been conducted in a church tribunal, has
30      been concluded with a sentence, and the person was found
31      guilty of the crime.
32
33      Q.    So that's a penal process under canon law?
34      A.    Yes, that's correct.
35
36      Q.    In an ecclesiastical tribunal?
37      A.    That's correct.
38
39      Q.    And it's documents relating to that topic only that
40      are subject of any canon law prescript or obligation in
41      relation to destruction?
42      A.    Yes.  But even with those, then you have to keep a
43      summary of the facts and the actual judgment that the
44      tribunal made in the particular case.  So not all documents
45      relating to it are destroyed.  There is still a residual
46      record of some of it.
47
```

1   Q.   Putting that category to one side, is it the case that
2   canon law requires other documents that relate to
3   allegations about priests' misconduct to be kept as part of
4   the secret archives and not to be destroyed?
5   A.   My view would be if they are in the secret archives,
6   they are kept permanently.
7
8   Q.   And they will be kept permanently even though the
9   priest has died, for example?
10   A.   Yes.
11
12   Q.   You were provided with a document to address in your
13   report, which was a letter dated 19 October 1995. For
14   practitioners, that is exhibit 67, which is at volume 3 of
15   the tender bundle, tab 262. Doctor, do you have a copy
16   handy of that letter?
17   A.   I do.
18
19   Q.   That's a letter dated 19 October 1995 from Bishop
20   Clarke to Reverend Denis McAlinden?
21   A.   Correct.
22
23   Q.   I want to ask you some questions about that. You deal
24   with that on page 22 of your report. You've got that
25   handy?
26   A.   Yes.
27
28   Q.   In the second paragraph, I think you take issue, do
29   you, with the way in which the letter from Bishop Clarke
30   addressed a request for laicisation by Father McAlinden in
31   terms of what canon law contemplates? Is that a fair
32   proposition?
33   A.   I think I have a difficulty with the fact that the
34   priest is being said - "I request you to do it" when, by
35   definition, a petition for laicisation is a free decision
36   on the part of the priest. Maybe in a particular case,
37   there's good reason why this should be undertaken. But as
38   I look at it just as a written document, that's my reaction
39   to it, that if it's a free decision, freely to be made, and
40   at the same time the bishop is supposed to indicate what
41   efforts he's made to make sure the priest stays in the
42   ministry because that was his calling, I just have
43   difficulty with that wording.
44
45   Q.   In your report you indicate:
46
47   *As the petition is to made freely by the*

```
 1            priest such a request by the Bishop could
 2            be regarded as a breach of the procedure.
 3
 4       A.   Yes.
 5
 6       Q.   That's a reference, is it, to the concept under canon
 7       law that laicisation is a fully voluntary process?
 8       A.   That's correct.
 9
10       Q.   Your concern is that, to the extent that it arises,
11       there may be a question about whether there is a free
12       consent or free will involved on the part of McAlinden --
13       A.   That's correct.
14
15       Q.   -- when a bishop is suggesting that he move towards
16       laicisation; is that right?
17       A.   Yes.
18
19       Q.   Again, without knowing the full context of the
20       McAlinden matter beyond the letter, you could understand,
21       could you, why Bishop Clarke might be seeking to take
22       action against McAlinden?
23       A.    I guess in hindsight, I would have written it by
24       saying "I strongly exhort you"; it's the word "request"
25       that I have difficulty with.
26
27       Q.    I understand.  But you not otherwise taking issue with
28       a suggestion that one particular option should be --
29       A.    No, not at all.
30
31       Q.    -- to seek to have a particular priest removed from
32       his priestly status by one means, being voluntary
33       laicisation, if it could be achieved?
34       A.    No, not at all.
35
36       Q.    I think you indicate in your report that the bishop
37       proposed to act in accordance with a 1044 canon process --
38       A.    Yes.
39
40       Q.    -- according to the letter of 19 October 1995.  That's
41       clear, isn't it, from paragraph 2 of the letter?
42       A.    That's correct, yes.
43
44       Q.    You indicate that, in your view, the letter did not
45       correctly set out the applicable canon law process under
46       1044.
47       A.    That is correct.
```

1
2   Q.   I want to ask you about that. In what respects did
3   the letter not set out the correct canon 1044 process?
4   A.   Canon 1044 is talking about a situation where it's
5   understood if a particular priest is suffering from some
6   form of psychological infirmity that is making the
7   situation such that he should not exercise the priestly
8   ministry. It's not - it may be permanent because of the
9   illness, but at this point of time it's a judgment, at this
10   point of time should this person continue to exercise the
11   ministry. It's not a penal process, it's nothing to do
12   with having committed a crime or anything like that. It's
13   simply saying is this person suffering from some infirmity
14   that's making him unsuitable to exercise the ministry at
15   the present time. If a bishop was going to make that
16   judgment, then canon 50 and canon 51 say, first of all, you
17   must put together all the information you have, get the
18   necessary proofs and information in order to make the
19   decision.
20
21   Q.   Pausing there, so that's the step that should be taken
22   under a canon 1044 process?
23   A.   Yes.
24
25   Q.   An important initial step - yes?
26   A.   Yes.
27
28   Q.   Putting to one side what may or may not have happened
29   here, just a matter of process under canon law?
30   A.   Yes. The bishop then will assemble the information.
31   Hopefully that would include a comment from a professional
32   person in regard to the condition of the priest. The
33   bishop then is obliged to consult with the priest, if that
34   is possible, and then, having done that, he then issues a
35   decree saying you are not - canon 51 says you spell out
36   what are the facts and what is the law and the decision is
37   you cannot exercise - you are prohibited or impeded from
38   ministry.
39
40   Q.   So that the end result of the canon 1044 process is a
41   decree that the person is impeded from exercising ministry.
42   A.   Yes. The canon also says that until such time as the
43   bishop, having consulted an expert, has allowed the priest
44   to resume the ministry, so the whole concept of it is that
45   it could be temporary for a period of time, short or long,
46   depending on the circumstances, but it's certainly not a
47   penal thing, and simply a matter of someone who is unwell

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 1    not being allowed to exercise ministry because it is
 2    detrimental to what's happened.
 3
 4    Q.   The evidence you are giving at the moment is directing
 5    yourself to the period of time in the 1990s - 1995?
 6    A.   Certainly.
 7
 8    Q.   Can I ask you, in terms of the end result, if a 1044
 9    process is successfully prosecuted or progressed to where
10    there is a decree of an impediment to exercise ministry, is
11    the person then still a priest?
12    A.   Yes.
13
14    Q.   Is also the end of a 1044 process that the person is
15    still incardinated to a diocese?
16    A.   Yes.
17
18    Q.   Is the end of a 1044 process that the person is still
19    able to wear priestly garb?
20    A.   Yes.
21
22    Q.   To wear crosses?
23    A.   Yes.
24
25    Q.   And is still able to call himself a priest?
26    A.   Yes.
27
28    Q.   Can I ask about at this period in time, that is, the
29    1990s - 1995 - what other processes were available under
30    canon law for taking action against a cleric who was
31    accused of sexual abuse of children?  We've dealt with the
32    1044 process.
33    A.   Yes.
34
35    Q.   You've also given evidence about laicisation?
36    A.   Yes.
37
38    Q.   That's a voluntary process - it depends on the
39    cooperation of the priest concerned.
40    A.   Yes.
41
42    Q.   Under canon law is there one or more other processes
43    that are available, or were available in 1995, in the
44    1990s, to take action against a priest when there are
45    reports or complaints of child sexual abuse on his part?
46    A.    If information came to a bishop of an alleged abuse of
47    a child, then the bishop was obliged to investigate that.
```

