

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 Thursday, 11 July 2013 at 9.30am
(Day 8)

Before Commissioner: Ms Margaret Cunneen SC

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

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

1 MS LONERGAN: Commissioner, before we continue with the
2 evidence of Bishop Malone, it has been drawn to my
3 attention by Mr Harben of senior counsel that there has
4 been inaccurate reporting by a particular news outlet on
5 television last night and I agree with Mr Harben that the
6 reporting does not accurately reflect the transcript.

7
8 What was reported was that, in relation to the
9 briefcase that was known to have belonged to Bishop Clarke,
10 that briefcase contained what later emerged as documents
11 containing what later emerged as abuse allegations against
12 paedophile priest Denis McAlinden.

13
14 Mr Harben and his junior have very helpfully flagged
15 in the transcript the parts where evidence was given
16 regarding that particular briefcase and there's no doubt
17 that that reporting is inaccurate. The references relevant
18 to the briefcase appear at page 788, line 29 to the end of
19 the page, and over to page 789 --

20
21 THE COMMISSIONER: Without reading it, Ms Lonergan, as
22 I understood Bishop Malone's evidence, there was nothing
23 about McAlinden in that briefcase and nothing about
24 paedophilia or sexual abuse at all.

25
26 MS LONERGAN: I don't know if it went that far.

27
28 THE COMMISSIONER: But certainly nothing about McAlinden.

29
30 MS LONERGAN: Certainly nothing connecting paedophilia
31 allegations about McAlinden in that briefcase,
32 Commissioner.

33
34 In my respectful submission, it would be appropriate
35 for some admonition to be put on the record in relation to
36 accurate reporting, Commissioner.

37
38 THE COMMISSIONER: Yes. May I address my comments to
39 those who care to report proceedings. We are anxious to
40 let the public know all that we can of what is going on in
41 this inquiry, but it is very important, in order to protect
42 every one's reputation where it requires protection, that
43 the reporting be completely accurate. The transcripts of
44 proceedings are available on the website very, very quickly
45 after we conclude, so that it really is important that
46 these things be checked.

1 Mr Crebbin is available for consultation, if there is
2 any doubt by any journalist as to what the evidence has
3 been, and his assistance, I'm sure, is always forthcoming.
4 I would exhort everyone who is reporting these proceedings
5 to be very, very careful to be accurate about what has been
6 said in this inquiry, and it would be appropriate, if
7 I could request it, that that matter be corrected in the
8 appropriate way by the reporter who made that false report.

9
10 Does that cover it, Ms Lonergan?

11
12 MS LONERGAN: Yes, Commissioner.

13
14 THE COMMISSIONER: Mr Harben?

15
16 MR HARBEN: Yes, thank you, Commissioner.

17
18 MS LONERGAN: Commissioner, I recall Bishop Malone.

19
20 THE COMMISSIONER: Good morning, Bishop Malone, and
21 I apologise that your words were falsely reported.

22
23 THE WITNESS: I've got used to it over the years.

24
25 <MICHAEL JOHN MALONE, sworn: [9.44am]

26
27 MR HARBEN: Commissioner, I assume we don't have to
28 revisit section 23 each day.

29
30 THE COMMISSIONER: No. That is noted, thank you,
31 Mr Harben.

32
33 MR HARBEN: Thank you Commissioner.

34
35 <EXAMINATION BY MS LONERGAN:

36
37 MS LONERGAN: Q. Bishop, yesterday I was asking you some
38 questions about your knowledge of previous reports or
39 allegations about Denis McAlinden having sexually abused
40 children. By "previous", I mean previous to those that you
41 were dealing with in your letter that you sent to McAlinden
42 on 2 November 1995?

43 A. Yes.

44
45 Q. As I understand your evidence, the position was you
46 knew about those two complainants, [AK] and [AL], but no
47 others at that time?

1 A. That's very correct, yes.
2
3 Q. You also gave some evidence yesterday regarding a
4 letter you sent in Bishop Clarke's absence in June 1995 to
5 the Apostolic Pro Nuncio in Canberra?
6 A. Yes.
7
8 Q. Reverend Brambilla?
9 A. Yes.
10
11 Q. You gave evidence to the effect that your letter was
12 part of a series of correspondence with that particular Pro
13 Nuncio?
14 A. I don't know that it was a series. I only wrote the
15 one letter, I think, to him
16
17 Q. What I want to suggest to you - I think the best way
18 to go about it is if you wouldn't mind turning up tab 251
19 and we'll just have a look at that letter that you sent on
20 20 June 1995 to the Apostolic Nuncio?
21 A. Which is volume?
22
23 Q. I'm terribly sorry, volume 3?
24 A. Thank you. Tab 251, did you say?
25
26 Q. That's right.
27 A. Yes, got it.
28
29 Q. You mention in your letter that you received the
30 enclosed communication from the San Pablo diocese in the
31 Philippines. Are you able to assist now with what that
32 communication was that you enclosed with your letter?
33 A. Look, honestly, I don't remember the contents of that.
34
35 Q. Can I suggest - and I'll have you look at it to ensure
36 that you get appropriate assistance for your answer -
37 behind tab 249 is a letter from the diocese of San Pablo in
38 the Philippines directed to Monsignor Clarke. Do you see
39 that?
40 A. I see, yes.
41
42 Q. It appears to have been --
43 A. Sorry, 249, was it?
44
45 Q. 249.
46 A. Thank you. Thank you, yes.
47

1 Q. It appears to have been dated 8 June 1995?
2 A. Yes.
3
4 Q. I'll give you a moment to read it.
5 A. Yes, I've just had a quick read.
6
7 Q. Do you see it sets out what action the Bishop of
8 San Pablo in the Philippines had noted was going to be
9 taken in relation to Denis McAlinden?
10 A. Yes.
11
12 Q. And it refers to having told McAlinden that a letter
13 had come from Bishop Clarke regarding him, being McAlinden?
14 A. Yes.
15
16 Q. It was hoped by the author of this letter, the Bishop
17 of San Pablo, that "you" - that is Bishop Clarke - "would
18 be able to convince him to go to Ireland"; do you see?
19 A. I can see that, yes.
20
21 Q. The letter also refers to a letter of Bishop Clarke's
22 dated 10 May 1995, doesn't it, in the first paragraph?
23 A. It does, yes.
24
25 Q. I suggest to you that it is this letter from the
26 Philippines that you enclosed and sent to Archbishop
27 Brambilla, the Apostolic Pro Nuncio, to let him know that
28 that response received from the Philippines was not going
29 to be adequate for the purposes of the ladies who had
30 complained about McAlinden?
31 A. It could well have been, I'd say.
32
33 Q. Could well have been?
34 A. Yes.
35
36 Q. In enclosing that response with your letter to the
37 Apostolic Pro Nuncio, you were attempting, weren't you, to
38 properly inform that gentleman of the problems that you
39 were having with McAlinden?
40 A. Yes, that plus to call on his good graces to have
41 McAlinden removed from the Philippines, yes.
42
43 Q. You needed his assistance?
44 A. I felt that he would have more weight than I would,
45 yes.
46
47 Q. You considered it important that you fully informed

1 him of the available information so that he could act in a
2 responsible and decisive way to the extent he was able?
3 A. Yes. My letter is not exactly full, but I think it
4 states generally the issues.
5
6 Q. What I want to suggest to you is for you to be on top
7 of the issues that were being addressed in the letter from
8 the diocese of San Pablo which you've enclosed with your
9 letter to the Apostolic Pro Nuncio, you must have looked at
10 Bishop Clarke's letter of 10 May; would you agree with me?
11 A. Is that here, because I'd need --
12
13 Q. I'm just asking you as a proposition?
14 A. I don't know. I'd have to familiarise myself.
15
16 Q. You don't know, but you are dealing with a letter that
17 replies to Bishop Clarke's letter of 10 May; do you see
18 that?
19 A. Correct, yes.
20
21 Q. It would have been important, would it not, to have
22 looked at the letter of 10 May so you knew what it was that
23 a bishop of the Philippines, the Bishop of San Pablo in the
24 Philippines, was talking about?
25 A. I may possibly have well - have well seen it, yes, but
26 I can't remember.
27
28 Q. What I'm asking you is a slightly different question.
29 I appreciate you're conceding it is a possibility that you
30 may have looked at the letter of 10 May. What I'm
31 suggesting to you is to responsibly correspond with the
32 bishop in San Pablo, in the Philippines, you would have
33 needed to have looked at the letter of 10 May of
34 Bishop Clarke so you knew what he was talking about?
35 A. That would make sense, yes.
36
37 Q. It would make sense.
38 A. Yes.
39
40 Q. And you would be acting responsibly and carefully in
41 relation to this difficult matter, would you not?
42 A. I would.
43
44 Q. That would include looking at the correspondence that
45 led to the position you found yourself in needing to ask
46 for intercession by the Apostolic Pro Nuncio?
47 A. Quite possibly so.

1
2 Q. You are only saying "quite possibly so"?
3 A. I can't remember having seen the 10 May letter.
4
5 Q. I'm not asking you that question.
6 A. But it stands to reason that I would have, yes.
7
8 Q. Have a look at the letter of 10 May 1995 which appears
9 behind tab 243.
10 A. Right.
11
12 MS LONERGAN: That's also exhibit 65, for those at the Bar
13 table.
14
15 Q. Have you read that to yourself?
16 A. Sorry, did you have a question there?
17
18 Q. I said you, "Have read that to yourself", the letter?
19 A. I have now, yes. This is just a message.
20
21 Q. No, no, behind tab 243?
22 A. Sorry, 243.
23
24 Q. I'm sorry, Bishop Malone. I've given you the wrong
25 number. It is a letter dated 10 May 1995.
26 A. I have it now, yes, thank you.
27
28 Q. Would you mind reading that to yourself.
29 A. Yes, I've read that.
30
31 Q. As I understood your evidence yesterday, it was to the
32 effect that the ladies [AK] and [AL] had come forward in
33 1995 to make formal statements regarding allegations of
34 sexual abuse by McAlinden. That's the position, isn't it?
35 A. I understand that they gave evidence about that matter
36 in 1995.
37
38 Q. All right. Yes.
39 A. It would seem from this that they came forward in some
40 other capacity prior to that.
41
42 Q. You don't know that, do you?
43 A. I don't know that, no.
44
45 Q. What you're referring to is the part of the letter
46 that says:
47

1 *In 1994 serious allegations were made*
2 *against Father Denis.*

3
4 A. Yes.

5
6 Q. You have no way of knowing, do you, whether these
7 ladies, [AK] and [AL], who you knew about in 1995, are the
8 people being referred to in 1994, do you?

9
10 MR HARBEN: I object to that. He has no way of knowing.
11 That asks the question as of now and it ignores the concept
12 of, firstly, what it was he may have been told then --

13
14 MS LONERGAN: I understand my learned friend.

15
16 MR HARBEN: -- and whether there's any document that may
17 have been available to my learned friend that may have been
18 used at the time.

19
20 MS LONERGAN: I will withdraw the question. I'll go about
21 it another way.

22
23 Q. Your evidence yesterday was to the effect that, in
24 1995, the only people who had complained about sexual abuse
25 on the part of Denis McAlinden were [AK] and [AL], at the
26 time you wrote your letter in November 1995?

27 A. That's all I knew, yes.

28
29 Q. You also gave evidence to the effect that
30 Bishop Clarke did not identify to you that there had been
31 any other victims of Denis McAlinden prior to him leaving
32 the diocese in November 1995 - "him" being Bishop Clarke?

33 A. That is my memory, yes.

34
35 Q. What I want to suggest to you is this letter dated
36 10 May 1995, if you read it, does not identify who was
37 involved in the 1994 serious allegations that were made?

38 A. No, it doesn't.

39
40 Q. And if you read this letter at the time you sent your
41 June 1995 letter to the Apostolic Nuncio, you would not
42 have known, would you - and it is a question, you can
43 accept it or reject it - who had made the allegations in
44 1994?

45 A. I presume that I was acting under the presumption that
46 it was [AK] and [AL] --

47

1 Q. Why would you --
2 A. -- perhaps making an earlier report to somebody.
3
4 Q. Why would you assume that?
5 A. Well, I understand that [AK] and [AL] came forward to
6 make a formal statement to a member of the diocese.
7
8 Q. Yes?
9 A. But whether there had been informal contact prior to
10 that, I was unaware and I was perhaps presuming that that
11 was the case in 1994.
12
13 Q. Are you saying that you had a basis for belief that
14 [AK] and [AL] had come forward and complained or made
15 allegations about Denis McAlinden prior to the formal
16 complaint being taken in October 1994?
17 A. I'm presuming that, yes.
18
19 Q. You're presuming, but nobody told you that?
20 A. I can't recollect that I was told that, no.
21
22 Q. The mention in this letter of "1994 serious
23 allegations" may well have been about different people?
24 A. It may have been, yes.
25
26 Q. Did you find out anything about what the "1994 serious
27 allegations" were by discussing the matter with Bishop
28 Clarke?
29 A. No, I was only acting under the presumption that it
30 was [AK] and [AL] making an earlier contact.
31
32 Q. Did you look for some sort of documentation or
33 information regarding the serious allegations, as referred
34 to in this letter, that came from [AK] or [AL] or anybody
35 else for that matter?
36 A. No, I didn't look for any corroborating evidence at
37 all.
38
39 Q. Do you see also in this letter is the statement by
40 Bishop Clarke that:
41
42 *In being confronted by these accusations by*
43 *a priest deputed by the Australian*
44 *Episcopal Conference, Father Denis admitted*
45 *to the accusations.*
46
47 Do you see that?

1 A. Yes, I can see that, yes.
2
3 Q. If you read this letter, in or about June 1995 when
4 you were forwarding your correspondence to the Bishop of
5 San Pablo, wouldn't you have considered that if
6 Father Denis had already admitted to the accusations that's
7 something that should be included in your correspondence?
8 A. I didn't really think that it would need to be
9 included. It was purely correspondence between myself and
10 the bishop in the Philippines, or sorry, and the Nuncio,
11 and all I wanted him to do was to move to have McAlinden
12 removed from the Philippines.
13
14 Q. Wouldn't it have helped immensely if you put in the
15 letter - if you knew this, of course - to the Apostolic Pro
16 Nuncio, "and look, he has already admitted to serious
17 allegations when confronted by accusations" --
18 A. Yes.
19
20 Q. -- "to a priest deputed by the Australian Episcopal
21 Conference?
22 A. Yes.
23
24 Q. That would have added huge weight to your request,
25 would it not?
26 A. Yes, it would have, yes, I suppose.
27
28 Q. But you didn't put it in there because you didn't
29 know, or why wasn't it in there?
30 A. I don't know what I did or didn't put into my letter
31 back in 1995, but I thought that what I wrote was
32 sufficient for the Nuncio to do his work.
33
34 Q. Would you agree with me that if you, in fact, knew
35 that it had been reported by Bishop Clarke that McAlinden
36 had admitted to serious allegations --
37 A. Yes.
38
39 Q. -- being made, that it would be a relevant matter to
40 include in the letter to the Apostolic Pro Nuncio?
41 A. It may well have been.
42
43 Q. Well, it would have been, wouldn't it?
44 A. Well, I suppose it would have been, yes; but, as
45 I say, my purpose in writing to the Nuncio was to get him
46 to have McAlinden removed from the Philippines and that
47 purpose was achieved with or without this.

1
2 Q. At the time you wrote the letter you didn't know if
3 that purpose was going to be achieved, did you?
4 A. No, I didn't, no.
5
6 Q. So wouldn't it have been helpful to put that extra
7 information in, if you knew it?
8 A. I suppose so, yes.
9
10 Q. More than you suppose so; you know it would have
11 helped?
12 A. Of course, yes.
13
14 Q. Your answer is "Of course, yes"?
15 A. Yes.
16
17 Q. We'll go back to your letter of 2 November 1995 which
18 appears at tab 265 of the same volume you have?
19 A. The same volume. Yes, thank you. This is my letter
20 to McAlinden --
21
22 Q. Your letter to McAlinden, yes. I just want to
23 understand the context in which you sent this letter.
24 First of all, you say in the letter that Bishop Clarke has
25 a time frame in place regarding the particular process:
26
27 *... "the next phase of this process will*
28 *take place in 15 days when I will send you*
29 *a summary of the evidence supporting the*
30 *claim in which you are impeded to carry out*
31 *your ministry properly ...*
32
33 Do you see that?
34 A. Yes.
35
36 Q. Then it goes on:
37
38 *You have 15 days from the date in which to*
39 *prepare ... your response ...*
40
41 Et cetera. You've got inverted commas around that comment,
42 but can I take it that that's an extract from a letter you
43 know Bishop Clarke sent, the letter of 26 October? Is that
44 the way we should read that?
45 A. I'm a bit unaware whether that was a comment from
46 Bishop Clarke's letter or from a canonical opinion about
47 that process.

1
2 MR HARBEN: I think the letter was 19 October.
3
4 MS LONERGAN: Sorry.
5
6 MR HARBEN: You said Bishop Clarke's letter of the 26th.
7
8 MS LONERGAN: Yes, and that's incorrect. I'm terribly
9 sorry, it should be Bishop Clarke's letter of 19 October.
10
11 Q. Just turn back to tab 262, bishop.
12 A. Right. Got it.
13
14 Q. Do you see there's a letter from Bishop Clarke to
15 McAlinden?
16 A. Yes, I can.
17
18 Q. Do you see in there the last paragraph of the first
19 page?
20 A. Yes.
21
22 Q. "The next stage", et cetera?
23 A. Yes, I see that. I'm quoting Bishop Clarke's letter,
24 yes.
25
26 Q. That letter also, the 19 October 1995 letter, includes
27 information to the effect that an admission had been made
28 to offences by McAlinden, doesn't it?
29 A. I can see that, yes.
30
31 Q. Yes:
32
33 *... in the light of your admission to*
34 *Father Brian Lucas and other evidence.*
35
36 A. Yes.
37
38 Q. So you understood, as at your reading of that letter,
39 19 October 1995, and you're quoting from it in your letter
40 of 2 November 1995 --
41 A. Correct.
42
43 Q. -- that an admission had been made to Father Brian
44 Lucas?
45 A. Yes.
46
47 Q. And relevantly to the conduct you were addressing,

1 which was sexual abuse of a minor person or minors?

2 A. Correct, yes.

3

4 Q. You thought at the time you wrote your letter of
5 2 November 1995, did you, that it was confined to [AK] and
6 [AL]?

7 A. Correct. That was my consistent thought, yes.

8

9 Q. You didn't, as I understand your evidence yesterday,
10 seek any information from Bishop Clarke about whether there
11 were other complainants?

12 A. No, I did not ask that, no.

13

14 Q. And you didn't look at McAlinden's file to see if
15 there was information regarding other complainants on his
16 file?

17 A. No, I did not. I was again, working on the
18 presumption that this was the one and only situation that
19 we were dealing with.

20

21 Q. Why was that the assumption?

22 A. Because it just - it came out of the blue that [AK]
23 and [AL] were the ones who were making the allegations
24 against McAlinden and I had no other knowledge of any other
25 person who may or may not have come forward.

26

27 Q. When did you learn that prior to the formal procedures
28 that were taking place on and after October 1995, had these
29 ladies may well have complained earlier than that time?

30 A. I don't know really where that came from. I mean, the
31 giving of a formal complaint in writing in a particularly
32 designated way is a much more formal process than a verbal
33 report to somebody who passed it down the line and
34 eventually had arrived at a point where it was acted on in
35 a more formal manner.

36

37 Q. Did you hear that some time in 1995, earlier than
38 November, earlier than October as well, [AK] and/or [AL]
39 attended a meeting at the diocese with Bishop Clarke?

40 A. Yes, I was told that by Bishop Clarke, that that
41 formal process had taken place.

42

43 Q. Prior to October, prior to the formal processes in
44 October, I'm suggesting earlier in the year?

45 A. Not earlier in the year but, see, at that deans'
46 meeting we spoke about yesterday, which was, I think, June,
47 there was information tabled there.

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Q. Did the information include that [AK] and or [AL] had attended the bishop's residence or the bishop's office and told what happened to them in terms of abuse by McAlinden?

A. I'm not sure about that, but it certainly --

Q. But at least something came up?

A. Something came up.

Q. Something came up that was talked about in the deans' meeting in about June 1995?

A. Yes.

Q. And you knew it was [AK] and [AL]; by that I mean, in the deans' meeting in June 1995, you knew it was about the same women who were ultimately asked to come and make formal complaints?

A. I think so, yes. I think so.

Q. You say there was no discussion at that deans' meeting regarding any other complainants against McAlinden, do you?

A. Not against McAlinden, no.

Q. I'm putting this proposition to you. You say that there was no discussion at that meeting about any prior reports - that is, prior to [AK] or [AL] - about McAlinden's sexually abusing children?

A. Not as I recall, no.

Q. When you say "not as I recall", that's quite a careful answer. Is that to preserve the position --

MR HARBEN: I object to that, Commissioner. That's my learned friend's interpretation of something and it is a very unfair thing to say in response to the answer.

THE COMMISSIONER: Would you withdraw that observation, Ms Lonergan, and just ask the question?

MR HARBEN: That puts a categorisation on it.

MS LONERGAN: I actually used the term "a very careful answer" because it was a very careful answer. I didn't mean any denigration of the witness about it. It appeared to me that the witness was reserving a position in relation to what might be otherwise a relevant matter I need to ask about. If it was interpreted as a criticism, it wasn't

1 meant to be. In my respectful submission, the question is
2 not inappropriate. I didn't complete the question.
3
4 THE COMMISSIONER: No.
5
6 MS LONERGAN: If, Commissioner, you would prefer I --
7
8 THE COMMISSIONER: Just withdraw that phrase.
9
10 MS LONERGAN: -- start again. I'm happy to do that.
11
12 THE COMMISSIONER: Thank you, Ms Lonergan.
13
14 MS LONERGAN: Q. Do you have a clear and complete
15 recollection of what was discussed regarding McAlinden at
16 the meeting in June 1995 between the deans?
17 A. No, I don't.
18
19 Q. Does that lead you to answer questions about that
20 meeting with some particular care because you don't want to
21 be tied down to a position regarding the extent of
22 discussions about McAlinden at that meeting? And I'm not
23 being critical; I just want to understand.
24 A. No, I'm not being evasive. I --
25
26 Q. I didn't say that.
27 A. I don't remember the content of the meeting, apart
28 from the minutes that - as brief as they were that appeared
29 afterwards.
30
31 Q. So there are minutes of that meeting, are there?
32 A. Well, brief minutes, yes.
33
34 Q. The minutes address [AK] and [AL] matters, do they?
35 A. I don't think they name them, no.
36
37 Q. But they address the fact that there were complaints
38 made?
39 A. Yes, yes.
40
41 Q. Yesterday I asked you some questions about who was
42 present at that particular deans' meeting and you were able
43 to assist with one or two names. Having had the afternoon
44 and evening to reflect on it, have you been able to think
45 of who else was present?
46 A. Oh, I didn't really give it much thought after I left
47 here, but Monsignor Hart would have been there. He was a

1 dean.
2
3 Q. Yes?
4 A. I mentioned, I think, Father Brady and Father Nugent.
5
6 Q. You did.
7 A. I did. Saunders you mentioned and I agreed.
8
9 Q. Yes.
10 A. I can't really think of any other who may have been
11 there.
12
13 Q. And the meeting of deans, do they perform the same
14 function as the consultors or Council of Priests or is it
15 slightly different?
16 A. They performed the same function then as consultors,
17 yes. I changed that later when I came in, but at that
18 point they were the consultors.
19
20 Q. So you changed it to having separate consultors?
21 A. No, no, Bishop Clarke had separate consultors and
22 separate Council of Priests. I combined them.
23
24 Q. When you say "meeting of deans" in Bishop Clarke's
25 time, that was a reference to the consultors, was it, or
26 the Council of Priests?
27 A. No, it was a reference to the meeting of the deans, who
28 were the consultors.
29
30 Q. I understand, thank you. Was anything said in that
31 meeting in June 1995 about accusations made --
32
33 MR HARBEN: I don't mean to be pedantic, but I think a
34 fair reading of the evidence was that the committing to a
35 date for the meeting was about June or approximately June.
36
37 MS LONERGAN: Yes, I agree with Mr Harben. It is just
38 that, this morning, Bishop Malone actually used the term
39 "June 1995", and I will ask him a question as to whether he
40 has had opportunity to look at some minutes of that
41 meeting, as he's now referred to short minuting having been
42 taken of that meeting and it is a document I don't recall
43 seeing. If we can narrow down the date, I'll do so, but I
44 certainly don't mean to confine the witness to answer if it
45 is not right.
46
47 Q. Bishop Malone, are you confident the meeting was

1 June 1995 or do you mean about June 1995?
2 A. No, it was June 1995.
3
4 Q. It was?
5 A. Yes.
6
7 Q. Have you seen meetings of that meeting?
8 A. I saw a copy in amongst the material.
9
10 Q. Did you?
11 A. I did.
12
13 Q. You don't happen to know what tab it was under, do
14 you?
15 A. You've got to be kidding. Six volumes here. It will
16 take us all --
17
18 Q. There were seven. You've missed one.
19 A. Seven? It was only six --
20
21 Q. In June 1995 at the consultants' or deans' meeting was
22 there mention of a case of a complaint that McAlinden
23 sexually abused a child in Western Australia?
24 A. I have seen reference to that. Whether it was in
25 amongst the deans' minutes of that meeting, I'm not sure.
26
27 Q. It has been drawn to my attention - it is tab 256,
28 I understand.
29 A. Of this same volume?
30
31 Q. Of this same volume. I have read this material. I've
32 even highlighted it. There it is.
33 A. Oh, 2 August.
34
35 Q. Yes. Just have a look at the minutes of this
36 particular deans' meeting. It may not be the one that
37 you're thinking of. It is dated 2 August. Do you see next
38 to point 2 under "Correspondence" --
39 A. Yes.
40
41 Q. -- there's some discussion regarding the
42 correspondence with the bishop in the Philippines about
43 McAlinden?
44 A. Yes.
45
46 Q. And mention that Denis, Father Denis would arrive back
47 in Australia on 5 August?

