

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 Friday, 12 July 2013 at 9.30am
(Day 9)

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 Kate Vale

1 MS LONERGAN: Good morning, Commissioner. Could Bishop
2 Michael Malone return to the witness box, please.

3
4 <MICHAEL JOHN MALONE, sworn: [9.30am]

5
6 <EXAMINATION BY MS LONERGAN:

7
8 MS LONERGAN: Commissioner, could the witness be given
9 access to exhibit 85, 86 and 87 which are his statements
10 and his police statement from May 2003?

11
12 THE COMMISSIONER: Yes. Thank you.

13
14 MS LONERGAN: Q. Bishop, do you have those three
15 statements in the witness box, the three statements I just
16 talked about?

17 A. My three statements, I do, yes.

18
19 Q. Would you mind turning to your July 2013 statement,
20 paragraph 6.2(i) where you address the steps you took upon
21 becoming aware of the report or complaint about Fletcher in
22 June 2002?

23 A. 6.2(i)?

24
25 Q. Yes, do you see that you mention the origin of your
26 becoming aware in the content of 6.2 and the various
27 subparagraphs, and it is (v) that I'm directing your
28 attention to where you say that you telephoned
29 John Davoren, who was then director of Professional
30 Standards Office, and sought his advice as to whether you
31 should stand Fletcher down?

32 A. I did, yes.

33
34 Q. You have a clear recollection of making that call, do
35 you?

36 A. I do.

37
38 Q. Why did you call him?

39 A. I called him because he was the head of the New South
40 Wales Professional Standards Resource Group and, as one
41 well experienced in these matters, I sought his advice as
42 to what I should do.

43
44 Q. Can I suggest to you that, in your statement, you
45 refer to him as the director of the Professional Standards
46 Office. Is that what you mean, that he was the director --

47 A. Yes, one and the same, yes.

1
2 Q. Mr Davoren, you say, said:
3
4 *Father Fletcher does not have to be stood*
5 *down at this point as there is a*
6 *presumption of innocence in these matters.*
7 *This is an allegation only. You don't have*
8 *to stand him down at this time.*
9
10 A. That is my recollection, yes.
11
12 Q. Did you make a note of that conversation with him at
13 the time?
14 A. No, I didn't.
15
16 Q. Did you rely on what Mr Davoren told you in deciding
17 what you would do regarding Fletcher?
18 A. It was certainly an influential factor, yes.
19
20 Q. Did you make that call to Mr Davoren before or after
21 you offered Fletcher the option of standing down when you
22 went to see him at Branxton on 20 June?
23 A. I think probably it would have been after that I had
24 spoken to Fletcher, yes.
25
26 Q. I'm sorry, did I ask you, did you make a note of that?
27 A. No, I did not.
28
29 Q. Did Mr Davoren tell you whether he had spoken to
30 anybody else to confirm that particular piece of advice he
31 gave you?
32 A. No, I don't believe that he did.
33
34 Q. You're confident in your recollection that that
35 conversation took place in June 2002?
36 A. Yes, I am.
37
38 Q. Did you have any other discussions with Mr Davoren
39 subsequent to the one you say occurred in June 2002 about
40 what you should do with Fletcher?
41 A. Not for a little while. Just as charges were about to
42 be laid, I think there was contact then as well.
43
44 Q. Was that by you or by your vicar general or --
45 A. I think that was by him, Mr Davoren.
46
47 Q. Mr Davoren phoned you?

1 A. I think so.
2
3 Q. Do you recollect what you spoke about then?
4 A. No, I can't actually, no.
5
6 Q. But it was to do with Fletcher?
7 A. Yes, it certainly was, and I know that Mr Michael
8 McDonald, who was the director of the Catholic Commission
9 For Employment Relations, that had been in touch, I think,
10 with Mr Davoren and all things - it was starting to get
11 rather active as charges were about to be laid.
12
13 Q. I suggest to you that Mr Davoren actually suggested
14 that Fletcher be stood down until the investigation was
15 complete in a conversation that he had with you or your
16 vicar general in February or March 2003. Does that accord
17 with your recollection?
18
19 MR HARBEN: I object. That's in two parts, Commissioner.
20
21 MS LONERGAN: Yes. I'll break it down. Mr Harben is
22 correct.
23
24 Q. Do you recall having a conversation yourself with
25 Mr Davoren where he made any suggestions or recommendations
26 as to what you should do regarding Fletcher still being in
27 ministry?
28 A. No, I don't, frankly.
29
30 Q. Did you have a discussion with your vicar general
31 regarding any call he received from Mr Davoren relating to
32 that issue?
33 A. No, I don't recollect that either.
34
35 Q. And do you know of any notes that you have seen in
36 files or papers relating to Fletcher that deal with that
37 subject matter; that is, a call from Mr Davoren or to
38 Mr Davoren about what should happen regarding Fletcher's
39 ministry?
40 A. I can't recollect that, other than the 20 June call
41 that I've referred to.
42
43 Q. Thank you. In paragraph 7.1 of that same statement
44 that you have with you in the witness box that's dated July
45 2013, you state, in answer to a question on what police
46 investigations and inquiries you were aware of with respect
47 to McAlinden and when you became aware of them, that during

1 your time as bishop, you were not aware of any
2 investigations by police in respect of the activities of
3 McAlinden?
4 A. That's correct, yes.
5
6 Q. You were shown the day before yesterday, however, some
7 correspondence regarding [AE] that you participated in that
8 referred to her having reported the matter to the police in
9 late 1999. Do you recall that?
10 A. I recall that we spoke about it, yes.
11
12 Q. I will turn up those letters if you need to, but in
13 one of the letters at least - I should turn it up for your
14 assistance - you mention you were aware the police had been
15 contacted by [AE]?
16 A. Yes, I think so.
17
18 Q. Yes?
19 A. I remember that, yes.
20
21 Q. And that, at some point, she withdrew her complaint?
22 A. Yes, I remember that.
23
24 Q. You didn't consider, did you, that particular
25 knowledge that you had in late 1999, early 2000, to be
26 knowledge or awareness about any investigation by police in
27 respect of activities of McAlinden?
28 A. No, as I understood it, she'd only reported the matter
29 to the police and then later withdrew. I didn't realise
30 there was an investigation in train.
31
32 Q. That's a distinction you make --
33 A. Yes.
34
35 Q. -- that [AE] reported the matter?
36 A. Yes.
37
38 Q. And did you make an assumption that there was no
39 investigation by police?
40 A. No, I knew it was a report, but I didn't know it was
41 an investigation.
42
43 Q. I will take you to a document, it is tab 313. I will
44 just give you the volume, volume 4. Before you turn it up,
45 bishop, do you remember having any inquiry directed to the
46 chancery by police about McAlinden in late 1999?
47 A. I remember there was an inquiry that came in from one

1 of the police persons from Charlestown looking for an
2 address, I think.
3
4 Q. I want to suggest to you that that was in 2002 and
5 we'll come to that.
6 A. 2002, was it?
7
8 Q. Just have a look at the document behind tab 313 for
9 me.
10 A. Right.
11
12 Q. You see that's a letter directed to the
13 Maitland-Newcastle diocese chancery?
14 A. Yes.
15
16 Q. Just read that document to yourself. Do you see that
17 includes a reference to [AE] having made a formal statement
18 and complaint --
19 A. I can, yes.
20
21 Q. -- regarding sexual assault she suffered in 1953 to
22 1954 at the hands of McAlinden. Do you see that?
23 A. I can see that.
24
25 Q. You knew about that matter later in October 1999 at
26 least, if not before 8 October 1999, because you were
27 forwarded a copy of her statement of complaint?
28 A. Right, yes.
29
30 Q. I'm happy for you to turn up the letter that assists
31 with marrying those two facts together. I don't want you
32 to just accept what I say.
33 A. No, I think I can remember that.
34
35 Q. Do you think you can remember that?
36 A. I think so.
37
38 Q. Have a look behind tab 317 and satisfy yourself.
39 A. Yes.
40
41 Q. Do you see the letter to you dated 8 October 1999
42 doesn't just say that she's mentioned the matter to the
43 police, but that she's made a complaint to them. Do you
44 see that?
45 A. I can.
46
47 Q. Are you suggesting that you didn't understand that