1   An investigation meant that you found out about the facts
2   and the circumstances and can we see clearly that this
3   person would have been responsible for that action, the
4   imputability is the wording in the canons. The 1962
5   document that was tabled earlier talking about these things
6   said if such allegations about these particularly horrific
7   crimes are mentioned, then one should also look to see what
8   is the history of this particular person, and that included
9   looking at secret archives to see if other complaints had
10   been made in the past.
11
12   Q.   Pausing there, is that a matter that you're referring
13   to being an issue that you've addressed in page 22 of your
14   report in the second paragraph from the bottom?
15   A.   Yes.
16
17   Q.   It is?
18   A.   It is, yes.
19
20   Q.   So a bishop is able to arrange or undertake an
21   investigation?
22   A.   Yes.
23
24   Q.   And is the other option that you've got in mind in
25   terms of processes that could be undertaken under canon law
26   a penal process?
27   A.   Depending upon the outcome of the investigation, then
28   he would have various options as to how to deal with it.
29
30   Q.   So if the investigation indicated that it couldn't be
31   said there was no substance to the matter, would that lead,
32   as an option available, to a penal process under part 4 of
33   the code?
34   A.   If the preliminary investigation clearly demonstrated
35   that this was - there was every reason to believe that this
36   crime had in fact been committed, then the matter should be
37   dealt with under the penal process, whether that's judicial
38   or extrajudicial is an option.
39
40   Q.   When you say "judicial", you're referring to an
41   ecclesiastical tribunal under canon law?
42   A.   Yes. I think if that was the point, the first thing
43   that had to happen was the priest was prohibited from
44   exercising ministry and, therefore, that would have meant
45   withdrawal of all the faculties and not permitted to
46   operate.
47

```
 1    Q.   That's within the power of a bishop to do?
 2    A.   That's within the power of the bishop, yes.
 3
 4    Q.   The other option is, is it the case, that steps could
 5    be taken, depending on the situation, to institute a penal
 6    process against the priest?
 7    A.   That's correct.
 8
 9    Q.   And that would be undertaken in an ecclesiastical
10    tribunal?
11    A.   Yes.
12
13    Q.   Such as a tribunal of which you were once a judge?
14    A.   Yes, the regional tribunal, yes.
15
16    Q.   Is the end result of a penal process under an
17    ecclesiastical tribunal in the 1990s, and now, that it can
18    lead to a priest being dismissed?
19    A.   That can be the decision of the tribunal, but the law
20    makes it clear that the judgment would have to be
21    commensurate with the crime, so that in very serious cases
22    it may well be that the penalty is in fact dismissal from
23    the clerical state.
24
25    Q.   When you say "very serious cases", there are various
26    matters that can make their way to an ecclesiastical
27    tribunal?
28    A.   Yes.
29
30    Q.   But, clearly, within the context of what could be
31    serious cases, allegations of child sexual abuse that are
32    found to have support would be in that category of what you
33    indicate being serious cases?
34    A.   Yes.
35
36    Q.   The penalty I think you indicated could be dismissal?
37    A.   Dismissal.
38
39    Q.   Is the consequence of dismissal that the person ceases
40    to be a priest?
41    A.   Yes.  It's the same consequences as laicisation,
42    except the way that the person got there - one was through
43    a free decision, the other one was through a judicial - or
44    a penal process, but the effects are the same - cease to be
45    a cleric, cease to have any rights as a cleric, can't do
46    anything in terms of priestly ministry, et cetera.
47
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 1      MR KELL:   Thank you.  No further questions.  We asked
 2      Dr Austin to come up today in the hope and expectation that
 3      his evidence would be finished, rather than having him stay
 4      tonight.
 5
 6      THE COMMISSIONER:   That might be the case.
 7
 8      MR SKINNER:   A few minutes only.
 9
10      MR GYLES:   I won't be more than a couple of minutes.
11
12      MR HARBEN:   If I ask anything, it won't be very long.
13
14      THE COMMISSIONER:   That looks very hopeful.
15
16      MR KELL:   Would it be convenient to continue on in those
17      circumstances?
18
19      THE COMMISSIONER:   Yes.
20
21      <EXAMINATION BY MR GOGARTY:
22
23      MR GOGARTY:   Q.   Doctor Austin, can you just go back to
24      paragraph 12 of your report.
25      A.   Yes.
26
27      Q.   You refer in that to the code of canon law, the 1983
28      version, canon 22, which states:
29
30          *When the law of the Church remits some*
31          *issue to the civil law, the latter is to be*
32          *observed with the same effects in canon*
33          *law, in so far as it is not contrary to*
34          *divine law, and provided it is not*
35          *otherwise stipulated in canon law.*
36
37      Could you give the Commission an example of something that
38      might be contrary to divine law?
39      A.   All the references in the code of canon law to the
40      civil law, 36 in all out of the 1700 canons, none of them
41      relate to anything where the divine law would be in
42      conflict with the civil law.  That's an overriding general
43      principle, but in the application of the 1983 code, if you
44      analyse all the canons that make mention of the civil law,
45      none of them would relate to anything relating to the
46      divine law.
47
```

1   Q.   The same would be the case with things not otherwise
2   stipulated in canon law?
3   A.   Sometimes canon law may say follow civil law but not
4   in regard to this aspect of it. If I could just refer you
5   to that example I've given, which says whatever the local
6   law decrees about contracts, et cetera, it doesn't say how
7   to resolve a dispute over contracts, for example. So
8   I would say you follow the canon law processes for
9   resolving that. You may go to the civil law if you want
10   to, but canon hasn't said if you have to resolve it you
11   must do it the way the civil law does.
12
13   Q.   One other small point of clarification, and
14   I apologise for my naivety about what some of these things
15   might mean, but in paragraph 20 of your report you talk
16   about items which - I'll read it:
17
18   *Norms concerning the more grave delicts*
19   *reserved to the Congregation for the*
20   *Doctrine of the Faith.*
21
22   What does that mean?
23   A.   I made reference earlier on to a document of 1962,
24   which was a repeat of a document of 1922. The 1970 code
25   said if you - if a bishop has any information about a
26   crime - not just sexual abuse but any crime - anything that
27   was a crime in the canon law, to investigate it, et cetera.
28   But in 1922, based on a document of 1741, so priests
29   misbehaving has been around for some time --
30
31   Q.   Is that in the transcript? My apologies for a
32   flippant remark.
33   A.   No, I think that's relevant, because sometimes you
34   hear people say that this has only just happened, the
35   church has never had - no structures. It's had them for
36   centuries, recognising that clerics, because of their
37   special obligations, can in fact violate them and the law
38   of the church has always made provision for dealing with
39   it. Whether the people responsible have done it is another
40   question, but I think from an historical point of view it's
41   been quite clear that the church has recognised that people
42   have - can, and have in fact violated their obligations as
43   clerics and appropriate action should be taken. That's
44   never been in doubt as far as I'm concerned. So it wasn't
45   a trite comment, if I can be forgiven for that. So 1917
46   the code came out: if you hear anything about crimes,
47   investigate. In 1922 it said in regard to certain crimes

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1    we're going to have a particular process in place, and it
2    started off with a crime of a priest soliciting during the
3    sacrament of penance, during confession, an accomplice for
4    a sin, and they just said that's so bad it is simply
5    totally unacceptable.  So they made special rules for
6    dealing with that one, so they were beside the code of
7    canon law.  That was that instruction we referred to.
8
9         That same instruction also said it applies to cases of
10   sexual abuse against minors.  So that is a heinous crime as
11   well, and that's got to be treated seriously and with
12   rigour.  So that was - the norms they should have followed
13   then were 1922, repeated in 1962.  When the code of canon
14   law came into force in 1983, the general norm was, repeated
15   in canon 6, that if these sort of laws, these penal
16   procedures that were in this instruction would lapse; they
17   would be abrogated and taken up by the new law.  Nothing
18   was publicly said at that time, but when we get to 2001
19   Cardinal Ratzinger, as he was the prefect of the
20   Congregation for the Doctrine of Faith said, those special
21   norms have never been abrogated, so in 2001 they are still
22   what we follow, but we have now revised them.  So if you
23   say what happened in 2001 about these special procedures,
24   in 2001 it was said if the bishop hears about a crime,
25   investigate it following canon law 1717, 1719, and when
26   you're finished that, you send everything to us at the
27   Congregation for the Doctrine of the Faith and we'll decide
28   the next steps to be taken.  That's the reference to that.
29
30        If I could just note, too, for information, that where
31   they are saying the following crimes number 1 and 2, a
32   crime or a delict against the sixth commandment committed
33   by a cleric with a minor below the age of 18, the 1917 and
34   1983 codes said 16 years, it was then taken up to 18.  But,
35   also, the acquisition, possession and distribution by a
36   cleric of pornographic images, that was not in the code, so
37   they have extended the crime by that document.
38
39   Q.   I think if you turn over the page, just at the end of
40   that sentence, you mention that the Congregation for the
41   Doctrine of the Faith will direct the bishop how to proceed
42   further, what sort of things might that include in your
43   experience?
44   A.   The doctrine of the faith could in fact say:  we will
45   process this case here in Rome.  That's one possibility.
46   The other possibility is to send it back to the bishop and
47   say, "You process it."
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1
2   Q.   Could it conceivably be that the Congregation for the
3   Doctrine of the Faith would say, "Send us all the material
4   you have on the complaint."
5   A.   Yes, you have to send that originally.
6
7   Q.   And then do nothing else?
8   A.   Yes, so if - when you do the preliminary
9   investigation, all the documentation that's been gathered
10   for that, all of that must go, and then they make the
11   decision based on that.
12
13   Q.   Thank you. Thank you Commissioner.
14
15   **<EXAMINATION BY MS GERACE:**
16
17   MS GERACE: Q.   Can I ask you some questions about the
18   document you were looking at, the letter of 19 October
19   1995, at tab 262. Firstly, if you assume this letter is a
20   letter from the bishop to Father McAlinden following on
21   from concerns made known to Bishop Clarke about sexual
22   abuse of children, and at this stage Father McAlinden has
23   had his faculties removed by Bishop Clarke as a consequence
24   of his investigation of that information, can I ask you the
25   following questions. The investigation by a bishop of an
26   allegation of sexual abuse would be one of the sorts of
27   confidential matters one would expect the bishop to
28   undertake himself; would you agree with that?
29   A.   No, that's - no. The law provides for the bishop to
30   undertake it, or someone delegated by him, and most
31   commentators, canonists, would say it's more appropriate
32   for the bishop not to do that personally, but in fact to
33   have someone else do that, and then he gets the report,
34   then he makes the decision.
35
36   Q.   In terms of information provided to him, though, in
37   the context of that investigation, would you expect that
38   information to be in the confidential or secret files?
39   A.   Certainly. In fact, the law says so.
40
41   Q.   To the extent that the bishop in receipt of that
42   information would discuss that with his deans, the
43   situation of a complaint having been made and action being
44   taken by the bishop in response to that information, would
45   that be construed as an invitation to the deans to
46   participate in the knowledge of those confidential matters
47   by the bishop?