1 A. Yes.
2
3 Q. Then it says:
4
5 *It was resolved that we move towards --*
6
7 It says "a legislation procedure", but I think that's not
8 quite what's meant there.
9
10 *... since Father Denis would not confirm to*
11 *the restriction placed upon him by*
12 *Bishop Leo.*
13
14 Do you see that?
15 A. Right. Yes.
16
17 Q. Does that assist you as to whether that's the meeting
18 that you've been referring to or at least recollecting or
19 providing a recollection of that you thought was in June?
20 A. These are the minutes, yes.
21
22 Q. This is it?
23 A. Yes. And those present are listed at the top.
24
25 Q. Thank you very much. So your recollection is that, at
26 this particular meeting, there was more general discussion
27 regarding allegations of sexual abuse made against Father
28 McAlinden?
29 A. It would appear that there was discussion. The
30 minutes say that there was simply discussion without
31 elaborating what that discussion was.
32
33 Q. All right, yes. Where it says "Discussion took place,
34 the bishop indicating", et cetera?
35 A. Correct, yes.
36
37 Q. Are you comfortable with that being the date then of
38 the meeting we've been talking about when you gave
39 evidence?
40 A. Yes. Yes, I'm sorry I misled you about the June date.
41
42 Q. That's absolutely no problem. I thank Mr Harben for
43 his assistance in pinning that date down. Going back to
44 this particular deans' meeting --
45 A. Yes.
46
47 Q. -- given the date as revealed in the document behind

1 tab 256 being 2 August, are you confident that's the first
2 time there was a discussion at a deans' meeting of the
3 issue or question mark over Denis McAlinden sexually
4 abusing children?
5 A. I'm reasonably confident that that was the first time,
6 yes.
7
8 Q. Reasonably confident?
9 A. That it was talked about at a deans' meeting, yes.
10
11 Q. Going back to the case in Western Australia, are you
12 able to assist with whether allegations made against
13 McAlinden in Western Australia in and around 1991 were
14 discussed at that particular meeting?
15 A. I have no idea.
16
17 Q. Do you recall when you first heard about allegations
18 being made in Western Australia?
19 A. Probably in the context of these discussions, you
20 know.
21
22 Q. You've lost me. Are you talking again about the
23 deans' meeting now?
24 A. Yes, possibly, yes.
25
26 Q. But not this particular one?
27 A. About the Western Australian situation?
28
29 Q. Yes.
30 A. I don't know when I first heard about it, but I'm sure
31 it would have come up, since I was only new in 1995, in
32 some discussions around McAlinden.
33
34 Q. I'm not confident your answer is referring to an
35 actual recollection or whether you're just surmising that
36 that would have come up.
37 A. Well, it would have because I knew about it somehow.
38
39 Q. You knew about it during 1995?
40 A. Correct. Yes. Certainly not before.
41
42 Q. Sorry?
43 A. Certainly not before.
44
45 Q. You knew about it at the time you wrote your
46 2 November letter to McAlinden?
47 A. Yes, I think I would have known about it then.

1
2 Q. Are you aware the allegations were actually heard in
3 court; they went that far?
4 A. I believe so, yes.
5
6 Q. You're aware that the charges weren't found proven?
7 A. Correct, I believe that too.
8
9 Q. And you're aware, aren't you, that there were
10 insurance implications with that particular issue and that
11 Bishop Clarke had to write to the insurer to reveal that
12 there had been that complaint and that criminal action?
13 A. I'm a little vague on that score.
14
15 Q. Was it part of your role as the coadjutor bishop to be
16 across all those sorts of issues, such as insurance and
17 matters of that nature - was it?
18 A. I was learning, beginning to learn about those things.
19
20 Q. And you knew in 1995, didn't you, that there were
21 obligations to keep the insurance company informed if
22 matters occurred that were relevant to insurance cover?
23 A. Yes, I was aware of that, yes.
24
25 Q. Are you aware that Bishop Clarke actually wrote to the
26 insurer and set out, amongst other things, that McAlinden
27 had admitted to sexually abusing children?
28 A. I'd need to be reminded of that if there was a
29 document.
30
31 Q. It was late 1994.
32 A. Was it?
33
34 Q. But whether there were discussions with you about that
35 having occurred - does that ring a bell at all?
36 A. Not really, no, but I did know that, around about this
37 time, Catholic Church Insurances were in contact with all
38 the bishops of Australia asking for any information they
39 had about the questionable behaviour of priests apropos of
40 sexual abuse and Bishop Clarke, as Bishop of Maitland at
41 the time, would have responded accordingly as to any
42 suspicions he had about his priests.
43
44 Q. Was that in 1995 or later or earlier?
45 A. Well, it would have been before 1995, I would suspect.
46
47 Q. Did you yourself have to do that sort of revelation

1 when you were bishop?
2 A. No, I didn't. It was just that when cases arose, we
3 contacted the insurance company in an ad hoc kind of way.
4
5 Q. You said yesterday that you first learnt about other
6 allegations - that is, people in addition to [AK] and
7 [AL] - some time much later than 1995; is that the
8 position?
9 A. Yes. Certainly it would have been probably from about
10 2000 on. There were at least a couple of cases, very
11 serious cases, that came before me.
12
13 Q. New people who came; is that --
14 A. New people, yes, who came before me.
15
16 Q. You've had an opportunity to look amongst the
17 material, or at least in discussions with your lawyers, the
18 Special Commission has, and some of those people are
19 mentioned in the material?
20 A. They are, yes.
21
22 Q. [AC] is one of them isn't it?
23 A. Can you bear with me?
24
25 Q. Yes.
26 A. Yes, [AC] is one of them, yes.
27
28 Q. [AE]?
29 A. And [AE] the other, yes, that's correct.
30
31 Q. They are the other two you learnt about?
32 A. Yes.
33
34 Q. And there were others after the death of McAlinden
35 that we don't need to go into?
36 A. Sure.
37
38 Q. What about historical matters, other complaints that
39 had been made to the diocese about McAlinden prior to 1995;
40 when did you first learn those people?
41 A. Oh --
42
43 Q. And by my question, I mean people who had in fact
44 complained to the diocese, not just people who had been
45 sexually abused by McAlinden prior to 1995?
46 A. I remember hearing from [BS] - are you up with me on
47 this - [BS] about [AJ].

1
2 Q. All right. And that was some time in 1995, was it,
3 that you heard that?
4 A. Oh, no; no, that would have been in 2003.
5
6 Q. What about historical allegations made that are
7 recorded on materials kept at the diocese? When did you
8 first learn about other historical allegations made against
9 McAlinden? Put aside what you heard from [BS]. Put aside
10 [AK] and [AL], [AC] and [AE]. When did you first hear
11 about any other historical allegations?
12 A. I'm not sure that there - that I did hear about any
13 other.
14
15 Q. Never heard about them?
16 A. I'm not sure.
17
18 Q. Never read about them?
19 A. Possibly, yes, but it would have been --
20
21 Q. When you say "possibly"?
22 A. It would have been - it would have been in the 2000s
23 when these things were being dealt with.
24
25 Q. When in the 2000s?
26 A. Oh, I couldn't say for sure and I'm not even --
27
28 Q. You say --
29 A. And I can't even remember who they may have been.
30
31 Q. You say "when these things were being dealt with".
32 What do you mean by that?
33 A. I mean the things surrounding - excuse me while
34 I search for these again. Things surrounding [AL] and [AK]
35 and things surrounding [AC] and [AE].
36
37 Q. Let me ask you what you are saying. Let's put [AL]
38 and [AK] to one side for a moment, and we'll come back to
39 them. [AC] and [AE], what were the things surrounding them
40 that you're referring to and what did that lead you to do?
41 A. In the case of [AC], she made a complaint through the
42 Towards Healing - New South Wales Towards Healing process.
43
44 Q. Yes?
45 A. The Professional Standards Office.
46
47 Q. Yes?

1 A. In the course of normal events, the director of that
2 office referred the complaint to me. I then wrote to her
3 and said that I was very sorry that this had happened and
4 we needed to sort out where we'd go from here. That led to
5 a facilitated meeting in Sydney, I remember, where I met
6 [AC] for the first time and then, in the process of that
7 meeting, in the course of conversation, we sorted out
8 processes to authorise counselling for her and --
9
10 Q. What has all that got to do with finding out about
11 other historical allegations?
12 A. I don't know that, at this point, I knew about other
13 historical --
14
15 Q. Well, I'm trying to drill down to that. We've got
16 [AC] and [AE] and you've just outlined the circumstances
17 regarding [AC] --
18 A. Correct.
19
20 Q. -- which led you to look at the bigger picture. Is
21 that a fair comment?
22 A. Yes, it was encouraging me to do that, yes.
23
24 Q. It encouraged you to do that. What did you do? Apart
25 from ministering to and managing [AC]'s particular
26 situation, what did you do to find out about the bigger
27 picture?
28 A. You mean did I dig into the archives and look for
29 things?
30
31 Q. You tell me?
32 A. I don't know that I did that, no.
33
34 Q. Did you at that stage --
35 A. Because I was unaware that there were - you know, that
36 there were old allegations against McAlinden that needed to
37 be sort of ferreted out.
38
39 Q. Did you look at his file in your office?
40 A. I didn't really delve into the file in an exploratory
41 kind of way, no.
42
43 Q. Did you pick up the file and look at it at all when
44 you were dealing with [AC]; "the file" being the file about
45 McAlinden contained in your office?
46 A. I don't think I did. I accepted [AC]'s story. [AC]?
47 Is that right?

1
2 Q. You accepted [AC]'s story?
3 A. Yes.
4
5 Q. But she was coming fresh to you with that story,
6 wasn't she?
7 A. She was, yes.
8
9 Q. You're saying, are you, that you did not look at
10 McAlinden's file at a time you were dealing with [AC]'s
11 story?
12 A. I didn't, no.
13
14 Q. You did not say to [AC], "McAlinden has a file so big
15 you can't jump over it."
16 A. Again, a little bit of hyperbole, but --
17
18 Q. Did you say it?
19 A. It is the sort of thing I'd say, yes.
20
21 Q. Did you say it?
22 A. I think so, yes.
23
24 Q. You're pretty confident you said it?
25 A. Oh, I think so.
26
27 Q. When you say it was a bit of hyperbole you indulged
28 in, it is the position, isn't it, that McAlinden had a
29 large file by that time?
30 A. Yes. There was certainly plenty of smoke around
31 I think.
32
33 Q. Don't worry about smoke. He had a large file?
34 A. Yes.
35
36 Q. And you looked at the file, didn't you?
37 A. I looked into it, yes, a little bit.
38
39 Q. A little bit?
40 A. A little bit, yes.
41
42 Q. A little bit in 2002?
43 A. Certainly it was in 2002 that [AC] came forward.
44
45 Q. You looked at McAlinden's file in 2002, didn't you?
46 A. Yes, but I didn't explore deeply into it.
47

1 Q. You opened it?
2 A. Yes, I opened it.
3
4 Q. And you looked at a number of pages in it?
5 A. I did, yes.
6
7 Q. Was that difficult to admit to before this Commission,
8 that you actually opened and looked at a number of pages in
9 McAlinden's file?
10 A. No, it's not - it's not difficult at all.
11
12 Q. All right. I sensed a sort of reluctance to reveal
13 that you had actually opened and looked at matters in
14 McAlinden's file. That may be unfair of me. You don't
15 feel reluctant about revealing that fact?
16 A. I think it is being unfair of you, yes.
17
18 Q. I don't want to be unfair to you. You are comfortable
19 to reveal that you opened McAlinden's file and looked at a
20 number of documents in it?
21 A. I looked at something in there, yes. What it was --
22
23 Q. Something?
24 A. I don't know what I saw, but I --
25
26 Q. No idea what I saw?
27 A. No. I can't remember.
28
29 Q. But you had enough of a look at the file, either on
30 the outside or the inside, to make the hyperbolic comment
31 to [AC] that it was a file you couldn't jump over.
32 A. Yes, that's what I said.
33
34 Q. Did you also say McAlinden was a grub?
35 A. I can't remember saying that word.
36
37 Q. And that there were a number of complaints made about
38 him. There were a number of complaint in two thousand --
39 A. That refers to [AK] and [AL], yes.
40
41 Q. And you didn't know about any others, other than [AC]
42 and [AE] by that time?
43 A. Correct, yes.
44
45 Q. When you had your look in McAlinden's file, you say
46 you looked at a document. Have you got any recollection at
47 all of what the document was that you looked at in

1 McAlinden's file?
2 A. No, I can't remember what it was I saw when I opened
3 it.
4
5 Q. I'm sorry?
6 A. I can't remember.
7
8 Q. Did you look at more than one document in McAlinden's
9 file?
10 A. I can't remember.
11
12 Q. But you recollect opening it?
13 A. Yes, I think so.
14
15 Q. It is an important matter to get straight, you would
16 agree with me?
17 A. Yes, I would have opened it, yes.
18
19 Q. No doubt you're well aware of a letter that has
20 received a bit of media attention that goes back to 1976
21 between Monsignor Cotter and Bishop Clarke?
22 A. Yes, I'm aware of that letter.
23
24 Q. When did you first become aware of that letter?
25 A. It wouldn't have been until after Bishop Clarke had
26 retired and I was the bishop of the diocese at that time.
27
28 Q. That covers a 16-year period. At what point?
29 A. It was fairly early in the piece, I have to say. It
30 probably would have been around about the late 1990s, into
31 the early 2000s that I encountered that letter.
32
33 Q. How did you encounter it?
34 A. I'm not sure. It was obviously triggered by
35 something, yes, but I can't recollect what that was.
36
37 Q. That file lived on McAlinden's file, didn't it? I'm
38 sorry, that document was on McAlinden's personnel file,
39 wasn't it?
40 A. Yes, I believe so.
41
42 Q. Can we assume at that point, late 1990s, you opened
43 the McAlinden file?
44 A. And would have seen perhaps that letter, yes.
45
46 Q. And you're unable to assist with what it was that
47 prompted you to open the McAlinden file at that point, or

1 are you?
2 A. I'm not able to say, but when I started to deal with
3 [AC], obviously it would have helped me to familiarise
4 myself with something about McAlinden.
5
6 Q. [AC] was 2001. [AE] was 1999. Does that assist you
7 as to whether that's when you opened McAlinden's file and
8 had a look at --
9 A. It may have been, yes.
10
11 Q. It may have been. Was it October 1999, a Towards
12 Healing application?
13 A. On the part of [AE]?
14
15 Q. Yes.
16 A. Yes.
17
18 Q. Does that ring a bell as something that prompted you
19 to go and look at McAlinden's file?
20 A. It would have done, yes.
21
22 Q. You saw that 1976 letter at that point, the
23 Cotter/Clarke letter?
24 A. At some point I did. Whether it was precisely October
25 1999 or not, I don't know.
26
27 Q. We'll have a look at that letter. Just before we do,
28 if it wasn't October 1999 or late 1999, was there another
29 event that you can identify that was a time at which you
30 are confident you looked at that 1976 letter?
31 A. Not that I can remember.
32
33 Q. If you can reach for volume 1, tab 59. This document
34 is also exhibit 57.
35 A. Tab 59?
36
37 Q. Tab 59. Just have a quick look at the introductory
38 part to satisfy yourself this is the letter that you had in
39 mind?
40 A. (Witness reads letter).
41
42 Q. Then it is pages 3 and 4 of the letter that are of
43 particular significance.
44 A. Sorry, pages --
45
46 Q. Pages 3 and 4 of the letter, so pages 82 and 83 down
47 the bottom middle. There is a typescript of it, if that

1 makes it easier for you, bishop?
2 A. Yes, that would help.
3
4 Q. Would you turn to page 86?
5 A. Thank you.
6
7 Q. About two-thirds of the way down, starting with:
8
9 *On May 6th (I think)....*
10
11 A. Yes. Got it.
12
13 Q. Do you see over the page Monsignor Cotter noting that
14 on examination these allegations about sexually abusing at
15 least one child were found to be factual?
16 A. Yes.
17
18 Q. And:
19
20 *Slowly, very slowly he admitted some*
21 *indiscretions ..*
22
23 Et cetera?
24 A. I see that, yes.
25
26 Q. :
27
28 *... then agreed that it was a condition*
29 *that had been with him for many years.*
30
31 A. Yes.
32
33 Q. It goes on:
34
35 *There never has been any physical assault*
36 *or damage, but inevitably it leaves a*
37 *psychological scar ...*
38
39 A. Yes.
40
41 Q. :
42
43 *... no such inclination towards the mature*
44 *female but towards the little ones only.*
45
46 A. Right.
47

1 Q. Do you recall your response in terms of a bishop, the
2 bishop of the diocese, who had read this information
3 regarding a priest who was still incardinated to your
4 diocese?
5 A. The question again?
6
7 Q. The question is you were the bishop of the diocese?
8 A. I was, when I encountered this letter, yes.
9
10 Q. When you encountered this letter?
11 A. Yes.
12
13 Q. We think perhaps late 1999, maybe as late as 2001?
14 A. Possibly, yes.
15
16 Q. On reading this letter, and knowing that
17 Father McAlinden was still incardinated to your diocese,
18 did you form a view as to what, if anything, you should do
19 with McAlinden, given this other complaint some time ago to
20 which it appears he had admitted, including an admission
21 that he had a tendency to carry out that sort of
22 paedophilic behaviour?
23 A. Well, he'd already been stood aside from ministry, as
24 I understand it, in 1993. So he was no longer exercising
25 priesthood even if he was still, in principle, incardinated
26 into the diocese.
27
28 Q. All right. He was still under your auspices in
29 effect, though, wasn't he?
30 A. Well, he was, yes.
31
32 Q. Did reading that letter prompt any imperative in your
33 mind that more needed to be done about this person who had
34 admitted that he was a paedophile, in effect?
35 A. No, that didn't occur to me at that time.
36
37 Q. Did you discuss the contents of that letter with
38 anyone or seek any guidance from anyone about that
39 additional information that you had discovered?
40 A. I don't recollect that I did.
41
42 Q. Did it occur to you that given there was a recorded
43 admission, another recorded admission, albeit an historical
44 one, that McAlinden engaged in paedophile behaviour, that
45 was something you should refer on to the police personally?
46 A. That didn't occur to me, no.
47

1 Q. Was there any time when it occurred to you you ought
2 to refer McAlinden's conduct to the police?

3 A. Yes, it did and it was in - the first time was in,
4 I think, 2003 - no in 1999.

5
6 Q. You personally phoned a police officer, did you, and
7 gave them the information that you had regarding McAlinden?

8 A. No, I don't remember doing that.

9

10 Q. I'm having difficulty following you. How did you
11 report the matter to the police if you didn't contact a
12 police officer?

13 A. The director of the New South Wales Professional
14 Standards Committee, in the regular meetings with bishops,
15 had indicated that he was prepared to act as a conduit
16 between any diocese and the police should we wish to refer
17 any matter to the police.

18

19 Q. So you say you referred the matter to that person?

20 A. I referred the matter to him.

21

22 Q. Not to the police yourself, personally?

23 A. No. But he then referred it to the police.

24

25 Q. As you understand it?

26 A. As I understand it.

27

28 Q. Did you ever speak to Monsignor Cotter regarding the
29 1976 letter I've just taken you to?

30 A. I don't think so, no.

31

32 MR SAIDI: Before we move on, Commissioner, in relation to
33 that last letter and before the media decides to run out
34 and misreport, that evidence about his belief that the
35 Professional Standards officer reported to the police, is
36 pure hearsay. I would ask that that indeed not be received
37 as evidence based on that hearsay. I appreciate it is his
38 understanding but, if it is not taken out and the evidence
39 is not objected to, it should be made perfectly plain that
40 the evidence is admitted only on the basis of his
41 understanding.

42

43 THE COMMISSIONER: Yes, that's as high as it goes
44 Mr Saidi. The bishop reported something to the
45 Professional Standards Office because that office had
46 offered to be a conduit to the police and that's as far as
47 the bishop could take it. He understood that that would go

1 on further --
2
3 MR SAIDI: Certainly, and I wouldn't like anyone in court
4 to think that what is being said is in fact the truth of
5 the matter.
6
7 THE COMMISSIONER: No.
8
9 MR BARAN: As far as I am concerned, so far as it is on
10 the basis that it is admitted as to his understanding and
11 nothing more, then I am content.
12
13 MR HARBEN: I think the word was "belief". .
14
15 MR BARAN: Belief or understanding.
16
17 THE COMMISSIONER: Yes.
18
19 MR COHEN: Commissioner, might I raise one point? There
20 needs to be some caution, though. Certainly matters can
21 be --
22
23 MS LONERGAN; I am sorry, I can't hear you, Mr Cohen.
24
25 MR COHEN: I am so sorry.
26
27 THE COMMISSIONER: Your amplification device is working
28 today, Mr Cohen.
29
30 MR COHEN: Touche, Commissioner. Might I raise this
31 point. There needs to be some caution in the way this
32 issue is dealt with in a juristic fashion; that is to say,
33 certainly matters can be received as a witness's
34 understanding. In my respectful submission, it shouldn't
35 be then some presumption that that leads to limitations,
36 for example, under section 136 of the Evidence Act. The
37 evidence should be in for all purposes and you should be
38 able to make what weight of it you will, but without any
39 express limitation by reason of some direction of that
40 type.
41
42 THE COMMISSIONER: There's no need to be complicated or
43 overly legalistic about this.
44
45 MR COHEN: I'm just anticipating something that --
46
47 THE COMMISSIONER: The bishop said that was his belief.

1 If things broke down after that, well, that may have
2 happened, but surely the bishop is entitled to say that he
3 believed.

4
5 MR COHEN: I'm not suggesting otherwise. I'm just
6 concerned that there may be legal argument later and I'm
7 trying to set that out, but not from me.

8
9 THE COMMISSIONER: I understand. I don't anticipate that
10 will be a problem.

11
12 MR COHEN: Thank you, Commissioner.

13
14 MS LONERGAN: Thank you, Commissioner.

15
16 Q. In the question before the last one I asked you about
17 Monsignor Cotter and your answer was to the effect that you
18 never spoke to Monsignor Cotter about that letter, the 1976
19 letter?

20 A. I don't recollect so, no.

21
22 Q. You may well have spoken to him about it?

23 A. I don't know that I did, no.

24
25 Q. Would you agree with me it is a very significant
26 letter that contains very significant information about a
27 priest of the diocese?

28 A. It does, yes.

29
30 Q. And information you would have liked to have been told
31 earlier, isn't it?

32 A. It definitely is, yes.

33
34 Q. Because when you started at the diocese, you were able
35 to contact him in late 1995, weren't you, by letter?

36 A. McAlinden?

37
38 Q. That is, he would have been able to have been found at
39 that point, wouldn't he?

40 A. He could have been, yes.

41
42 Q. If you'd known that other information from 1976, would
43 you agree with me you may well have, at that point, given
44 you had fresh complaints, or reasonably fresh complaints,
45 from [AK] and [AL], treated those complaints differently?

46 A. It would have added a lot of weight to what we did,
47 yes.

1
2 Q. Are you able to say whether, at that point, that, is
3 late 1995, you would have taken or reported McAlinden to
4 the police?
5 A. I'm not able to say that I would have done that, but
6 I would have liked to have thought that I would, yes.
7
8 Q. Did you ever speak to Bishop Clarke about the letter,
9 the 1976 letter?
10 A. No, because he'd retired by this stage and I didn't
11 bother him with any diocesan matters.
12
13 Q. Even in late 1999 or 2000 or 2001, whenever it was
14 that you read that letter, it didn't prompt you to go,
15 "Well, Bishop Clarke, I would have really liked to have
16 known about this letter" --
17 A. No, I didn't.
18
19 Q. -- "as it would have affected the way I dealt with a
20 paedophile priest of the diocese"?
21 A. No, I didn't say that.
22
23 Q. Did you feel let down by Bishop Clarke, that he hadn't
24 told you about the letter?
25 A. I did feel let down about that and probably other
26 things as well.
27
28 Q. Other things regarding McAlinden and what was
29 apparently Bishop Clarke's knowledge of McAlinden's
30 paedophile behaviour?
31 A. Other things about McAlinden particularly, yes.
32
33 Q. Other things that, had you known them, they may well
34 have prompted you to contact the police about McAlinden at
35 an earlier time than you did?
36 A. Yes, I'd say definitely to that.
37
38 Q. What were those other things?
39 A. Matters surrounding not only [AK] and [AL] but [AJ],
40 about - there were also, I understood later, reports made
41 to the principal of the school at Merriwa.
42
43 Q. Yes, and you only found out about those at some later
44 point?
45 A. Quite later, yes, yes. Those things were not said to
46 me and I'm disappointed that they weren't.
47

1 Q. They would have led you to take different action in
2 relation to McAlinden then than you did?
3 A. I'm sure they would have.
4
5 Q. Particularly regarding reporting him to the police?
6 A. Yes.
7
8 Q. You would agree with me, wouldn't you, that records
9 that suggest that McAlinden admitted to his behaviour, his
10 paedophilic behaviour, are of more significance than just
11 accusations which he denied?
12 A. Yes, for sure.
13
14 Q. You mentioned [AJ]. Did Bishop Clarke ever tell you
15 that the removal of faculties that he supervised in early
16 1993 was related to [AJ]?
17 A. No, no; it was only related to [AK] and [AL], as far
18 as I knew.
19
20 Q. The removal of faculties, and I'm distinguishing that
21 from the laicisation, in February 1993, if they related to
22 [AK] and [AL], that suggests, doesn't it, that [AK] and
23 [AL] made complaints prior to February 1993?
24 A. It does, yes.
25
26 Q. Are you able to assist with why, if the complaints
27 were made prior to February 1993 by [AK] and [AL], formal
28 action wasn't taken until October 1995?
29
30 MR HARBEN: I object to that. That calls for - he can be
31 asked whether he was told why.
32
33 MS LONERGAN: I'll withdraw the question. I'll start
34 again.
35
36 Q. Given your belief that the removal of faculties in
37 February 1939 was related to complaints by [AK] and [AL] --
38 A. Yes.
39
40 Q. -- are you able to assist with why particular formal
41 processes were taken regarding the [AK] and [AL] complaints
42 in October 1995?
43 A. And not before?
44
45 Q. Well, I won't put the "and not before" because that's
46 probably the part Mr Harben objects to.
47 A. There was certainly a lengthy delay.

1
2 Q. I'm not being critical about the delay. My question
3 is a little different. Why was it that, in October 1995,
4 given your evidence is to the effect that you believed [AK]
5 and [AL] led to the removal of faculties in February or
6 early 1993, why was a formal process being commenced in
7 October 1995?
8 A. I have no --
9
10 MR HARBEN: I object to that.
11
12 THE WITNESS: I have no idea.
13
14 MR HARBEN: Just a moment, please. I assume, because
15 we have heard the evidence that the decision was
16 Bishop Clarke's, the witness is being asked why was it that
17 Bishop Clarke made that decision at the time. It was to
18 that that I objected because he was asked to put himself
19 into the head of Bishop Clarke.
20
21 MS LONERGAN: I'm not asking why Bishop Clarke made the
22 decision; I'm asking why in terms of what this the witness
23 knows.
24
25 THE COMMISSIONER: Why the decision was made, if he knows.
26
27 MS LONERGAN: Yes, if he knows.
28
29 MR HARBEN: If he knows.
30
31 MS LONERGAN: In brackets, "if he knows". He may not
32 know.
33
34 THE WITNESS: I don't know.
35
36 MS LONERGAN: Q. All right. Well, that's easy.
37 A. I didn't arrive in the place until two years later.
38
39 Q. No, I'm talking about the decision in October 1995.
40 A. Yes.
41
42 Q. You were asked to continue a process?
43 A. Correct.
44
45 Q. That had begun in October 1995?
46 A. Correct.
47

1 Q. For laicisation?

2 A. Correct.

3

4 Q. My question is: do you know why, given [AK] and [AL]
5 are supposed to have reported the matter nearly two years
6 before, that process was occurring in October 1995?

7

8 MR HARBEN: Before the witness answers, perhaps I could
9 have a word to my learned friend?

10

11 THE COMMISSIONER: Yes.

12

13 (Ms Lonergan and Mr Harben confer)

14

15 MS LONERGAN: Thank you for that moment, Commissioner.
16 I'll move on to a slightly different approach.

17

18 Q. You received a letter from McAlinden dated 27 November
19 1995. I want you to have a look at it. It is behind
20 tab 266.