1 comment in that letter to mean that there would be any
2 police investigation?
3 A. No, obviously there would have been a police
4 investigation in train, yes; it's just something that I've
5 forgotten.
6
7 Q. All right. You know from reading, as you stated you
8 would have, on Wednesday, [AE]'s statement of complaint for
9 the Towards Healing process, that she intended to take the
10 matter to the police?
11 A. She did. I knew that, yes.
12
13 Q. But you didn't include in your statement any
14 investigation that the police were doing in respect of
15 [AE]?
16 A. No.
17
18 Q. Did you forget about it?
19 A. My statement was purely made from memory. I had no
20 documentation to consult; so that being the case, yes,
21 I had forgotten about it.
22
23 Q. The letter that's behind tab 313 is addressed to the
24 bishop's chancery?
25 A. Yes.
26
27 Q. The way things were being conducted in 1999 at your
28 workplace, does that of necessity mean it would have been
29 drawn to your attention?
30 A. I would have thought so, yes.
31
32 Q. Looking at the --
33 A. That's presuming I was there. As I mentioned
34 yesterday, I usually have holidays in October and that's
35 when this letter came in.
36
37 Q. You were able to send a reply to Mr Davoren's letter
38 to you enclosing [AE]'s complaint --
39 A. Right.
40
41 Q. -- on - I'll just turn it up for you - on 12 October
42 1999, and that's behind tab 320. Can we take it that, at
43 least on 12 October, given this letter has your signature
44 on it, that you were present on 12 October?
45 A. I can, yes.
46
47 Q. While we're looking at that letter, just have a look

1 down the bottom there on the left, there's a file
2 reference, it appears to be, and if you can assist us with
3 that, it says:

4

5 *File: Sexual Abuse [AE] - re*
6 *McAlinden.Oct99.*

7

8 Q. Do you see that?

9 A. Yes, can I see that.

10

11 Q. Are you able to assist with that file referencing
12 system? Was that a system that you set up?

13 A. No. That was set up by my personal assistant, but
14 that's the kind of system they used to identify
15 correspondence.

16

17 Q. Does that denote that there was a separate file
18 relating to sexual abuse of [AE] by McAlinden?

19 A. No, I don't think so. I think it relates to the fact
20 that it was about sexual abuse by McAlinden. It would have
21 been filed in the McAlinden file.

22

23 Q. Can we take it from evidence you've given earlier that
24 you didn't personally access the McAlinden file at this
25 point, that is, October 1999?

26 A. Well, it was certainly very limited, the access that
27 I had to the file, yes, as we --

28

29 Q. Did you rely - I'm sorry?

30 A. As we saw yesterday.

31

32 Q. Did you rely on your secretary to file letters of this
33 nature on the McAlinden file?

34 A. I'm not sure whether she or I filed it, but either of
35 us could have.

36

37 Q. Your secretary was Ms Doyle, was she?

38 A. Correct, yes.

39

40 Q. Did you discuss these matters with Ms Doyle at any
41 time?

42 A. No, I don't think so, no.

43

44 Q. Can we take it that Ms Doyle typed the letter, or did
45 you?

46 A. No, she was Maree Lawrie, "ML". See down the bottom
47 just above the reference, it's "+MM/m1".

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Q. So "ML" means Maree Lawrie typed the letter for you?
A. Maree Lawrie, who was the assistant secretary, yes.

Q. Would she also do filing?
A. Yes, she would have, yes.

MS LONERGAN: I tender that letter of 12 October 1999 behind tab 320, Commissioner.

THE COMMISSIONER: Thank you, Ms Lonergan. The letter of 12 October 1999 to [AE] from Bishop Malone will be admitted and marked exhibit 98.

EXHIBIT #98 LETTER OF 12/10/1999 TO [AE] FROM BISHOP MALONE (TAB 320)

MS LONERGAN: I'll just flick back to the letter behind tab 313 and tender that also. That's addressed to the bishop's chancery dated 8 October 1999.

THE COMMISSIONER: Tab 313, the letter of 8 October 1999 to the bishop's chancery from Detective Senior Constable Watters of police will be admitted and marked exhibit 99.

EXHIBIT #99 LETTER OF 8/10/1999 TO THE BISHOP'S CHANCERY FROM DETECTIVE SENIOR CONSTABLE WATTERS

MS LONERGAN: Q. Do you have the document behind tab 313 open, the letter to the bishop's chancery?
A. Yes, I do.

Q. Do you see that that letter outlines that [AE] told her mother and father about the sexual assaults and her parents brought it to the attention of the bishop? Do you see that?
A. I can see that, yes.

Q. I appreciate your evidence is to the effect that you don't recall seeing this letter. Is that your evidence today?
A. Well, I can't recall seeing it, no, which doesn't mean I didn't see it.

Q. But your usual practice in 1999 would have been to read letters of this nature if they were addressed to the bishop's chancery?

1 A. Certainly, yes.
2
3 Q. And particularly given that it was concerning
4 complaints of sexual assault by a priest of your diocese?
5 A. Definitely, yes.
6
7 Q. If you had read this letter, and it mentions that this
8 lady's mother and father had brought to the attention of
9 the bishop what had happened, wouldn't you have gone to
10 look to see if there was any confirmation that this had
11 occurred?
12 A. Well, I didn't, no. You know, I just took it as read.
13 I mean, the police, when they write things like this,
14 I didn't need to double-check whether it was true or not.
15
16 Q. You don't recollect having read this letter - that's
17 the position, isn't it?
18 A. Yes.
19
20 Q. But you now say that you didn't look to see whether
21 there was any information relating to the contents of this
22 letter where it refers to [AE]'s parents bringing the
23 matter to the attention of the police?
24 A. No, I didn't look, no.
25
26 Q. You're confident you didn't look?
27 A. I'm sure I didn't look.
28
29 Q. Are you saying therefore that you read this letter or
30 are you just saying that you didn't look because you know
31 in late 1999, you weren't familiar with the contents of
32 McAlinden's file?
33 A. No, I can't recall reading this letter, but, as I say,
34 it doesn't say that I didn't.
35
36 Q. Do you see the letter goes on to say:
37
38 *[AE] states that with her parents, she went*
39 *to the Bishop's house but sat in the car*
40 *while her parents met with the Bishop.*
41
42 A. Yes, I can see that.
43
44 Q. There's also a specific request by the police as to
45 whether there is any record of this letter allegedly sent
46 to [AE]'s family regarding the incident. Do you see that?
47 A. Yes, I can.

1
2 Q. Would you agree with me that that would require, if
3 this was going to be answered with any proper attention, at
4 least a look at the file on McAlinden that would have been
5 present in your office?
6 A. That makes sense, yes.
7
8 Q. But you're unable to say whether that search was
9 conducted, or are you?
10 A. I'm not able to say that it was conducted, no.
11
12 Q. Can we take it from your answers that you're unable to
13 say generally whether any reply was given to the police
14 officer who sent this letter about that issue?
15 A. I don't know. Was there - there may have been
16 something on the file, if there had been a reply. And it
17 is not the sort of thing that would be ignored; it would be
18 acknowledged as least.
19
20 Q. If there was a reply, can we take it, given that that
21 confidential file about McAlinden or confidential files
22 about him would have had to be accessed, that you would
23 have had to have authorised any such search?
24 A. Correct, yes.
25
26 Q. But you don't recollect?
27 A. I don't know. I probably would have done it myself.
28
29 Q. But you don't recollect actually doing it?
30 A. No, I don't.
31
32 Q. It says:
33
34 *Police also request any assistance that may*
35 *be offered with the current whereabouts of*
36 *Father McAlinden.*
37
38 Do you see that?
39 A. Sorry, where --
40
41 Q. The second-last paragraph?
42 A. Yes.
43
44 Q. At this time, October 1999, did you know where
45 McAlinden was?
46 A. Yes, I think we did know where he was at that point.
47

1 Q. Do you know whether this particular officer, Detective
2 Senior Constable Watters, was contacted, firstly, by you on
3 that matter?
4 A. I can't remember having any dealings with detective
5 senior constable, as he was then.
6
7 Q. Can you recall requesting any of your staff to contact
8 him and give him information?
9 A. No, I can't remember.
10
11 MS LONERGAN: I have tendered that letter?
12
13 THE COMMISSIONER: Exhibit 99.
14
15 MS LONERGAN: Thank you, Commissioner.
16
17 Q. You've already given an and answer to the effect that
18 you recall there being contact made by a police officer
19 from Charlestown?
20 A. Yes.
21
22 Q. I want to suggest to you that that was Detective
23 Senior Constable Flipo, in around about 2002?
24 A. Yes.
25
26 Q. I think your personal assistant, Ms Doyle, provided
27 some information pursuant to a request by you that she do
28 so?
29 A. Yes, she did.
30
31 Q. I'll just turn up the relevant document. It's in
32 volume 5. Just bear with me. Tab 353.
33 A. In volume?
34
35 Q. Volume 5. I think this might be the incident that
36 you've referred to in your evidence.
37 A. 353?
38
39 Q. Yes, tab 353.
40 A. Yes, I see.
41
42 Q. Do you see that there's an email there from
43 Ms Doyle --
44 A. Yes.
45
46 Q. -- to Mr Davoren saying that you had asked her to
47 advise him of certain details?