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2   MR GYLES: I object. This is a question that is - a level
3   of generality that does not allow a useful answer, because
4   we know from the letter that what Bishop Clarke says is
5   that:

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

10   The question is what that means, and Ms Gerace is
11   essentially putting that that includes information going to
12   the underlying matter, as I understand the question.
13   That's the difficulty.

15   MS GERACE: If ultimately the information is useless, it
16   can be disregarded, but there are a number of meetings
17   between Bishop Clarke and both his vicars general at the
18   time, the coadjutor bishop and the deans in relation to
19   Father McAlinden. We've heard evidence from a number of
20   the persons present at those meetings about how they
21   construed their role or their ability to access files and
22   what they saw as their respective positions vis-à-vis the
23   confidential nature of the information. If this is not a
24   matter that Dr Austin can address, I'm sure that Dr Austin
25   will tell me that there's nothing he can add to the
26   process.

28   THE COMMISSIONER: Yes, very well.

30   MS GERACE: Q.   Sorry, doctor.
31   A.   As set out in the code of canon law, preliminary
32   investigation involves receiving information, getting -
33   appointing someone to conduct the investigation, and that
34   person then coming up with a report. That is canon 1717.
35   The bishop then has to consider that report, and the law
36   makes specific reference that the bishop may discuss - if
37   he deems it prudent - so this is the discretion of the
38   bishop - if he deems it prudent to consult. The law talks
39   about two judges or other legal experts. By the word
40   "judge" they mean judges of the ecclesiastical tribunal or
41   other legal experts. So the law is not saying you can only
42   consult those, but that's clearly saying to the bishop: if
43   you have a report from a person who has done the
44   investigation and these are the findings of that
45   investigation, you use your prudent judgment as to whether
46   you should consult with other people before you then move
47   on.   So the idea of consulting with people before the