21

A. The same volume?

22

23 Q. Yes.

24

A. I don't think it is the same volume.

25

26 Q. I'm sorry, you're on a different volume. It is in
27 volume 3, sorry.

28

A. You need to give me time to reach for it. Behind
29 tab 266, was it?

30

31 Q. That's right. You're better at this than I am,
32 Bishop Malone.

33

A. Sorry? Yes, McAlinden's letter to me?

34

35 Q. Yes.

36

A. Yes.

37

38 Q. I just want you to read that to yourself just to give
39 you the background of the correspondence and then I'm going
40 to take you to another letter which isn't in the bundle.

41

A. (Witness does as requested).

42

43 Q. My question in relation to this letter is a
44 preliminary one: did you reply specifically to this
45 letter? I'm not suggesting you should have.

46

A. I can't remember. He was writing to me, so presumably
47 I didn't. He was responding to my letter to him.

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MS LONERGAN: Could the witness be shown exhibit 78.

Q. I will just give you a moment to have a look at that, Bishop Malone, because the handwriting is a little difficult.

A. It is hard yes.

Q. And it is a six-page letter.

A. Yes.

MS LONERGAN: Commissioner, perhaps we should adjourn for 10 minutes, if that's suitable to you. It is a long letter.

THE COMMISSIONER: Yes, that's a good idea.

SHORT ADJOURNMENT

MS LONERGAN: Q. Bishop, you've had an opportunity to read that quite long letter?

A. Yes, I've finished reading it. Rather laborious, but I've finished.

Q. Would you agree with me that it is a letter that you read about 8 December 1995?

A. Yes, I would have.

Q. And it is your handwriting on the top there, "Received 8.12.95"?

A. I can't see that. It doesn't have it on my copy.

Q. Just turn that first page over. In the top left-hand does it not say, "Received 8.12.95"?

A. No, I can't see that, but anyway

MS LONERGAN: Could I have that copy of the exhibit passed down, please. (Shown to counsel). I've just noticed that the exhibit copy that's been provided to the witness is missing the first page. I'll make an arrangement for him to be given that first page.

THE COMMISSIONER: Does that include the covering letter, as it were?

MS LONERGAN: The covering letter which shows that the letter was actually addressed to the bishop.

1
2 THE COMMISSIONER: Yes.
3
4 MS LONERGAN: Q. I'm going to hand you another copy, if
5 you wouldn't mind reading the front page.
6 A. Thank you.
7
8 MS LONERGAN: Could I inquire from those at the Bar table
9 whether they all have a covering page that's addressed to
10 Bishop Malone.
11
12 MR HARBEN: Yes, we have it.
13
14 MS LONERGAN: I understand everyone else has it.
15
16 THE WITNESS: In answer to your question, yes, can I see
17 my handwriting on the first page, "Received 8 December
18 1995."
19
20 MS LONERGAN: Q. So we can take it that you read it, at
21 or around that date?
22 A. Correct, correct.
23
24 Q. I want you to read that front cover page, which you
25 didn't have an opportunity to read in that break and
26 introduce yourself to the context of the letter.
27 A. Yes.
28
29 Q. Do you see that covering letter notes that enclosed is
30 his response to your letter and the documents received
31 during the month of November?
32 A. Yes.
33
34 Q. The letter is addressed "To whom it may concern" -
35 I'm sorry, the response part of the letter?
36 A. Yes.
37
38 Q. It seems to be a response to particular canons
39 pursuant to which McAlinden had has been accused; is that a
40 reasonable summary?
41 A. That's correct, yes.
42
43 Q. I direct your attention to page 88, the numbered
44 page 3 of the letter or response, and it's got 88 down the
45 bottom centre?
46 A. Yes, I've got it.
47

1 Q. Third paragraph:
2
3 *On the various occasions when things did go*
4 *wrong, I never for a moment tried to*
5 *minimise my guilt by blaming some*
6 *uncontrollable tendency - always making*
7 *sure of receiving the Sacrament of Penance*
8 *before offering Mass.*
9
10 Do you see that?
11 A. Yes, I see that.
12
13 Q. Then he says:
14
15 *Likewise, when I visited a qualified*
16 *psychoanalyst some years ago in*
17 *Castle Hill, after 5 or 6 consultations, he*
18 *assured me he found nothing in the nature*
19 *of an aberration.*
20
21 A. Yes, I see that.
22
23 Q. You read that back in December 1995?
24 A. Yes, I did.
25
26 Q. Didn't that not prompt you to try to find out whether
27 what McAlinden said in that letter was true and that he had
28 in fact had some sort of consultation with a psychoanalyst?
29 A. He was writing the letter to me, so I could only
30 assume that he was writing the truth.
31
32 Q. Why would you assume he was writing the truth?
33 A. I'm not sure I understand where you're going here,
34 but --
35
36 Q. You don't have to worry where I'm going.
37 A. Okay.
38
39 Q. Why would you assume he was telling the truth here?
40 A. He was trying to defend himself against the process of
41 laicisation that was commencing.
42
43 Q. That was a process you were by then supervising?
44 A. Correct, yes.
45
46 Q. You needed to go and check, didn't you, as to whether
47 matters he was raising in his response were truthful, such

1 as --
2 A. Seeing the psychoanalyst.
3
4 Q. Yes.
5 A. I don't remember digging into the file to find any
6 report about that, no.
7
8 Q. So you think there was a report, do you?
9 A. I don't know.
10
11 Q. You hadn't familiarised yourself with the fact that
12 there was a report from a psychoanalyst in Castle Hill,
13 recently?
14 A. No, I hadn't.
15
16 Q. So you don't recollect going to McAlinden's file or
17 making any inquiries of anybody about whether there was in
18 fact any material that evidenced what he says there?
19 A. No.
20
21 Q. Over the page, page 4, under the heading that looks
22 like "Canon 279", he says this --
23
24 THE COMMISSIONER: 277, I think.
25
26 THE WITNESS: Yes, I think so, yes.
27
28 MS LONERGAN: Q. He says:
29
30 *Yes, here I have failed miserably in*
31 *observation of the perfect and perpetual*
32 *continence in relation to my view of*
33 *chastity in matters about which I have*
34 *been accused and which I have accused*
35 *myself, though some of the individual*
36 *cases mentioned by Father Lucas (1993) did*
37 *not occur, most of all that concerning*
38 *[AK].*
39
40 And then he goes on to make some gratuitous comments?
41 A. Yes.
42
43 Q. Didn't that lead you to wonder or worry that the
44 allegations about [AK] weren't true or weren't confirmed by
45 McAlinden and, therefore, you needed to look further about
46 information that would assist the process you were
47 pursuing?

1 A. No. The context of the letter is very self-serving.
2
3 Q. Yes?
4 A. On the basis of the letter taken in total, you know,
5 I should have introduced a process of canonisation of him.
6 In fact, he was trying to make excuses left, right and
7 centre and, you know, anything he said about anything
8 really was questionable.
9
10 Q. You accepted, though, did you, that he was accusing
11 himself of failing in his vow of chastity?
12 A. Yes, I can see that, yes.
13
14 Q. He mentions in this letter, doesn't he, that another
15 one that didn't happen was the case that was brought to
16 court in Western Australia in 1992; do you see that?
17 A. Yes.
18
19 Q. In the same paragraph?
20 A. I saw that.
21
22 Q. At least by the time of this letter, you were aware of
23 case having been brought in Western Australia in 1992?
24 A. Yes, that's right.
25
26 Q. Further down that page --
27 A. What page are we on?
28
29 Q. Still on the same page, it is page 4, under the
30 heading "Canon 277"?
31 A. Thank you, yes.
32
33 Q. This paragraph appears:
34
35 *However, as I explained to Father Lucas in*
36 *1993, that by the grace of God and the help*
37 *of our Blessed Lady, I had already become*
38 *completely free from all such wrongdoings.*
39 *In fact, regarded such as an abomination.*
40
41 What did you make of that statement?
42 A. Again in the general context of the letter, I thought
43 it was sanctimonious rubbish.
44
45 Q. But it at least included an admission to some
46 wrongdoings in the past?
47 A. Yes, it did all of that, yes.

1
2 Q. Over the page, bottom of page 5 --
3 A. Yes.
4
5 Q. -- appears the following after a commencement - well,
6 that appears after a series of steps that Father McAlinden
7 says he has taken to assist him in reforming his ways?
8 A. Yes.
9
10 Q. Then on page 90, he commences with:
11
12 *Fortunately, at a very early age, I'd been*
13 *taught the power of prayer, and now feel*
14 *I can claim to be a living example of that*
15 *power.*
16
17 Do you see that?
18 A. Yes, I can see it.
19
20 Q. After that:
21
22 *So much so, that when I spoke to*
23 *Father Lucas about 3 years ago, I assured*
24 *him I had no worry or fear of falling back*
25 *into the problems of the past. In fact, no*
26 *way could I have opened up and confessed so*
27 *freely to Father Lucas admitting my past*
28 *failings had I not been convinced that this*
29 *was a thing of the past.*
30
31 Do you see that?
32 A. Yes.
33
34 Q. That's a confirmation that admissions of past failings
35 had been made to Father Lucas?
36 A. Correct.
37
38 Q. Did you contact Father Lucas and find out what that
39 was all about?
40 A. No, I did not.
41
42 Q. Why not?
43 A. Because, again, McAlinden had spoken of this and there
44 was no need to double-check.
45
46 Q. McAlinden might have been telling you a load of
47 rubbish?

1 A. It wouldn't have been in his best interests to have
2 done that, though.
3
4 Q. No, because admissions of behaviour that's criminal is
5 a very serious matter, isn't it?
6 A. It is, yes.
7
8 Q. Admissions of behaviour that's criminal is something
9 that the police would like to know about; would you agree?
10 A. I would agree with that, yes.
11
12 Q. Then he goes on:
13
14 *Hence while I've failed miserably regarding*
15 *Canon 277, I believe I'm now more a priest*
16 *than for many years - a repentant priest.*
17
18 A. Yes.
19
20 Q. :
21
22 *So, while condemning myself in no uncertain*
23 *terms, the sad experience has taught me*
24 *greater compassion towards others who have*
25 *sinned ...*
26
27 Et cetera.
28 A. Et cetera, yes.
29
30 Q. Did you read that part of the letter as any sort of
31 invitation by McAlinden to be passed on to other
32 authorities, such as the police?
33 A. No, I didn't.
34
35 Q. Would you turn to page 93, which is numbered page 8
36 letter of the letter. A third of the way down McAlinden
37 says - I wish I could read the first couple of words, but
38 there are two illegible words and then:
39
40 *... regard to the threat of someone*
41 *contacting the police, I fail to see where*
42 *this has any relevance to any of the*
43 *Canons; indeed, if you would advise it,*
44 *I'd be prepared to go to the Police and*
45 *accuse myself.*
46
47 Do you see that?

1 A. Yes, can I see that.

2

3 Q. :

4

5 *There may even be work to be carried out in*
6 *prison, as I had occasion to discover.*

7

8 And then he goes on and tells a tale about having spent
9 some time in maximum security when he was accused of
10 sexually abusing a child in Perth?

11 A. Correct.

12

13 Q. His comment there about "if you would advise it,
14 I'd be prepared to go to the police and accuse myself", did
15 you read that as a request to you, his bishop, to tell him
16 what to do and advise him what he ought to do?

17 A. No, I did not. Again, in the context of the letter,
18 I just thought it was rubbish.

19

20 Q. But you, as the bishop of diocese, had some power to
21 tell him what to do, didn't you?

22 A. I did, yes.

23

24 Q. I'm not suggesting you would have necessarily done it,
25 but can we take it from your answer that you did not then,
26 in response to this, say, "Yes, I do want you to go to the
27 police"?

28 A. No, I didn't say that.

29

30 Q. Wouldn't that have been an appropriate thing to do?

31 A. That's just taking one little sentence out of an
32 entire letter that is --

33

34 Q. No, I'm not suggesting because of only that invitation
35 that that would have been an appropriate thing to do. What
36 I'm suggesting is, in the context of a letter where there
37 are recorded admissions by a perpetrator who is a priest of
38 your diocese, wouldn't it have been the right thing to do
39 to contact the police and say, "Look, I've got a letter
40 here where McAlinden admits to doing all these things"?

41 A. You must remember that I was being torn by the
42 knowledge that [AK] and [AL] didn't want the police
43 involved.

44

45 Q. All right. But in this letter you would agree with
46 me, wouldn't you, he's referring to "other" matters?

47 A. He's referring to incidents, yes.

1
2 Q. You don't know whether those other people would be
3 prepared to go to the police and make formal complaints,
4 and you didn't know in 1995, did you?
5 A. I didn't know that there were any "other" when this
6 letter - when was this letter?
7
8 Q. You know he had been sent to --
9 A. It's 1995, yes.
10
11 Q. He had been sent to a psychotherapist in Castle Hill
12 because of this letter, don't you?
13 A. He said all that, yes.
14
15 Q. You know that he wasn't sent to see the
16 psychotherapist in relation to anything you were doing in
17 1995?
18 A. No.
19
20 Q. But you didn't go and look at his files to see if
21 there was anything that could give you more information
22 about that?
23 A. That's right.
24
25 Q. Would you agree with me that this letter suggests that
26 there were or could be complainants other than [AK] and
27 [AL] that he's talking about here?
28 A. Oh, there could be, yes.
29
30 Q. In particular, he says that what happened with [AK]
31 wasn't true?
32 A. Yes.
33
34 Q. So that puts her to one side, doesn't it?
35 A. Yes.
36
37 Q. And he's admitting about other complaints, other than
38 [AK], isn't he?
39 A. It could have been [AL].
40
41 Q. He doesn't say singular, he says multiple, doesn't he?
42 A. The accusations came from [AK] and [AL]. That's
43 multiple. Even though he --
44
45 Q. Yes?
46 A. Even though he dismisses [AK] --
47

1 Q. That's how you're reading it, aren't you?
2
3 MR HARBEN: Perhaps the witness could finish his answer.
4
5 MS LONERGAN: Q. I'm terribly sorry, Bishop Malone.
6 Please keep going.
7 A. I mean, he dismisses [AK]'s involvement in the whole
8 thing, which only leaves [AL]. He doesn't say anything
9 about that particular person. So when he makes multiple
10 admissions, I would have thought he was referring to both
11 [AK] and [AL] prior to him dismissing [AK].
12
13 Q. And that's assumption on your part?
14 A. It is, yes.
15
16 Q. Would you agree with me that his comments regarding
17 that there may well be work to be carried out in prison, as
18 he had the occasion to discover, is a reference to - it
19 appears at least on the face of what he says there - an
20 understanding that the conduct to which he is admitting is
21 criminal conduct?
22 A. Yes.
23
24 Q. On page 7 of the letter, in about the middle of the
25 page, McAlinden talks about his activities in the San Pablo
26 diocese?
27 A. Yes.
28
29 Q. About halfway through that, he talks about having
30 heard 10,000 confessions over a six-month period?
31 A. Yes.
32
33 Q. Did you take note of that as you read the letter, the
34 fact that he was carrying out confessions?
35 A. I read that, yes.
36
37 Q. He shouldn't be carrying out confessions, should he,
38 given he has had his faculties removed; is that the
39 position?
40 A. He had his faculties by Bishop Clarke, but the bishop
41 in the Philippines, I understand, had granted him
42 faculties.
43
44 Q. But you were satisfied, as of earlier than, December
45 1995, that the bishop in San Pablo had withdrawn his
46 faculties, were you not?
47 A. In when, 1995, sorry?

1
2 Q. No, some time in 1995.
3 A. Yes.
4
5 Q. Yes. My question is that weren't you concerned
6 reading that he had been conducting such a large number of
7 confessions that that would inevitably involve him having
8 access to children in a setting where there weren't other
9 people present?
10 A. Yes, which was why Bishop Clarke was keen on removing
11 him from the Philippines, yes.
12
13 Q. I understand that, but seeing in writing from
14 McAlinden that sort of fact, that sort of matter, did that
15 make you concerned that more needed to be done to stop this
16 admitted paedophile accessing children?
17 A. Yes.
18
19 Q. So what did you do?
20 A. It was being done with the laicisation process.
21
22 Q. With which he wasn't cooperating?
23 A. Correct, which was the one thing that he would have
24 found the most damaging to his - to his priesthood.
25
26 Q. More damaging --
27 A. Because he says in the letter --
28
29 Q. I'm terribly sorry.
30 A. He says in the letter that he was ordained a priest
31 forever and he didn't want to lose that.
32
33 Q. Yes, but he could still be laicised and access
34 children and commit paedophile acts, couldn't he?
35 A. Yes.
36
37 Q. Wouldn't that be a far better way to deal with him to
38 report him and his admissions to the police?
39 A. Yes, it would have been.
40
41 Q. When you became aware in this letter of there having
42 been some allegations made about him in Perth, including
43 him having spent a night in maximum security prison while
44 waiting for the result of that case, did you contact the
45 bishop in Western Australia relevant to the diocese in
46 which he had been working?
47 A. I'm a bit unsure as to when that situation in Perth

1 was. Was it in 1993, was it?
2
3 Q. I think he said in the letter, I'll turn it up for
4 you. I believe it's 1992. Page 89, the end of the first
5 paragraph under the heading "Canon 277"?
6 A. Right.
7
8 Q. He talks about neither did the case happen that was
9 brought to court in WA in 1992?
10 A. I'm sorry, whereabouts on page 89?
11
12 Q. It is the first long paragraph under the heading
13 "Canon 277"; do you see that?
14 A. Yes.
15
16 Q. It is right at the end of that paragraph.
17 A. Yes, 1992, yes.
18
19 Q. There were two bishops in Western Australia at that
20 time, were there, Geraldton and Bunbury, or were there
21 others?
22 A. No, there were others, but he was in Bunbury, I think,
23 was he not?
24
25 Q. You knew that from his appointment documents?
26 A. From his address.
27
28 Q. So did you contact the bishop in Bunbury to find out
29 what all that was about?
30 A. No, I didn't.
31
32 Q. Didn't you need to satisfy yourself as bishop of the
33 diocese what the circumstances were as to his conduct in
34 Western Australia as far as the bishop, the relevant
35 bishop, in Western Australia knew?
36 A. No, I didn't really.
37
38 Q. Would you agree with me that the contents of
39 the December letter suggests that McAlinden was not in any
40 way prepared to comply with the laicisation process?
41 A. Yes, I'd say so.
42
43 Q. It is the position, isn't it, that laicisation could
44 only then be successful if the bishop - it is the position,
45 isn't it, that the laicisation process could only be
46 successful if the priest involved consented?
47 A. Yes, that's correct.

1
2 Q. This letter makes it plain that there's no consent?
3 A. Yes.
4
5 Q. Didn't you think at that point, "Well, laicisation is
6 not going to work. I have to come up with something else"?
7 A. I don't know what I thought then.
8
9 Q. On page 8 of the letter, there's a very clear
10 indication, isn't there, that there is not going to be any
11 cooperation with the laicisation?
12 A. Yes.
13
14 Q. What you were attempting to pursue was futile?
15 A. He clearly rejects the process, yes.
16
17 Q. Yes.
18 A. But the fact that he rejected the process didn't mean
19 that that was the end of it. We would have just proceeded
20 regardless of his consent or not.
21
22 Q. But there was no way that you could --
23 A. There was little hope that it would be successful,
24 yes.
25
26 Q. No hope, is there, without the consent of the priest?
27 That's how it was in 1995 and 1996?
28 A. I don't know about no hope, but certainly there was
29 very little hope.
30
31 Q. How would the little hope come about? How would the
32 laicisation process be successful in late 1995 or during
33 1996, as the laws then were of the church, if the priest
34 didn't consent?
35 A. It would only have been helpful were we to put
36 together a dossier outlining all of the difficulties that
37 the diocese was facing with regard to McAlinden and the
38 allegations and the suspicions and so on around him and
39 presenting these to the Vatican for their decision.
40
41 Q. One useful thing to be included in such a pursuit and
42 such a document or series of documents would have been an
43 inclusion of the fact that McAlinden had admitted in
44 documents and arguably to an official of the Catholic
45 Church?
46 A. Correct, yes.
47

1 Q. Appointed by the episcopacy --
2 A. Yes.
3
4 Q. -- the national episcopacy, that he had engaged in
5 paedophile acts?
6 A. Yes.
7
8 MR SKINNER: I object to that.
9
10 MS LONERGAN: I withdraw that.
11
12 MR SKINNER: There was a premise, which I don't think is
13 correct. My learned friend said "admitted in documents".
14 I don't know that that's necessarily so.
15
16 MS LONERGAN: Commissioner, I will clarify.
17
18 THE COMMISSIONER: Thank you, Ms Lonergan.
19
20 MS LONERGAN: I'm not suggesting an admission in documents
21 other than letters that have been tendered in these
22 proceedings and I've made a distinction in relation to
23 Mr Skinner's client of allegations of admissions to an
24 official. I'm not rolling the two up together. I'll ask
25 the question a little differently.
26
27 THE COMMISSIONER: Thank you.
28
29 MS LONERGAN: Q. Given, by that stage, you had a letter
30 from McAlinden that set out the fact, as he sees it, that
31 he had made admissions about paedophilia --
32 A. Yes.
33
34 Q. -- and you also had seen documents authored by
35 Bishop Clarke to the effect that he, Bishop Clarke, had
36 been told that McAlinden had admitted to paedophilic
37 conduct?
38 A. Yes.
39
40 Q. Wouldn't it have been appropriate to include that sort
41 of information in a submission to the Holy See to try and
42 get McAlinden out of the priesthood?
43 A. It would have, yes.
44
45 Q. Wouldn't a quicker way - perhaps a more direct way -
46 have been to provide that information to the police?
47 A. It certainly would have, yes.

1
2 Q. They could have acted on it and arrested him?
3 A. Yes.
4
5 Q. Given the view that you've expressed or the concession
6 that you've made that laicisation by consent was not
7 entirely hopeless but close to --
8 A. Close to.
9
10 Q. -- close to hopeless, and the only way forward in
11 terms of getting McAlinden laicised and out of the
12 privileges that go with the priesthood was petitioning the
13 Vatican with all the information that you could to try and
14 have that process occur --
15 A. Yes.
16
17 Q. -- wouldn't that cause you to go and have a look at
18 his file and see what else was on there?
19
20 MR HARBEN: I object to that. If the question is being
21 asked assuming that he embarked on the process of
22 approaching the Vatican - if it is put in those terms as
23 opposed to just some lead-up period - it must require that,
24 bearing in mind the evidence that's been given.
25
26 MS LONERGAN: I take my learned friend's point.
27
28 Q. You didn't commence a process of petitioning the Holy
29 See to laicise McAlinden, did you?
30 A. No, I didn't, no.
31
32 Q. By that, I mean you didn't further the process; other
33 than the letters that we've already taken you to, you
34 didn't make further ministrations or representation to the
35 Holy See in an attempt to laicise McAlinden, did you?
36 A. No, I didn't.
37
38 Q. Did you think about doing that given the
39 considerations of lack of cooperation?
40 A. I think, by this stage, we were fairly stymied.
41
42 Q. By "we", who do you mean?
43 A. I mean Father Bill Burston and myself.
44
45 Q. So that is your vicar general?
46 A. Father Bill Burston was the vicar general.
47

1 Q. So do you recollect having discussions with
2 Father Burston about what to do?
3 A. I do, yes.
4
5 Q. Did that include petitioning the Holy See with further
6 information to obtain assistance from them to force
7 McAlinden to be laicised?
8 A. I don't know that it got that far, frankly. I think
9 we were probably toying with the idea of reporting the
10 matter to the police round about that time..
11
12 Q. You toyed with the idea?
13 A. Yes.
14
15 Q. And you didn't report the matter to the police, at
16 that point?
17 A. Not at that point, no.
18
19 Q. Why not?
20 A. I'm a bit unsure. Again, apart from the fact that
21 [AK] and [AL] were not wanting the police involved, and
22 that became a bit of a complicating factor.
23
24 Q. Did you talk to Father Burston about whether he knew
25 about any previous complaints of sexual abuse?
26 A. No, I don't know that I did specifically about that.
27 I mean, in the course of conversation, he would have
28 mentioned something along those lines, had he known.
29
30 Q. That's an assumption you make, isn't it?
31 A. Well, it is, yes.
32
33 Q. Father Burston had been at the diocese a lot longer
34 than you, hadn't he?
35 A. He certainly had.
36
37 Q. Did you have any conversation with him at any time
38 prior to 1996 regarding whether he knew about any previous
39 complaints of sexual abuse on the part of McAlinden?
40 A. I don't know that I was that specific when I was
41 speaking with Father Bill.
42
43 Q. When you were toying with the idea of reporting
44 McAlinden to the police, when was that?
45 A. Well, we would have been toying with the idea once
46 we'd received this response from McAlinden, which was, you
47 know, very sanctimonious and trying to make excuses for his

1 behaviour.
2
3 Q. Totally uncooperative, wasn't it?
4 A. It was, yes, but he was also claiming that his
5 aberration or tendency to sexual abuse was somehow
6 controlled by prayer and the sacraments, which is quite
7 ridiculous. It's a psychological condition and --
8
9 Q. That was your view in 1995, December 1995?
10 A. It was, yes.
11
12 Q. Given that was your view and that it was a
13 psychological condition, didn't that increase your concern
14 that he would continue to prey on children - P-R-E-Y on
15 children?
16 A. Yes.
17
18 Q. Despite his suggestions to the contrary?
19 A. Certainly, because, as I understand it, there's little
20 or no cure for that kind of condition.
21
22 Q. Is it around about that time when you got this
23 response that you were toying with the idea of reporting
24 him to the police?
25 A. Yes, probably in - certainly in 1996, after we'd
26 received this letter and unpacked it a bit.
27
28 Q. Did you approach [AK] and [AL] and try and persuade
29 them to assist in taking the matter to the police?
30 A. No, I didn't know them at that point. It wasn't until
31 later that I got to meet [AL].
32
33 Q. You could have --
34 A. I never met [AK].
35
36 Q. I'm terribly sorry.
37 A. I never met [AK], but I met [AL].
38
39 Q. [AL] was a locally living lady?
40 A. I believe so, yes.
41
42 Q. You could have found out who [AL] was and contacted
43 her, couldn't you?
44 A. Yes, I could have, I suppose.
45
46 Q. Did you make a conscious decision not to do so?
47 A. No, I - it certainly wasn't a conscious decision, no.

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Q. Upon what did you form the view that [AL] wasn't prepared to go to the police? Was it what someone else told you or was it a document you read?

A. No. It was Bishop Clarke informing me, when he asked me to do the laicisation process, informing me that they did not want to go to the police.

Q. All right.

A. And that was a fairly dominant kind of thought.

Q. As I understand your evidence, it was probably early 1996 that you were toying with the idea of reporting McAlinden to the police?

A. It would have - it would have certainly crossed our minds, both Father Bill and myself, yes, to do exactly that.

Q. What you said before was toying with the idea --

A. Yes.

Q. -- as opposed to crossing your mind. Do you agree with me they're different?

A. Well, they are, I suppose.

Q. Toying with the idea means that it was actually something --

A. We were thinking about it, yes.

Q. And you were discussing it with Father Burston?

A. I presume so, yes.

Q. Are you able to assist with your recollection?

A. I mean, I would have, yes, because he and I worked closely together and in these sorts of situations of great delicacy, you know, you need the advice of a close confidant.

Q. It is a bit more pressing than a matter of great delicacy. You've got a priest incardinated to the diocese, who you were concerned may be continuing to sexually abuse children. Would you agree it is a bit more than a matter of delicacy?

A. Yes; then again, it's the matter of [AK] and [AL] not wanting the police involved and, as I said, that was - you know, that was a pretty important factor in our thinking.