1 A. Right.
2
3 Q. Do you see that?
4 A. I can see that, yes.
5
6 Q. Does that accord with your recollection?
7 A. It does.
8
9 Q. That you did that in July 2002?
10 A. Yes.
11
12 Q. Are you able to say whether, at that point, you were
13 aware that the police wanted this detail at that time, July
14 2002, just ignoring the other writing on the page?
15 A. Yes, I believe so. There was - I seem to remember my
16 personal assistant saying that the female police person
17 from Charlestown, I think it was, was looking for this
18 information.
19
20 Q. Is there any reason why you said that she should
21 advise the PSO as opposed to the police officer from
22 Charlestown?
23 A. No, I'm not sure about that.
24
25 Q. And then you see a little further down - in
26 handwriting that I understand is probably Elizabeth
27 Doyle's - 26 September 2002?
28 A. Yes, can I see that.
29
30 Q. :
31
32 *This info (advice) to Jacqui Flipo,*
33 *Charlestown Detectives ...*
34
35 Do you see that?
36 A. Yes, I can.
37
38 Q. At least at that time, 2002, you were aware, weren't
39 you, that police were investigating McAlinden?
40 A. Yes, obviously I was, yes.
41
42 Q. And you'd forgotten about that?
43 A. I had, I'm afraid, yes.
44
45 Q. In relation to the addresses provided one of them -
46 it's been redacted out, but we can show you an unredacted
47 copy if you need - is a relative's address in New South

1 Wales, that's [UR18]?
2 A. Right.
3
4 Q. The other one is an address in England, do you see?
5 A. I can, yes.
6
7 Q. Wasn't it the position, in September 2002 at least,
8 that you were aware that he - he McAlinden - was back in
9 Australia and living in Western Australia?
10 A. Well, yes, we'd talked about that yesterday.
11
12 Q. Yes?
13 A. Yes.
14
15 Q. So did you think that it would be important that you
16 advise your assistant to tell Ms Flipo that there was
17 actually some other updated information; that is, that you
18 knew that he was still alive and living in Western
19 Australia?
20 A. This was in July, not September.
21
22 Q. If you have a look at when the information was
23 provided to Ms Flipo --
24 A. Oh, I see what you mean. Down the bottom.
25
26 Q. Do you see that?
27 A. Yes.
28
29 Q. That was September?
30 A. Yes, I see that.
31
32 Q. You knew by then, didn't you --
33 A. We probably knew around about that same time, yes.
34
35 Q. Did it occur to you that that was extra information
36 that had come to you that ought to be advised to the police
37 so they could find this man?
38 A. I'm sure if we thought of it, we would have provided
39 that information to the police.
40
41 Q. You didn't think of it?
42 A. I don't know that we did. I - again it's hazy.
43 You're talking a fair few years ago.
44
45 Q. I should put this to you in fairness: do you think
46 that the information about McAlinden being back in
47 Australia and in Western Australia was conveyed to this

1 particular officer on behalf of the diocese at some point?
2 A. I don't know.

3
4 MR GYLES: Commissioner, might I raise an issue with
5 respect to this?

6
7 THE COMMISSIONER: Yes.

8
9 MR GYLES: Bishop Malone was taken to a document
10 yesterday, which was a document at tab 346 and, as
11 I understand it, my learned friend is cross-examining -
12 this was the document that Bishop Malone referred to as
13 "having been taken to this document yesterday", which uses
14 the expression that he was "still alive and living in
15 Western Australia". This is a document dated 20 June.

16
17 Commissioner, to be fair to Bishop Malone, if that
18 letter is being used as his state of knowledge as at that
19 time in connection with the question that's being asked, if
20 you go forward to tab 352, there is a relevant
21 communication that he wasn't taken to yesterday --

22
23 MS LONERGAN: Commissioner, if I can be permitted to just
24 continue with my examination, I am absolutely intending to
25 take the witness to that letter. I can't take him to each
26 letter at the same time.

27
28 THE COMMISSIONER: Yes.

29
30 MR GYLES: Yes, but the concern --

31
32 MS LONERGAN: I'm working through my analysis of one
33 document at a time and I will take him to that letter. I'm
34 asking him questions and getting answers and I should be
35 permitted to continue doing what I'm doing.

36
37 THE COMMISSIONER: Yes, isn't that so, Mr Gyles?

38
39 MR GYLES: The issue I have is what's being put is his
40 state of mind as at September 2002, and what the witness is
41 drawing from is the letter he was taken to yesterday.

42
43 THE COMMISSIONER: Without reference to letters in between
44 or other letters saying different things.

45
46 MS LONERGAN: The letter to which Mr Gyles is drawing
47 attention is a letter from the Archbishop of Perth saying

1 he has lost all trace of him at a certain time. I am
2 still permitted to ask Bishop Malone whether he knows
3 individually other information.

4
5 THE COMMISSIONER: Yes.

6
7 MS LONERGAN: They are different things, with respect.

8
9 THE COMMISSIONER: Yes, Ms Lonergan. I will permit you to
10 proceed as you were doing.

11
12 MS LONERGAN: Thank you, Commissioner.

13
14 Q. Bishop Malone, I was making inquiries with you as to
15 whether you thought it was important to tell Ms Flipo or
16 tell Ms Doyle to tell Ms Flipo that you had information
17 suggesting at least enough information to cause you to
18 write to [AC] in June 2002 that McAlinden was alive and
19 living in Western Australia. Do you recall that?

20 A. Yes.

21
22 Q. Did you think to inform Ms Flipo or Officer Flipo that
23 you had also tried to find out from the bishop in Western
24 Australia in June 2002 - that is, the Archbishop of Perth -
25 whether he knew where McAlinden was?

26 A. No, that was not communicated as far as I know. If we
27 had known that he was back in Western Australia, that would
28 have been communicated, I'm sure.

29
30 Q. Is the position that you say, although in June 2002
31 you communicated to [AC] that McAlinden was still alive and
32 living in Western Australia --

33 A. Yes.

34
35 Q. -- that that information wasn't correct at the time
36 she was told that?

37 A. No, I'd say that was correct. I wouldn't have written
38 it otherwise.

39
40 Q. Are you able to say what the source of your
41 information was for that statement then?

42 A. No, I'm not.

43
44 Q. You wrote on 28 June to the Archbishop of Perth.
45 That's behind tab 352.

46 A. Yes.

47

1 Q. I'm terribly sorry, we don't seem to have the letter
2 that prompted the letter from the Archbishop of Perth,
3 Reverend Hickey.
4 A. No. I seem to - may I interrupt?
5
6 Q. Yes, please do.
7 A. I seem to remember that I verbally asked him at the
8 Bishops Conference that we were trying to find McAlinden
9 and did he have any idea, and this was his response to me
10 subsequent to that.
11
12 Q. So you sent the letter of 20 June to [AC] saying he
13 was in Perth and still alive?
14 A. Yes.
15
16 Q. But some time between 20 June and 28 June, is it, you
17 had a conversation with the Archbishop of Perth?
18 A. I would have had a conversation with him probably in
19 the May, which is when the Bishops Conference is on and all
20 the bishops gather in Sydney for that. That's when I would
21 have asked him.
22
23 Q. You recall having a conversation with the Archbishop
24 of Perth about the whereabouts of McAlinden in May 2002?
25 A. I do, yes.
26
27 Q. Would you agree with me that writing to [AC] telling
28 her that he was still alive and living in Perth suggests
29 that you got some sort of information contemporaneous to
30 that month, June 2002, at least, that he was still alive
31 and living in Perth?
32 A. The question being did I know that --
33
34 Q. Did you learn that at the Bishops Conference?
35 A. No, I didn't learn - no, Archbishop Hickey said that
36 he would find out, if he could, where things were, and he
37 consulted also with Bishop Quinn in Bunbury, again with no
38 success.
39
40 Q. Is it the position that what you said to [AC] in the
41 letter in June 2002 may have been incorrect?
42 A. No, I'm not saying it's incorrect at all, otherwise
43 I wouldn't have written it, but certainly whether we knew
44 the address or whether it was just a vague "living in
45 Western Australia", I'm not sure.
46
47 Q. But, by any account, as you understand the position,

1 you didn't tell Ms Doyle to tell Officer Flipo that you had
2 had information in June 2002 that McAlinden was living in
3 Western Australia?