1   bishop moves on is included in the law.
2
3   Q.   So the bishop may consult with his, say, coadjutor
4   bishop or a vicar general or the deans --
5   A.   Yes.
6
7   Q.   -- in relation to those matters. You gave some
8   evidence about paragraph 1 and the use of the word
9   "request" - that I request you to petition the Holy See for
10   a rescript of laicisation. You said that you would have
11   used the word "exhort". Can I be clear to understand that
12   the bishop had no power to request or direct a priest to
13   petition the Holy See for a rescript of laicisation?
14   A.   If I understand by the word "request" I'm asking you
15   to do it, I'm sort of demanding that you do it, that to me
16   is not appropriate. But what is appropriate is for a
17   bishop to exhort a priest that if it's very clear to the
18   bishop, and hopefully to the priest himself, that, really,
19   this is in his own personal best interests and that of the
20   church that he should seek a dispensation, then I would not
21   used the word "request" - I would use "exhort", "encourage"
22   that this is the pathway that you should follow because the
23   circumstances are such that it is no longer appropriate for
24   you to exercise ministry.
25
26   Q.   Are you able to assist us on how long it would take
27   for a priest to voluntarily request a rescript of
28   laicisation?
29
30   MR KELL: I think probably the time should be specified.
31
32   MS GERACE: Q.   At the time, say in 1995?
33   A.   The gathering together the information - the priest
34   goes to the bishop and says, "I'd like to make a petition"
35   and the petitioner, the priest, then has to fulfil -
36   there's a process to follow, so he has to write the whole
37   thing up, et cetera. People - information is to be
38   gathered, seminary records, et cetera. Witnesses have to
39   be interviewed and that depends on the priest's
40   circumstances, et cetera. All that has to be done and
41   that's gathered together not by the bishop himself but he
42   delegates priests to deal with that. The bishop adds his
43   opinion to that and it's sent to Rome. So the time that it
44   takes for the person - the bishop's delegate to get that
45   all together is one thing. When it's sent to Rome, you
46   then wait until they respond. It could be - again, it
47   might depend on the circumstances. I know in cases where a

```
 1    priest has made the petition because he's - one dying of
 2    cancer and wanted to regularise his situation, and that
 3    came back almost overnight.  So there's nothing - you send
 4    it to Rome and you wait until they process it.  Three
 5    months could be maybe four, maybe five.  It just depends.
 6    There's nothing that says you will get an answer back in X
 7    amount of time.
 8
 9    Q.   May I ask you about changes in the church since the
10    issue of sexual abuse by clergy has become even more
11    prominent in the last few years.  May I ask you
12    specifically about the provisions of - and forgive my Latin
13    - the normae de gravioribus delictis - is it the case now
14    that the church has put in place various penal procedures
15    that may be done more expeditiously to dismiss a priest
16    from the priesthood in the case of child sexual abuse?
17    A.   Hopefully, they will be more expeditious, but that's -
18    because they are now sent to Rome, then there's also a
19    queue of these.  So what I think has become very clear in
20    my estimation is that what was perceived by many to be a
21    lack of response or a lack of - lots of sort of proactive
22    work has now been clearly strengthened up by this, so that
23    it's very clear how it's got to happen.  I don't know if it
24    will hasten the time line, if I could put it that way.
25
26    Q.   Was the purpose, and I think it's at article 21,
27    subsection (2) and n1 and n2 of the normae, the process by
28    which you could apply to dispense a priest without the need
29    for a judicial trial?  Was that the purpose?
30    A.   What they have done is made provision for - under the
31    law itself, you can't dismiss a priest without a judicial
32    trial.  There had to be a full process - a judicial process
33    for dismissal.  So they have relaxed that, if you like, and
34    said now we can in fact dismiss people without going
35    through a full judicial process, an ecclesiastical trial.
36    In that sense, they have changed the regulations.
37
38    Q.   Is the effect of that, being at least from 2010, it
39    was a way of seeking an almost involuntary laicisation of a
40    priest in its consequence, even if not by its name?
41    A.   No, it's still a penal process.  It is still something
42    that comes out of a penal process, so it's quite different
43    to the voluntary request.  It still carries with it that
44    penal - even though it's an administrative one, not a
45    judicial one, the character of the action is that of a
46    penal action.
47
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1      Q.   A penal action, as you've said, indicated where those
2      actions are taken, they need to be documented and the
3      decision is documented as well; is that right?
4      A.   Everything is documented.
5
6      Q.   Where are those records kept?  Does the ecclesiastical
7      court have its own records or archives?  Are they
8      published?
9      A.   When the documents talk about keeping the record of a
10     trial in the secret archives of a diocese, because since
11     1952, and then since we haven't had - each diocese in
12     Australia doesn't have its own tribunal.  There is a
13     regional set-up, so the 11 dioceses in New South Wales only
14     have one tribunal called the Regional Tribunal of Sydney,
15     so it's the archives of that where those documents are
16     kept.  Quite clearly, if there was a trial relating to a
17     penal process for a priest, say, of this diocese, then
18     those documents would also be kept here.  I would think
19     that's an appropriate way.  The bishop would have to have
20     records of what happened to the priest anyhow, so they
21     would be kept twice, if you like.
22
23     Q.   You talked about the bishop providing permission for
24     access to the confidential files.  Could that permission be
25     given informally as in the vicar general asking the bishop
26     for access to a file?
27     A.   He would have to explain the reason why.  In my view,
28     the bishop should not just give people access to any sort
29     of confidential information that's in the secret archive
30     simply because someone asks.
31
32     Q.   Might I ask you then to answer the question in these
33     terms.  Where a bishop asks his vicar general to carry on a
34     process with a priest who had been accused of sexually
35     abusing a child, so that the bishop had invited the vicar
36     general to undertake some act in relation to a process
37     against the priest, would that be an appropriate situation
38     where the vicar general could say to the Bishop, "May
39     I look at these files for the purpose of that process?"
40
41     MR GYLES:   I object.  This witness can't give relevant
42     evidence to this question.  You need to consider this
43     question.  My learned friend is trying to get support for
44     the proposition, which has been denied by the vicar general
45     of the time, that he did access the files for that purpose.
46     This is not a matter of canon law.  Obviously, as between
47     vicar general and bishop they can have whatever
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1   arrangements they like, and in my respectful submission
2   this is not an admissible - it's of no probative value to
3   you.
4
5   THE COMMISSIONER: Because it didn't happen, but --
6
7   MR GYLES: In any event, it is not a question of opinion.
8   One can have an opinion about canon law, but that doesn't
9   enable one to give relevant opinion evidence on this
10   particular question as to whether it would be reasonable as
11   between a bishop and a vicar general, if the vicar general
12   said because I've been asked to continue with the
13   laicisation process and access was sought, whether access
14   would be given, but the evidence is that access was not.
15
16   THE COMMISSIONER: It was not given and not sought, but,
17   Ms Gerace, you could have Dr Austin's opinion as to
18   whether --
19
20   MS GERACE: Yes.
21
22   Q.   Could the question be read again. Do you remember the
23   question?
24   A.   Yes. If the bishop asked the vicar general to
25   investigate a matter that had come to his attention, and
26   the bishop was aware that in regard to that particular
27   cleric there was information that had already been in the
28   secret archives, then that information had to be taken into
29   account in the investigation. And that's clearly stated in
30   the 1962 document, that if allegations are made, you go
31   back and see what's already there, which is another reason
32   why these documents are kept perpetually. So I think, in
33   that particular case, if the bishop says to the vicar
34   general, "Please investigate this," and there are - there
35   is information in the archives, then the bishop - that's if
36   it's relevant of course, it may not be relevant to the
37   particular thing - it has to be relevant to the issue
38   that's been brought forward, of course.
39
40   Q.   So is the position such that as at 1993 the canon law
41   required, where information came to the knowledge of the
42   bishop of an allegation of sexual abuse, for a search to be
43   made of the confidential files in order to ascertain
44   whether there was other relevant information to that
45   complaint?
46   A.   No, the law didn't demand that to take place. The law
47   says to the bishop, "You have to investigate it," so it's

1   up to him to know if there's anything that would be of
2   relevance and if there is something there to make a
3   judgment that it is of relevance.
4
5   Q.   So the law required the investigation, and the
6   investigation required a search of the secret files in
7   order to ascertain if there was other information relevant
8   to it?
9   A.   The law doesn't say that explicitly. The law says to
10   the bishop you must investigate, and the canonical
11   tradition is that that is one of the sources you go to as
12   well as finding out from other people about other issues,
13   so it's just one of the issues that would have to be taken
14   into account.
15
16   Q.   In any event, the question I asked earlier, subject to
17   the situation, is the matter of permission being granted to
18   a vicar general or other person for access to the secret
19   files, a matter that, subject to the reason being advanced,
20   can be done informally, so that if the vicar general wishes
21   to access the files and a reason is given to the bishop,
22   canon law does not prescribe any particular process?
23   A.   No, provided the bishop gives permission, that's
24   what's required.
25
26   Q.   If I may be clear on something else. Where a priest's
27   faculties are removed, what is your evidence that the
28   priest may or may not celebrate the eucharist?
29   A.   He may.
30
31   Q.   Does that mean to dispense communion or --
32   A.   Well, if he's celebrating --
33
34   MR KELL: I think the witness said "privately". You might
35   have spoken over it.
36
37   THE WITNESS: Yes, celebrating privately means without a
38   congregation. He may be living with his family or
39   something like that. That's - but it's talking about
40   public celebrations.
41
42   MS GERACE: Q.   He may not publicly celebrate the
43   eucharist but may celebrate it privately; is that right?
44   A.   Because he doesn't need a faculty to celebrate the
45   eucharist and he can only be prohibited from celebrating in
46   accordance with the law and that is a penal restriction on
47   him. So taking the faculties off him is not a penal matter

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 1    at all; it's simply saying that I do not consider you
 2    suitable to exercise the faculties at the moment, but the
 3    right to celebrate the eucharist remains.  But the bishop
 4    would say, "If you're not doing other things publicly, then
 5    you're restricted to celebration of the eucharist within
 6    the family" - "privately" is the word they use.
 7
 8    Q.   You've said in your CV I think that you act as a canon
 9    - an adviser essentially to various bishops, et cetera.
10    A.   Yes.
11
12    Q.   Were canonical advisers available in 1993?
13    A.   Certainly.
14
15    Q.   And in 1995?
16    A.   Certainly.
17
18    Q.   I assumed that was the case, but just to be clear so
19    there was no issue about that.
20    A.   If I could just add that there are some canonists who
21    have appointments within a diocesan structure or something
22    like that who work for the diocese and there's a few of us
23    who don't belong to any diocese or don't work for any -
24    work independently, but there are only a couple.
25
26    Q.   When in paragraph 12 of your report you talked about
27    the canonisation of the civil law, and I know you've been
28    asked some questions so forgive me if it's repetitive, do
29    I understand your evidence to be that the canon law
30    provided for a facility to receive into itself the
31    obligations of the civil law in whatever state or
32    jurisdiction the diocese or priests or other clergy were
33    operating?
34    A.   So if canon law says we use what the civil law says,
35    then if it is New South Wales, it's the New South Wales
36    legislation that applies.  If it's another state or another
37    country, it's what applies there.  So when canon law says
38    specifically in regard to this matter we'll follow the law
39    of the land, that's what it means.
40
41    Q.   Does canon 480 require a vicar general to report to
42    the diocesan bishop matters of more important concern that
43    the vicar general is involved in?  Is that what canon 480
44    requires?
45    A.   Yes, it talks about - because both the vicar general
46    and the vicar, called an episcopal vicar - an episcopal
47    vicar is similar to a vicar general except his jurisdiction
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 1      or powers are restricted to a particular aspect of the
 2      ministry or a particular region, something like that, and
 3      vicars general have been in the law for centuries.
 4      Episcopal vicars only appeared after the Second Vatican
 5      Council in the 1983 code.  So because they exercise the
 6      power of the bishop, then that link back to the bishop is
 7      through reporting, but that's distinct from a situation
 8      where the bishop delegates either a vicar general or
 9      episcopal vicar to do a particular task.  That reporting
10      back comes from that delegation.  This is talking about
11      their general duties that they have by virtue of the law.
12
13      Q.    Does canon law tell us anything about the role of
14      consultors or deans?
15      A.    Yes, it does.
16
17      Q.    Could you identify the relevant articles?
18      A.    College of Consultors begins - there are two
19      structures.  One is called the Council of Priests, and that
20      grew out of the teaching of the Second Vatican Council and
21      the relationship of bishop and priest, et cetera.  The
22      Council of Priests is a body that is either elected by the
23      priest, with some appointees by the bishop, some by reason
24      of office, like, for example, a vicar general by reason of
25      office is a member of the Council of Priests.  That's canon
26      495 through to 501, and canon 502 says from the Council of
27      Priests a College of Consultors of six is appointed.  So
28      they have all got to belong to the Council of Priests and
29      consultors comes out of that and canon 502 talks about the
30      duties that the consultors have in accordance with the law.
31      So there are some references in the canons where it says
32      the bishop needs to get the consent of the consultors to do
33      something, or he must consult with them.
34
35      Q.    That was in canon 502; is that right?
36      A.    That's correct, yes.
37
38      Q.    What are the specific matters that the bishop must
39      consult with the consultors about?
40      A.    Well, one example would be in relationship to the
41      alienation of the goods belonging to the diocese -
42      administration of temporal goods is a area where consultors
43      are involved.  But that doesn't mean they can't be used for
44      other things.  The law is saying there are certain things
45      where consultors are to be used by the bishop in his
46      governance, but that does not mean that he cannot also
47      allocate them a whole lot of other roles as well.
```

1
2   Q.   The bishop may take whatever issues he considers he
3   needs advice upon to his consultors?
4   A.   Certainly.
5
6   MS GERACE: Those are my questions.
7
8   <**EXAMINATION BY MR COHEN**:
9
10   MR COHEN: Q.   One very quick question, if I may,
11   Dr Austin. Is it the case that there's any material
12   difference between a bishop and an archbishop, or is it
13   just a title that relates to somebody who is in charge of a
14   vicar diocese?
15   A.   The word in canon law is the diocesan bishop, which
16   means the bishop of a diocese, but some diocese are
17   archdiocese. So there's no difference, they are both the
18   bishop of a particular church or diocese, but the dioceses
19   of a particular area are gathered together to form what
20   they call a province, and the archdiocese is the main
21   diocese of that province and then you have what they call
22   the suffragan diocese attached to it, so we talk about the
23   ecclesiastical province of Sydney and the archbishop or the
24   archdiocese of Sydney and then associated with that are the
25   other ten dioceses. So in law there's no difference
26   between an archbishop and a bishop. Each of them is a
27   bishop of a diocese with the same powers and same
28   faculties, same authority.
29
30   Q.   Is it simply a question of the size of the area, is
31   that what drives it?
32   A.   To some extent it is, but it is the historical
33   development of creating, say, the archdiocese of Sydney and
34   then eventually cutting dioceses off it. Like Wollongong
35   was cut off from Sydney to form a diocese and when other
36   dioceses were established - so it's an arrangement of
37   gathering together a number of dioceses under one
38   archdiocese.
39
40   Q.   Is there any formal reporting between a bishop and an
41   archbishop?
42   A.   No. The diocesan bishop's higher authority is the
43   Roman pontiff.
44
45   MR KELL: I object. We are now straying into
46   relationships of archdiocese. It's 4.35. I can understand
47   my friend has a canon law expert here and it is a matter of

interest, but I am not sure that it's going to assist you
                and the Commission.