1 Q. When you say "our thinking", you're referring to just
2 Father Burston, are you.
3 A. Father Burston and myself. We were trying to respect
4 the wishes of [AK] and [AL].
5
6 Q. Given you were toying with the idea of going to the
7 police, did you, at that point, access McAlinden's file to
8 see if there was other material on there that you could
9 utilise in making a decision about what you ought to do?
10 A. No, I did not make that decision to go into the file.
11
12 Q. Do you know whether Father Burston had a look at
13 McAlinden's file at around that time?
14 A. No, I do not.
15
16 Q. Was Father Burston able to have access to that file?
17 A. Yes.
18
19 Q. As your vicar general?
20 A. Yes, he certainly was.
21
22 Q. You replied to McAlinden in a letter dated 22 December
23 1995 which is behind tab 271. It is exhibit 75. Do you
24 have that document?
25 A. Yes.
26
27 Q. In that letter you note that you're continuing the
28 laicisation process and you note his unwillingness to apply
29 personally for laicisation; do you see that?
30 A. Yes.
31
32 Q. You sent this letter to a post office box in WA?
33 A. Correct.
34
35 Q. By that time at least, you knew he was in Western
36 Australia?
37 A. That was the address we had.
38
39 Q. Did you contact the bishops in Western Australia to
40 warn them about McAlinden being present in the area?
41 A. Not in 1995. That came a little later.
42
43 Q. When was that?
44 A. Oh, it would have been probably in the 2000s, some
45 time, 2003 or so, 2004.
46
47 Q. Why did you do it then?

1 A. Simply because we couldn't find Denis McAlinden after
2 a time. He seemed to be ducking for cover between Western
3 Australia and Ireland.
4
5 Q. When you say "ducking for cover: What efforts were
6 made by you to find him in Western Australia in 1995-96?
7 A. That was the address we had, the Jolimont address.
8
9 Q. He answered letters that you sent from that address,
10 at least initially, didn't he?
11 A. He did, yes.
12
13 Q. It didn't occur to you to get in contact with the
14 police in Western Australia and warn them that there was an
15 admitted paedophile living in Western Australia?
16 A. No, I didn't.
17
18 Q. And acting as a priest?
19 A. No, I didn't think to do that.
20
21 Q. At that stage, did you see you had any child
22 protection obligations that ought to have to led you to
23 think along those lines?
24 A. At that stage, you know, my understanding of the issue
25 was fairly innocuous. I wasn't fully aware of the extent
26 of the issue. So, in my defence, I suppose I was on a
27 sharp learning curve because of the McAlinden situation.
28 It only developed into something more concrete later on.
29
30 Q. Did you learn things from what was happening in
31 relation to another priest of the diocese who was in fact
32 arrested in October 1995?
33 A. Yes.
34
35 Q. That matter was already in the hands of the police,
36 wasn't it, at the time you first learnt about it?
37 A. Yes, it was, yes.
38
39 Q. Did anything relating to the arrest of that priest
40 factor on your management of McAlinden?
41 A. Not hugely. I mean, that priest, when he was arrested
42 admitted his offences, which in itself was quite unusual,
43 I think.
44
45 Q. You had another priest who had admitted offences,
46 namely McAlinden?
47 A. Yes.

1
2 Q. To that extent at least, there were some parallels?
3 A. There were, yes.
4
5 Q. When did you first learn that Ryan, who was the other
6 priest, we're talking about --
7 A. Yes.
8
9 Q. -- had been accused of sexually abusing children?
10 A. It probably would not have been - as I was saying
11 yesterday, I returned from holidays in October 1995.
12 I read in the newspaper about how a priest at East Maitland
13 had been placed under arrest.
14
15 Q. When did you learn that that was Ryan?
16 A. Oh, it probably would have been within the 24 hours of
17 reading it in the paper, because I returned to work and
18 discovered it was Ryan.
19
20 Q. What day did you return to work?
21 A. It would have been towards the end of October, say
22 around 31 October - whatever date that might be.
23
24 Q. Did you check your diary to see whether that was in
25 fact the date you returned to work?
26 A. No, I did not, because the situation happened then
27 early in December - early in November, rather, where
28 Bishop Clarke resigned and his resignation was accepted by
29 the Vatican.
30
31 Q. Was Ryan arrested on your first day in the job - or
32 later or earlier?
33 A. No, no, no. My first day on the job was 15 February
34 1995.
35
36 Q. I'm terribly sorry, I mean your first day in the job
37 as bishop. We were talking about Bishop Clarke leaving.
38 A. Oh, as bishop. Just prior to that.
39
40 Q. Just prior?
41 A. I took over as bishop about a day or two after Ryan
42 had been arrested.
43
44 Q. So Bishop Clarke was still in the hot seat?
45 A. He was.
46
47 Q. At the time Ryan was arrested?

1 A. The hot seat is correct.
2
3 Q. The circumstance in which you became aware that the
4 priest who had been accused was Ryan was what? Did someone
5 at the diocese tell you or what happened?
6 A. Yes, I think it was Bishop Clarke himself who told me,
7 because I sort of walked in the door and he drew me aside
8 very quickly and filled me in on the Ryan matter.
9
10 Q. That was before the arrest actually took place?
11 A. No, it had happened, I think.
12
13 Q. It had already happened?
14 A. Yes.
15
16 Q. I'm going to ask you to put aside volume 3 and reach
17 for volume 4.
18 A. Yes.
19
20 MS LONERGAN: Commissioner, would that be a convenient
21 time?
22
23 THE COMMISSIONER: Very well. We will take the morning
24 tea break and return at 12.
25
26 **SHORT ADJOURNMENT**
27
28 MS LONERGAN: Q. Bishop, do you have volume 4 in the
29 witness box with you?
30 A. Yes, I do.
31
32 Q. Just have a look at a document behind tab 273. It
33 appears to be a handwritten note of yours?
34 A. Yes.
35
36 Q. There's date on it, 1996; do you see that?
37 A. I do, yes.
38
39 Q. Is that in your handwriting, that "1996"?
40 A. It looks like my writing, yes.
41
42 Q. Do you recall having made that note --
43 A. I do.
44
45 Q. -- regarding a suspicion about Jim Fletcher and
46 inappropriate behaviour with boys?
47 A. Yes, I do.

1
2 Q. The name on that note is Patrick Roohan?
3 A. Roohan.
4
5 Q. Was he an official of the Catholic Church in this
6 diocese?
7 A. He was the principal of a school in the diocese, at
8 Singleton.
9
10 Q. There's mention of some other names, "Jim Callinan
11 warned Patrick".
12 A. Yes.
13
14 Q. What does that mean?
15 A. Jim Callinan was the director of schools in the
16 diocese of Maitland-Newcastle and he must have said
17 something to Patrick about coming forward with regard to
18 Fletcher, I think.
19
20 Q. And Jim Finucane?
21 A. Finucane, yes.
22
23 Q. Finucane?
24 A. It was said to me by Patrick Roohan that Jim Finucane
25 and Colleen Timoshenko, the other two names there, that
26 they may know something about this inappropriate behaviour.
27
28 Q. The note next to "Colleen Timoshenko may know", is
29 that "Saw her" with an exclamation mark?
30 A. That is "Saw"; yes, I interviewed her.
31
32 Q. That means she was the only one out of those that you
33 actually went and interviewed or --
34 A. Yes.
35
36 Q. Then, "Spoke to Michael Bowman" - who was he?
37 A. Michael Bowman was the current director of Catholic
38 schools. Jim Callinan had retired by that stage.
39
40 Q. I understand. Did you discuss this particular piece
41 of intelligence with your deans or consultors?
42 A. No, I don't think I did.
43
44 Q. Why not?
45 A. To me it was - it was reported as a suspicion only.
46 When I spoke to Colleen Timoshenko, she was unable to
47 confirm that suspicion. She said she knew nothing about

1 it.
2
3 Q. You recall that now?
4 A. I recall that, yes.
5
6 Q. You didn't add that to the note. You just said, "Saw
7 her", but didn't add that?
8 A. No, I would have seen her probably after making this
9 note.
10
11 Q. If you did see her and she told you something that you
12 were concerned about regarding Fletcher, you would have
13 recorded that somewhere, maybe on that note?
14 A. I'm sure I - I'm sure I would have, yes. I was
15 getting used to idea of making some file notes by this
16 time.
17
18 Q. You gave evidence that Bishop Clarke, at the meeting
19 of deans in what we've identified to have been August 1995,
20 discussed with his deans at the time a rumour regarding
21 another priest?
22 A. Yes.
23
24 Q. But you didn't see that as a necessary thing to do in
25 relation to this particular rumour about this particular
26 priest?
27 A. About what?
28
29 Q. Fletcher?
30 A. About making a note or not --
31
32 Q. No, about raising with the deans that you had some
33 information from somebody about another priest being
34 engaged in inappropriate behaviour with boys?
35 A. Yes, I don't remember speaking about it to the deans.
36
37 Q. You may have?
38 A. Possibly.
39
40 Q. Behind tab 274 is a letter from a Mr Rolls, R-0-L-L-S,
41 and it is directed to Monsignor Hart. In January 1996, was
42 Monsignor Hart your vicar general?
43 A. No, Monsignor Hart wasn't. It was Father Bill
44 Burston.
45
46 Q. So was Monsignor Hart Bishop Clarke's vicar general?
47 A. He was, yes.

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Q. Can you just read that letter to yourself. It is titled "Misprision of felony".

A. Yes.

Q. Do you see the first paragraph talks about:

The police in the States of Victoria and New South Wales have indicated they are adopting the principle they should investigate the possibility of laying charges of Misprision of Felony in relation to all cases involving criminal sexual activity.

Do you see that?

A. Yes, I can see that.

Q. Do you remember whether you have seen a copy of this letter before today?

A. I don't remember seeing it, no.

Q. Was Monsignor Hart one of your deans or consultors as at January 1996?

A. Yes, he was a dean certainly.

Q. This letter appears to have been directed to him as vicar general?

A. Yes.

Q. Was it the position that mail directed to persons who had performed the role of vicar general would ordinarily be brought to the attention of the bishop - that is, you - when it involved a matter of this type of importance?

A. Yes, it should have been, but I don't recollect seeing it.

Q. If you had seen it, is it something you would have recollected, do you think, given the contents?

A. You know, it's too long ago, but I may have, yes.

Q. Isn't it the position that, as at December 1995, you had been given information in writing to the effect that a priest of the diocese, of which you were head, had admitted to criminal offences?

A. Yes.

1 Q. And those criminal offences involved criminal sexual
2 activity?
3 A. Yes.
4
5 Q. Do you see this letter talks about legal advice being
6 provided to a representative of the diocese?
7 A. Yes.
8
9 Q. It talks about the possibility of laying charges of
10 misprision of felony in relation to all cases involving
11 criminal sexual activity?
12 A. Yes, I can see that, yes.
13
14 Q. I understand that your evidence is you don't recall
15 seeing this, but had you seen it, that would be something
16 that you would have remembered, wouldn't you, given the
17 position you had found yourself in of being informed about
18 criminal activity by priests of the diocese?
19
20 MR HARBEN: Commissioner, there's no way the witness can
21 answer that. That's a hypothetical on a hypothetical, with
22 respect. My learned friend can ask him, having seen the
23 letter now what does he think of it, or something like
24 that.
25
26 THE COMMISSIONER: Yes, had the bishop seen it.
27
28 MS LONERGAN: Commissioner, if you're not assisted by it,
29 I'll move on to something else.
30
31 THE COMMISSIONER: The situation now, perhaps?
32
33 MS LONERGAN: I beg your pardon?
34
35 THE COMMISSIONER: If he saw it today, what would it have
36 triggered?
37
38 Q. The situation is, Bishop Malone, that you don't recall
39 ever having seen that letter?
40 A. I don't recall, Commissioner, no. If it had been
41 today, it would have been a whole different story, yes.
42
43 THE COMMISSIONER: Yes.
44
45 MS LONERGAN: Q. You say "If it had been today it would
46 have been a whole different story", what story?
47 A. The matter would have been pursued with more vigour

1 and --
2
3 Q. The matter being reporting --
4 A. Reporting it to the police and so on, yes.
5
6 Q. Reporting McAlinden to the police?
7 A. Yes.
8
9 Q. That's regardless of the wishes of the --
10 A. The two people, yes.
11
12 Q. -- two women you say you knew about?
13 A. Yes, that's correct.
14
15 Q. Have a look at the document behind tab 275 which is
16 exhibit 76. That appears to be McAlinden's reply to your
17 letter of 22 December. I just want to make sure I've taken
18 you to your 22 December letter. Yes, I did.
19 A. You did, yes.
20
21 Q. That's the one where you said we're going to proceed
22 with the process?
23 A. I rejected his excuses, yes.
24
25 Q. I just want you to read that letter to yourself. It
26 doesn't have anywhere on that a notation that you received
27 it, but do you recollect receiving this letter, and I'll
28 just give you a moment to read it?
29 A. Yes, I've had a quick look.
30
31 Q. Do you recall actually --
32 A. I think I did.
33
34 Q. -- reading this?
35 A. Yes.
36
37 Q. Did you, at the time you received it, view the
38 contents with some cynicism, do you recall? Please say if
39 you don't.
40 A. Well, yes, because all the correspondence from
41 McAlinden was very self-seeking, and he was trying to make
42 excuses for his behaviour.
43
44 Q. All right.
45 A. He was trying to say that he was a reformed character
46 when, in fact, that could not be the case. So I would have
47 received this letter with the same degree of cynicism.

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Q. Would you agree there were attempts in the correspondence you'd read up to this letter, and including this letter, to minimise what he had been accused of?

A. I see that, yes.

Q. In this letter, in the paragraph commencing about halfway down the page, the first page, he disputes a claim of any relationship as mentioned continuing over a lengthy period of time with any child?

A. Yes.

Q. He says:

Neither do I know the names of the said accusers. I admitted to Father Lucas all the cases that I was aware of.

Do you see that?

A. Yes.

Q. Did that prompt you to contact Father Lucas and find out what "all the cases" were?

A. No, I didn't contact him, no.

Q. Do you see he says:

Some of the names given by him were certainly not correct: one of these was that of [AK] ...

A. Yes.

Q. And then a little further down you see another name mentioned was [AJ]?

A. Yes.

Q. Do you know who that is from having a look at the pseudonym list?

A. I do know, yes, I do.

Q. He said this:

... even though she occasionally sat on my knee on the few occasions I visited their home, I certainly did nothing to that child that was indecent.

1
2 Do you see that?
3 A. Yes.
4
5 Q. Did you accept his denial, or apparent denial, that
6 there was anything improper?
7 A. Well, in the context of all the other letters, yes
8 I would have rejected anything that he said in his defence.
9
10 Q. Did that lead you to find out what the complaint was
11 by [AJ]?
12 A. No, it didn't, actually.
13
14 Q. It didn't occur to you to go and look at McAlinden's
15 file to see if there was any evidence on there or
16 information on there about what [AJ] had said about him?
17 A. No, I didn't - I didn't check that.
18
19 Q. Did you discuss it with Father Burston or any priest
20 at the diocese?
21 A. I can't recollect having done so, although perhaps
22 I would have shown the letter to Father Burston.
23
24 Q. Father Burston, having been at the diocese before you
25 arrived, may well have known things about what the [AJ]
26 material was?
27 A. He may have, yes, that's true. That's true..
28
29 Q. But you don't recollect any specifics of the
30 discussion with him, if you had any?
31 A. No, I don't.
32
33 Q. Would you have a look at the letter behind tab 276
34 which also appears to be a letter from McAlinden to you and
35 again, this is from a post office box in Jolimont, Western
36 Australia?
37 A. Yes.
38
39 Q. So at least at that point, you knew that --
40 A. He was still there.
41
42 Q. -- McAlinden was apparently accessing mail in Western
43 Australia. Just read that letter to yourself. I don't
44 have any specific question to you about it. It is just to
45 keep you informed of the sequence of events, and then I'm
46 going to ask you to look at the letter behind tab 277.
47 A. (Witness does as requested). Yes, I've got the gist

1 of it.
2
3 Q. Did you have a look at the shorter letter behind
4 tab 277.
5 A. Yes.
6
7 Q. Do you see that February 1996 letter behind tab 277
8 provides a contact address in Ireland?
9 A. It does, yes.
10
11 Q. It was the position, wasn't it that, as bishop of the
12 diocese, priests incardinated to the diocese were obliged
13 to inform you where they were?
14 A. Yes, in vague terms, yes.
15
16 Q. And McAlinden did that for a while, but ceased at some
17 point to inform you?
18 A. Well, yes, yes.
19
20 Q. But at least in early 1996, you were still kept
21 informed?
22 A. Yes, that's true.
23
24 Q. Do you know whether the diocese assisted in paying or
25 contributing to any airfare that McAlinden used to travel
26 overseas?
27 A. I was unaware of any airfare being paid to him. That
28 was not the custom.
29
30 Q. That was not the custom?
31 A. No.
32
33 Q. Did anyone tell you that, in 1993, a one-way ticket to
34 England had been purchased for McAlinden?
35 A. I have heard that, yes.
36
37 Q. You heard that?
38 A. I have heard that.
39
40 Q. Who did you hear that from?
41 A. I think I've heard that in the context of these
42 investigations for this Special Commission.
43
44 Q. From whom did you hear that?
45 A. From my legal team.
46
47 Q. Before your legal team assisted you with information

1 that was being explored by the Special Commission - and may
2 I say that there's nothing at all inappropriate about you
3 being so informed - had you heard anything about that prior
4 to those sorts of matters?

5 A. I can't recollect being told that prior to that, no.

6
7 Q. Did you ever discuss with [AJ] anything to do with
8 McAlinden's sexual abuse conduct or allegations in relation
9 to her?

10 A. I don't think I did, no.

11
12 Q. I just need your assistance with the document behind
13 tab 278, which is a typewritten, very short document, that
14 appears to have been okayed by you on 8 March 1996.

15 A. Okayed by me, yes.

16
17 Q. It says:

18
19 *We have had three replies from him,*
20 *strongly urging that he be not deprived of*
21 *the ability to say Mass ...*

22
23 And asking the question:

24
25 *Do we nominate an adviser for him, or is it*
26 *done by the judge in the case?*

27
28 Do you know who prepared that note?

29 A. I think that would have been Father Bill Burston
30 prepared that note, because, by this time, I had passed
31 over the proceedings against McAlinden to Father Bill
32 Burston and he was proceeding with it, I think, in a
33 reasonable kind of way.

34
35 Q. Behind tab 281 is a letter on "Diocese of
36 Maitland-Newcastle" letterhead to "My Dear Brothers" dated
37 26 April 1996. That's a letter to your priests of the
38 diocese, is it?

39 A. That's correct, yes.

40
41 Q. The prompting of that letter was what? I know you
42 refer to the Australian Bishops meeting at Kensington, but
43 was there something in particular that prompted it relative
44 to your diocese?

45 A. If it came from the Australian Catholic Bishops
46 Conference, it would not have been specific to the
47 Maitland-Newcastle diocese.

1
2 Q. If you have a look behind tab 282, that seems to be a
3 pastoral letter and media release authored by the Catholic
4 Bishops of Australia?
5 A. Yes.
6
7 Q. Was that the origin of your --
8 A. This would be what prompted my letter, yes.
9
10 Q. So you adapted something from the Australian Catholic
11 Bishops?
12 A. I'd say so, yes.
13
14 Q. In terms of your letter?
15 A. I would think so.
16
17 Q. You make this comment:
18
19 *In our own diocese at present the issue is*
20 *very real.*
21
22 That is a reference to the issue of sexual abuse in all its
23 forms in the Catholic Church?
24 A. Yes.
25
26 Q. Then you go on:
27
28 *People are asking us what is happening to*
29 *our church and our priesthood.*
30
31 Do you see that?
32 A. Yes.
33
34 Q. At the "PS" part of the letter, you've referred to a
35 media release regarding Vince Ryan's court appearance.
36 A. Yes.
37
38 Q. And also a copy of the minutes of the Council of
39 Priests meeting held 2 April 1996?
40 A. Yes.
41
42 Q. Do you see that?
43 A. I see that, yes.
44
45 Q. Are you able to assist with the relevance or otherwise
46 of the copy of the minutes of the Council of Priests
47 meeting from April 1996?

1 A. Not without seeing it, no.
2
3 Q. I don't think I can assist you with that.
4 A. I don't know what's in there.
5
6 Q. Are you able to recollect whether it related to
7 Vince Ryan? Please say so if you can't.
8 A. I'm not able to recollect what transpired at the
9 Council of Priests meetings. I'm sure Vince Ryan would
10 have been discussed because it was a current case.
11
12 Q. The pastoral letter, which appears behind your letter
13 to your priests of the diocese dated 26 April 1996, refers
14 to an Australian Catholic Bishops meeting in plenary
15 assembly at Kensington?
16 A. Correct, yes.
17
18 Q. And that the major item on the agenda was the issue of
19 sexual abuse by priests and religious?
20 A. Right.
21
22 MR HARBEN: "A major item".
23
24 MS LONERGAN: I'm terribly sorry, it does say "a major".
25 Thank you, Mr Harben.
26
27 Q. Can we take it you went to that?
28 A. Yes, I would have done.
29
30 Q. The letter that you sent to the priests of the diocese
31 attaching that pastoral letter, was that sent to McAlinden
32 as well as all the other priests of the diocese, do you
33 remember?
34 A. I have no idea whether he'd have got a copy.
35
36 Q. Did you want him to get a copy?
37 A. No, I don't know if he was on the mailing list for all
38 this sort of thing.
39
40 Q. "All this sort of thing"? The letter to "My Dear
41 Brothers", wasn't that to be directed to all your priests
42 of the diocese?
43 A. Yes, it was, yes.
44
45 Q. But you're unable to say whether he was one of the
46 ones it was sent to?
47 A. I don't know whether he was sent one or whether he

1 received one. I have no way of knowing that.

2

3 Q. The pastoral letter, about a third of the way down the
4 page says:

5

6 *We cannot change what has happened in the*
7 *past, undo the wrongs that have been done*
8 *or banish the memories and the hurt.*

9

10 Was that a position with which you agreed at the time?

11 A. Yes, certainly.

12

13 Q. Then it says:

14

15 *In seeking to do what is possible, our*
16 *major goals must be truth, humility,*
17 *healing for the victims, assistance to*
18 *other persons affected, an adequate*
19 *response to those accused and to offenders,*
20 *and prevention of any such offences in the*
21 *future.*

22

23 A. Yes.

24

25 Q. Can we take it those sorts of considerations were
26 discussed at the Australian Catholic Bishops plenary
27 meeting?

28 A. I'd say so, yes.

29

30 Q. When you say "I'd say so", do you remember them being
31 discussed?

32 A. Well, I don't remember the actual meeting, but the
33 fact that this pastoral letter has emerged from it would
34 indicate that it is virtually - you know, it's a summary of
35 the meeting.

36

37 Q. This letter is a statement of intention, isn't it, on
38 the part of Catholic Bishops of Australia to act in a
39 certain way regarding sexual abuse allegations?

40 A. Correct, yes.

41

42 Q. Is that a fair reading?

43 A. Because this was the year that the Towards Healing
44 document was first tabled, in the early part of 1996.

45

46 Q. Had it been tabled at the time of this particular
47 pastoral letter, are you able to say?

1 A. It was - it was tabled in draft form at that first
2 meeting in April 1996 and it was then voted on and ratified
3 in November of that same year.

4
5 Q. The next paragraph on the pastoral letter reads as
6 follows:

7
8 *When the guilt of a priest or religious is*
9 *established, the response of the Church*
10 *authority must be appropriate to the*
11 *seriousness of what has happened. Serious*
12 *offenders who have abused their power may*
13 *not be given such power again. Those who*
14 *have made the best response to treatment*
15 *recognise this themselves, and they no*
16 *longer claim a right to return to ministry.*

17
18 A. Yes.

19
20 Q. Had you had experience of that situation as at April
21 1996; that is, the treatment and/or response to treatment
22 on the part of any priest of a diocese?

23 A. No, I don't think I'd had any response - any
24 experience of that at that point, no.

25
26 Q. What was your understanding as to what was required by
27 that part of the pastoral letter on your part to respond to
28 the establishment or otherwise of the guilt of McAlinden,
29 as you knew it at that time?

30 A. In 1996, we were still proceeding, weren't we, with
31 correspondence between ourselves and McAlinden in the
32 earlier months, still on the assumption that [AK] and [AL]
33 did not want the police informed and that the laicisation
34 process should continue.

35
36 Q. You hadn't made any inquiry with [AJ] by that time?

37 A. No, I hadn't.

38
39 Q. You hadn't looked --

40 A. I didn't know of [AJ]'s existence until somewhat
41 later.

42
43 Q. It's mentioned in McAlinden's letter that I just took
44 you to?

45 A. Yes, I know, it said it there, but it was a name that
46 meant nothing to me.

47

1 Q. But the context in that letter was a denial on the
2 part of McAlinden that he had interfered with [AJ]?
3 A. Yes, that's correct.
4
5 Q. That letter predated this April 1996 --
6 A. It did, yes.
7
8 Q. You at least had some knowledge there had been an
9 allegation made by [AJ], didn't you?
10 A. It would appear that, I think, probably Brian Lucas,
11 in the context of that letter, took McAlinden to the [AJ]
12 matter as well.
13
14 Q. What I'm asking is about your knowledge; that is, in
15 the context of the letter from McAlinden that I've just
16 taken you to, it was evident, wasn't it, to you that there
17 had been at least some allegation by [AJ]?
18 A. It would appear so, yes.
19
20 Q. In terms of your pastoral responsibilities as bishop
21 of the diocese, didn't you see it as relevant, particularly
22 given this expressed position in this pastoral letter, to
23 make contact with past possible victims of McAlinden?
24 A. That would have been the adequate response, yes, and
25 I did not make that response.
26
27 Q. Do you accuse yourself in that respect of having not
28 done that?
29 A. That I did not - yes, I did not dig and explore the
30 files.
31
32 Q. Did you deliberately not explore files about McAlinden
33 that may well have been available to you and in respect of
34 the file or files in your office were in fact available to
35 you deliberately because you did not want to know?
36 A. No, it wouldn't have been because I didn't want to
37 know. It would have been because the whole area of sexual
38 abuse is so distasteful that I would have found it very
39 unpalatable to dig further.
40
41 Q. Is it fair to say that, at some point, you had an
42 epiphany in relation to dealing with these matters of
43 sexual abuse?
44 A. Yes, it would be fair to say that.
45
46 Q. When did that happen?
47 A. I think probably the earlier years of my being bishop

1 were fairly bumbling when it came to responding adequately
2 to matters of sexual abuse. That was certainly the case
3 that was brought to the New South Wales Ombudsman following
4 the Fletcher matter.

5
6 Q. That was in 2003?

7 A. That was 2004; it was the inquiry that the Ombudsman
8 conducted and, from that, it was very obvious that I was -
9 I was not adequately handling these matters.

10
11 Q. We'll come to that. Are you saying that that's when
12 the epiphany occurred or did you think it happened earlier?

13 A. No, I think that's probably the time the lights went
14 on for me.

15
16 Q. What about the direction and/or assistance in terms of
17 at least the pastoral approach that should be followed, as
18 set out in this April 1996 letter? Did that assist you in
19 directing the way in which you ought to manage complaints
20 of sexual abuse?