4
5 MR HARBEN: I object to that.

6
7 MS LONERGAN: I'll withdraw that. I'll start again.

8
9 Q. You say you must have had some sort of information
10 that allowed you in June 2002 to write to [AC] to the
11 effect that McAlinden was living in Western Australia?

12 A. Yes.

13
14 Q. But when you spoke to Ms Doyle or asked Ms Doyle to
15 provide certain information to the Professional Standards
16 Office in July 2002, you didn't include anything about
17 Western Australia, did you?

18 A. I don't recollect that I did, but we should have, and
19 maybe we did. I don't know. But it would have been - yes,
20 I suppose it would have been on the email, otherwise,
21 wouldn't it?

22
23 Q. Are you able to recollect whether you instructed
24 Ms Doyle to tell Ms Flipo anything about McAlinden having
25 been thought to be living in Western Australia in June
26 2002?

27 A. I don't remember that.

28
29 MR GYLES: To be fair to Bishop Malone, he should be given
30 an opportunity to read this letter, particularly the third
31 paragraph of it.

32
33 MS LONERGAN: Commissioner, I'm asking the witness at the
34 moment about his recollection. He doesn't need to read
35 another person's document to mine his own recollection.
36 I'll now take the witness to the document. If Mr Gyles
37 could permit me to proceed in the manner that keeps things
38 sensible and cogent, I will do so.

39
40 Q. Bishop Malone, would you mind looking in more detail
41 at the three-paragraph letter behind tab 352. That's the
42 letter from Archbishop Hickey of Perth?

43 A. Oh yes, yes.

44
45 Q. It's addressed to you?

46 A. Yes.

1 Q. It is dated 28 June 2002?
2 A. Yes.
3
4 Q. It is the reply to your oral request?
5 A. My verbal request, yes.
6
7 Q. Yes. What Archbishop Hickey tells you is:
8
9 *The St John of God Hospital phoned us about*
10 *him last year when he was a patient there.*
11 *We have not heard of him since.*
12
13 Do you see that?
14 A. Yes.
15
16 Q. And:
17
18 *I asked Peter Quinn if he had a lead, but*
19 *he doesn't, unfortunately.*
20
21 A. Yes.
22
23 Q. The next paragraph is:
24
25 *If you want to find him, the police might*
26 *help.*
27
28 Do you see that?
29 A. Yes.
30
31 Q. Then:
32
33 *I don't even know if he is still in Western*
34 *Australia.*
35
36 Do you see that?
37 A. Yes.
38
39 Q. Did you, prompted by that letter, contact the police
40 and say "We're trying to find McAlinden. Can you help us"?
41 A. I can't remember having done so. We spoke yesterday
42 about my contacting the police in 1999 because of our
43 frustration of trying to find McAlinden.
44
45 Q. In 1999?
46 A. Yes - and then in 2003 --
47

1 Q. I am going to stop you there. There was no evidence
2 yesterday that you contacted the police in 1999. Your
3 evidence yesterday was that you caused some information to
4 be conveyed to the Professional Standards Office?

5 A. That's correct, yes.

6

7 Q. So that's not contacting the police; would you agree
8 with me?

9

10 MR HARBEN: Commissioner, that's a very unfair way of
11 putting it. If one recalls the cross-examination, it was
12 about steps that were taken, and the bishop's answer, as
13 I recall, was that that was the process he went through
14 with a view to that happening. The document then clearly
15 says "notification by this person on behalf of Bishop
16 Malone."

17

18 THE COMMISSIONER: Yes. I recall the bishop saying that
19 he expected that to be a conduit to the police.

20

21 THE WITNESS: That is correct.

22

23 MR HARBEN: And that the process didn't work; that was his
24 understanding.

25

26 MS LONERGAN: Yes, there's no issue about that,
27 Commissioner --

28

29 MR BARAN: I object to --

30

31 MS LONERGAN: -- but my question to this witness is that
32 that's not contacting the police. The police are one
33 thing; they wear blue uniforms. The PSO is something else.
34 There is a distinction.

35

36 THE COMMISSIONER: Of course there is, Ms Lonergan, but
37 when the form itself says something about "ultimate
38 reference to the police" or something, it would be in the
39 expectation of the witness that it might ultimately get to
40 the police.

41

42 MS LONERGAN: It may be, but this witness has given
43 evidence about - I'm asking the question about contacting
44 the police.

45

46 THE COMMISSIONER: Yes.

47

1 MS LONERGAN: I'm asking something different. I'm not
2 doubting the evidence that was given regarding what was in
3 this witness's mind about what should happen when he
4 contacted the Professional Standards Office, but this
5 witness gave an answer to my question that he had contacted
6 the police and that's not correct.

7
8 THE COMMISSIONER: Yes. We all understand.

9
10 MR BARAN: My objection is: "That's not contacting the
11 police, is it?", is something that needs to be specified
12 with a great more specificity than it has been. It is not
13 enough to simply use that rubric. It must be specified, in
14 fairness to the witness and in fairness to my client.

15
16 THE COMMISSIONER: Thank you, Mr Baran.

17
18 MS LONERGAN: Q. Let me go about it this way. When you
19 asked Ms Doyle to contact the officer at Charlestown
20 Detective Senior Constable Flipo --

21 A. Yes.

22
23 Q. -- you knew that was a direct contact with the police,
24 didn't you?

25 A. I did.

26
27 Q. When you rang Mr Davoren with some details about [AK]
28 and [AL] in late 1999, you knew that was contact with the
29 PSO, didn't you?

30 A. I.

31
32 Q. You expected, as you've already given evidence, that
33 the person at the PSO, Mr Davoren, would filter certain
34 information or provide certain information to the police as
35 per what you provided him?

36 A. It was our acceptable protocol that Mr Davoren would
37 be used as the conduit between the bishops of New South
38 Wales, ACT and the police.

39
40 Q. But in the case of notifying Detective Senior
41 Constable Flipo of address details, that is different,
42 isn't it? It was a direct contact with the police where
43 information was provided?

44 A. She contacted our office and we replied in kind, yes.

45
46 Q. You've given some evidence you had a conversation with
47 Archbishop of Perth, Archbishop Hickey, at a bishops

1 conference in May 2002?
2 A. Yes.
3
4 Q. Was there anything in particular that prompted you to
5 have a conversation with him that, as I understand your
6 evidence, related to McAlinden?
7 A. Precisely because we were trying to track him down and
8 we kept coming against dead ends and thought perhaps one of
9 the local bishops might be able to be more helpful than we
10 could be.
11
12 Q. And Peter Quinn, was the Bishop of Bunbury was he?
13 A. He was the Bishop of Bunbury at the time, yes.
14
15 Q. You wanted to track him down - why, at that time?
16 A. So we could continue the processes that we were
17 speaking about yesterday against --
18
19 Q. The processes?
20 A. Against McAlinden, the process of laicisation.
21
22 Q. At the time you received this letter of 28 June 2002,
23 had you been informed via [AC]'s statement of complaint
24 that she was prepared to corroborate any person who had
25 asserted serious sexual assault allegations against
26 McAlinden?
27 A. I remember that, yes.
28
29 Q. Was that factoring on your mind at all in June 2002 as
30 to a reason why McAlinden ought to be located or was it
31 purely the laicisation matter?
32 A. Well, it was that, plus, you know, by 2002, we had
33 arrived at an awful level of frustration about trying to
34 find the man. So in 1999 we made the request that the
35 police be informed through the Professional Standards
36 Office and that was repeated in 2003, the year after this,
37 regarding two other matters.
38
39 Q. The information that was sent through to Mr Davoren in
40 1999, in August, behind tab 309, related to [AK] and [AL],
41 didn't it?
42 A. Is that in another volume?
43
44 Q. Yes. Don't worry about turning it up. I think we
45 went through that enough yesterday.
46 A. We did, yes.
47