                THE COMMISSIONER: I think you have your answer anyway.

                MR COHEN: I have one more question which I hope won't
                elicit any objections.

                Q.   Where does a cardinal fit into this scheme?
                A.   A cardinal?

                Q.   Yes.

                MR KELL: Again, I make the same point. It may be quicker
                to let the expert answer it quickly.

                THE COMMISSIONER: Just to assuage Mr Cohen's interest.

                MR COHEN: With respect, it's not just interest, there's a
                forensic purpose.

                THE WITNESS: From the very earlier centuries, the Roman
                pontiff used what they called the College of Cardinals, a
                group of advisers. That College of Cardinals has grown to
                what we now know today - there are regulations that are not
                in the code of canon law that regulate the whole question
                of College of Cardinals and the Roman pontiff appoints
                particular bishops or archbishops to be also a cardinal.
                Traditionally, it goes with particular Sees, so
                traditionally the Archbishop of Sydney has also been
                appointed a cardinal, but there was a time when Archbishop
                Knox in Melbourne was also a cardinal. So the bishops who
                are appointed cardinals are appointed by the Roman pontiff
                quite freely and, when they join that College of Cardinals,
                they have a certain role to play which has nothing to do
                with being a bishop of a diocese.

                Q.   Is that College of Cardinals where jurisdiction of the
                church for these matters is derived?
                A.   No.

                Q.   Where is that jurisdiction derived from?
                A.   In regards to all of these, the Roman pontiff is the
                supreme legislator. He makes the laws for the universal
                church, so the code of canon law or the other legislation,
                the ones referred to just in 2001, they came under the
                authority of John Paul II. The diocesan bishop can make