21 A. Yes, it certainly did. I mean, if I'm anything, I'm a
22 pastor. I might not be an expert in canon law or other
23 things, but certainly over the years of being a priest
24 I have developed a sensitivity to people's needs and I hope
25 that I try to respond adequately to those. So my earlier
26 response to sexual abuse matters would have been to, where
27 possible, meet with the people concerned and offer them
28 whatever help I could.

29
30 Q. But you didn't meet with [AK] or [AL]?

31 A. No, I didn't, not at that point, not at that point.

32
33 Q. You didn't meet - sorry, you didn't meet with [AJ]?

34 A. No, I did not.

35
36 Q. You didn't find out the identity of other persons who
37 may be mentioned on McAlinden's file in your office?

38 A. No.

39
40 Q. You didn't inquire with Bishop Clarke as to the
41 identity of who the other victims may have been?

42 A. No.

43
44 Q. And you didn't discuss with your vicar general,
45 Father Burston, what he may know about who the other
46 victims may have been?

47 A. No, I don't recollect that I did.

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Q. On the following page is the media release and it does appear --

MR SKINNER: Excuse me, could I speak to my learned friend for a moment?

(Ms Lonergan and Mr Skinner confer)

MS LONERGAN: Commissioner, it has been drawn to my attention by Mr Skinner, and also by Mr Kell, my learned junior, that the letter of 27 January 1996 has an unfortunate hole punch to the left-hand side, with regard to a word that I read on to the record as "admitted" and --

THE COMMISSIONER: It leaves out a "not"?

MS LONERGAN: No, there's no "not" there. Mr Kell has managed to unearth a slightly better copy. The letter that looked like a "D" to me now looks like a "B", but there's still a circle over the initial letter or couple of letters. I accept that the most likely word is "I submitted to Father Lucas all the cases that I was aware of" as opposed to "admitted".

THE COMMISSIONER: I see.

MS LONERGAN: If anyone at the Bar table disagrees with that I'm content to revise that position. That does seem to be --

THE COMMISSIONER: Thank you, Ms Lonergan, for pointing that out. Thank you, Mr Skinner, for raising it

MR SKINNER: Yes. There's one other matter. May I speak to my learned friend?

THE COMMISSIONER: Yes.

(Ms Lonergan and Mr Skinner confer)

MS LONERGAN: Q. Page 604, bishop, appears to be a document perhaps prepared by your vicar general, or at least he's provided as the contact person together with your communications officer?

A. Yes, I can see that.

1 Q. It is a media release dated 24 April 1996?
2 A. Yes.
3
4 Q. Do you see this is a media release regarding charges
5 laid against Vincent Ryan?
6 A. Yes, can I see that.
7
8 Q. In the second paragraph this appears:
9
10 *In accordance with normal Church procedure,*
11 *Father Ryan was immediately withdrawn from*
12 *active ministry on 11 October 1995 and the*
13 *proper procedure of our legal system is*
14 *taking its course.*
15
16 Do you see that?
17 A. Yes.
18
19 Q. What was the normal church procedure referred to
20 there, are you able to say?
21 A. I'm not able to say, frankly.
22
23 Q. Is it your document?
24 A. Yes, it is, yes.
25
26 Q. No idea at all what the normal church procedure was as
27 at 1996 regarding what appears to be a reference to
28 withdrawal of Father Ryan from active ministry?
29 A. From active ministry, yes. There must have been -
30 there must have been charges laid against him in October
31 1995.
32
33 Q. Yes, but my focus is on the "normal church procedure"
34 reference there.
35 A. Oh, I see what you mean.
36
37 Q. Yes.
38 A. I think that if somebody is charged, then they should
39 be withdrawn from ministry. I think that was the normal
40 church procedure.
41
42 Q. That was the normal church procedure in 1996, as you
43 understood it?
44 A. I think so, yes.
45
46 Q. That once charges had been laid, that should happen?
47 A. Yes.

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MS LONERGAN: I tender the documents behind tab 281.

THE COMMISSIONER: That is just page 604?

MS LONERGAN: I'll tender all of them. Pages 601 to 604.

THE COMMISSIONER: As one exhibit?

MS LONERGAN: Yes, please.

THE COMMISSIONER: The material behind tab 281 comprising four pages, 601 to 604 inclusive, will be admitted and marked exhibit 90.

EXHIBIT #90 MATERIAL BEHIND TAB 281 COMPRISING PAGES 601-604

MS LONERGAN: Q. Would you have a look at tabs 283 and 284. Look at 284 first?

A. Yes.

Q. You've given evidence that Father Burston, as your vicar general, was continuing the laicisation process that had been commenced?

A. Yes, correct.

Q. That letter confirms that that was indeed what Father Burston was doing in May 1996?

A. He was, yes.

Q. It also shows, does it not, that the letter sent by Father Burston was returned unopened on the handwritten annotation on the next page behind tab 283?

A. Yes, I see.

Q. At this stage, did Father Burston talk to you about the apparent lack of response of McAlinden?

A. Yes, he would have done, yes.

Q. Do you recall whether you toyed, at that point, with the idea of reporting McAlinden to the police given he was apparently overseas and not responding to your letters?

A. Yes, I think --

MR GYLES: I object to that question. This is as to the apparent unwillingness to respond. Commissioner, you will

1 recall that you were taken to tab 277, which was the
2 address to which this letter was sent.
3
4 THE COMMISSIONER: Yes, Mr Gyles.
5
6 MR GYLES: It was an address in Tipperary, Ireland. That
7 address is described, on 27 February 1996, in this way:
8 Denis McAlinden says "I have not as yet any fixed address
9 in Ireland."
10
11 MS LONERGAN: Yes, I will withdraw the question.
12
13 MR GYLES: This is a temporary address.
14
15 THE COMMISSIONER: Yes, he says it was a temporary
16 address.
17
18 MR GYLES: You get the point.
19
20 THE COMMISSIONER: Yes, Mr Gyles, thank you.
21
22 MS LONERGAN: I will withdraw the question.
23
24 Q. You learned that McAlinden had planned to go overseas
25 from the earlier letter I showed you?
26 A. I did, yes.
27
28 Q. Were you concerned that once he left the country he
29 may commit offences of paedophilia overseas?
30 A. No, that didn't occur to me, no.
31
32 Q. It did not occur to you?
33 A. It did not occur to me, no.
34
35 Q. Why not?
36 A. My knowledge of this sort of situation was still
37 fairly vague, I'd have to say, in 1995-96.
38
39 Q. So you knew he had committed a number of paedophilic
40 offences in relation to various persons, but does this mean
41 you accepted his suggestion that he was a reformed
42 character?
43 A. No, I did not accept that conclusion at all.
44
45 Q. What led you to the belief that he wouldn't commit any
46 more paedophilic offences overseas?
47

1 MR HARBEN: The evidence is it didn't occur to him. Now
2 it's being put to him as a positive proposition that he
3 formed that opinion.
4
5 MS LONERGAN: I apologise. I do understand what my
6 learned friend says.
7
8 Q. It didn't occur to you, as in that you didn't think
9 about it; is that what you mean?
10 A. No, I didn't think, no.
11
12 Q. So when you gave an answer a few questions back to the
13 effect that it didn't occur to you, you were not suggesting
14 that you dismissed it as a proposition?
15 A. No.
16
17 Q. You just didn't think about it?
18 A. Correct, yes.
19
20 Q. I understand. Behind tab 285 is a letter. I'm going
21 to ask you to read it and tell me if you have seen it
22 before. Just read it to yourself.
23 A. (Witness does as requested). Yes.
24
25 Q. In addition to priest files on McAlinden, you also
26 inherited priest files relating to Vince Ryan?
27 A. Yes. He would have been in the files.
28
29 Q. Did you look at Vince Ryan's files prior to June 1996?
30 A. No, I don't think so.
31
32 Q. Was a search warrant issued for Vince Ryan's files
33 associated with his arrest for paedophile offences, are you
34 able to say?
35 A. I can't remember really. I'm sure they would have
36 been.
37
38 Q. You don't recall accessing Vince Ryan's file, priest's
39 file?
40 A. No, I don't, no.
41
42 Q. All right.
43 A. Well, certainly subsequently I was adding huge amounts
44 of paper to it, but --
45
46 Q. The letter that I've asked you to read to yourself is
47 a letter between Monsignor Cotter and Bishop Clarke?

1 A. Yes.
2
3 Q. It talks about matters to do with Vince Ryan?
4 A. Yes.
5
6 Q. Did you, at any stage, discuss Vincent Ryan with
7 Monsignor Cotter?
8 A. Yes, I did. It was after Vince's sentencing and his
9 conviction that I did speak with Monsignor Cotter about the
10 matter.
11
12 Q. And was one of the things that you spoke to Monsignor
13 Cotter about that the media were reporting on the Ryan
14 matter?
15 A. I don't recollect that that was at issue between us,
16 really.
17
18 Q. Did you discuss with Monsignor Cotter how he dealt
19 with earlier information that he had about Vincent Ryan
20 having a tendency to commit paedophilia with boys?
21 A. Yes, he explained to me how he had been approached by
22 parents of certainly one child who complained about Vince
23 Ryan's activities and how I think the parents said, "If you
24 don't get him out of the parish, then we'll do something
25 drastic."
26
27 Q. And was the "something drastic" going to the police,
28 do you know?
29 A. I don't know about that.
30
31 Q. He didn't identify that?
32 A. I don't think so. And Monsignor Cotter then proceeded
33 to arrange for Vince Ryan to go to Melbourne for some
34 counselling and for treatment of some kind.
35
36 Q. Do you remember when you had this conversation with
37 Monsignor Cotter?
38 A. It would have been after Vince Ryan was charged and
39 sentenced and convicted, so whenever his trial was, which
40 would have been, what, about 1997, 1997 roughly. It was
41 around about - after that time.
42
43 Q. Did you consider any of the information that
44 Monsignor Cotter gave you as something that you could
45 employ for managing McAlinden?
46 A. No, I did not.
47

1 Q. You considered it and rejected it or you just didn't
2 relate the two?
3 A. No, it did not occur to me to.
4
5 Q. Did you discuss with Bishop Clarke matters relating to
6 Vincent Ryan and his criminal conviction and the conduct
7 associated with it?
8 A. I think the only memory I have of that is, because
9 Bishop Clarke was still the bishop for about a day or two
10 after this charge was laid against him, that Bishop Clarke
11 was in shock, as was I.
12
13 Q. The letter that I've asked you to read is dated 2 June
14 1996?
15 A. Yes.
16
17 Q. Had you read that letter before I'd shown it to you
18 today?
19 A. Well, only in my legal team's care, yes, but I hadn't
20 seen it up until the last week or two.
21
22 Q. Could you look behind tab 294.
23 A. Yes.
24
25 Q. In the top left-hand side of the page, there's a
26 message photocopied there. I don't want you to read out
27 the name of the person who it is from, and if parties at
28 the Bar table could note we'll redact that name out.
29 A. Certainly.
30
31 Q. Do you recall making that particular note?
32 A. Yes, that's my handwriting.
33
34 Q. It is a report of abuse regarding Denis McAlinden and
35 a boy when he was about seven years of age?
36 A. Yes.
37
38 Q. It went on for about 10 years?
39 A. I see that, yes.
40
41 Q. It related to a phone call you took?
42 A. Yes.
43
44 Q. We have it in the materials as something that occurred
45 in 1997. Does that ring a bell with you as to when you
46 received this particular report or are you able to assist
47 with when it was received by you?

1 A. No, I can't see any date on the message pad.
2
3 Q. No.
4 A. No. But, no, I couldn't tell you when this came in.
5
6 Q. Are you confident that you've correctly recorded the
7 name of the priest, that it was about?
8 A. Yes, well, that's - yes.
9
10 Q. Do you see down the bottom there:
11
12 *I advised [UR55] --*
13
14 That is the mother of the alleged victim --
15
16 *to report the matter to the Police [as soon*
17 *as possible].*
18
19 A. Yes.
20
21 Q. And:
22
23 *... mentioned to her that we had received*
24 *other complaints about McAlinden, but which*
25 *the complainants had refused to go to the*
26 *Police.*
27
28 A. Yes.
29
30 Q. Do you see that?
31 A. Yes.
32
33 Q. It says:
34
35 *Bishop Clarke and I had been instigating*
36 *proceedings for laicisation for McAlinden.*
37
38 A. Yes.
39
40 Q. Do you know whether that person went to the police?
41 A. No, I don't.
42
43 Q. Did you, as bishop of the diocese, encourage that
44 person to come in and make a complaint to the diocese that
45 you could act on?
46 A. Not really, no. Once I'd referred her to the police,
47 and hoping that she would go, that would be the end of the

1 matter from my point of view.

2

3 Q. That note that you made would have been one that was
4 placed on McAlinden's file, would it not?

5 A. Yes. I think so, yes.

6

7 MS LONERGAN: I tender that file note, Commissioner.

8

9 THE COMMISSIONER: Thank you, Ms Lonergan. The file note
10 behind tab 294 by Bishop Malone will be admitted and marked
11 exhibit 91.

12

13 **EXHIBIT #91 FILE NOTE BEHIND TAB 294**

14

15 MS LONERGAN: There's other secondary evidence that I can
16 make available to those at the Bar table, but not
17 immediately, that confirms that the date of that message is
18 3 December 1997.

19

20 THE COMMISSIONER: Thank you.

21

22 MS LONERGAN: I should also note on the record that
23 Bishop Malone added to that note some further matters he
24 conveyed to the caller, that he expressed his sorrow and
25 encouraged her or urged her to seek counselling through
26 Centacare for her son and herself and noted the diocese
27 would pay for that and rang Centacare to alert them to
28 expect her call.

29

30 THE COMMISSIONER: Thank you, Ms Lonergan.

31

32 MR GYLES: Might I just inquire - obviously, the document
33 doesn't have a date on it.

34

35 THE COMMISSIONER: Do you accept Ms Lonergan's --

36

37 MR GYLES: I haven't seen it, but I would take it that the
38 position taken by counsel assisting is that this is a
39 document which was prepared on 3 December.

40

41 THE COMMISSIONER: 3 December 1997.

42

43 MS LONERGAN: Yes. I'll show Mr Gyles the document we've
44 obtained from the diocese that appears to proffer that
45 position.

46

47 THE COMMISSIONER: Thank you.

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MS LONERGAN: Q. Yesterday you acknowledged that it was your recollection that McAlinden was being paid by the diocese some stipend?

A. Yes, some small stipend.

Q. For a period?

A. Through the Clergy Fund, yes.

Q. I want to suggest to you that that stopped in August 1997?

A. Right.

Q. Just have a look behind tab 296 and 297. Behind tab 296 is a meeting of the Maitland Clergy Central Fund where you are noted as having been present?

A. Yes.

Q. Have a look at page 694 at the top of the page next to (c). There's a minute referring to McAlinden?

A. Yes.

Q. It is noted that you said:

... McAlinden's whereabouts are unknown, although he is believed to be back in Australia but not practising as a priest.

A. Yes.

Q. And:

It seemed inappropriate, it was agreed, that he continued to receive payments from the Fund into his bank account while Diocesan authorities were trying without success to contact him.

Do you see that?

A. Yes.

Q. And:

It was agreed to stop all payments in the hope that this action would cause him to make contact.

1 That correctly reflects the position as at that meeting in
2 August 1997?

3 A. Yes.

4

5 Q. And then behind tab 297 there's a fax message from
6 Monsignor Frank Coolahan --

7 A. Yes.

8

9 Q. -- to Ms Mears. Monsignor Coolahan was in charge of
10 the Maitland Clergy Central Fund?

11 A. He was the secretary of it at the time.

12

13 Q. And he's authorising suspension of all payments at
14 that point?

15 A. Correct.

16

17 Q. Payments to Father McAlinden?

18 A. Yes.

19

20 MS LONERGAN: I tender both those documents together.

21

22 THE COMMISSIONER: Thanks Ms Lonergan. The minutes of the
23 meeting of the Maitland Clergy Central Fund of 5 August
24 1997 will be admitted and marked exhibit 92.

25

26 THE COMMISSIONER: What was the other document?

27

28 MS LONERGAN: The other document is a fax.

29

30 THE COMMISSIONER: And the fax on the following tab,
31 tab 297, will also be part of exhibit 92. Thank you,
32 Ms Lonergan.

33

34 **EXHIBIT #92 MINUTES OF THE MEETING OF THE MAITLAND CLERGY**
35 **CENTRAL FUND OF 5/8/1997 (TAB 296); AND FAX DATED 13/8/1997**
36 **(TAB 297)**

37

38 MS LONERGAN: Q. Could you please turn to tab 304, and
39 we're now part of the way through 1999, Bishop Malone.

40 A. Yes, right. I've got it.

41

42 Q. You will see that there's a letter there from your
43 vicar general, Father Burston, to Mr Davoren?

44 A. Correct.

45

46 Q. Just to give some context, Mr Davoren worked at the
47 Professional Standards Office of the Catholic Church at

1 that time, as you understood it?
2 A. He did, yes.
3
4 Q. By that time, had you become aware that there was a
5 procedure set up whereby a diocese could provide
6 information to the Professional Standards Office that could
7 be then forwarded to the police?
8 A. Definitely, yes.
9
10 Q. You gave evidence to that effect earlier today?
11 A. I mentioned that a bit earlier, yes.
12
13 Q. Father Burston's letter, was that pursuant to a
14 request you made that information be passed on to
15 Mr Davoren at the Professional Standards Office about [AL]
16 and [AK]?
17 A. Yes, it would have been, yes.
18
19 Q. The letter suggests that the women, [AL] and [AK],
20 "have not indicated at this stage any wish to take the
21 matter to the police"?
22 A. Yes.
23
24 Q. Do you see that?
25 A. I do.
26
27 Q. Is that, on your understanding of what you were told
28 in 1995, an accurate reflection of the position?
29 A. Yes, that's correct.
30
31 Q. Wasn't one of the matters you refer to in your
32 correspondence with the Apostolic Nuncio that these ladies
33 were threatening to take the matter to the police?
34 A. I mentioned that, yes, there was that - that that was
35 a threat, and we - I think I spoke about the possibility of
36 it being a bit of hyperbole, just to add weight to the
37 content.
38
39 Q. I think yesterday you acknowledged that that was not a
40 correct reflection, what you put in the letter to the
41 Apostolic Nuncio; is that your position?
42 A. I don't know that they were threatening to go to the
43 police. I think they were a bit ambivalent about that
44 right through this process, anyway.
45
46 Q. By "ambivalent", you mean uncertain what to do?
47 A. Well, you know, they were sometimes going to the

1 police, sometimes not.

2

3 Q. I understand. So at the time this letter - August
4 1999 - was sent, was it your understanding these ladies did
5 not want to go to the police?

6 A. That was still my understanding, yes.

7

8 MS LONERGAN: I tender that letter, Commissioner.

9

10 THE COMMISSIONER: The letter from Vicar General Father
11 Burston to Mr Davoren of 10 August 1999 will be admitted
12 and marked exhibit 93. That's tab 304.

13

14 **EXHIBIT #93 LETTER FROM THE VICAR GENERAL FATHER BURSTON TO**
15 **MR DAVOREN OF 10/8/1999 (TAB 304)**

16

17 MS LONERGAN: Q. On the next tab is a letter of the same
18 date from your vicar general to the Bishop of Nottingham.
19 Do you see that?

20 A. I do.

21

22 Q. In that letter it is noted that McAlinden is at
23 present at Skegness?

24 A. Yes, I see.

25

26 Q. Did you know in August 1999 that that's where he was?

27 A. I'd have to say no. If I knew, it's gone from my
28 memory, but I'd say not.

29

30 MS LONERGAN: I tender that letter.

31

32 THE COMMISSIONER: Letter of 10 August 1999 to the Bishop
33 of Nottingham from Father Burston, tab 305, will be
34 admitted and marked exhibit 94.

35

36 **EXHIBIT #94 LETTER OF 10/8/ 1999 TO THE BISHOP OF**
37 **NOTTINGHAM FROM FATHER BURSTON (TAB 305)**

38

39 MS LONERGAN: Q. In that letter, there's a comment to
40 the effect, "Denis is not an easy man to deal with"?

41 A. Yes.

42

43 Q. Are you able to assist whether you had conversations
44 with Father Burston about the particular contents of this
45 letter or are you just not able to say?

46 A. Look, I'm a bit vague about the Golden Jubilee
47 celebrations in Skegness, but, you know, Father Burston and

1 I discussed the difficulties that we were having with
2 McAlinden in not responding to correspondence and not
3 responding to any aspects of the process at all.

4
5 Q. Behind tab 306 is another letter dated 10 August 1999,
6 this time addressed to Denis McAlinden, care of a street
7 address in Skegness, England?

8 A. I see that, yes.

9
10 Q. Do you recall having discussions with Father Burston
11 to the effect that an actual address for McAlinden in
12 England was known at the time?

13 A. No, I don't think so. It was just another example of
14 his elusiveness. You know, he was here, there and
15 everywhere.

16
17 Q. At least an address was known?

18 A. Yes,

19
20 Q. At that point?

21 A. True.

22
23 Q. Do you know where that address was found or who
24 provided the details?

25 A. No, I don't.

26
27 MS LONERGAN: I tender that letter, Commissioner.

28
29 THE COMMISSIONER: Thank you, Ms Lonergan. The letter
30 from Father Burston to Denis McAlinden of 10 August 1999
31 will be admitted and marked exhibit 95.

32
33 **EXHIBIT #95 LETTER FROM FATHER BURSTON TO DENIS MCALINDEN**
34 **OF 10/8/1999 (TAB 306)**

35
36 MS LONERGAN: Q. Bishop, at this stage it had been some
37 years since attempts had been started to laicise McAlinden?

38 A. Yes.

39
40 Q. And, at this point at least, it appears your vicar
41 general knew McAlinden was in England?

42 A. Yes.

43
44 Q. And knew a street address for McAlinden?

45 A. Yes.

46
47 Q. Did it not occur to you that, given there was no

1 cooperation or no apparent cooperation with the process
2 that you had tried to pursue and continued, it would be
3 preferable to report this paedophile priest to the police?
4

5 MR HARBEN: I object to that. I thought that was the
6 whole point of that letter that Father Burston wrote. That
7 was the evidence that my friend took him to, that the
8 letter was written, he thought on his instructions, on
9 10 August 1997, to Mr Davoren.

10
11 THE COMMISSIONER: Yes, to Mr Davoren.

12
13 MS LONERGAN: I'll put the question differently.
14 I understand my learned friend's comment.

15
16 Q. Didn't it occur to you, given the apparent lack of
17 cooperation of Father McAlinden with the process that you
18 were pursuing, that you ought to report the matter directly
19 to the police - you personally?

20 A. This is what we were doing. I have a memory that not
21 only did Father Burston write to John Davoren about that
22 matter, but I phoned him as well and asked him to act on my
23 behalf to notify the police about McAlinden.

24
25 Q. The information that you've provided to Mr Davoren,
26 what did that consist of? Did you send over the statements
27 made by [AL] and [AK]?

28 A. No, no, nothing like that. It was just a simple
29 notification by phone, "Would you please act on our behalf
30 and inform the police about our difficulties in trying to
31 find McAlinden."

32
33 Q. Is there any reason why the statements of [AL] and
34 [AK] were not provided to the police so that they could
35 assess the information and the detail contained in it?

36 A. There was no need for the police to have that at that
37 point. They could have come and subpoenaed any documents
38 and looked through the file themselves at that point,
39 should they have wished, should they have wanted to do so.

40
41 Q. The file in your office?

42 A. Yes, the McAlinden file.

43
44 Q. The file you hadn't looked through?

45 A. Yes.

46
47 MS LONERGAN: Is that a convenient time, Commissioner?

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THE COMMISSIONER: Thank you Ms Lonergan. I will adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

UPON RESUMPTION:

MS LONERGAN: Commissioner, there has been a request from the media for release of exhibits 90 to 95 inclusive. Could those at the Bar table let staff of the Special Commission know by 4.15 if they have any objections to those being released.

THE COMMISSIONER: Thank you, Ms Lonergan.

MS LONERGAN: Q. Bishop, could you turn to tab 309 in volume 4. I think you still have that with you in the witness box.

A. Yes, thank you.

Q. You've given some evidence to the effect that you caused the Professional Standards Office of New South Wales to be notified of various information that you had regarding victims of McAlinden?

A. Yes.

Q. And the purpose of that notification was so that that organisation could forward to the police some intelligence or details about those matters?

A. That's correct, yes.

Q. I just want you to have a look at the form that appears behind tab 309.

A. Yes.

Q. I'm not suggesting it is your document or even a document of your diocese, but you see under the heading "Notifying person" down near the bottom --

A. Yes.

Q. -- the name "John Davoren, Professional Standards Office, on behalf of Bishop Michael Malone, Bishop of Maitland-Newcastle" appears?

A. Yes.

Q. It is dated 24 August 1999?

1 A. Correct.
2
3 Q. Would you mind reading the information that's
4 completed on the form and then I'm going to ask you some
5 questions along the lines of whether that information
6 recorded there coincides with your recollection, if you
7 have one, of what you conveyed to the Professional
8 Standards Office?
9 A. The offence details?
10
11 Q. Yes, in particular.
12 A. (Witness does as requested). Yes, I've read that.
13
14 Q. Do you see there's some information about McAlinden
15 being currently in England?
16 A. Yes.
17
18 Q. But that he was "expected to return to Australia
19 shortly and reside somewhere in the Bunbury region of WA"?
20 A. Yes.
21
22 Q. Can you see that?
23 A. Yes, I can.
24
25 Q. Was that information, information you conveyed to
26 Mr Davoren, do you remember? Please say if you don't
27 remember.
28 A. Look, I don't remember, frankly.
29
30 Q. Was that consistent with what you knew in 1999, around
31 about August, that he was currently in England and expected
32 to return to Australia shortly and reside somewhere in the
33 Bunbury region?
34 A. Well, before the luncheon break, I did mention the
35 fact that I was unsure as to whether Father Burston had
36 shared that address at Skegness with me or the Golden
37 Jubilee things, so I'm not quite sure. If I knew that,
38 then I passed it on, yes.
39
40 Q. Is it the position that it may well be that
41 Father Burston is the one who passed this information on to
42 the Professional Standards Office on your behalf?
43 A. He may have done. I had a recollection of ringing
44 John Davoren myself and I know Father Burston, wrote, yes.
45
46 Q. That was about [AK] --
47 A. Around the same time, yes.