1 Q. We won't go back to that. In June 2004, you are
2 aware, aren't you, that the Maitland-Newcastle diocese was
3 approached with a search warrant to access files regarding
4 Fletcher?
5 A. Probably, yes. I think there were a number of
6 warrants issued, yes, at different times.
7
8 Q. I'm sorry. At different times?
9 A. Yes.
10
11 Q. Did you have any involvement in the provision of
12 documents in response to the search warrant issued
13 regarding Fletcher?
14 A. No, only that they'd have had access to whatever they
15 wanted.
16
17 Q. Given that you had files, personnel files that were
18 confidential about priests in your office at that time --
19 A. Yes.
20
21 Q. -- that was the position in 2004, wasn't it?
22 A. Yes, it was.
23
24 Q. Did you make sure that police who attended were given
25 access to the confidential files?
26 A. Yes, they were.
27
28 Q. And that was your usual practice, was it, to make sure
29 that staff knew they were to be provided?
30 A. Yes.
31
32 Q. Did you, at any stage whilst the police investigation
33 into Fletcher was proceeding, collude in any way with
34 Father Saunders or Father Burston regarding what they
35 should say to the police regarding what happened?
36 A. No, there was no collusion whatsoever.
37
38 Q. Are you aware of Father Saunders or Father Burston
39 colluding about conversations they had with Fletcher?
40 A. No.
41
42 Q. Yesterday, just before we adjourned, you were shown a
43 document, I'm not too sure whether it is in the witness box
44 with you any more, and I don't think I tendered it.
45 A. No, I handed two documents back to the sheriff.
46
47 Q. Thank you very much. It is a facilitated meeting of

1 Towards Healing dated 29 August 2002. I'm just wondering
2 if a copy could be provided to you.
3 A. Thank you.
4
5 MS LONERGAN: Commissioner, do you still have your copy?
6
7 THE COMMISSIONER: Yes, thank you, Ms Lonergan. I have
8 that.
9
10 MS LONERGAN: Q. I was just asking you some questions
11 about the second page of that. Under the heading
12 "McAlinden's history", I asked you some questions about
13 some of that material yesterday. But that document
14 additionally notes that you informed [AC] that McAlinden
15 had been stripped of his faculties as a priest of the
16 Maitland-Newcastle diocese and that "he had personally
17 liaised" - that is, you - "with bishops in the Philippines
18 and Western Australia to warn them of McAlinden's history".
19 Do you see that?
20 A. Yes. It was Bishop Clarke who warned the bishops in
21 the Philippines initially, yes.
22
23 Q. What about the bishops in Western Australia? When did
24 you warn them of McAlinden's history?
25 A. I didn't warn them, I don't think, at all.
26
27 Q. If you made that statement, as recorded there in that
28 facilitated meeting, that would be untrue, would it?
29 A. We're looking at what, the first paragraph, are we?
30
31 Q. Yes, I'll give you time to read it. In fact, read all
32 of the "McAlinden's history" part of the document. I don't
33 want to be unfair to you. If you would prefer, you should
34 read the whole document in its entirety.
35 A. I've read that paragraph, yes.
36
37 Q. I don't want you to feel any discomfort in me
38 questioning you about this matter if you haven't had the
39 advantage of reading the whole document and getting the
40 whole context of what it is, which appears to be
41 Mr Salmon's notes of a facilitated meeting at which you
42 attended?
43 A. Yes, that's what they are, yes.
44
45 Q. Would you prefer to read the whole document before
46 I ask you any further questions?
47 A. No, I think we can refer to it as we come to it, can

1 we?

2

3 Q. All right. My question is about the second sentence
4 under "McAlinden's history" regarding an assertion you
5 apparently made in this meeting as recorded by Mr Salmon,
6 that McAlinden had been stripped of his facilities as a
7 priest of the Maitland-Newcastle diocese and that you had
8 personally liaised with bishops in the Philippines and
9 Western Australia to warn them of McAlinden's history?

10 A. Yes, can I see that's what it says, yes.

11

12 Q. First of all, did you say that in this meeting?

13 A. This is kind of a recollection of Michael Salmon.

14

15 Q. It is notes made by Mr Salmon at the time?

16 A. Yes, in the facilitated meeting, yes.

17

18 Q. Yes.

19 A. Certainly, as I mentioned a moment ago, Bishop Clarke
20 initiated the contact with the bishop in the Philippines.

21

22 Q. We've seen letters about that?

23 A. That's correct. And then I took up the matter with
24 the Nuncio in Canberra, and Monsignor Hart had written to
25 the bishop. So, in that sense, I had some involvement in
26 writing to the Philippines. But to the bishops in Western
27 Australia, I can't recollect writing to them nor can
28 I recollect saying that.

29

30 Q. Are you saying, first of all, you can't recollect
31 writing to the bishops in Western Australia or warning
32 them, even orally, about McAlinden's history?

33 A. No, I can't remember that, no, but I think McAlinden's
34 history was known. Now, whether it was known through
35 Bishop Clarke, or from myself, to the bishops of Western
36 Australia, it was certainly known.

37

38 Q. Are you asserting now that that comment attributed to
39 you that you had personally liaised with bishops in Western
40 Australia to warn them of McAlinden's history is not
41 something you said in that meeting?

42 A. I can't recollect that I said that.

43

44 Q. If you said that, it would not have been true or it
45 would have been true?

46 A. The only - the only thing that would have been true
47 would be a verbal communication.

1
2 Q. In terms of any liaison you had with the bishops in
3 the Philippines, would you agree with me that that liaison
4 where there was warning about McAlinden's history occurred
5 after he had had a period working over there?
6 A. Yes, that's correct.
7
8 Q. And that's of necessity because you didn't come into
9 knowledge about McAlinden's presence in the Philippines
10 until you came to the diocese?
11 A. Until I was in the diocese in 1995, yes.
12
13 Q. Would you agree with me that documents that you've
14 seen that Bishop Clarke wrote to the Philippines about
15 McAlinden's history of offending with children also were
16 sent somewhat after the event?
17 A. No, I can't recollect the chronology of that, but I --
18
19 Q. The documents will show that and they're not your
20 documents, so I won't take time going through them. Did
21 you say to [AC] at any time that you were going to provide
22 the whole of McAlinden's file to the police for
23 investigation?
24 A. I can't recollect saying that. Does it say that here?
25
26 Q. No. I'm just asking whether you recollect?
27 A. No, I don't remember saying that.
28
29 Q. In a phone call around about 9 August 2002, where you
30 were discussing attendance by [AC] at the Towards Healing
31 procedures that you were involved in?
32 A. No, I can't remember saying that.
33
34 Q. Bishop, do you have in the witness box in front of you
35 volume 5 of the materials?
36 A. I've put it back but I'll get it again. Right.
37
38 Q. Do you see, Bishop Malone, it is a copy of an email
39 from the Professional Standards Office, Mr Davoren?
40 A. Behind tab what?
41
42 Q. Tab 371.
43 A. Yes, I see.
44
45 Q. Do you see that Mr Davoren is informing you that he
46 has done what you have asked and notified the police about
47 complaints? Do you see that?

1 A. Yes, I see that.
2
3 Q. And that the police have given him information as well
4 about some of the things that they knew?
5 A. Right. Yes.
6
7 Q. That shows, doesn't it, the process that you have been
8 giving evidence about?
9 A. I can see that.
10
11 Q. It seems to have worked in the way that you expected
12 it to in March 2003 at least?
13 A. Yes, certainly that.
14
15 MS LONERGAN: I tender that, Commissioner.
16
17 THE COMMISSIONER: Thank you. What tab was it?
18
19 MR BARAN: Tab 371.
20
21 THE COMMISSIONER: Tab 371, email from Mr Davoren to
22 Bishop Malone of 4 March 2003 will be admitted and marked
23 exhibit 100.
24
25 **EXHIBIT #100 EMAIL FROM MR DAVOREN TO BISHOP MALONE OF**
26 **4/3/2003 (TAB 371)**
27
28 MS LONERGAN: Q. Bishop, could you turn to tab 372 - and
29 this document should probably be tendered with the last
30 exhibit - do you see that's a form used by the Professional
31 Standards Office, as you understand it?
32 A. I understand. I didn't - I'd never seen these before,
33 but I understand it is.
34
35 Q. In the form is information that you provided to
36 Mr Davoren for forwarding on to the police?
37 A. Correct, yes.
38
39 Q. You will see under the "Offence details" part of the
40 form there's mention of one complaint having been received
41 in 1999?
42 A. Yes.
43
44 Q. Do you see that? I want to suggest to you that that
45 was [AE]?
46 A. Okay.
47