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1   laws for his own diocese, but - and the ecclesiastical
                2   province can also make laws in accordance with the law, the
                3   code. Bishops conferences can also issue decrees that are
                4   the same as laws, but those two, the Bishops Conference and
                5   the province must get the approval of the Apostolic See
                6   before their laws become effective and no legislative power
                7   below can make a law that is contrary to the universal law
                8   of the church, so no bishop can make a law that is contrary
                9   to what's in the code of canon law.
               10
               11   <**EXAMINATION BY MR HARBEN**:
               12
               13   MR HARBEN: Q.   Doctor, on page 10 of your report, you
               14   commence to answer question 3(a), which is a question
               15   directed towards a number of time periods, and in relation
               16   specifically to requirements for a bishop to undertake an
               17   investigation. On page 10 you look at 1956 and you talk
               18   about the investigation as something that could be done by
               19   the bishop personally or by appointment of another priest.
               20   You are nodding. That has to be recorded, doctor. That's
               21   correct, is it?
               22   A.   I'm sorry, I didn't quite understand.
               23
               24   Q.   Did the investigation that you refer to on page 10
               25   include an interview with the priest who is accused or it
               26   is alleged that he has committed an act of sexual abuse -
               27   did that include that as part of the investigation?
               28   A.   No, that didn't, not part of the preliminary
               29   investigation.
               30
               31   Q.   The investigation, did that involve speaking to
               32   witnesses or the like?
               33   A.   Yes.
               34
               35   Q.   Nevertheless, that was the beginning of the process?
               36   A.   Correct.
               37
               38   Q.   Then you set out the process that could be engaged in;
               39   is that right?
               40   A.   That's correct.
               41
               42   Q.   Did the process include, at some stage, an interview
               43   with the priest?
               44   A.   Yes, certainly. Back on page 10, if the preliminary
               45   investigation considers that the probable arguments -
               46   number 4 on page 10, so that if the conclusion of the
               47   preliminary investigation was that we should proceed, then

```
 1        that's when the priest is summoned.
 2
 3        Q.    Cited, formally charged?
 4        A.    Yes.
 5
 6        Q.    You then deal on page 11 with 1976, the period, and at
 7        the bottom of that page you say that the situation in 1976
 8        is the same as is outlined in paragraphs 15 and 16 above.
 9        So it remained the same?
10        A.    That's correct.
11
12        Q.    And for the period 1983 to 1987, in the third
13        paragraph on page 12, you say for that period it was the
14        same as it was in 1962 - the 1962 instruction - so it
15        carried on?
16        A.    That is correct and that is because of the
17        paragraph above that.
18
19        Q.    I understand that is descriptive of it.
20        A.    Yes.
21
22        Q.    The next period is 1993 to 1995.  You simply state
23        it's the same for the period immediately above it, 1983 to
24        1987.  So it carried on from period to period?
25        A.    That's correct.
26
27        Q.    The question then asked you the next time period as
28        being the present time.  Do you see that on page 12?
29        A.    Yes.
30
31        Q.    In the period 1995 to the present time, did it
32        continue for the same as those other periods, or did it
33        change at some stage?
34        A.    It changed in 2001.
35
36        Q.    2001?
37        A.    Yes.  So the present time would begin, if you like -
38        well, 1995, it continued through to 2001.  The significant
39        change came in 2001, 30 April.
40
41        Q.    I think you refer to that at the top of page 13, and
42        you speak of if there is a "semblance of truth" the
43        investigation must be completed and the bishop is to
44        forward the matter on.
45        A.    That's correct.
46
47        Q.    That's something for the bishop to do following that
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 1        investigation?
 2        A.    That is correct.
 3
 4        Q.    You then spoke of the penal process involving the
 5        regional tribunal, or the ecclesiastical tribunal, meaning
 6        the same thing.  Did I understand that --
 7        A.    That's correct.
 8
 9        Q.    Did that process require the presence of the priest,
10        or was it envisaged that it be an ex parte process?
11        A.    No, he would be summoned to appear before the
12        tribunal.
13
14        Q.    He needed to be summonsed, and he needed to appear to
15        engage in the process?
16        A.    The tribunal was obliged by law to summons the person.
17        If he chose not to appear, then that would be his free
18        choice.
19
20        Q.    But I take it that there would be a process that would
21        be engaged in in an attempt to have him comply with the
22        process.
23        A.    Certainly.
24
25        Q.    That may present some practical difficulties, I take
26        it.
27        A.    He would have the right to have an advocate, and so he
28        would have a canonical advocate to assist him.
29
30        Q.    In terms of ensuring that natural justice, such as
31        would be applied, I take it that your expectation would be
32        that the authorities would do everything they could to
33        ensure attendance in the process by the priest?
34        A.    Certainly, and even without such a process canonical
35        advocates have always urged the priest to participate in
36        whatever the process is, so that same would apply to a
37        formal trial.
38
39        <EXAMINATION BY MR SKINNER:
40
41        MR SKINNER:    Q.    Doctor, you've said something in your
42        report about the concept of faculties, firstly, at page 7,
43        note 10.  Is that your terminology?  You've got the numeral
44        10 there and three paragraphs - that section of your report
45        in any event.  If I call it "note 10", will you know what i
46        mean
47        A.    Yes.
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1
2      Q.    You say, "A faculty is an empowerment to act."
3      A.    Yes.
4
5      Q.    The priest is not entitled to these faculties, they
6      are freely granted by the diocesan bishop.  I think you
7      also said in evidence to Mr Kell my learned friend, in the
8      course of examination by him, again the priest does not
9      have the right to faculties, this is within the power and
10     discretion of the bishop totally; is that correct?
11     A.    That's correct.
12
13     Q.    It can be withdrawn at any time; correct?
14     A.    Provided he has a just cause for so doing.
15
16     Q.    Indeed,  I want to take you to page 21 where you say
17     something about that.  You were asked specifically what
18     steps were required under canon law to remove a priest's
19     faculties as at 1993, and your note 40 deals with that.  Do
20     you see that?
21     A.    Yes.
22
23     Q.    In fact, you pick up from note 10, where I just took
24     you to, and you make it plain that the withdrawal of
25     faculties is an administrative act by the bishop subject to
26     the provisions of canon law for executing such acts.  By
27     that you mean administrative acts; correct?
28     A.    As distinct from legislative or judicial.
29
30     Q.    So the canon law that is applicable is applicable to a
31     range of administrative acts of which the withdrawal of
32     faculties is but one.  There is no specific canon law for
33     the withdrawal of faculties; is that what you're saying?
34     A.    That's correct, it's an administrative act, and the
35     norms of law, canon 50, et cetera, deal with all
36     administrative acts.
37
38     Q.    You make it plain then that canon 50 requires a
39     bishop, before issuing a decree to withdraw faculties from
40     a priest, and I will go on, but just for the moment this
41     decree to which you refer, is there any specific form for
42     that requirement under canon law, or does it just need to
43     be in writing and say what it is?
44     A.    The law says the decision must be in writing, but the
45     format of the decree is the practice of the church in doing
46     such documentation.
47
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1    Q.   Any bishop could basically just follow a practice
2    himself, and that would be a decree.  There's no
3    specific --
4    A.   Yes, the law makes it very clear that if a decree is
5    issued, it has to state what are the facts of the case,
6    what is the law that is being applied, and then of course
7    what the decision is, and it must be in writing.
8
9    Q.   Can I take you to a document in volume 3 that you
10   might still have, tab 210.  For the record, it is exhibit
11   50 as well.  Do you see that?  Do you have that, doctor?
12   A.   I do, yes.
13
14   Q.   It's a photocopy and it would appear on its face to be
15   a letter having been written by the then bishop of
16   Maitland-Newcastle diocese, Reverend Leo Clarke, to Father
17   McLinden on 12 February 1993 on the letterhead of the
18   diocese of Maitland.  Do you see that?
19   A.   I do.
20
21   Q.   Despite the note at the bottom which says in
22   handwriting:
23
24        *Letter to have been handed to Denis - but*
25        *not necessary once [administrative] decree*
26        *finalised.*
27
28   I'd ask you to assume that, despite that note, the letter
29   having been signed has been issued in some form or other to
30   Father McAlinden.  Do you see that?
31   A.   Yes.
32
33   Q.   It refers, in the first paragraph, to a telephone call
34   having been made by Bishop Clarke to McAlinden the day
35   before.  Do you see that?
36   A.   I do.
37
38   Q.   Lower down, at about point 5 of the letter, it says:
39
40        *... in the first stage of proceedings*
41        *I issue this administrative decree ...*
42
43   Does that letter stand as an administrative decree?
44   A.   In my view, it would.
45
46   Q.   As a consequence then, that is the decree by which the
47   bishop goes on and says:
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 1
 2              ... I formally withdraw your faculties as a
 3              priest ...
 4
 5       Do you see that?
 6       A.   Yes.
 7
 8       Q.   He says:
 9
10              ... in light of serious allegations ...
11
12       Is that a sufficient expression of the reasons for so
13       withdrawing?  And I take you back to where, on page 21 of
14       your report, you point out that there should be, at least
15       in summary form, the reasons for the decision in note 40?
16       A.   The reference in the letter to the protocol by the
17       Bishops Conference I presume is a reference to the protocol
18       that was established in 1992, and if my memory is correct,
19       that protocol spoke about a priest - the term they used was
20       administratively which is in the code of canon law - a
21       priest standing aside from ministry while the investigation
22       took place.  So if that protocol was being followed that
23       included provision for a priest to be stood aside and that
24       the letter then says that we're acting in accordance with
25       that protocol and allegations have been made and I'm asking
26       you to stand aside, or I'm withdrawing your faculties,
27       I believe that that would comply with the laws in regard to
28       an administrative act.
29
30       Q.   Indeed, the letter also, on its face - I took you to
31       paragraph 1 - would seem to comply with the canonical
32       requirement that there be consultation with the priest
33       insofar as possible.  It's apparent, it would seem, that at
34       least a telephone call was made and is that sufficient
35       consultation under canon law?
36       A.   I think I couldn't really answer that question.
37       I think it depends entirely on the circumstances of a
38       particular case, but if the circumstances were such that
39       objectively that complied with consultation, then the
40       answer would be it is sufficient to comply with canon 50.
41
42       Q.   In effect, this document stands as the withdrawal of
43       faculties of Father McAlinden, and that was done on the
44       basis of the allegations having been made concerning his
45       behaviour.
46       A.   That's correct.
47
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 1      Q.   Can I then take you to a document which is behind
 2      tab 212, just two further along.  You see there that again
 3      there is this document - it's not signed or anything, but
 4      it would appear to have been intended at least to be issued
 5      27 February 1993.  Do you see that?
 6      A.   I do.
 7
 8      Q.   It adds something to the withdrawal of faculties.  It
 9      says not only that:
10
11           ... you may not engage in any public
12           priestly ministry, eg, Mass, Sacraments,
13           Funerals, etc --
14
15      It says --
16
17           nor may you present yourself as a priest or
18           be known as a priest wherever you live.
19
20      Do you see that?
21      A.   I do.
22
23      Q.   I think you said earlier in your evidence to Dr Kell
24      that a withdrawal of faculties in itself means that the
25      recipient of that still can be a priest; correct?
26      A.   He's still a priest, yes.
27
28      Q.   And you went on and said "and can wear priestly garb".
29      This seems to go beyond that and says that you can't
30      present yourself as a priest, even though obviously Father
31      McAlinden remained one, or be known as a priest.  It added
32      a layer of impediment to him that he was not to hold
33      himself out as a priest or not to wear clerical garb, does
34      it not?
35      A.   The bishop is entitled to give certain precepts if the
36      case warrants it.  There is another provision in the code
37      for giving a precept, which is an instruction to do certain
38      things or not do certain things.  I would regard, again
39      only looking at this and not knowing all the circumstances
40      relating to the issue, but if a bishop saw fit, because of
41      what was happening, to say to a priest, "Wherever you go,
42      you do not present yourself as such" would be a precept or
43      a direction to him to behave in that, because of certain
44      circumstances that the priest would be aware of.
45
46      Q.   The bishop certainly has the power to do that?
47      A.   Certainly.
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1
2      Q.    As an administrative act?
3      A.    Yes.
4
5      Q.    And he does not have to go through the higher level of
6      formalities required for laicisation; do you agree with
7      that?
8      A.    Oh, no, this is quite a different thing altogether to
9      that.
10
11     Q.    Indeed the higher requirements for laicisation
12     include an interview of the priest under oath?
13     A.    The laicisation process, yes.
14
15     Q.    And higher standards of documentation of any
16     investigative processes in that regard?
17     A.    Because the process of laicisation is a petition to
18     the Roman pontiff for a favour to be granted that a priest
19     request dispensation, the procedures in place for that -
20     and they have been in place for many, many decades and have
21     been revised - do require a totally different structure to
22     these other matters that are revealed in this.  They are
23     not comparable issues.
24
25     Q.    A moment ago, you were asked some questions by
26     Mr Harben, senior counsel on my left, about page 10 of your
27     report.  On page 10 you commenced to answer question 3(a).
28     The Crown Solicitor's Office asked you to summarise the
29     canonical position as it was from 1956 up to the present
30     time in respect of dealing with allegations of child sexual
31     abuse committed by a priest.  Can I take you to page 10 for
32     the moment?
33     A.    Yes.
34
35     Q.    You then set out the detail.  What Mr Harben took you
36     to is at about point five of that page.  It's a fairly long
37     paragraph there in note 15.  It refers to the bishop having
38     received information about sexual abuse of a minor having
39     to proceed immediately with an investigation, or appointing
40     another priest to do it, interviewing the person making an
41     allegation under oath and so on.  That's a whole extra
42     set-up from the administrative process of withdrawal of
43     faculties, isn't it?
44     A.    Certainly.
45
46     Q.    That sort of level of formality is not required for
47     the withdrawal of faculties; is that correct?
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 1      A.    The formality required for the withdrawal of faculties
 2      is that if the bishop has information, evidence that
 3      warrants his decision to withdraw the faculties, there is a
 4      just cause for so doing.
 5
 6      Q.    That's pretty well at the discretion of the priest as
 7      to whether that threshold is met?
 8      A.    Well, it is a discretion of the bishop to judge
 9      whether the priest --
10
11      Q.    Sorry, the bishop?
12      A.    Yes, certainly.  If the bishop issues a decree,
13      canon 221 says the person always has a right of recourse
14      against the decree.  There is a whole procedure in the code
15      for taking administrative recourse against the decree of a
16      bishop, if one believes he has been unfairly or unjustly
17      treated by the decree.
18
19      Q.    The control then on the issuing of the decree is more
20      in the sense of there being some sort of review process
21      after the issue, the actual issue itself can be done by the
22      bishop pretty well on the bishop's own determination of the
23      necessary basis for that - is that correct?
24      A.    He has to make the judgment and he has to make it on
25      the basis of the facts to him, and it's not to be an
26      arbitrary judgment.
27
28      Q.    Finally can I ask you this question, which arises, you
29      can assume, from other evidence given in these proceedings,
30      although you might think it sounds a little facetious, but
31      it's certainly serious when I ask you this.  Did the
32      Catholic Church in 1993-1995 in fact have any concept of a
33      safe house being provided for priests, a place of some
34      confinement of them in some safe manner?
35      A.    It's my understanding that when it became very clear
36      that issues of particularly paedophilia were involved,
37      there was an effort to not only proceed down the line of
38      punishment but also, in keeping with the code of canon law,
39      proceed down the pathway of rehabilitation or at least
40      assistance to deal with the matter.  Whether that ended up
41      with a person leaving the ministry was another question.
42      It was what can they do for the person who is in this
43      situation.
44
45           I've never heard of a safe house being used in
46      Australia, that's only my limited knowledge, but certainly
47      there were steps made - when it became clear that the
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 1    priest was in fact offending in this way - to help the
 2    person.
 3
 4    Q.   But there was no concept formally of a safe house
 5    within the church at the time?
 6    A.   Well, there were certainly groups set up to assist
 7    priests with these issues.  Around the world various groups
 8    provided them, but I must say I've never heard the word
 9    used here in terms of "safe house".
10
11    Q.   And it has not canonical law characteristic to it?
12    A.   Certainly not.
13
14    MR SKINNER:   Thank you.   Those are my questions.
15
16    <EXAMINATION BY MR GYLES:
17
18    MR GYLES:   Q.   Very briefly, Dr Austin, you were asked
19    some questions by Ms Gerace, who is sitting at the front,
20    concerning access that the vicar general may have to the
21    bishop's files.  You gave, in effect, an example of where
22    that might be necessary.  As I understood your evidence -
23    correct me if I'm wrong - it was that where the bishop had
24    asked the vicar general to conduct an investigation into an
25    allegation, in order to conduct that investigation, the
26    vicar general would need to have access to the bishop's
27    files to see if there was any relevant information in order
28    for that investigation to be conducted properly - that was
29    the example you gave; did I --
30    A.   The bishop should know if there is something in the
31    archives.  Therefore, if he judges there is something
32    relevant, then he gives permission.
33
34    Q.   All I am really seeking confirmation of is the
35    assumption you were making or the example you gave, the
36    premise of it was that the bishop asked the vicar general
37    to conduct an investigation for him - that's correct, isn't
38    it?
39    A.   Yes, the bishop would delegate the vicar general to
40    carry out an investigation and, if necessary, have access
41    to the archives if the bishop knew that there was
42    information there that should be part of the investigation.
43
44    Q.   I understand, thank you.  You were asked some
45    questions at a general level about the vicar general having
46    the powers of the bishop --
47    A.   Yes.
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1
2      Q.   -- except where certain powers were reserved to the
3      bishop for himself; do you recall that evidence you gave?
4      A.   Yes.
5
6      Q.   So moving to the specific rather than the general, if
7      one were seeking to ascertain the powers of a particular
8      vicar general at a particular time, one would need to know
9      whether the bishop himself had reserved powers to himself,
10     wouldn't one?
11     A.   The law reserves some powers to the bishop, so --
12
13     Q.   But as between --
14     A.   But if there were any other reservations where the
15     Bishop required the vicar general to get a special mandate
16     from him to do it, that would have to be in writing when
17     the bishop appoints the vicar general.
18
19     Q.   But that was a matter for the bishop as to the powers
20     he wanted to reserve in a particular situation?
21     A.   Oh, yes, it is up to his decision, but he has to put
22     it in writing.
23
24     Q.   In those circumstances, there may be powers that would
25     only be able to be exercised by a vicar general under that
26     arrangement when the bishop was away from the diocese
27     depending on whatever particular arrangement was made;
28     correct?
29     A.   If the bishop is going to be absent from the diocese
30     for a period of time, then the expectation of the law is
31     that he would make provision for the governance of the
32     diocese in his absence.  That would include delegating the
33     vicar general to do things that are reserved for him if
34     they are delegable.
35
36     Q.   In your report you address the letter of 19 October
37     1995, which is exhibit 67.  It's accurate to say, isn't it,
38     when looking at paragraph 43 of your report, that you read
39     the letter as providing two alternatives to McAlinden:
40     number one, that he is requested to petition the Holy See
41     for a rescript of laicisation; do you see that?
42     A.   Yes.
43
44     Q.   As an alternative we see a canon 1044 process being
45     mooted?
46     A.   Yes, but --
47
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1    Q.   As far as the canon 1044 process was concerned, that
2    is a process by which, if taken to its fruition, he would
3    be prohibited from exercising priestly ministry by reason
4    of a psychological infirmity; is that the way I read your
5    report?
6    A.   Yes, can I just say that --
7
8    Q.   It's not necessary for me to go further.  You have
9    answered my question.  So I might move to the next one?
10   A.   But with respect, I didn't see two alternatives.  They
11   are two quite different things.  The second one --
12
13   Q.   Dr Austin, my question was --
14
15   MR KELL:   I think the witness should be allowed to
16   complete his answer.  I think he was trying to explain his
17   answer.
18
19   THE WITNESS:   Canon 1044 arises where a bishop comes to a
20   point where a priest has some form of illness that means he
21   should not be exercising the ministry.  It's not a penal
22   matter.  It is a matter of illness that has to be dealt
23   with.  Canon 1044 is very clear that if a priest has some
24   form of insanity or some other form of psychological
25   infirmity that prohibits him, then he should not be allowed
26   to do exercise ministry until such time as the bishop has
27   reviewed it, got further advice and says that it's okay to
28   go back.  That is one issue.
29
30       Quite separate from that is the question of whether or
31   not this particular priest should in fact seek a
32   dispensation because really he is no longer suitable for
33   any form of ministry, forever in the future.  I did not see
34   them as two alternatives to solving the problem, with
35   respect.
36
37   Q.   But what the letter is telling the priest, McAlinden,
38   is that the bishop has begun the 1044 process?
39   A.   That's correct.
40
41   Q.   That is one thing that is happening, but he is asked
42   whether - or there is a request made that he petition the
43   Holy See for laicisation?
44   A.   That is also correct.
45
46   Q.   You have some disquiet about the use of the word
47   "request" in number 1.  That's your position, isn't it?
```