1
2 Q. That was about [AK] and [AL] that you recollect you
3 phoned?
4 A. That's correct, yes.
5
6 Q. Thank you. Behind tab 310 is a statement of complaint
7 relating to [AE] taken on 5 October 1999. Do you see that?
8 A. Yes, I can see it, yes.
9
10 Q. Do you remember [AE]? There's no need to say her
11 actual name?
12 A. I'm just looking it up. Yes, I've got that here, yes.
13
14 Q. And you had subsequent dealings with [AE] in the
15 nature of managing her complaint through Towards Healing?
16 A. I did, yes.
17
18 Q. You met her on at least one occasion?
19 A. Certainly one occasion.
20
21 Q. Have a look at page 2 of the statement of complaint.
22 Do you see there's a part there for the person completing
23 the form to note whether they intended to notify the police
24 or not?
25 A. I can see that.
26
27 Q. You can see that person has ticked "Yes" in terms of
28 intention?
29 A. She's ticked "Yes" correct.
30
31 Q. If you wouldn't mind putting your hand where that page
32 is. I'm going to show you another document and I'm going
33 to relate the two. You were provided with a copy of [AE]'s
34 complaint together with a letter dated 8 October 1999 that
35 appears behind tab 317?
36 A. Yes, I have that.
37
38 Q. Do you see that's a letter from Mr Davoren to you?
39 A. Yes.
40
41 Q. Enclosing [AE]'s complaint?
42 A. Yes.
43
44 Q. Can we take it that you would have read [AE]'s
45 complaint at or around the time it was forwarded to you?
46 A. I did, yes.
47

1 Q. As at October 1999, was it your practice to make
2 contact with alleged victims of sexual abuse consistent
3 with the Towards Healing type of procedures or not?
4 A. Yes, certainly. On receipt of the letter from
5 John Davoren and the complaint that was attached, the
6 normal protocol was to write to the person who was making
7 the complaint to let them know that I'd received the
8 complaint and that we were about to put steps in place to
9 process that complaint appropriately.
10
11 Q. Behind tab 320 is a letter apparently from you to
12 [AE]?
13 A. Yes.
14
15 Q. In there you provide some pastoral comments --
16 A. I do.
17
18 Q. -- acknowledging how difficult it must have been for
19 her?
20 A. Yes.
21
22 Q. And apologising or expressing your sorrow to hear how
23 she had suffered?
24 A. I can see that, yes.
25
26 Q. That was a matter that you expressed truthfully?
27 A. Yes.
28
29 Q. You have assured her that her statement has been taken
30 very seriously?
31 A. Yes.
32
33 Q. Then you've mentioned that you are dependent on what
34 action the police decide to take at that point?
35 A. Correct, yes.
36
37 Q. Because, as you understood it, she had reported it to
38 the police?
39 A. She was either going to or intended to or whatever.
40
41 Q. Was it the process of Towards Healing at that time
42 that, as you understood it, until the police had done their
43 inquiry, it was not proper for you to start any process
44 that may interfere with their inquiry?
45 A. That was my understanding, yes.
46
47 Q. You've noted that the whole process can take much

1 longer than most people expect and there might be some time
2 before she hears from you again?
3 A. Yes.
4
5 Q. Are you able to say when you first met [AE]?
6 A. I think the next step in the process after my letter
7 was to attend a facilitated meeting with [AE], and her
8 counsellor, and her husband, was present, yes.
9
10 Q. Was it the requirement of Towards Healing that you
11 didn't proceed with meeting with the complainant if there
12 was an intention to proceed with the police first?
13 A. With the police, yes. I wasn't quite sure whether the
14 police were actively involved in her case.
15
16 Q. Yes.
17 A. But, in a sense, the involvement of the police was for
18 the purpose of investigation of her complaint, whereas any
19 meeting between her and myself was of a pastoral nature.
20
21 Q. Are you saying there was no reason why you wouldn't
22 personally have met with her in circumstances where she'd
23 taken the matter to the police?
24 A. Yes, I think I could have done that, yes.
25
26 Q. Have a look at the document behind tab 324. You will
27 see that's a letter from Mr Davoren, from the Professional
28 Standards Office, to you, dated 7 February 2000?
29 A. Yes.
30
31 Q. Do you see there's mention there in the first
32 paragraph about [AE] having contacted him upset, or fairly
33 upset, saying that she'd made a complaint to Maitland
34 police but had decided to withdraw it?
35 A. I see, yes.
36
37 Q. Do you see that?
38 A. Yes, I see that.
39
40 Q. And that he told her that he would let you know that
41 she's no longer dealing with the police?
42 A. Right. Okay.
43
44 Q. Do you see that?
45 A. Yes.
46
47 Q. Then it goes on to say:

1
2 [AE] was under the mistaken impression that
3 the Church had taken no action despite
4 information allegedly provided to the
5 authorities about McAlinden. Someone told
6 her - some parish rumour I presume - that
7 McAlinden was still a Parish Priest
8 somewhere.
9

10 He then goes on to say that it would be of assistance if
11 there could be some direct action by the church in relation
12 to [AE].

13 A. Yes.

14
15 Q. Can we take it that you then made plans to meet with
16 her?

17 A. Yes, that's correct.

18
19 Q. Have a look at the document behind tab 325.

20 A. Right.

21
22 Q. That's a letter from you to Mr Davoren noting that the
23 complaint to the police had been withdrawn?

24 A. Yes.

25
26 Q. And recommending counselling from a Sister Evelyn
27 Woodward?

28 A. Yes.

29
30 Q. Sister Woodward was a person who was involved in
31 preparing protocols and matters of that nature as to how
32 sexual abuse allegations against clergy should be managed?

33 A. She was. She was a key figure in helping the response
34 to that, yes.

35
36 Q. Did you think that there may be any conflict of
37 interests there if [AE] was sent to Sister Woodward as
38 opposed to someone independent of the church.

39 A. No, I think she was - Sister Evelyn Woodward is a
40 particularly well-qualified counsellor, psychologist,
41 I think. I'd had dealings with her in a pastoral kind of
42 way on a number of occasions and I thought she was most
43 appropriate to look at the [AE] case.
44

45 Q. Then your letter of 28 February suggests you had some
46 overseas commitments and wouldn't be back until the end of
47 March?

1 A. Yes.
2
3 Q. On 31 March, behind tab 326 you'll see this, you got
4 another letter from Mr Davoren referring to [AE] sounding
5 very stressed when she had rung him; do you see that?
6 A. Yes, I see that.
7
8 Q. And suggesting that a meeting or some sort of message
9 soon would be helpful?
10 A. Yes.
11
12 Q. There does appear to be a bit of a delay. It may be
13 that there were intervening letters and you might be able
14 to assist with that, but the next letter we have appears to
15 be dated 10 May the same year?
16 A. Is that on 32 --
17
18 Q. Behind 327?
19 A. Yes.
20
21 Q. It is from you to Mr Davoren saying you have been in
22 touch with Sister Woodward "who is seeing [AE] in a
23 professional capacity"?
24 A. Yes.
25
26 Q. Do you see that? Your letter suggests that you asked
27 Sister Woodward what the best way would be to take forward
28 a church response to her distress?
29 A. Yes.
30
31 Q. "Her distress" being [AE], and that there should be a
32 facilitated meeting set up?
33 A. Yes.
34
35 Q. Are you able to say how soon after that letter the
36 facilitated meeting occurred?
37 A. I'm not able to say when it occurred but, hopefully, it
38 would have occurred as quickly as possible after this
39 letter.
40
41 Q. Do you remember [AE]?
42 A. I do. Vividly, yes.
43
44 Q. Did you form a view that she was significantly
45 affected by the sexual abuse that she complained of?
46 A. It was - it was scary how affected she was.
47

1 Q. Did meeting her and seeing how affected she was have
2 an impact on your appreciation of the effect of child
3 sexual abuse on victims?
4 A. It most certainly did. I've never forgotten it.
5
6 Q. Do you think that that changed your response to these
7 matters in any way from the time you met [AE]?
8 A. As I mentioned earlier, it was - it was a growing
9 appreciation within myself about how to respond
10 appropriately to these matters and each time I met with a
11 victim, if I could use that word --
12
13 Q. Yes.
14 A. -- my understanding deepened more, and [AE] was
15 particularly distressed by what had happened to her.
16
17 Q. Did you feel that there was any difficulty with you
18 discussing [AE] with Sister Woodward given Sister Woodward
19 was providing counselling to her?
20 A. Only I thought Sister Woodward would be the best
21 person to set up a facilitated meeting, precisely because
22 [AE] was in a very delicate state and the presence of
23 another anonymous person, somebody unknown to her, would
24 have probably been more distressing. It would have been
25 easier for Sister Evelyn to have conducted the
26 facilitation.
27
28 Q. But in terms of your knowledge at the time, that is
29 19, I'm sorry --
30 A. 2000.
31
32 Q. Did you consider it more appropriate for [AE] to be
33 referred for counselling to someone who wasn't connected
34 with the Catholic Church, or that didn't cross your mind?
35 A. Sister Evelyn was already providing some counselling
36 for her, so it seemed better to carry on that consistent
37 counselling, I thought.
38
39 Q. You are aware, aren't you, that [AE] consulted other
40 counselors or psychiatrists independent of Sister Woodward?
41 A. I can't remember that.
42
43 Q. I'm going to ask you to go to a new volume, volume 5.
44 Have a look at the document behind tab 346.
45 A. Volume 5? Behind tab?
46
47 Q. Tab 346.

1 A. Thank you.
2
3 Q. You see that's a letter you wrote to [AC] on 20 June
4 2002, noting in the first paragraph that McAlinden is
5 still alive and living in Western Australia; do you see
6 that?
7 A. I'm just trying to see who [AC] is. Yes, thank you.
8 Yes, I can see that.
9
10 Q. Do you see that comment there:
11
12 *... however, he is still alive and living*
13 *in Western Australia.*
14
15 A. Yes.
16
17 Q. Are you able to assist the Commissioner with the basis
18 of your knowledge of those facts, that McAlinden was still
19 alive and living in Western Australia?
20 A. His last correspondence with us would have been in
21 1999, was it?
22
23 Q. What I'm asking you about is how, in June 2002, you
24 were able to say "he is still alive and living in Western
25 Australia"?
26 A. I'm a bit unsure as to how I have that information,
27 but if it's there then, I did. I don't know how, but --
28
29 Q. Can we take it that you wouldn't have misrepresented
30 to this lady, this alleged victim of McAlinden's, that
31 McAlinden was living in Western Australia if he wasn't?
32 A. No, I would not have done that, no.
33
34 Q. So you must have known at that time that he was living
35 there?
36 A. Yes, I would have.
37
38 Q. I'll come back to this letter a little later on. We
39 will move now to matters involving Fletcher. Could you
40 turn to tab 330, which is in that volume but near the
41 front.
42 A. Tab 330. Yes.
43
44 Q. I'm going to ask you to leave that open and go back to
45 volume 4 and go to the very last tab in that volume, which
46 I should take you to first. I apologise I should have done
47 that before.

1 A. Volume 4. What am I looking at, sorry?
2
3 Q. The very last tab, 329.
4 A. These are very cumbersome things. Tab 329. Yes, got
5 it.
6
7 Q. Do you see that's a file note dated 13 December 2000?
8 A. Yes, I can.
9
10 Q. That's where [BI], in a confidential conversation,
11 told you that his son, [AH], may have been molested by
12 Jim Fletcher about six years ago; do you see that?
13 A. Yes, I can see that.
14
15 Q. You've already given some evidence regarding some
16 rumours that you had heard about Fletcher that you included
17 in a note you made in 1996?
18 A. Yes.
19
20 Q. Had you heard anything about Fletcher by way of rumour
21 that he may have interfered with children between the notes
22 you made in 1996 and this note?
23 A. No. No.
24
25 Q. Why did you make this particular note?
26 A. Well, simply because when these sorts of things are
27 communicated to me, I thought it was important to make a
28 note of it, just to reflect the seriousness of the
29 complaint or allegation, or whatever it might have been,
30 the information.
31
32 Q. Bishop, you have recorded in this note that [AH] had
33 claimed that he had been raped by Fletcher?
34 A. Yes.
35
36 Q. [And raped] at 18 years of age in a pub in the
37 Maitland region - do you see that?
38 A. Yes.
39
40 Q. By a person unknown?
41 A. Yes.
42
43 Q. Although [BI] suspected that [AH] knew him?
44 A. Correct.
45
46 Q. Then there is mention of [BI]'s concern that [AH]'s
47 behaviour changed radically?

1 A. Yes.

2

3 Q. And that he had outbursts of anger, was drinking, had
4 mood swings and had attempted suicide soon after; do you
5 see that?

6 A. Yes.

7

8 Q. By 2000 you were aware, weren't you, that that kind of
9 behaviour could be consistent with persons who had been
10 sexually abused when they were younger?

11 A. Yes, it was - yes.

12

13 Q. In general and amongst --

14 A. It was developing in me, yes.

15

16 Q. Then there is an assertion that [BI] took [AH] to see
17 Jim Fletcher after the suicide attempt. Do you see that?

18 A. Yes, I can.

19

20 Q. And:

21

22 *[AH] stayed at Branxton overnight. Went to*
23 *bed fully closed and woke up naked.*

24

25 Do you see that?

26 A. Yes, I do.

27

28 (Transcript suppressed from page 924, line 28 to line 42)

29

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44 Q. Did it make you concerned that Jim Fletcher may be
45 acting inappropriately with young men?

46 A. It certainly concerned me when I heard about it, yes.

47

1 Q. Did you go and speak to Fletcher about the assertions
2 at that stage?
3 A. I didn't myself, but I asked my vicar general, Father
4 Bill Burston, to do that.
5
6 Q. It is your understanding that Bill Burston went and
7 spoke to Fletcher about these matters that had been raised?
8 A. I don't know that he went to Fletcher, no. I think he
9 spoke to [BI].
10
11 Q. He spoke to [BI]; I understand. My question to you
12 was about Fletcher, whether --
13 A. No, at that point I did not go and I'm thinking now
14 I don't think Father Burston went to see Fletcher either.
15
16 (Transcript suppressed from page 925, line 16 to line 26).
17
18
19
20
21
22
23
24
25
26
27
28 Q. But not concerned enough to ask Fletcher whether there
29 was anything he needed to tell you regarding his behaviour
30 with young men of the diocese?
31 A. No, I didn't at that point.
32
33 Q. You can put that one away and we'll go to the file
34 under it and go to tab 330. Can I ask you this: did you
35 at the time - you've got it with you there, Bishop Malone?
36 A. Yes, I know.
37
38 Q. Did you, at the time you received this information
39 from [BI], think back to the rumours that you had been
40 provided with in 1996 and, therefore, worry that what was
41 rumoured before may have some truth in it?
42 A. Yes, it did occur to me, that there was a link, yes.
43
44 Q. Behind tab 330 is a note dated 3 January 2001 in your
45 handwriting?
46 A. Yes, I think - I'll just verify it. Yes.
47

1 Q. Just read it to yourself.
2 A. Yes, I have.
3
4 Q. You are noting there, are you, what you were told by
5 your vicar general, Father Burston?
6 A. Correct, yes.
7
8 Q. You don't have any knowledge yourself as to that
9 particular conversation he refers to there?
10 A. No, I don't. It didn't happen in my presence.
11
12 Q. Did you rely on that information relayed to you by
13 your vicar general to decide what action or otherwise you
14 needed to take in relation to Fletcher?
15 A. I did.
16
17 Q. What did you decide?
18 A. Well, we decided at the - once it had been discussed
19 with Father Burston and myself, we decided that there was
20 insufficient evidence to take the matter further.
21
22 Q. Did you speak to [AF] so that you could determine what
23 [AF] was saying about what happened to him?
24
25 MR HARBEN: [AH].
26
27 THE WITNESS: [AS]?
28
29 MS LONERGAN: Q. [AF] - I'm sorry, [AH]. I'm terribly
30 sorry. [AH]?
31 A. [AH]? No, I did not, no
32
33 (Transcript suppressed from page 926, line 33 to line 39)
34
35
36
37
38
39
40
41 Q. Appreciating that Father Burston was a psychologist,
42 he didn't go and speak to [AH] at that time, did he?
43 A. I don't think so, no.
44
45 (Transcript suppressed from page 926, line 45 to page 927,
46 line 14)
47

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Q. Did you form a view that there was nothing wrongful at all in the conduct that had been reported to you regarding Fletcher?

A. No, I did not form that view because I thought certainly there was some smoke there, but it would have seemed, from what Father Burston and I discussed, that there wasn't sufficient reasons to bring it forward, through a lack of evidence.

Q. You didn't seek any evidence, did you, such as speaking to [AH]?

A. Apart from conversation with [BI], no. I didn't speak to [AH].

Q. Given he's the person who is supposedly to have been involved or supposedly to have been molested by Jim Fletcher, isn't he the person who would have been the best source of any evidence?

A. Well, eventually, yes, but at that point, no.

Q. Did you form a view that [AH] was unreliable without even speaking to him about those matters involving Fletcher?

A. Well, I didn't know [AH] and I was relying on the words of [BI].

Q. The other person who may have been able to provide you with evidence of the matter was Fletcher. Did you speak to Fletcher after this conversation with Burston on 3 January 2001 to find out if there was any truth in the assertion?

A. No, I did not.

1 Q. Would you agree with me that gathering evidence about
2 allegations of molestation on the part of a priest would be
3 a matter for the police rather than the diocese?
4 A. I don't know that it had come to a police matter at
5 that point.
6
7 Q. It hadn't come to a police matter because no-one had
8 gone to the police with it?
9 A. Well, that's true, but, I mean, there was - there was
10 suspicion, there was doubt, there was wonder as to whether
11 there was veracity to these things at all.
12
13 Q. Given your experience with what you had learned about
14 Vincent Ryan and McAlinden, did that not raise in your mind
15 the possibility that Fletcher may also be suffering under
16 the same paedophilic tendencies?
17 A. I was - I was scared stiff about that, yes, about the
18 possibility of yet another person coming forward.
19
20 Q. Did that fear prevent you from finding out the truth
21 of what had occurred, on reflection today?
22 A. Oh, look, at the time when certain matters were
23 reported about Fletcher, both the first ones that we spoke
24 about this morning and [BI]'s conversation with me on
25 3 January 2001, there was, as I say, smoke. There was very
26 little in the way of fact, and when you don't have any sort
27 of facts to act on, it's hard to act.
28
29 Q. But, in this particular case, something that you could
30 have acted on was the suggestion that [AH] had been a
31 victim of Fletcher's, so you could go and talk to [AH] or
32 Fletcher, couldn't you?
33 A. Yes, I could have, yes.
34
35 Q. But you chose not to?
36 A. Yes. I'm not quite sure why, whether [AH] would have
37 denied it or whether Fletcher would have denied it. The
38 chances are both would have at that point.
39
40 Q. You don't know that --
41 A. I don't know that, no.
42
43 Q. -- because you didn't seek the information?
44 A. I don't know that, but it is probably an educated
45 guess.
46
47 Q. There was little that you had to go on by way of facts

1 because you didn't actually seek facts from the two
2 persons, the only two persons, who really knew what had
3 happened?
4 A. Yes, that's correct, and those same two persons may
5 have denied the whole thing. But, as you say, I didn't
6 know that.
7
8 Q. I am going to take you to some matters in your
9 statement that you've prepared for the Commission and also
10 your police statement which you prepared much closer to the
11 time of these events than now?
12 A. Can I put this volume away?
13
14 Q. Just close it up and put it to one side. You'll need
15 exhibits 85 to 87.
16 A. Volume something else?
17
18 Q. I'm hoping someone will hand you exhibits 85 to 87?
19 A. Are they in the first volume?
20
21 Q. No. Someone will come and give them to you. Do you
22 have those with you, bishop, exhibits 85 to 87?
23 A. No.
24
25 Q. What do you have there with you in the witness box?
26 A. I've only got my statements.
27
28 Q. The statements you've got with you in the witness box,
29 are they your copies of the statement or were they provided
30 by court staff?
31 A. You provided me with fresh copies of two of my
32 statements yesterday.
33
34 THE COMMISSIONER: They're respectively exhibits 85 and
35 86.
36
37 MS LONERGAN: Q. Do you have a copy of exhibit 87 in the
38 witness box with you?
39 A. No, I don't.
40
41 MR HARBEN: Tab 390.
42
43 THE WITNESS: It is probably in one of these ones, is it?
44
45 THE COMMISSIONER: Tab 390, volume 5.
46
47 MS LONERGAN: Q. I thought it would be easier to give you

1 a break from the folders, but we'll go back to those.
2 We'll start with tab 390. This is a statement you prepared
3 for the police in the Fletcher prosecution in May 2003?
4 A. Yes.
5
6 Q. The reason I'm taking you to that first --
7 A. Excuse me, I'm just having trouble with this folder
8 tab 390?
9
10 Q. 390.
11 A. At last. Yes.
12
13 Q. I want you to read the police statement to yourself
14 and I'm going to ask you some questions about it.
15 A. Yes, I think I've got a handle on it.
16
17 Q. The contents of that statement are accurate, aren't
18 they?
19 A. Yes, as far as I'm able to remember, yes.
20
21 Q. In paragraph 13 of that statement, you refer to a
22 discussion that you had or an appointment that was made
23 with you on 20 June where Detective Chief Inspector Fox or
24 then Detective Sergeant Fox, I think, attended with
25 Detective Senior Constable Joy and Father Jim Saunders?
26 A. Yes, I remember that.
27
28 Q. And it says:
29
30 *We discussed the allegations and overall*
31 *situation.*
32
33 Do you see that?
34 A. Yes.
35
36 Q. Do you recall much about that particular meeting with
37 Detective Sergeant Fox?
38 A. Well, I do. It was rather a traumatic meeting because
39 Detective Chief Superintendent Fox indicated to me the
40 complaint that - the allegation that had been made by [AH].
41 He said that it was a very serious matter and he
42 recommended to me that I stand Father Fletcher aside from
43 ministry.
44
45 Q. And that's 20 June 2002?
46 A. That's my memory, yes.
47

1 Q. Did Detective Chief Inspector Fox tell you that he'd
2 taken any statement or evidence from [AH] yet?
3 A. I don't know that he had because it was only about,
4 what, two and a half to three weeks after the original
5 information came about [AH] going to the police.
6
7 Q. I'm going to go back to paragraph 10 of your
8 statement. There you refer to a 60 Minutes program on
9 2 June?
10 A. Yes.
11
12 Q. Did you watch that program yourself?
13 A. I did. I remember it, yes.
14
15 Q. You say that some time in the following week you had a
16 conversation with [BI]?
17 A. Yes.
18
19 Q. In which [BI] told you that [AH] had made his
20 allegations to the police. Do you see that there in
21 paragraph 10?
22 A. I'm just trying to find that little bit, please.
23
24 Q. In the fourth and third last lines of paragraph 10.
25 A. Yes, right. Sorry, your question again, counsel?
26
27 Q. I was just asking if you see that there, that's all.
28 A. Yes, I see that.
29
30 Q. Did you then marry together this conversation with
31 [BI] to what you had been told back in 2010?
32 A. In 2001.
33
34 Q. In 2001, I'm sorry, yes.
35 A. Well, in my mind I did, yes, because it sort of
36 verified what [BI] had said to me then.
37
38 Q. Are you able to recollect now whether the information
39 that [BI] told you on 6 June or about 6 June included more
40 detail than what you had been told in December 2001, or you
41 just can't say? Putting aside the detail that he had gone
42 to the police with it, I mean in terms of the content of
43 the complaint?
44 A. I don't know that he added any more detail. I think
45 it's more like 4 June, after that particular date.
46
47 Q. You think it is 4 June because you have been able to

1 put together that date with a conversation that you had
2 with [BI]'s wife, [BJ]?
3 A. Yes. Probably, yes, it would be that.
4
5 Q. Your statement in paragraph 11 says that you spoke to
6 your vicar general, Jim Saunders, and told him that you'd
7 spoken to [BI]. Do you see that?
8 A. Yes.
9
10 Q. You say:
11
12 *We then felt that Jim Fletcher should be*
13 *informed that an allegation had been made*
14 *against him. We then drove immediately to*
15 *Branxton and there met with Jim Fletcher.*
16
17 A. Yes.
18
19 Q. You can't be certain as to the exact date, but you
20 believe it was in the week following 2 June?
21 A. I believe it was 4 June.
22
23 Q. Do you believe that you travelled to talk to Fletcher
24 about the allegation prior to having a conversation with
25 [BI] or after?
26 A. After. I spoke to [BI] in the morning and travelled
27 out to see Fletcher around lunchtime.
28
29 Q. No other priest of the diocese had told you that
30 Jim Fletcher had received a phone call from [AH] on 2 June
31 prior to you going out to --
32 A. No.
33
34 Q. You didn't know that detail?
35 A. No, I didn't learn that until I was at Branxton.
36
37 Q. Did you have the conversation with [BI] before or
38 after the phone call you received from [BJ]? Are you able
39 to say?
40 A. I think from memory my conversation with [BI] was on
41 the morning of 4 June.
42
43 Q. Yes?
44 A. I went to see Fletcher with Jim Saunders around
45 lunchtime of that same day.
46
47 Q. Yes?

1 A. And I think it was the following day that I would have
2 rung [BJ].
3
4 Q. You rang [BJ] --
5 A. From memory.
6
7 Q. Why did you ring [BJ]?
8 A. It was, I suppose, an effort to be pastoral towards
9 her, as I hoped I had been to [BI], and that since there
10 was something serious afoot here, we needed to support one
11 another through it all.
12
13 Q. In paragraph 11 you talk about arriving or attending
14 Fletcher at the presbytery or wherever he was in Branxton?
15 A. He was in the presbytery, yes.
16
17 Q. He was in the presbytery. Thank you. You spoke to
18 him over a cup of coffee in the kitchen?
19 A. Correct, yes.
20
21 Q. You said:
22
23 *Jim I have got some bad news for you and*
24 *that news is that following the 60 Minutes*
25 *program of the other night someone has come*
26 *forward and has made an allegation of*
27 *sexual abuse against you.*
28
29 A. Yes.
30
31 Q. You say:
32
33 *[He] looked unwell. He sagged and looked*
34 *confused.*
35
36 A. Yes.
37
38 Q. And was obviously shocked?
39 A. Yes.
40
41 Q. And said, "Who would do such a thing?", and you said,
42 "It was [AH]"?
43 A. I did, yes.
44
45 Q. Do you recollect what expression Fletcher wore on his
46 face when you mentioned the complainant was [AH]?
47 A. He was in a distressed state and it came out very

1 quickly in the conversation that he had had an anonymous
2 phone call following the 60 Minutes program on the Sunday
3 night.
4

5 Q. Did he tell you that before you had an opportunity to
6 say to him, "I've got some bad news. Someone's come
7 forward and made an allegation"?

8 A. Whether it was before or after I'm unsure, but
9 certainly he did tell me, yes.
10

11 Q. You don't mention that in your police statement, that
12 Fletcher told you there had been that call?

13 A. Anonymous call, no, well - yes.
14

15 Q. Is there any reason why it wasn't included in your
16 police statement?

17 A. I have no reason to know why it was overlooked.
18

19 Q. Are you sure it was conveyed to you during that
20 discussion that you had with Fletcher on that day?

21 A. I'm sure that it was, yes.
22

23 Q. You say that you thought that revealing the name of
24 the claimant might trigger in Fletcher a possible
25 admission?

26 A. Yes.
27

28 Q. Why did you think that?

29 A. The experience that I had had with Vince Ryan was
30 probably in my mind. As I mentioned earlier, he admitted
31 his offences.
32

33 Q. To you?

34 A. Not to me, no, but to the police, and he pleaded
35 guilty to those, which then circumvented the need for a
36 long police investigation. Bearing that in mind, I thought
37 that, by mentioning this to Fletcher, I may have been able
38 to trigger some kind of response in him that might
39 circumvent a police investigation, and then, perhaps an
40 investigation only for the purposes of sentencing.
41

42 Q. Did you tell Fletcher the identity of the complainant
43 in an effort to interfere with or thwart or hinder
44 potential police investigation?

45 A. No, that was never in my mind. I know that I've
46 created that impression, but it was certainly not my
47 intention to do that.