1 Q. Yes? Did you have other complaints in 1999 that you
2 were aware of about McAlinden?
3 A. I don't think I did at that point, no.
4
5 Q. Just check the pseudonym list and be comfortable that
6 we're talking about the same complaint?
7 A. [AE]?
8
9 Q. [AE].
10 A. Yes, I've got it, thank you.
11
12 Q. So do you agree that's one you knew about in 1999?
13 A. That would be about right, yes.
14
15 Q. It was late 1999, October?
16 A. Okay.
17
18 Q. Then one in 2001; do you see?
19 A. Yes.
20
21 Q. I want to suggest to you that that's [AC]?
22 A. Okay.
23
24 Q. It appears from the documents that we have seen that
25 [AC] came forward in 2002, so are you able to assist with
26 whether there was somebody else in 2001 who complained
27 about McAlinden?
28 A. No, I don't know who that would have been. My contact
29 with [AC] came originally through the New South Wales
30 Professional Standards Group. She'd made a complaint in
31 the Towards Healing process, yes.
32
33 Q. I took you to her complaint briefly yesterday.
34 A. You did, yes.
35
36 Q. The date of that complaint was June 2002. I'll just
37 check that I've got that correct. You have volume 5 there
38 with you, don't you?
39 A. I think that's the one we're looking at.
40
41 Q. Yes, you do. Have a look at tab 344. Do you see
42 that's a statement of complaint by [AC]?
43 A. I've got it, yes. Yes, we have seen this.
44
45 Q. Do you remember yesterday I took you to the part where
46 [AC] said she would like her information to be used in
47 corroboration?

1 A. Yes, I remember.
2
3 Q. You acknowledged that you would have read that?
4 A. Yes, I would have, yes.
5
6 Q. I want to understand who it is that is being reported
7 here in this particular form that we're looking at behind
8 tab 372. We've got --
9 A. We've determined [AE].
10
11 Q. We've determined [AE]. The other one is talking about
12 a complaint in 2001, but it is clear, isn't it, that [AC]
13 was 2002?
14 A. Correct, yes.
15
16 Q. Did you ever hear of a complainant about McAlinden
17 whose pseudonym is [AF]? You'll have to have a look at the
18 list because she's a new one.
19 A. I've got the old pseudonym list; is that correct?
20
21 Q. She will be on there, but I meant new in terms of
22 I haven't raised her with you.
23 A. Oh, I see. No, I have no recollection of that name at
24 all.
25
26 Q. Can we take it that the information you've provided to
27 Mr Davoren that ended up in this form can't have been [AF]?
28 A. I don't think so.
29
30 MR HARBEN: Can't have been sorry, what?
31
32 MS LONERGAN: [AF]. Do you have that, Mr Harben?
33
34 MR HARBEN: Commissioner, that doesn't follow. First of
35 all, this document is not the document of this witness.
36 Whilst the witness has conceded that he provided
37 information to Mr Davoren, he has said that he has no
38 recollection of someone in 2001.
39
40 THE COMMISSIONER: Yes.
41
42 MR HARBEN: So he can't be asked to express an answer to a
43 positive assertion about, one, something in a document not
44 created by him, and, two, about a year he has no knowledge
45 of.
46
47 MS LONERGAN: I take my learned friend's point.

1
2 THE COMMISSIONER: There may not be such a mystery. Do
3 you see there, Ms Lonergan, the dates of birth of the two
4 complainants appear to be 1942, which is consistent for
5 [AE], and 1949. Perhaps if [AC]'s date of birth is in
6 1949, that would lend weight to it being that same
7 complainant and just an error in the year. Would that be
8 right?
9
10 MS LONERGAN: That is possible. I was just trying to
11 understand if that was --
12
13 THE COMMISSIONER: Yes, working out if that was done.
14
15 MS LONERGAN: -- something we could establish by going
16 through the document in that way.
17
18 MR BARAN: Commissioner, could I rise to raise one matter?
19
20 THE COMMISSIONER: Yes, Mr Baran.
21
22 MR BARAN: In volume 4, tab 304, 1999 appears to be
23 complaints regarding McAlinden involving [AL] and [AK], not
24 [AC] or [AE]. That's the letter from Father Burston, the
25 vicar general of 10 August 1999 to Mr Davoren at
26 Professional Standards. The document that's been now shown
27 to the bishop, I'm just unsure as to whether or not that in
28 fact the 1999 persons who were complaining should
29 additionally be [AL] and [AK] or should just be [AL] and
30 [AK] or [AC] and --
31
32 MS LONERGAN: I am sorry, I don't understand Mr Baran's
33 statement. Is it an objection?
34
35 MR BARAN: No. There was a question as to who the
36 complainants were, but it was whether there were any
37 additional complainants in respect of this particular form
38 that's been shown to the bishop now.
39
40 THE COMMISSIONER: Yes, because the document in 304
41 suggests that they came forward in --
42
43 MR BARAN: [AL] and [AK] - around the same time.
44
45 THE COMMISSIONER: Yes. All right.
46
47 MS LONERGAN: Commissioner, I've already established,

1 I thought, with this witness yesterday, that it was his
2 understanding that the document Mr Baran has just referred
3 to was intelligence that was passed on about [AK] and [AL]
4 as confirmed by the letters of his then vicar general,
5 Father Burston.

6
7 THE COMMISSIONER: Yes.

8
9 MS LONERGAN: And this document we're looking at now
10 behind tab 372 is regarding other complainants, but let me
11 ask some questions to satisfy Mr Baran's concerns.

12
13 THE COMMISSIONER: Yes, Ms Lonergan.

14
15 MS LONERGAN: Q. Bishop, did you have a practice in 2003
16 of notifying more than once about complainants had you
17 already notified to the PSO?

18 A. Sorry, could you re-ask that?

19
20 Q. Yes. Did you have a practice in 2003 of contacting
21 Mr Davoren at the PSO and telling him again about
22 information you had already provided him some years before
23 regarding complainants about McAlinden?

24 A. I would think that I would not have repeated my
25 contact there.

26
27 Q. Mr Davoren has recorded that the church appointed two
28 independent investigators, one for each complaint. Do you
29 see that?

30 A. Yes, I see that.

31
32 Q. I'm taking care to avoid any unnecessary traversing of
33 areas that we don't need to cover. Let me ask you this
34 question: if the complaints that are referred to in this
35 document were received by the diocese in 1999 and 2001, are
36 you able to say whether you provided the information that
37 Mr Davoren seems to have on this form to the PSO earlier
38 than March 2003?

39 A. I would think not.

40
41 Q. Are you able to say what prompted that information to
42 be provided in March 2003 as opposed to at an earlier time?

43 A. I suppose simply as the momentum was building against
44 McAlinden with the 1999 notification about [AK] and [AL],
45 and then two more people coming forward, [AC] and [AE],
46 then the notifications were additional ones - I'm losing
47 myself a bit here. What --

1
2 Q. No, that's fine.
3 A. Is that okay?
4
5 Q. Was it your practice at the time to provide
6 information to the Professional Standards Office within a
7 short time frame of receiving complaints?
8 A. Yes, it was, yes.
9
10 Q. Would you agree with me that if the complaints were
11 received in 1999 and 2001 and this was the first time you
12 advised Mr Davoren about them, that wasn't a short time
13 frame?
14 A. Well. 1999 was handled in 1999.
15
16 Q. No, I'm talking about the two that are referred to in
17 the document behind tab 372.
18 A. Right. And your question again, sorry?
19
20 Q. My question is: if you received the complaint in
21 1999 - let's take them one at a time. If you received a
22 complaint in 1999 and the first time you advised Mr Davoren
23 was March 2003, about that complaint, you would agree with
24 me, wouldn't you, that that wasn't advising him about it
25 within a short time?
26 A. That's not, no. I would agree with you.
27
28 Q. You would agree with me? If the complaint was
29 received in 2001 and you didn't advise him about it until
30 March 2003, that's not within a short time frame?
31 A. No, it's not, no.
32
33 Q. If you said that neither complainant was prepared to
34 talk to the police, but one of the complainants was a
35 reference to [AC], that's not quite a true reflection of
36 what [AC] told you, is it, in her statement of complaint?
37 A. [AC] included the rider that she would be happy for
38 her situation to be used to corroborate another.
39
40 Q. You didn't read that as that she'd be happy to talk to
41 the police?
42 A. Well, she would have been happy to talk to the police,
43 if she was put into the position where she should.
44
45 Q. Can we take it from your answer that you didn't tell
46 Mr Davoren, as part of your notification here, about that
47 rider that [AC] had provided?