1   A.   That is correct.
2
3   Q.   Can I suggest to you that is a very cautious or
4   conservative way in which to read that sentence and really
5   what was being asked in substance was whether the recipient
6   of the letter, McAlinden, was willing to do that. In other
7   words, if the answer to that was yes, then that was
8   something that he was willingly prepared to do and it
9   doesn't involve any element of force to do it, simply by
10   answering that question, "Yes, I will do that."
11   A.   I didn't regard it as a cautious response.
12   I regarded it as a fact that if it was supposed to be free,
13   the priest in question could have gone to seek the advice
14   of a canon lawyer to present his petition. That canon
15   lawyer could easily have said, "Are you doing this freely -
16   yes or no?" "No, the bishop wants me to do it. I don't
17   want to do it", and he would not send it.
18
19   Q.   Then he would have said "No." You read this as being
20   a "demand" that he do it? That was the word you used. You
21   said your preference would have been if he had used the
22   words "I exhort you to do it."   Whether that is an
23   opinion --
24   A.   With respect, I see them as quite different. I admit
25   I interpreted "request" as a demand. That's my
26   interpretation of it. I read what I read. If you see it
27   differently, I accept that.
28
29   Q.   I suggest to you that the purpose of number 1 was to
30   see whether the priest was willing to petition the Holy See
31   for a rescript of laicisation. Upon reading this letter
32   and in answering that question, it was open to him to
33   either say, "Yes, I am prepared to do that", or, "No, I'm
34   not."   If he had said, "Yes, I am prepared to do it",
35   there is no element of coercion or demand in the wording
36   used in this letter?
37   A.   I respect your interpretation. I simply don't agree
38   with it.
39
40   MR GYLES: Thank you. I have no further questions.
41
42   MS GERACE: Commissioner, I'm sorry, and I'm sure Mr Gyles
43   has an objection to this, but can I to shortcut the
44   application and the objection, but could I clarify a matter
45   with Dr Austin, with your indulgence.
46
47

<EXAMINATION BY MS GERACE:
2

3   MS GERACE: Q.   In terms of a vicar general asking for
4   access to the confidential files, is your evidence that
5   good reason must be shown to have access to the
6   confidential files?
7   A.   Yes.

8

9   Q.   And that good reason is not restricted merely to a
10   situation where the vicar general has been asked to
11   investigate allegations of sexual abuse?
12   A.   Not at all.

13

14   Q.   In your opinion, if this is a matter you can give an
15   opinion on, would a good reason be where a bishop has
16   delegated or asked the vicar general to continue a
17   canonical process against a priest?

18

19   MR GYLES: I object.   There are a whole lot of facts in
20   that question for that answer to have any meaning and have
21   any value to you, Commissioner.   One needs to know what the
22   status of the process was.   One thing we know for sure is
23   he didn't need to do it, because the process was underway
24   and we have seen the letters that were written which didn't
25   require the underlying information.

26

27   I apprehend what my learned friend is trying to do is
28   establish that those responsible for continuing the process
29   knew about the information.   That is a matter for you,
30   Commissioner.   My learned friend has tried this twice and
31   she not be able to do it, in my respectful submission.

32

33   THE COMMISSIONER: Thank you, Mr Gyles.   What do you say,
34   Mr Kell?

35

36   MR KELL: In the interests of the time, if it can perhaps
37   be done quickly in a single question and Dr Austin can give
38   his answer.   Necessarily, it is at a level of some
39   hypothetical basis because Dr Austin is not enmeshed in the
40   facts, so it is a matter of weight that can be given to a
41   particular answer.