1
2 Q. Did you discuss with your vicar general, Jim Saunders,
3 what action you should take in relation to Fletcher
4 remaining in ministry, at that time?
5 A. Oh, at that time, no, I'd say not. We were still -
6 the two of us, still reeling with the news that this had
7 happened and that it was now in the hands of the police.
8
9 Q. Did you form a view as to whether the complaints were
10 true or untrue or was it too early for you to form an
11 opinion?
12 A. No, it was too early for me to know whether it was
13 true or untrue. And because there was the certain
14 confusion around the veracity of [AH]'s comments from both
15 [BI] and from my conversation with Fletcher and Burston and
16 one or two other clergy, there was a general sense that
17 this couldn't be true.
18
19 Q. The one or two other clergy, who were they?
20 A. One would have been Father Des Harrigan, who was a
21 friend of Fletcher's.
22
23 Q. Yes.
24 A. The other I can't remember. So it may have been
25 Saunders and Fletcher and Burston.
26
27 Q. Sorry, Saunders and Fletcher and Burston?
28 A. And Burston, yes.
29
30 Q. Did you have an opinion at the time that paedophiles
31 tended to lie through their teeth when confronted?
32 A. Yes, I did know that, yes.
33
34 Q. Do you remember having a conversation with [BJ] on
35 5 June where you made various comments regarding the [AH]
36 revelation?
37 A. I don't really remember what I said in that
38 conversation or what she said to me.
39
40 Q. What I want to suggest to you is that you expressed
41 some sympathy for the situation?
42 A. Yes.
43
44 Q. You acknowledged the pain that the family would no
45 doubt be experiencing?
46 A. Yes.
47

1 Q. And you offered some help to help the family through
2 the difficult times that may well lie ahead?
3 A. Yes.
4
5 Q. You told [BJ] that [BI] had told you --
6 A. Yes.
7
8 Q. I withdraw that. You told [BI] you had been up to see
9 Fletcher that afternoon?
10 A. Told [BJ] or [BI]?
11
12 Q. [BJ]; you told [BJ] that you been up to see Fletcher
13 that afternoon?
14 A. Yes, I presume I would have, yes.
15
16 Q. By your "Yeses", you're saying you agreed with that
17 during the conversation?
18 A. I'm sure I would have.
19
20 Q. You said to [BJ] that, "Of course, Fletcher denies he
21 had anything to answer for and was understandably upset"?
22 A. Yes.
23
24 Q. You said, "From what I know of paedophiles, they lie
25 through their teeth when confronted"?
26 A. Yes.
27
28 Q. You don't have to agree with my proposition, but are
29 you comfortable with that?
30 A. No, no, that was my view, certainly.
31
32 Q. It was a view you communicated to [BJ]?
33 A. To [BJ], yes, but there was always the chance that
34 Fletcher might have confessed.
35
36 Q. You recollect you said that to [BJ] as well?
37 A. I don't know that I said that, but, you see, I mean --
38
39 Q. I'm just asking about your conversation with [BJ] at
40 the moment. I'll come back to any other matters you
41 consider need to be stated.
42 A. Okay.
43
44 Q. You mentioned to [BJ] that you had had a conversation
45 with [BJ]'s husband about [AH] last year?
46 A. Possibly, I did, yes --
47

1 Q. The prior year?
2 A. -- I can't quite recollect that level of detail,
3 but --
4
5 Q. And that there was some discussion about [AH]'s
6 suicide attempt?
7 A. Yes, right.
8
9 Q. You offered any support that the church could provide
10 internally or externally in the way of counselling?
11 A. Yes.
12
13 Q. And that you would be back in touch?
14 A. Yes.
15
16 Q. [BJ] told you of her pain in seeing her son struggle
17 with some aspects of his life and how proud she was of him
18 for being courageous enough to put up his hand?
19 A. Yes.
20
21 Q. Do you recall her saying that to you?
22 A. I do, yes.
23
24 Q. You also said that you would pray for her and the
25 family, at the end of the conversation?
26 A. Did I, okay
27
28 Q. Do you accept that you would have said that?
29 A. I think so, yes.
30
31 Q. Do you recall what your next interface with [BJ] was
32 in a pastoral sense?
33 A. I can't, frankly, no.
34
35 Q. It is the position, isn't it, that Fletcher wasn't
36 arrested for offences in relation to [AH] until May 2003?
37 A. Yes, that's true, yes.
38
39 Q. Are you able to identify any pastoral assistance you
40 personally provided to [AH] or his family between that call
41 in June 2002 and the time the charges were laid?
42 A. I don't remember any outreach there at all.
43
44 Q. Did you feel some awkwardness about contacting the
45 family given the situation?
46 A. Yes, I felt a lot of awkwardness because [BJ]'s
47 husband, [BI], held a very responsible position in the

1 diocese.
2
3 Q. Did you delegate the pastoral care aspect to another
4 priest of the diocese?
5 A. I can't remember having done that.
6
7 Q. When the trial proceeded in 2004, did you attend the
8 trial at all?
9 A. No, I didn't attend at all.
10
11 Q. Did you contact [AH] or his family to extend any
12 pastoral support leading up to or during the criminal
13 trial?
14 A. Yes, there was - there was an attempt on my part to
15 offer financial assistance to both Fletcher and to [AH].
16
17 Q. But I'm asking in terms of pastoral support - meeting
18 with the family, having a cup of tea, talking with them
19 about these issues - did you do any of that?
20 A. No, I don't remember doing that, no.
21
22 Q. Did you delegate such tasks to a priest of your
23 diocese?
24 A. I can't remember doing that either. I would like to
25 think I had.
26
27 Q. During the criminal trial, did you or any priest of
28 your diocese, sit with the family at any stage during the
29 criminal proceedings?
30 A. Well, I wasn't there for a start and I don't know that
31 any priest did.
32
33 Q. Did you ask any priest to do that?
34 A. No, I didn't. There was, again, a general disbelief
35 amongst the clergy that Fletcher was guilty and I think --
36
37 Q. Did you have a view yourself as to Fletcher's guilt or
38 innocence?
39 A. Certainly up until the trial, I kind of was ambivalent
40 about that. I wasn't sure one way or the other. During
41 the trial, I was given a copy of [AH]'s statement to police
42 with the advice to read it and once I'd read it, I was
43 convinced that Fletcher was guilty.
44
45 Q. You read that while the trial was still proceeding,
46 did you?
47 A. Yes, it was proceeding, yes.

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Q. Did you tell [AH] that you formed the view that Fletcher was guilty?

A. No, I did not.

Q. Did you inform [AH]'s family that, having read [AH]'s statement, you reached the view that Fletcher was guilty?

A. No, I did not do that either.

Q. Going back to June 2002, it is the position, isn't it, that Detective Chief Inspector Fox, at the meeting in June 2002, was attempting to persuade you that Fletcher should be stood down from his parish. Do you remember that?

A. He strongly persuaded me to do that, yes.

Q. You were not persuaded?

A. Eventually I wasn't. After he advised that, I was doing a bit of thinking about what I would do were I to stand Fletcher aside. I remember making some rough notes about how I might cover the parish were Fletcher to stand aside. I had made a phone call to Monsignor Hart at the cathedral to see whether he would be able to provide accommodation for Fletcher should he be stood aside. I was addressing the possibility of Fletcher working within the diocese, as Detective Chief Superintendent Fox had suggested to me, to give Fletcher some kind of office job to occupy him during the time that he was stood aside from ministry.

So those were some of the things I was thinking about, jotting down, with a view to standing him aside. I also made a phone call to John Davoren at Professional Standards, which you may want to get on to. I'm probably preempting a bit, am I?

Q. Yes, a little. You had all those thoughts, did you, on the day you had the conversation with Detective Chief Inspector Fox?

A. Not on the day, no, but certainly subsequently - I took his words to heart and certainly considered them very seriously. I mean, Detective Chief Inspector Fox said, you know, it wasn't his call; it was my decision.

Q. That was right, wasn't it?

A. Yes, that's true. I'm just saying that's what he said, yes.

1 Q. So you got in touch with Fletcher and told him it was
2 your view that he should be stood down from the parish, did
3 you?
4 A. That's when I went back out to see Fletcher the second
5 time, yes.
6
7 Q. The second time you went out to see him was on
8 20 June; is that right?
9 A. Yes, that's right.
10
11 Q. You told him, did you, that it was your view that he
12 should stand down from the parish?
13 A. Yes, it was.
14
15 Q. You communicated that view to your vicar general,
16 Saunders, did you?
17 A. Yes. Again, he can accompanied me when I went out to
18 Branxton to see Fletcher. I shared with him the fact that
19 Detective Chief Superintendent Fox had advised that
20 Fletcher be stood aside from ministry. We tossed that
21 around a bit in the car as we drove out and then we spoke
22 to Fletcher about that.
23
24 Q. You spoke to Fletcher about it in terms of offering
25 him the option to stand down, didn't you?
26 A. Yes, I wasn't really strong enough, I have to agree.
27
28 Q. It is more than that, isn't it? You did not request
29 him to stand down; you asked him if he wanted to stand
30 down; that's right, isn't it?
31 A. No, I did ask him to stand down.
32
33 Q. Did or did not?
34 A. I did, yes.
35
36 Q. You are aware, aren't you, that your vicar general,
37 Saunders, received a letter from Fletcher dated 24 June
38 2002 which is behind tab 351. Just have a look at that
39 letter.
40 A. Yes.
41
42 Q. Do you see that letter refers to "the visit"?
43 A. Yes, I can see that.
44
45 Q. You're Bishop Michael?
46 A. Yes.
47

1 Q. :

2

3 *I have given thought to the suggestion you*
4 *made to me regarding residence at the*
5 *Cathedral for a time.*

6

7 Do you see that?

8 A. Yes.

9

10 Q. :

11

12 *I have decided that I would feel much*
13 *better and I would prefer to remain here at*
14 *Branxton.*

15

16 Do you see that?

17 A. Yes, I can see that.

18

19 Q. Doesn't that letter suggest that he, Fletcher, was
20 offered the option to decide to leave his parish or not, as
21 opposed to being requested?

22 A. Well, I did request him to stand aside, but he
23 objected to that and wrote in these words.

24

25 Q. You have seen that letter we've just looked at?

26 A. Yes.

27

28 Q. But you, as the bishop, had the power to require him
29 to stand down, didn't you?

30 A. I did. Yes, I did.

31

32 Q. You in fact did that in 2003 when it was drawn to your
33 attention that that was the action required by law?

34 A. Yes.

35

36 Q. At that time?

37 A. Yes, he was just about to be formally charged with
38 these offences.

39

40 Q. So is there a distinction in terms of needing to stand
41 him down between having been accused of criminal charges
42 and actually having the charges laid?

43 A. In my mind there was at the time, yes.

44

45 MS LONERGAN: I tender the letter of 24 June 2002 that
46 appears behind tab 351.

47

1 THE COMMISSIONER: Thank you, Ms Lonergan. The letter
2 from Jim Fletcher of 24 June 2002 will be admitted and
3 marked exhibit 96.
4

5 **EXHIBIT #96 LETTER FROM JIM FLETCHER DATED 24/6/2002**
6 **(TAB 351)**
7

8 MS LONERGAN: Q. You've given some evidence, Bishop
9 Malone, to the effect that you made some considerations or
10 considered some factors relating to Fletcher standing down
11 or otherwise?

12 A. Yes.
13

14 Q. You've documented them somewhere, have you? Did you
15 document your thoughts?

16 A. I did make some notes, some rough notes, yes, and
17 I saw them --
18

19 Q. Yes, so did I?

20 A. -- in the company of my legal team somewhere.
21

22 Q. Behind tab 338, I believe.

23 A. Yes, I've got them.
24

25 Q. Are you able to assist with the date these notes were
26 made?

27 A. No, I'm not really. The first page is with regard to
28 what risk assessment was I making.
29

30 Q. Can I suggest to you that that note was made in 2003
31 when you had some questions asked by the Ombudsman's
32 office?

33 A. I was just about to say I think it might be to do with
34 the Ombudsman's inquiry, yes.
35

36 Q. So that's most likely to have been in early 2003?

37 A. 2003-4, yes.
38

39 Q. 2003 or 2004?

40 A. Yes. The actual inquiry was in 2004.
41

42 Q. You have to forgive the way the notes appear. They
43 came to us in a format like this without any clear dates on
44 anything on them.

45 A. I understand, yes.
46

47 Q. So we're not being unhelpful; we just didn't know.

1 The second page, which is page 870, what about that
2 material? Is that relevant at all to the consideration of
3 whether Fletcher should remain in his parish in 2002?

4 A. No, it is not relevant to that so much, but this, the
5 first part of the page is to do with whatever financial
6 arrangements I might be able to make for either Fletcher or
7 [AH].

8
9 Q. So where is the bit that refers to financial
10 arrangements for [AH]?

11 A. Well, it is not here.

12
13 Q. Yes?

14 A. I was toying - not toying; I was considering offering
15 a personal loan to Fletcher to pay for his legal fees and
16 that that would come from his estate, if he had any, at the
17 time of his death, or whatever.

18
19 Q. Yes, I see that. Where is the bit that refers to the
20 financial assistance you were considering giving to [AH]?

21 A. There's no written record there, but I did mention it
22 to [BI] that, in the efforts to be impartial, a similar
23 offer would be made to [AH]. Now, [AH] did not require
24 legal fees, but he may have required other matters, and
25 that in fact did happen.

26
27 Q. Can we take it that that second page of notes, that is
28 page 870, occurred after the time the charges were laid
29 against Fletcher, therefore after May 2003, or in or after?

30 A. Around about that time I'd have to say, yes.

31
32 Q. And what about the next page?

33 A. The next page or the next.

34
35 Q. Actually just stay on the page you are?

36 A. At the bottom of the page, yes. I can't think who
37 that contact person - oh, sorry.

38
39 Q. In terms of the material that appears at point 2 under
40 the wavy line on page 870 you've written:

41
42 *Contact Person be appointed for alleged*
43 *victim.*

44
45 What's that a reference to?

46 A. That's a reference to [AH] and for some person from
47 the diocese deputed to be the conduit between him and

1 myself.
2
3 Q. Then:
4
5 *He/she should clear contact with police.*
6
7 A. Yes.
8
9 Q. That means you don't want them to contact [AH] unless
10 the police say it's okay?
11 A. That's correct, yes.
12
13 Q. And:
14
15 *Contact person is conduit.*
16
17 As you've just said?
18 A. As I've just said, yes.
19
20 Q. The next bit, what does this mean:
21
22 *If letter sent, make no admissions.*
23 *No phone call out of the blue.*
24
25 A. I don't know about those two, unless I was making
26 notes from somebody giving me advice, and I don't know who
27 that could be. I have no memory of it.
28
29 Q. On the next page there is a reference to [AH]'s
30 father?
31 A. Yes.
32
33 Q. Again, is that something that looks like it was notes
34 that were made in 2003 or are you able to say when that was
35 made?
36 A. I'm not able to say exactly when it was made, but
37 I think it was made probably a little bit later after the
38 trial.
39
40 Q. The next page, 872, is that a continuation? It has a
41 number 2 at the top. Is that a continuation of the page
42 before?
43 A. Yes, I see it. Yes, I've got it here.
44
45 Q. I'm sorry, is that a continuation, that second page?
46 A. No, I don't think so. It is just the second page of
47 two pages.

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Q. Just two separate pages, are they?

A. Yes, it is, yes.

Q. Do you see on the page that's got 871 on bottom of it you've got noted:

Informing Jim? Flak possible.

A. Yes.

Q. And:

*Intention?
I thought it appropriate.*

A. Yes.

Q. Then under another wavy line:

Remain in place? Flak possible.

A. That's correct, yes.

Q. Do those notes assist in identifying when you made them?

A. Not really, no. I mean, these were just - they weren't file notes as such. They were simply scribblings to myself.

Q. Yes, I understand that.

A. I didn't date them, so I'm sorry I can't help much there.

Q. In terms of the words "flak possible" in a circle to the right of "Informing Jim?" and "Remain in place?" --

A. Yes.

Q. -- was that a reflection of your concern that members of the community would be angry with you or annoyed with you that you had informed Jim?

MR HARBEN: I object to that. That assumes a meaning to the words "Remain in place" relevant to a particular person. It doesn't say that at all.

MS LONERGAN: I'll ask some preliminary questions.

1
2 Q. Are you able to assist with whether this page is
3 dealing with matters relating to Jim Fletcher?
4 A. Yes, I am.
5
6 Q. "Informing Jim?"; is that a reference to Jim Fletcher?
7 A. Yes, it is.
8
9 Q. The notes under it "Intention?" and "I thought it
10 appropriate" are references to you having informed Jim of
11 police investigations?
12 A. On 20 June, yes, correct.
13
14 Q. But you're unable to assist with when you made these
15 particular notes?
16 A. Yes, I am unable to assist.
17
18 Q. I'm not being critical. I just want to understand.
19 A. Yes, I understand.
20
21 Q. The "Flak possible", in the circle, is you writing
22 some trepidation that you have that there will be flak
23 arising from you having taken that action?
24 A. Most assuredly, yes.
25
26 Q. And there was flak, wasn't there?
27 A. There was, yes.
28
29 Q. You were, in fact, reported to the Ombudsman for not
30 doing the right thing in relation to Fletcher?
31 A. Correct, yes.
32
33 Q. And an Ombudsman investigation was undertaken?
34 A. Yes.
35
36 Q. You were interviewed for that?
37 A. Yes, I was.
38
39 Q. And a report written?
40 A. There was.
41
42 Q. Did you agree with the findings of the report in
43 relation to you?
44 A. I'd say I'd have to agree with the findings of the
45 report, yes, in relation to me and in relation to the other
46 matters raised.
47

1 Q. The "other matters" were institutional matters
2 connected to the organisation known as CCER?
3 A. Yes. That's the Catholic Commission for Employment
4 Relations, which was the body that had carriage of all of
5 these sexual abuse matters on behalf of the bishops of New
6 South Wales, ACT, and there was some question mark about
7 their effectiveness in representing the interests of the
8 bishops in an effective kind of way.
9
10 Q. There were also question marks raised relevant to your
11 position, to the effect that there wasn't sufficient
12 education and information provided to bishops, including
13 you, about what needed to be done?
14 A. All of that, yes.
15
16 Q. On your note where you say the words or have recorded
17 the words "Remain in place?", is that a reference to not
18 having stood Fletcher down from his position at the parish?
19 A. Yes, I think it is.
20
21 Q. And there again "Flak possible", that's an expression
22 of your trepidation that people might be angry if you leave
23 him in place, or was it after the event?
24 A. I knew that were we to leave him in place, it would
25 cause difficulties. Were we to stand him aside it would
26 likewise cause difficulties.
27
28 Q. Looking at the note in view of those answers, does
29 that assist you with when you made the note?
30 A. Again, I can't say to be precise, but possibly it was
31 before the trial.
32
33 Q. Is there any reason --
34 A. Well, it must have been before I stood him aside.
35
36 Q. Is there anything in the note that suggested that it
37 had to be after the charges were already laid against
38 Fletcher or you --
39 A. No, I think it was before the charges were laid,
40 because, you know, Fletcher was still in place and I was
41 faced with this dilemma.
42
43 Q. Was this involvement with the Ombudsman that you've
44 given some answers about, impetus for revision of your
45 views and approach regarding child sex matters in your
46 diocese?
47 A. A revision of my views?

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Q. Yes, or a reconsideration or a --

A. I identified before the lunch break that this was the epiphany about which you asked, because whilst I had acted with a certain degree of pastoral concern and compassion, I think that was a bit patchy at times. So it wasn't until 2004 when these matters were looked at in such an organised kind of way that it became very clear to me that I needed more than just the help that I was able to provide, or my vicar general with me. So it was seen to be, at that point, the time to set up something more professional.

Q. Was there any particular difficulty arising from standing Fletcher aside in June 2002 as suggested to you by Detective Chief Inspector Fox?

A. The only difficulty would have been whether Fletcher was guilty or not, which I knew the courts or the investigation would have to determine, but because there was a sufficient amount of doubt around by both, you know, [BI] and by some of the clergy, then it seemed to be that Fletcher should have had the benefit of the doubt.

Q. That's even taking into account that you had a personal visit by an experienced police officer who told you that the matters that had been raised with him by [AH], albeit not formally committed to a statement yet, were serious?

A. Oh, yes. No, did he say that.

Q. And he did also tell you they were concerning sexual abuse of [AH] when he was a child?

A. Yes. Yes.

Q. In your note that we've just been looking where you've written the words "Remain in place? Flak possible", you are referring there to the leaving of Fletcher in place might cause flak because of his potential continuing risk to children?

A. Yes.

MS LONERGAN: Commissioner, those instructing me have asked for a five-minute break.

THE COMMISSIONER: Very well, Ms Lonergan. I will adjourn for five minutes.

SHORT ADJOURNMENT

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MS LONERGAN: Q. I'm going to take you to your statement on July 2013, so it is the longer statement. It is paragraph --

A. Can you just give me a moment to get rid of this folder?

Q. Yes. Paragraph 6.2(vii) in your July 2013 statement? It is your longer July statement.

A. Yes. I'm sorry, I'm --

(Transcript suppressed from page 949, line 12 to line 30)

THE WITNESS: I'm finding it hard - which document? Which statement, because I made two?

MS LONERGAN: Q. There's a statement you prepared for your lawyers in 2013, in July. You prepared two statements in 2013. One was June and one was July. It is your old statement that was redone in July?

A. Okay. Right.

Q. Do you see it is the longer statement?

A. Yes. All right. I've got you now. What paragraph are you referring to?

Q. 6.2(vii) and about halfway down the page you refer to a conversation you had with Will Callinan?

A. Correct, yes.

1 Q. You say this conversation occurred on 20 June?
2 A. Yes, I did.
3
4 Q. At about 2pm at Branxton?
5 A. Roughly that time, yes.
6
7 Q. How far is Branxton from where you were residing at
8 the time?
9 A. From Newcastle?
10
11 Q. Yes.
12 A. Oh, probably 40 minutes by car.
13
14 Q. Was it the situation you had a meeting with Detective
15 Chief Inspector Fox --
16 A. Yes.
17
18 Q. -- and after that meeting you drove straight to
19 Branxton?
20 A. That's the assumption. The meeting with Detective
21 Chief Superintendent Fox was in the morning of 20 July, and
22 we drove out, as I say, around lunchtime.
23
24 Q. The time of your meeting with Detective Chief
25 Inspector Fox was at 11.30, wasn't it?
26 A. I'd take your advice on that.
27
28 Q. I'll get you to turn that up. I'm sorry to get you
29 back with the bundles, but it is proper that you do. It is
30 volume 5, tab 348. It is an extract from your diary of 20
31 June.
32 A. Tab 348?
33
34 Q. That's right. No disrespect to you, but there's quite
35 a few things written on this particular day and I'm just
36 not sure what times relate to what events. It appears, on
37 the face of it, that, at 11.30 you met with Peter Fox?
38 A. Yes.
39
40 Q. Under that you've got "Trip to Branxton to see
41 Jim Fletcher"?
42 A. Correct, yes.
43
44 Q. In brackets after that you have "plus Will C"; do you
45 see that?
46 A. Yes I do.
47

1 Q. How long was your meeting with Peter Fox?
2 A. It wasn't long. Probably 20 minutes or so.
3
4 Q. Then you drove out to Branxton and spoke to Fletcher,
5 is that the position, or did you see Will C first?
6 A. No, we drove out to see Jim Fletcher, and that was
7 because Detective Chief Superintendent Fox had asked me to
8 stand Fletcher aside, and that's when we passed that on to
9 him.
10
11 Q. All right. In your statement you refer to having a
12 meeting with Will Callinan at about 2pm?
13 A. Yes, roughly that time, yes.
14
15 Q. That's at Branxton?
16 A. That's at Branxton, yes.
17
18 Q. Did you make a note at the time of your meeting with
19 Will C?
20 A. No, I didn't. We would have arrived at Branxton
21 probably around a little after 1 o'clock, I suppose. And
22 then the conversation with Fletcher probably took something
23 like 40 minutes, roughly. Then I left the presbytery,
24 where Fletcher was with Jim Saunders, and walked down to
25 the school which is just, you know, three minutes away, and
26 spoke to Will Callinan.
27
28 Q. Jim Saunders was present at the meeting with
29 Will Callinan, was he?
30 A. No, he was not. It was just myself and Will Callinan.
31
32 Q. I thought you said Jim Saunders walked down to the
33 school with you?
34 A. No, I didn't say that.
35
36 Q. I'm sorry?
37 A. He was present in the presbytery with Fletcher.
38
39 Q. So you left him behind at the presbytery?
40 A. I left them behind and went down to see him.
41
42 Q. You went down by yourself?
43 A. I did.
44
45 Q. Was there any reason you didn't take your vicar
46 general with you for this meeting?
47 A. I wish I had now, but no, it was just - it was just an

1 advice - to see Will Callinan, to advise him of what was
2 happening but also to give him a heads up as to what might
3 happen from hereon in.

4
5 Q. You've put the conversation in paragraph (vii) or
6 6.2(viii) of your July 2013 affidavit.

7 A. Yes.

8
9 Q. You've put it in inverted commas. Do you have a
10 recollection that that's exactly what was said in terms of
11 the relevant part of the conversation?

12
13 MR HARBEN: Commissioner, in fairness to the witness, the
14 sentence before the conversation is set out describes the
15 import of what follows it, because it --

16
17 THE COMMISSIONER: "Inter alia, words to the following",
18 I expect that the word "effect" should have been there.

19
20 MR HARBEN: The word "effect" should have been there and
21 it also says, "The conversation included" and then,
22 "inter alia, words to the following", read there "effect".

23
24 MS LONERGAN: I didn't mean to mislead the witness that
25 that was the only conversation. "Inter alia", my Latin is
26 very rusty and I don't know what that means.

27
28 MR COHEN: "Among other things".

29
30 THE COMMISSIONER: "Amongst other things", Ms Lonergan.

31
32 THE WITNESS: "Amongst other matters", yes.

33
34 MS LONERGAN: Thank you for the translation from Mr Cohen
35 and others. I'm obviously the only non-Latin scholar in
36 the room.

37
38 Q. "The conversation included, amongst other things,
39 words to the following" and we should assume the word
40 "effect" there rather than "words to the following"?

41 A. Yes.

42
43 Q. This part of the conversation that you have recorded
44 in your statement, you have attempted to put your best
45 recollection into your statement about it?

46 A. I have, yes.

47

1 Q. You are confident, are you, that, amongst the things,
2 you spoke to Mr Callinan about was that Mr Callinan would
3 need to be careful while this is going on; that is, the
4 investigation?

5 A. Yes.

6

7 Q. "He shouldn't be alone with kids and should stay away
8 from the school."

9 A. Yes, I did.

10

11 Q. If that was your concern and you were concerned enough
12 to say that to the principal of St Brigid's Primary School
13 at Braxton, why didn't you just stand Fletcher down?

14 A. I wish I had but at this point I was still reeling
15 with the knowledge that Detective Chief Superintendent Fox
16 had advised me that I should stand him aside. I was still
17 grappling with that. I just mentioned it to Fletcher and
18 he was begging me not to, so I spoke to Will Callinan in
19 order to say, "Well, this is where we're up to. I'm not
20 sure where it's going to go from here."

21

22 Q. Do you see the fundamental inconsistency of your
23 position?

24 A. I can, yes, I can.

25

26 Q. That being that, on the one hand, you're giving
27 Fletcher the option to leave the parish or not and, on the
28 other hand, you are saying to the principal of the school
29 associated with the parish that he shouldn't be alone with
30 kids and should stay away from the school?