1 A. Well, Mr Davoren had access to the complaint.
2
3 Q. I beg your pardon?
4 A. Mr Davoren had access to the complaint that she had
5 made to the Professional Standards.
6
7 Q. Was he permitted to forward that complaint in its
8 entirety, with that rider handwritten in it, to the police?
9 A. No, probably not to the police, since they'd requested
10 that the police not be involved, but he certainly sent it
11 to me.
12
13 Q. He sent the complaint to you?
14 A. Yes.
15
16 Q. Was the arrangement at that time that Mr Davoren could
17 use his discretion to provide whatever documents he wanted
18 to the police to assist with any investigation they might
19 wish to do?
20 A. No, that was not the custom at all. The head of
21 church - in my case the bishop, myself - is the one who has
22 the call upon how these matters are processed.
23
24 Q. So he would have to get back to you and you would need
25 to okay it?
26 A. Yes, he would liaise with me as to where we would go
27 and he would advise accordingly if he thought the matter
28 should be taken to the police.
29
30 MS LONERGAN: I've finished with that document. Did
31 I tender it, Commissioner?
32
33 THE COMMISSIONER: No, you haven't yet.
34
35 MS LONERGAN: Could I tender that as part of the last
36 exhibit, the document that appears behind tab 372.
37
38 THE COMMISSIONER: Yes, Ms Lonergan. The document that
39 appears behind tab 372, headed "Child sexual abuse
40 information dissemination to NSW Police Service Child
41 Protection Enforcement Agency, notifying officer, John
42 Davoren, for the Bishop of Maitland-Newcastle" will be
43 admitted as part of exhibit 100.
44
45 **EXHIBIT #100 ADDITION OF DOCUMENT, HEADED "CHILD SEXUAL**
46 **ABUSE INFORMATION DISSEMINATION TO NSW SERVICE FORCE CHILD**
47 **PROTECTION ENFORCEMENT AGENCY" (TAB 372)**

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MS LONERGAN: Q. I'm moving on to a different topic, now, Bishop Malone. Do you recall in August 2005 you had a person working for you called Helen Keevers?

A. Yes.

Q. What was her role in the diocese?

A. Helen Keevers in 2005 was the director of our Child Protection Unit.

Q. Did Helen Keevers tell you that she had found out information that McAlinden had been found in Western Australia and was in failing health, or words to that effect?

A. I don't recollect her telling me that. She certainly told me a lot of things, but I don't --

Q. All right. Do you recall you yourself becoming aware of McAlinden having been located in Western Australia before his death?

A. Yes, I think so.

Q. Did you take any steps yourself to let the police know about his location or was the context that that information was already known to the police, as you understood it?

A. I don't know whether the police knew and I don't know whether - if he was in the similar location to where he had been before, then the police would have already had that information.

Q. Are you able to pinpoint when you first knew that he had been actually located in Western Australia?

A. No, I'm unable to say that.

Q. Can we take it that you're also unable to say whether you conveyed any of that information to the police officer Flipo, who had been noted as somebody who contacted the diocese for information?

A. Yes, I'm unable to say that.

Q. You're unable to say whether Sergeant Watters was contacted either? He is the fellow who sent the letter in October 1999?

A. No, I'm unable to say that also.

Q. While we are on the subject of Ms Keevers, did you at any time authorise Ms Keevers to release documents

1 regarding McAlinden to one of his victims?
2 A. This issue has arisen in the course of this inquiry,
3 and my normal practice would be not to release documents to
4 victims of sexual abuse, but I think, in the case of [AL],
5 Helen Keevers made the suggestion that it would help [AL]
6 enormously were she to have access to documents which would
7 show her what the church was doing.

8
9 Q. Had done?

10 A. Was doing with regard to progressing her case, and
11 I may have said yes to that, I think. I don't - there's no
12 written authorisation or anything, but it would have been a
13 verbal okay.

14
15 Q. Was the nature of the documents historical in terms of
16 it showed actions that were taken by the church some time
17 before they were provided to Ms [AL]?

18 A. Yes. I didn't identify which particular documents,
19 but Helen Keevers was sure that some of them would be of
20 comfort to [AL].

21
22 Q. You allowed Ms Keevers to choose which documents she
23 ought to --

24 A. Yes, I think so, yes.

25
26 Q. Did Ms Keevers have access to the confidential
27 personnel files held in your office for that purpose?

28 A. She did, yes, with my approval.

29
30 Q. At some point was it the situation, bishop, that some
31 of the information on at least McAlinden's confidential
32 personnel file was copied over to the Zimmerman Services
33 files?

34 A. It could easily have been, yes. I know there were
35 duplications on a number of matters.

36
37 Q. Why was that done?

38 A. Just for ease of access. I mean, the office for the
39 Child Protection Unit was at a distance from my own office
40 and the inconvenience of going from one place to the other
41 just to pick up some papers was great. So I was happy for
42 duplication to take place.

43
44 Q. Was Zimmerman Services or Zimmerman House set up in
45 2005? Was that when it was set up?

46 A. Yes. There was a study paper done in 2004 outlining
47 how we would progress with the Child Protection Unit, and

1 it came into effect, from memory, in 2005.

2

3 Q. Were you, at that stage, content for staff of
4 Zimmerman Services to see material that was on McAlinden's
5 confidential file?

6 A. To - sorry, to see?

7

8 Q. To see and to have access to?

9 A. Yes, I was, yes.

10

11 Q. Had you, by that stage, formed a view that there was
12 no impediment to you allowing staff of Zimmerman Services
13 to see all that material?

14 A. To --

15

16 Q. See the material, the confidential material on
17 McAlinden's file?

18 A. No, I had no worries about that at all because the
19 staff of Zimmerman House, as it was later known, were very
20 professional and competent and I had great confidence in
21 them.

22

23 Q. You're aware, aren't you, that there were assertions
24 made surrounding the material provided to [AL] that that
25 had been provided as a type of leak from the diocese; that
26 is, an unauthorised provision of confidential material
27 outside of the diocese?

28 A. Yes, it was more than that material. It was a lot of
29 other material as well.

30

31 Q. I don't want to talk about the other material as well,
32 but in relation to the material that you've mentioned you
33 permitted or you think you permitted Ms Keevers to provide
34 to [AL] to assist her in her understanding of what the
35 diocese had done about McAlinden --

36 A. Yes.

37

38 Q. -- you're aware, aren't you, that that was described
39 as a leak of confidential material?

40 A. I don't know about that specific information, but
41 doubled with the other matters, yes, I think.

42

43 Q. But at least in relation to the material you said
44 Ms Keevers could give to [AL], that wouldn't be a proper
45 description, would it, because it was authorised by you?

46 A. No, certainly not. It was authorised by myself, yes.

47

1 Q. It was authorised by you because you saw that as
2 something that would assist [AL] in her --

3 A. Indeed, yes, I did.
4

5 Q. You're aware, bishop, aren't you, that there's a
6 requirement at canon law that bishops keep secret archives
7 regarding priests?

8 A. Yes.
9

10 Q. Did you follow that requirement whilst you were Bishop
11 of Maitland-Newcastle?

12 A. I did, yes.
13

14 Q. You're aware, aren't you, that the requirement
15 relating to those confidential documents includes a
16 requirement that, in the diocesan curia, there's a secret
17 archive, or at least in the ordinary archive there be a
18 safe or cabinet which is securely closed and bolted and
19 which can't be removed and, in this archive, documents
20 which are to be kept under secrecy are to be most carefully
21 guarded?

22 A. Yes.
23

24 Q. Is that what you would do with your confidential or
25 secret files?

26 A. That's what we did eventually, yes, particularly
27 following the Ombudsman's inquiry of 2004, and there were
28 recommendations then made for far better filing, I think
29 just prior to that from the Catholic Commission for
30 Employment Relations. So all of that came at around about
31 the same time.
32

33 Q. Prior to 2004, you didn't necessarily comply with that
34 particular requirement in terms of security of your secret
35 archive?