42

43   MR GYLES: I maintain my objection despite the time.   It
44   is a question of his expertise to give this answer and
45   whether it's of any value to you Commissioner.   This is a
46   question you will need to deal with.   I don't want a
47   situation in submissions where there is a reference given

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1    to an opinion of a canon lawyer on this topic to a question
2    which is essentially meaningless unless one drills down
3    into a whole lot of specifics.
4
5    MS GERACE:   Maybe it can be dealt with this way rather
6    than on specifics.  Commissioner, on the objection, the
7    point is this: a number of people have given answers about
8    not having access.  The point is merely to indicate that
9    obtaining access to do various things was a simple task.
10   All that was required was good reason to be given to the
11   bishop and access would be given.
12
13        I understood from my questions and the questions that
14   followed by Mr Gyles that he sought to limit that or to
15   somehow qualify an answer that had been given from the
16   expert.  All I am doing is exploring with the expert what
17   the evidence was, and I think I have already been given the
18   answer in a sense.
19
20   THE COMMISSIONER:   Yes, I think so too.  The practical
21   difficulty at the time is possibly related to Bishop
22   Clarke's reluctance to divulge things to various people.
23
24   MS GERACE:   That would be obviously a decision that you
25   will need to take about whether you accept the explanations
26   given to you by the various witnesses about what Bishop
27   Clarke's position was in respect of those, and I was not
28   intending to ask - in any event, I think the answer is not
29   so limited.  Dr Austin has indicated that all that needed
30   to be given was good reason and it was not limited to an
31   extent.
32
33   THE COMMISSIONER:   Yes, that's the theoretical provision.
34
35   MR GYLES:   And I didn't object to that question.  It was
36   the next question.
37
38   MS GERACE:   May I raise one matter in terms of a document
39   and it might be a matter that is more appropriately dealt
40   with elsewhere.  I will talk to Dr Kell for a moment.
41
42   Q.   You were asked questions about putting reasons in a
43   decree.  Needless to say, the reasons that are stated must
44   accurately reflect the allegations that have been made or
45   the reasons for which a decree has been given?
46   A.   Yes, a decree is supposed to have the reasons for
47   which it has been given.
```

1
2   Q.   And they must accurately reflect the nature of the
3   allegations or the fact --
4
5   MR SKINNER: I object. The actual question which I asked
6   and to which Dr Austin agreed was picked out of his report,
7   where he says "must express at least in summary form."
8   That was the precise wording. That is his evidence in his
9   sworn statement. In my submission the question misstates
10   the evidence.
11
12   MS GERACE: "In summary form" it doesn't mean --
13
14   THE COMMISSIONER: That says nothing about accuracy.
15
16   MS GERACE: It doesn't say anything about accuracy. For
17   instance, if the witness could have a look at tab 212 which
18   is a document that was shown to --
19
20   MR SKINNER: I object to this, Commissioner. Ms Gerace is
21   seeking to re-examine on my examination, with respect. Her
22   standing to do so is problematical at the very least with
23   instructions from those who instruct her. I object. It's
24   not within her brief, in my submission, and it ought not
25   continue.
26
27   MR GYLES: Commissioner, I support the objection. It is
28   important to recognise that Dr Austin is an expert on canon
29   law. That is what he is here to tell us about. He was not
30   a bishop and he was not a vicar general. He is not drawing
31   upon some sort of expertise in dealings between
32   vicars general, bishops, and how things might be --
33
34   THE COMMISSIONER: Who may not be canon lawyers
35   themselves.
36
37   MR GYLES: Exactly. The question has been asked, "Under
38   canon law, what are the requirements of a decree?" He has
39   given a report about that and I don't think his expertise
40   to do that has been challenged. The question is: is it
41   necessary under some specific canon law as to degrees of
42   accuracy in this and he says that it isn't. He has been
43   asked a specific question and said "No." He has agreed
44   with Mr Skinner it can be done. There is no formality to
45   the particular form, but it is something that is done in a
46   particular way under canon law.
47

```
1    THE COMMISSIONER:   Ms Gerace, I think that is as far as we
2    can take it.
3
4    MS GERACE:   These proceedings were taken as a direct
5    result of one of my clients in particular coming forward.
6    They touch very directly upon the complaints made by one of
7    my clients to the church in response to which this
8    procedure was undertaken.  There was no objection, as
9    I understand it, from the diocese when the questions were
10   put by Mr Skinner to this witness about the nature of the
11   reasons given in an earlier document, about whether that
12   complied with the requirements of canon law.
13
14       There is in the document at tab 212 a reason given,
15   "In the light of your health, I am confirming your
16   retirement from priestly ministry."  If that does not
17   assist you, Commissioner, I am happy not to ask it.  My
18   submission would be that the obligation to require a
19   summary of reasons requires that those reasons in fact be
20   true and that there be an accurate summary of the
21   allegations rather than some other description of what is
22   occurring.  If that is not a matter that the Commission
23   would be assisted upon by my asking Dr Austin while he is
24   here, then there is no reason to ask it.
25
26   THE COMMISSIONER:   It is an interesting question,
27   Ms Gerace, because when you recall the evidence that we
28   have that Denis McAlinden was sent to Dr Derek Johns for
29   some kind of treatment or something, it may be that the
30   bishop was labouring under the misapprehension that it was
31   a health matter if he was offending in this way.  It is
32   very difficult because we don't know what he thought.  He
33   obviously thought - well, someone thought that McAlinden
34   would be helped by going to the psychiatrist.  Is that a
35   matter of health?  Is it a euphemism or a coyness?
36
37       In any event, Dr Austin, what do you think about this
38   letter to McAlinden referring to his health when really the
39   situation was that he was a paedophile?
40
41   MR KELL:   Sorry, Commissioner.
42
43   THE COMMISSIONER:   Yes, Mr Kell.  Do you object to my
44   question?
45
46   MR KELL:   Perhaps I have risen too early.  I was
47   wondering, in addition perhaps, whether the witness could
```

be asked as a general proposition whether canon law
requires that the summary that has been referred to be an
accurate summary. Just on that discrete point, it may be
of assistance whether canon law says anything on that.

THE COMMISSIONER: Ms Gerace's question.

MR KELL: But not taken to the particular letter, just as
a matter under canon law.

THE COMMISSIONER: Would you answer Mr Kell's question?

THE WITNESS: When the law talks about a decree expressing
"at least in summary form" the reasons for the decision,
the law understands that there may be page after page of
reasons, if you like. In the decree you have to put down
what I would call the essential reasons, the primary
reasons, the fundamental reasons for the decree being
issued. Quite clearly, the law presumes that those reasons
are true, they're accurate, they accord with the facts on
which the decree is based.

THE COMMISSIONER: Anything else, Mr Kell?

MR KELL: Just one matter quickly, Commissioner.

<EXAMINATION BY MR KELL:

MR KELL: Q. You were asked some questions about penal
process as an alternative to canon 1044 and whether there
were situations where there may be difficulty in engaging
the person in the process in terms of an ecclesiastical
tribunal. Is it the case, with that alternative, that
steps would be taken to try to engage the priest with the
process?
A.   My view would be that a bishop would do everything in
his power to engage him in the process for the good of the
church.

Q.   Is it the position ultimately that an ecclesiastical
tribunal can proceed in an ex parte fashion in a penal
process?
A.   If everything according to the law has been done to
summons, et cetera, the judges can declare the person
absent from the trial.

Q.   And continue the --

```
 1    A.    And continue the trial, yes.
 2
 3    Q.    To obtain the decree?
 4    A.    Well, the judgment would then come.  The judgment is
 5    either that the crime has been proven and the penalty is
 6    dismissal, or whatever the penalty is, but they do have to
 7    proceed to a definitive judgment.
 8
 9    Q.    Which could result in the dismissal of the person
10    from --
11    A.    It could be including the dismissal, yes
12
13    MR KELL:   Commissioner, I think that concludes the public
14    evidence of Dr Austin.  Perhaps he could be excused.
15
16    THE COMMISSIONER:   Thank you very much for your evidence,
17    Dr Austin.  You are excused from the public hearing
18
19    <THE WITNESS WITHDREW
20
21    MR KELL:   Could I indicate that there has been a request
22    from the media for certain exhibits, namely, 206, 207, 208,
23    209, 2210, 211.  Could parties let those assisting know by,
24    say, 5.25pm whether there is any objection to releasing
25    those.
26
27         In terms of the proceedings tomorrow morning,
28    Commissioner, it is anticipated that there will be evidence
29    first from Mr Robbs, a former police officer, then Maureen
30    O'Hearn and Bishop Bill Wright.
31
32    THE COMMISSIONER:   Before I rise, Mr Kell, there is one
33    matter I intended to clarify at the conclusion of the
34    evidence of Father William Burston.
35
36         In the context of my remarks regarding the treatment
37    of Father Burston outside this courtroom before he gave his
38    evidence and upon the various days, I made some comments
39    that may have been perceived by some as indicating that
40    I accorded him some particular status on account of his
41    being a priest.  That was neither my intention nor my view,
42    and my comments were intended only to emphasise my strongly
43    held, and I hope well-known, position that every witness
44    who gives evidence or assistance to this inquiry is
45    entitled to the utmost courtesy and respect.  I wished to
46    place those remarks on the record.  Thank you, Mr Kell.
47
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1   I will adjourn the public hearings until 10 o'clock in
2   the morning.
3
4   MR KELL: Yes, thank you, Commissioner.
5
6   **AT 5.25PM THE COMMISSION WAS ADJOURNED TO**
7   **THURSDAY, 1 AUGUST 2013 AT 10.00AM**
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