31 A. Yes.

32

33 Q. That seems a very serious assertion or a serious
34 warning to be giving to Mr Callinan, doesn't it?

35 A. It is, yes.

36

37 Q. It implies, doesn't it, that you have significant
38 concern that Fletcher shouldn't be allowed with children?

39 A. Certainly concern; I'm not sure about "significant
40 concern".

41

42 Q. It was significant enough to mention it to Mr Callinan
43 in those terms?

44 A. Well, yes, that's true. I mean, it was - I mean, a
45 serious allegation had been made against Fletcher and on
46 the strength of that, until it could be proven, he needed
47 to stay away from children.

1
2 Q. Would you agree with me that an important part of a
3 priest's role in a parish attached to a school is to attend
4 school functions, provide confessions, have pastoral visits
5 at the school and matters of that nature?
6 A. That would be normally the case, yes, and Fletcher's
7 involvement would not have ruled out mass with the whole
8 school in the church, but it certainly would have ruled out
9 any attempt by him to go to the school and to interact with
10 the children.
11
12 Q. And that rules out confession?
13 A. That too.
14
15 Q. Yes. And it rules out reading groups where he might
16 be alone with a child?
17 A. Yes, most certainly that, yes.
18
19 Q. You were sufficiently concerned about the risk he
20 posed to children to warn Mr Callinan about those things?
21 A. I was concerned, certainly, that here was a man who
22 was under suspicion and therefore people needed to be alert
23 to that.
24
25 Q. Are you absolutely confident that that exchange
26 occurred with Mr Callinan on that day?
27 A. I am, yes.
28
29 Q. And you're aware, aren't you, that Mr Callinan doesn't
30 recollect that conversation having occurred?
31 A. I am aware of that, yes.
32
33 Q. You're aware of that because of the investigation that
34 the Ombudsman did in 2003, that there was that difference
35 between you and he in terms of recollection?
36 A. Yes.
37
38 Q. In terms of the trusted position held as a parish
39 priest, it is the position, isn't it, that Fletcher could
40 be in contact with children on weekends, et cetera, and
41 unsupervised where the principal, Mr Callinan, was not
42 available to supervise?
43 A. Yes, that's true, yes.
44
45 Q. Did you tell Mr Callinan that he needed to do
46 something in relation to that or not?
47 A. No, not about weekends I didn't, no.

1
2 Q. Did you tell Fletcher these conditions that you had
3 conveyed to Callinan?
4 A. I did, yes.
5
6 Q. When did you do that?
7 A. I did. When I returned to the presbytery from
8 speaking to Will Callinan, I told Fletcher that I had been
9 down to see Mr Callinan and that I had spoken to him about
10 Fletcher and that I had advised Callinan to not allow
11 Fletcher to enter the school.
12
13 Q. Yes.
14 A. Okay? And to keep an eye open.
15
16 Q. Father Saunders was there when you told him those
17 things?
18 A. Well, I'd hope so; I hope so.
19
20 Q. Was he or not?
21 A. He was in the presbytery certainly, yes. He should
22 have been there, yes.
23
24 Q. He was your vicar general. You would have wanted him
25 there for that important instruction you were giving to a
26 priest of your diocese?
27 A. Yes, I would have, yes.
28
29 Q. It is highly likely he would have been there for that
30 exchange?
31 A. Highly likely, yes.
32
33 MR GYLES: Could we have clarification of the word
34 "there"? At the moment, you're saying in the presbytery.
35
36 THE COMMISSIONER: Yes, he was within hearing of the
37 conversation.
38
39 MS LONERGAN: That's why I asked it.
40
41 MR GYLES: That may be the intention of it but I'm not
42 certain.
43
44 MS LONERGAN: Q. Yes. There for the exchange, I thought,
45 imported present within the hearing of the exchange you had
46 with Fletcher when you told him about the conditions of his
47 operation at Branxton?

1 A. Yes, I hope he was, yes.
2
3 Q. You're saying you hope he was. My question was it
4 would be very likely that he would be there because, as
5 your vicar general, you would want him there to hear what
6 you had requested or ordered Fletcher not to do or to do?
7 A. Yes. Correct.
8
9 Q. Did you make some notes of that particular exchange
10 with Fletcher?
11 A. No, I didn't.
12
13 Q. Did you confirm it in a letter to him so he could
14 understand what he was permitted to do in terms of
15 ministering to children?
16 A. I don't think I did that either.
17
18 Q. Why not?
19 A. Unless you've found something.
20
21 Q. I haven't, but if there is something I'm happy for you
22 to point it out?
23 A. No, I - well, it's something I should have done, yes.
24 I should have put down a risk assessment tool and given him
25 direct instructions as to what he could and couldn't do.
26
27 Q. It would have been easy to write a letter to him
28 saying --
29 A. Oh, sure.
30
31 Q. "Confirming our conversation, you can't do," X, Y and
32 Z, "or be alone with children of the parish"?
33 A. That's correct.
34
35 Q. Have a look at the document behind tab 359. This is a
36 letter you did send to Fletcher, albeit four months after
37 your exchange with him in June 2002 --
38 A. Yes.
39
40 Q. -- where you actually have expanded his
41 responsibilities to include another parish?
42 A. Yes. Correct.
43
44 Q. Did you approach the headmaster or headmistress at the
45 school associated with the new parish you had included in
46 Fletcher's pastoral care and tell the headmaster of that
47 school that you had limited Fletcher's contact with

1 children because of accusations of sexual abuse?
2 A. I don't believe I did.
3
4 Q. Who was the headmaster or headmistress of the school
5 associated with the Lochinvar parish?
6 A. There were two schools. One was a primary school.
7
8 Q. Yes.
9 A. And the principal of that was Chris Quinn, Mr Chris
10 Quinn, and the principal of the high school escapes me at
11 the moment.
12
13 Q. You didn't tell Mr Quinn about Fletcher's --
14 A. I don't think I did.
15
16 Q. Although you told Will Callinan --
17 A. I did, yes.
18
19 Q. -- at Branxton, you didn't tell the opposite number to
20 Mr Callinan at Lochinvar to be aware of Fletcher's
21 association with young children unsupervised?
22 A. I don't believe I did. I don't know.
23
24 Q. Do you now see that as an inconsistent position?
25 A. Definitely, yes.
26
27 Q. Why is it that you allocated to Fletcher - accused as
28 he was of sexual abuse of a boy - another parish?
29 A. The diocese had been going through a process of
30 rationalising parishes from the late 19 - say, from about
31 1996. The diocese had had a synod in 1992-93, before my
32 time, in which the teachings of the Second Vatican Council
33 were applied to the life of the diocese. That involved
34 giving laypeople greater participation in the life and
35 mission of the church. The synod decreed that every parish
36 was to have a pastoral council with an elected body of
37 parishioners and that the pastoral council would discuss
38 and decide upon issues relating to the life of the parish
39 and so on.
40
41 Q. Forgive me for interrupting, but are you leading to
42 the reason why you appointed --
43 A. I am, yes.
44
45 Q. -- Fletcher to a further parish?
46 A. Yes, I'm leading there.
47

1 Q. All right.
2 A. Yes. So out of this concept of greater lay
3 participation, the diocese engaged in the process from
4 about 1996, say, three years after the synod, in
5 rationalising parishes. There were 53 parishes in the
6 diocese when I first arrived. Many of those parishes,
7 particularly in rural areas, were fairly small and whilst
8 they did have a priest back in the days when priests were
9 plentiful, they shared a priest with a neighbouring parish.
10 In this process we drew up a blueprint where the parishes
11 of the diocese were either given the option of sharing a
12 priest with a neighbouring parish or amalgamating their
13 parishes as such, or engaging in some kind of lay-led
14 leadership of a parish area.
15
16 Q. Can we take it that Lochinvar were keen to have a
17 parish priest?
18 A. Lochinvar did have a parish priest, but it was
19 probably one of the smallest parishes in the diocese and
20 the --
21
22 Q. But why was - I'm sorry?
23 A. And the priest there applied for the parish of Raymond
24 Terrace, which he was successful in getting, and so on the
25 basis of that and on the basis of our blueprint, Lochinvar
26 was added to Branxton. It had nothing to do with
27 Fletcher's situation as such.
28
29 Q. I am not putting to you a proposition that you
30 deliberately defied what Detective Chief Inspector Fox
31 asked you to do and in fact widened Fletcher's parish.
32 What I'm asking you is why you appointed Fletcher to a new
33 parish where he would have access to children who were
34 unaware of the matters that you had raised with the
35 principal at Branxton?
36 A. Yes, I take your point. We had no-one to put into
37 Lochinvar, because of shortages and so on, so it was the
38 logical conclusion called for by the blueprint.
39
40 Q. Wouldn't it have been better to put in a priest at
41 Lochinvar who had not been accused of sexually abusing
42 boys?
43 A. Yes, but we had nobody to put in there, that's what --
44
45 Q. Nobody at all?
46 A. Nobody at all. That's what I'm saying, yes.
47

1 Q. So better to appoint a man accused of paedophilia than
2 have no priest?
3 A. Oh, that's a bit strong, but I take your advice, yes.
4
5 Q. One step that you could have taken to protect children
6 of that parish would have been to do as you did, as you
7 allege with Mr Callinan, and warn the principal of the
8 school or schools associated with the parish, as you did
9 Mr Callinan?
10 A. Yes, that's correct.
11
12 Q. But you didn't do that?
13 A. That's correct.
14
15 MS LONERGAN: I tender that letter, Commissioner, the
16 letter of 3 October.
17
18 THE COMMISSIONER: That is MFI10. Tab 359, the letter of
19 3 October 2002 to Fletcher from Bishop Malone, will be
20 admitted and marked exhibit 97.
21
22 **EXHIBIT #97 LETTER OF 3/10/2002 (PREVIOUSLY MFI10) FROM**
23 **BISHOP MALONE TO JAMES FLETCHER (TAB 359)**
24
25 MS LONERGAN: Q. Fletcher was convicted of sexual abuse
26 of [AH], wasn't he?
27 A. He was.
28
29 Q. You withdrew his ministry after those convictions were
30 upheld?
31 A. Yes. As soon as he was about to be charged, we
32 withdrew his capacity to minister. We stood him aside from
33 priesthood.
34
35 Q. Yes. I am going to ask you to turn to your shorter
36 statement, which is exhibit 86, the one that you prepared
37 in June 2013.
38 A. Are we done with this volume?
39
40 Q. Yes, we are.
41 A. Okay. This was prepared in --
42
43 Q. June 2013. It is specifically regarding the visit you
44 made to Fletcher on 4 June 2002?
45 A. Right. Yes.
46
47 Q. In that document, bishop, you have set out your

1 reasons for having done what you did on 4 June in attending
2 on Fletcher as a priest of your diocese?

3 A. Yes.

4

5 Q. It is the position, isn't it, that you were unaware
6 that that was not a good thing to have done at the time you
7 did it?

8 A. That's true.

9

10 Q. Your visit to him was not malicious?

11 A. I'd say my visit with Jim Saunders was spontaneous,
12 you know, following the news that we had.

13

14 Q. It was motivated by pastoral concern for him?

15 A. Yes.

16

17 Q. You were aware that he'd had a stroke some time
18 before?

19 A. Yes.

20

21 Q. And you were concerned that, as his bishop, you should
22 minister to him in some way?

23 A. Yes. The relationship between a priest and bishop is
24 reflected in canon law. It is probably twofold, insofar as
25 the relationship is described as a relationship of
26 brotherhood and prayer, so in the shared sacrament of
27 holy orders we share ministry; therefore, there is a bond
28 there based on that.

29

30 Q. Yes.

31 A. Plus the fact that the bishop of course is the
32 superior of the priest and that's where I had hoped that by
33 visiting Fletcher I might elicit some kind of admission,
34 which was not forthcoming.

35

36 Q. You state in your statement, paragraph 1.8, that it
37 never occurred to you that you might be hindering a police
38 investigation?

39 A. No, it never did, I'd have to say.

40

41 Q. It was your intention to try to assist, was it, in
42 securing an admission from Fletcher?

43 A. That would have been very helpful had it happened,
44 yes.

45

46 Q. Would you have provided that admission to the police
47 had you secured it?

1 A. I certainly would have, yes.
2
3 Q. You had documentation of admissions to paedophilia by
4 McAlinden but you didn't provide those documents to the
5 police, did you?
6 A. No, but again, could I repeat, that [AK] and [AL],
7 I think it was, said that they didn't want the police
8 involved.
9
10 Q. You had admission from McAlinden noted in various
11 correspondence that didn't only relate to [AK] and [AL],
12 didn't you?
13 A. Well, at that point I only knew about [AK] and [AL];
14 that's what I'm saying.
15
16 Q. You note in your statement that you now acknowledge
17 that in approaching Fletcher, you may have hindered the
18 investigation?
19 A. Yes, I certainly acknowledge that, yes.
20
21 Q. And you understand that it is possible that potential
22 evidence could have been destroyed by Fletcher as a
23 consequence of him becoming aware of the allegations?
24 A. Yes. It was [BI] who first pointed that out to me and
25 I must admit I was a bit shocked to hear that, but it's
26 true, yes.
27
28 Q. But that hadn't occurred to you at the time?
29 A. No, it hadn't, no.
30
31 Q. Do you know as a fact that any evidence was destroyed
32 by Fletcher as a consequence of you going to talk to him?
33 A. No, I don't know that anything was destroyed, but
34 that's not to say that it wasn't.
35
36 Q. You also say in your statement that in 2002 you had
37 not arrived at the realisation that sexual abuse by clergy
38 within the church was endemic?
39 A. Yes.
40
41 Q. Given that there was an Australian Catholic Bishops
42 Conference seminar in Randwick where the matter was
43 discussed in 1996, do you still maintain the position that
44 you didn't realise in 2002 that sexual abuse by clergy
45 within the church was endemic?
46 A. I didn't, no. I mean, that advice from the bishops'
47 conference was to do with sexual abuse matters generally.

1 It didn't sort of speak about the number or the frequency.
2
3 Q. You thought that the cases that you had come across in
4 your diocese were just one offs?
5 A. I was hoping they would be, but they kept mounting up.
6
7 Q. And you say that at that point in time, that is, 2002,
8 you were still defensive of the church's reputation and
9 wanted to avoid unwelcome scandal?
10 A. Yes, and that's an accurate statement that I made
11 there.
12
13 Q. And you thought the church was being attacked by
14 vulnerable people who were trying to embarrass it?
15 A. Yes.
16
17 Q. But you now know that that was wrong and that attitude
18 added to the distress of victims?
19 A. Yes. I have a lot of regrets about this whole matter.
20
21 Q. You set up the Child Protection Unit, later known as
22 Zimmerman House --
23 A. Yes.
24
25 Q. -- in or about 2005, specifically to better manage and
26 support victims of sexual abuse?
27 A. I did, yes.
28
29 Q. And there was an aspect to Zimmerman House's work that
30 also included advising perpetrators; is that right? At
31 paragraph 1.15 you mentioned --
32 A. Advice for perpetrators.
33
34 Q. Advice for perpetrators?
35 A. Yes. That was - it's accurate what I'm saying there,
36 but we soon found that it was a conflict of interests to do
37 that and we made other arrangements.
38
39 Q. In terms of Zimmerman House's work, was it part of
40 their work to question perpetrators?
41 A. Not when it came to matters of sexual abuse, no.
42
43 Q. Was it the practice at your diocese to interview
44 alleged perpetrators of sexual abuse to ascertain the truth
45 or otherwise of the assertions made about them?
46 A. By this time, no.
47

1 Q. Yes.
2 A. Were there allegations made and the people did not
3 want police involvement, then those matters would be
4 investigated by independent private investigation.
5
6 Q. By "independent private investigation" you mean those
7 independent private investigators would interview the
8 alleged perpetrators?
9 A. They would have, yes.
10
11 Q. Was that process followed for either McAlinden or
12 Fletcher?
13 A. No.
14
15 Q. I'm not suggesting that it was a practical
16 possibility, but it wasn't?
17 A. No, it wasn't.
18
19 Q. But you used it for others, did you?
20 A. I did, yes.
21
22 Q. You've noted that you believe the establishment of the
23 Child Protection Unit was a valuable initiative and you're
24 pleased that it still continues?
25 A. Yes, I certainly am.
26
27 Q. And that it's your view that that unit has assisted
28 many victims and their families?
29 A. Well, yes, it has, I know that for a fact and it
30 continues to do so.
31
32 Q. As far as you're aware, Zimmerman Services has a solid
33 relationship with the New South Wales Ombudsman and the New
34 South Wales Police Service?
35 A. Yes, I would ascertain that. I would declare that,
36 yes.
37
38 Q. You believe that the obligations of the diocese in
39 respect of reports of abuse matters are now strictly
40 attended to in a very professional manner by
41 Zimmerman Services?
42 A. I'd have to say yes to that. I mean, of course,
43 there's always room for error, but largely that's the
44 intention, yes.
45
46 Q. You've spoken publicly via the ABC's Lateline program
47 in May 2008 where you voiced regret --

1 A. Yes, I did.
2
3 Q. -- that you didn't take matters regarding Fletcher as
4 seriously as you should have?
5 A. Yes. I wish I had - you know, in hindsight again,
6 I wish I'd acted with more determination in standing
7 Fletcher aside and in not informing him. There was a
8 certain coming to terms with these matters within my own
9 mind that I regret.
10
11 Q. It has been drawn to my attention that there's another
12 document I should take you to. I'm sorry about that. It
13 is tab 374 in volume 5.
14 A. Tab 374?
15
16 Q. Yes.
17 A. Thank you.
18
19 Q. Just before we delve into that document, continuing
20 the line of questioning that I was pursuing before,
21 your enlightened views led you to call on the Pope to make
22 a formal apology to victims of sexual abuse when he was
23 here in 2008?
24 A. I did.
25
26 Q. And he did that?
27 A. I think that led to early retirement. You don't tell
28 the boss what to do.
29
30 Q. But he did do what you asked him to do?
31 A. He did, yes. I suppose he was pressured a bit to do
32 it.
33
34 Q. Perhaps it was a miracle.
35 A. Sorry, what tab was that again?
36
37 Q. Tab 374.
38 A. Tab 374. Yes.
39
40 Q. Jokes aside, Bishop Malone, did your more vocal
41 statements regarding the way child sexual abuse should be
42 managed put you offside with some of your contemporary
43 bishops?
44 A. I'd have to say yes to that.
45
46 Q. Did you feel obliged to resign from your position?
47 A. No. No, there was no pressure on me to resign and

1 I didn't feel that I needed to resign for that purpose.
2 I was - the purpose of my resignation was that I'd reached
3 a point, following all of this investigation and the
4 difficulties around all of that, where I was just very
5 tired and I needed to get away, so I offered my resignation
6 at 71 years of age and I've been happily retired for two
7 years.

8

9 Q. Was it accepted with obscene haste or was there a
10 delay?

11 A. I don't know "obscene haste" but it was accepted
12 fairly rapidly, yes.

13

14 Q. The document behind tab 374, just to try and determine
15 the date of its preparation, it appears to be a handwritten
16 document by you about Fletcher?

17 A. It is, yes.

18

19 Q. It refers to having had a conversation with
20 Michael McDonald who had heard from the Ombudsman's office
21 that Jim Fletcher will soon be charged. Do you see that?

22 A. Yes.

23

24 Q. And then it talks about:

25

26 *I visited [Father Jim Fletcher] ... at the*
27 *above address to inform him of charges to*
28 *be laid and to stand him down from duty.*

29

30 A. Yes.

31

32 Q. This was 18 March 2003?

33 A. Correct.

34

35 Q. Is there any reason why you made that decision on that
36 day, as in were you told to do that or did you form your
37 own view that you needed to do that?

38 A. No, I wasn't told, but it was obvious that the police
39 investigation had reached the point now where charges were
40 about to be laid and then at the same time the Ombudsman
41 had been informed about my lack of contact with him, so
42 Michael McDonald, who was the head of Catholic Commission
43 for Employment Relations, he was contacted by the Ombudsman
44 about why Fletcher's situation was not notified to them.
45 So that all led then to a phone call from Michael McDonald
46 to let me know that charges were about to be laid because
47 I think Detective Chief Superintendent Fox had indicated

1 that to him, or the Ombudsman had or somebody.
2
3 Q. And where you say in the second-last sentence:
4
5 *I sought legal advice from Gerard Phillips*
6 *(Carroll & O'Dea).*
7
8 What was that legal advice about?
9 A. I'm not sure about that now.
10
11 Q. In June 2002, bishop, you were contacted by a victim
12 of McAlinden, [AC], who had put a formal complaint into
13 Towards Healing. Do you remember that?
14 A. Excuse me. I'll have to find my list. [AC].
15
16 Q. Yes.
17 A. I've got so many papers here. Do I need this volume
18 any more?
19
20 Q. You do actually. Just have a look at the --
21 A. I'll shunt that aside. Thank you. Yes. Repeat the
22 question, please? It was --
23
24 Q. Yes.
25 A. It was [AC]?
26
27 Q. [AC]. In June 2002, you had some dealings with or at
28 least had the complaint of [AC] forwarded to you?
29 A. Yes.
30
31 Q. Do you see behind tab 344 is the complaint by [AC]?
32 A. 344.
33
34 Q. Yes.
35 A. Yes, I see.
36
37 Q. It was your usual practice at that time, wasn't it, to
38 read complaints from victims of sexual abuse so that you
39 understood what they'd been through and were complaining
40 about?
41 A. Yes, it was, yes.
42
43 Q. Behind tab 346 is a letter from you to [AC] telling
44 her that you have read that statement of complaint?
45 A. Yes.
46
47 Q. You've noted that that person had chosen not to report

1 the matter to the police. Do you see that?
2 A. Correct, yes.
3
4 Q. I want to draw your attention to page 912 behind
5 tab 344, which is a handwritten addendum to [AC]'s
6 complaint.
7 A. The typed and corrected copy?
8
9 Q. If you wouldn't mind just going to the handwritten
10 copy which is page 912?
11 A. What do you mean "912"? I'm sorry --
12
13 Q. No, page 912.
14 A. I'm sorry. Yes, I've got it.
15
16 Q. You see that handwritten note is headed "Addendum re:
17 Criminal behaviour". Do you see that?
18 A. I can see that.
19
20 Q. It reads:
21
22 *If other serious complaints are made about*
23 *Father McAlinden, if the Professional*
24 *Standards Office is made aware through*
25 *other complaints of other (criminal)*
26 *behaviour by him, then I would like my*
27 *experiences to be used in corroboration.*
28
29 Do you see that?
30 A. Yes, I can see that.
31
32 Q. Is it correct to say, as you do in your letter, that
33 [AC] has chosen not to report the matter to the police, but
34 would you agree with me that she has gone to the trouble of
35 noting that she wants her complaint used for corroboration
36 of others if any others complain?
37 A. Yes, that's what she's saying, yes.
38
39 Q. At that time you were dealing with or had dealt with
40 the allegations made against McAlinden by [AE]?
41 A. Yes.
42
43 Q. And the allegations in relation to [AE] included rape,
44 didn't they?
45 A. Yes.
46
47 Q. And so you were aware of other serious allegations

1 about McAlinden?
2 A. Yes.
3
4 Q. At the time you read this?
5 A. Yes.
6
7 Q. Did you take any particular action in relation to that
8 addendum comment by [AC] in terms of telling the
9 Professional Standards Office about [AC]'s wish to be used
10 in corroboration?
11 A. Yes. I don't recollect having done so.
12
13 Q. Do you agree with me that, given that note, you ought
14 to have done so, given what you knew?
15 A. Yes, I think so, yes.
16
17 Q. Do you recollect conceding that you said to one of
18 McAlinden's victims that he had a file you couldn't jump
19 over?
20 A. Yes, we dealt with that this morning.
21
22 Q. And did I put to you that it was [AC] you said that
23 to?
24 A. Yes, I think you said that this morning.
25
26 Q. And you agreed that's who it was?
27 A. Yes.
28
29 Q. Thank you. I'm going to show you a document that is a
30 Towards Healing Summary of Facilitated Meeting. It has
31 been provided to your solicitors. I have a copy for the
32 Commissioner and a copy for you. (Shown to witness). Have
33 you had an opportunity to read that document with your
34 solicitors before today?
35 A. Yes, I have glanced at it, yes.
36
37 Q. I draw your attention to the second page of that
38 document under the heading "McAlinden's History"?
39 A. Yes.
40
41 Q. Before I do that, you noted, no doubt, that it was a
42 summary prepared by Michael Salmon?
43 A. Yes.
44
45 Q. He was at the time an official of the Catholic Church
46 associated with the Professional Standards Office?
47 A. He succeeded John Davoren as the director of that.

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Q. It is his note that appears on the face of the document?

A. It is, yes.

Q. Do you see that he's recorded that you informed [AC] that you had caused McAlinden's case to be raised with the police, although you acknowledge that:

... any response by the Police would be by necessity limited in the absence of at least one victim making a formal statement to them.

Do you see that?

A. Yes, I can see that.

Q. Mr Salmon also noted that you said despite McAlinden's advanced age, it was your opinion that the matter needed to be handled by the police.

A. Yes.

Q. And:

...[AC] evinced an intention to formally notify them of her allegations against McAlinden.

Do you see that?

A. I see that, yes.

Q. Is it the position that you did raise McAlinden's case with the police on behalf of [AC], or at all, on or after this date of the meeting in August 2002?

A. I mentioned earlier that I had contacted or Father Bill Burston and myself had contacted John Davoren - that was in 1999 - to inform the police about what we knew and the fact that we couldn't find him and that was because of our frustration at not being able to receive correspondence from him. He seemed to have disappeared into thin air. Also, I rang - I have a memory that I rang John Davoren's office in 2003 to report other victims whom I had got to know in the intervening years.

Q. One of the victims was [AC], wasn't it?

A. Correct, it was.

1 Q. And --
2 A. And [AE].
3
4 Q. And [AE]?
5 A. Yes.
6
7 Q. You had known about [AE] since 1999?
8 A. Yes.
9
10 Q. And you'd known about [AC] since June 2002?
11 A. Yes.
12
13 Q. And you reported those two additional victims of
14 McAlinden in March 2003.
15 A. Right.
16
17 Q. Does that ring a bell?
18 A. Yes, sort of.
19
20 Q. Was there any reason why there was the delay in
21 relation to telling the police about [AE]?
22 A. I don't know - I don't --
23
24 Q. Telling the Professional Standards Office?
25 A. Yes. No, I - yes. I don't know that I'd - I didn't
26 contact the police directly about [AC] or [AE].
27
28 Q. Yes. That's why I corrected the question, I'm sorry.
29 It was about telling the Professional Standards Office.
30 A. Yes, certainly that. I don't know that I identified
31 them but I certainly said that there were two other victims
32 that had come forward and the police needed to be informed
33 about this matter by Professional Standards.
34
35 MS LONERGAN: Would that be a convenient time,
36 Commissioner?
37
38 THE COMMISSIONER: Yes, Ms Lonergan.
39
40 **AT 4.05PM THE COMMISSION WAS ADJOURNED TO**
41 **FRIDAY, 12 JULY 2013 AT 9.30AM**
42
43
44
45
46
47

#

#90 [1] - 901:16
#91 [1] - 907:13
#92 [1] - 909:34
#93 [1] - 911:14
#94 [1] - 911:36
#95 [1] - 912:33
#96 [1] - 942:5
#97 [1] - 959:22

1

1 [3] - 826:25, 852:33, 951:21
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