36 A. Certainly the files were not as secure as they could
37 have been, but we rectified that rather smartly.
38

39 Q. In the case of McAlinden, you were prepared to allow
40 for photocopies to be made of some confidential material so
41 that Zimmerman Services could use it in their work?

42 A. Yes.
43

44 Q. One of the other provisions of the canon is that each
45 year - this is again relating to the secret archives -
46 documents of criminal cases concerning moral matters are to
47 be destroyed whenever the guilty party has died or 10 years

1 have elapsed since a condemnatory sentence concluded the
2 affair. A short summary of the facts are to be kept
3 separate together with the text of the definitive judgment.
4 First of all, are you able to say - did you follow that
5 particular canon regarding destruction of documents
6 regarding criminal cases concerning moral matters?
7 A. No, I didn't destroy any documents in my time as
8 bishop. Perhaps I should have. They're all here.
9
10 Q. Did you class the steps that, to your knowledge, were
11 taken in relation to McAlinden to be criminal cases
12 concerning moral matters?
13 A. I was - you know, I was coming to terms with the
14 nature of the criminal activity of McAlinden. This was
15 part of the growing awareness within myself of these
16 matters.
17
18 Q. My question is a little bit more based in the canon
19 itself. Were those documents, such as you saw, ones that
20 fitted the category of criminal cases concerning moral
21 matters in terms of canon law or you just can't get that
22 specific as you're not a canon law scholar?
23 A. You know, I know canon law and it is an important part
24 of church life, but I'm not a canonist, and I don't
25 rigorously observe --
26
27 Q. And - I'm sorry?
28 A. I didn't rigorously observe that aspect of it.
29
30 Q. Is there a difference between secure filing and a
31 secret archive?
32 A. No, not really, not in my mind.
33
34 Q. You made a joke to the effect that you should have
35 destroyed documents in relation to, no doubt McAlinden,
36 but speaking seriously --
37
38 MR HARBEN: I don't think the witness said that.
39
40 MS LONERGAN: Let me put the question more carefully,
41 thank you, Mr Harben.
42
43 Q. You made a joke to the effect that you should have
44 destroyed documents?
45 A. No, no, no, I'm saying --
46
47 Q. I beg your pardon?

1 A. I wasn't saying I should have destroyed documents, no.
2
3 THE COMMISSIONER: Maybe he should have.
4
5 MS LONERGAN: Q. I'm trying to actually fix it for the
6 record and I'm making it worse. You made a comment - and
7 it was a jocular comment - that maybe you should have
8 destroyed documents.
9 A. Well, only insofar as we might not be in this room
10 now, had I destroyed them.
11
12 Q. But you, of course, did not do so and you've kept them
13 and provided such documents as you are aware of --
14 A. Yes.
15
16 Q. -- and have in your custody and control to assist the
17 Commission?
18 A. Yes.
19
20 Q. Whilst you were bishop, you did not on any occasion,
21 did you, ask staff to destroy documents?
22 A. No, I did not.
23
24 Q. Particularly no documents relating to Fletcher or
25 McAlinden?
26 A. No documents relating to anybody.
27
28 Q. In your role as bishop, do you have an obligation to
29 prevent circumstances occurring that bring scandal on the
30 church?
31 A. Yes, of course.
32
33 Q. Is that a fundamental obligation that you take an oath
34 about when you're sworn in as bishop or is it a clergy
35 obligation? What's its content?
36 A. It is not an oath that you take, but it is certainly a
37 role that the bishop would have to avoid scandalous
38 situations touching the church, yes.
39
40 Q. So, as bishop, did you initially try to defend the
41 reputation of the church in the way you dealt with
42 allegations of sexual abuse on the part of McAlinden and
43 Fletcher?
44 A. I think as a priest for nearly 50 years and a bishop
45 for nearly 20 now, you're caught up in the whole ethos and
46 environment of the church and, therefore, since you're
47 serving the church as a priest and bishop, there is a

1 tendency naturally to want to defend the organisation to
2 which you belong. So, yes, I was conscious of the fact
3 that these issues of sexual abuse were in fact impinging
4 upon the stability of the church, and I regretted that and,
5 in my earlier time particularly, I tried to prevent that
6 from causing damage to the church by trying to play it down
7 perhaps a little.

8
9 Q. Do you think given those considerations, that they
10 affected your decision as to whether or not to provide
11 certain information to the police?

12 A. Oh, my practice with the police has been, you know,
13 open house really. They didn't really have to bring a
14 warrant to look at files, and so on, after we'd got into
15 the swing of handling these things a lot better. I would
16 not have wanted to have thwarted any police investigation
17 at all, either in the days when I was wrestling with the
18 scandal situation touching the church or subsequently.

19
20 Q. You would appreciate there is a difference between
21 thwarting a police process or investigation and, on the
22 other hand, assisting it.

23 A. Yes.

24
25 Q. Is it your view that you have always assisted police
26 investigations?

27 A. Well, certainly in latter years I have. In those
28 earlier years, as these matters were first beginning to
29 surface, it wasn't an easy thing to do, but, you know,
30 these were part of my growing in the whole awareness of
31 these situations.

32
33 Q. From your answer, can we take it that there was a
34 point at which you altered the way you went about these
35 things, or was it a more subtle development and when did
36 these changes or more subtle developments occur?

37 A. I would not have deliberately denied access by the
38 police to documents.

39
40 Q. Yes.

41 A. So I would not have deliberately stymied any
42 investigation; but a growing awareness, yes, that's the way
43 I've been describing it.

44
45 Q. You have given evidence about having an epiphany as
46 to the way you should deal with these matters of sexual
47 abuse --

1 A. Yes.
2
3 Q. -- around about the time of the Ombudsman's inquiry
4 into matters relating to you and the CCER, I think the
5 organisation is called, in 2004?
6 A. Yes, correct.
7
8 Q. Are you dating your development as to the need to be
9 more open about these matters as before 2004 or after it or
10 when?
11 A. Certainly, by 2004, I was hooked on being much more
12 transparent and open about things, yes, so --
13
14 Q. Did you find --
15 A. -- that's what I'm calling the epiphany.
16
17 Q. Did you find that to be a difficult thing because of
18 the church culture and the closeted environment relating to
19 it?
20 A. I did, because that was still alive and well in many
21 sections of the church, but I came to the conclusion around
22 about that time that I couldn't sit on the fence and, on
23 the one hand, try to defend the church and, on the other
24 hand, try to look after the interests of victims of sexual
25 abuse. So I publicly stated that I was prepared now to
26 look after the interests of victims of sexual abuse.
27
28 Q. Did you encounter any resistance from the priests of
29 the Maitland-Newcastle diocese to that whole matter of
30 sexual abuse by clergy?
31 A. The resistance was never overt, but I sensed it, yes,
32 by some.
33
34 Q. And did that resistance that you sensed improve with
35 time or not?
36 A. I'd say not.
37
38 Q. You gave some evidence yesterday to the effect that
39 your stance on child sexual abuse did manage to put you
40 offside with some of your contemporary bishops, at least
41 I put that proposition to you and you accepted it. Did you
42 find that your stance on these matters managed to put you
43 offside with others, other senior parts of the church?
44 A. Other than bishops?
45
46 Q. Yes. Or there is none - just the pontiff?
47 A. No, I don't know of any others necessarily. I mean,

1 the whole issue of sexual abuse by its nature is very
2 divisive, so when you take a stance one way or the other,
3 you're going to create some difficulties somewhere along
4 the line.

5

6 Q. Bishop, you mentioned that from other priests in the
7 Maitland-Newcastle diocese there was some resistance that
8 you said was not overt. What was the nature of that
9 resistance, if it wasn't overt?

10 A. It was more a sense of non-cooperation, if I could
11 say.

12

13 Q. How did that evidence itself?

14 A. By non-cooperation.

15

16 Q. Non-cooperation with what types of things?

17 A. Well, it was a case of, you know, I think they were -
18 I think that there were a number of people who were hoping
19 I'd just go away, you know, which I eventually did.

20

21 Q. And that non-cooperation continued until your
22 resignation, did it?

23 A. I'd say so, yes.

24

25 Q. In May 2010, you took the step of publishing a formal
26 apology to the community and particularly addressed to
27 those who had been abused by clergy, sexually abused by
28 clergy?

29 A. Yes, we felt the need to do that.

30

31 Q. When you say "we", you did it?

32 A. Yes, it was certainly under my auspices. I took
33 advice from my executive committee.

34

35 Q. It was you as Bishop of Maitland-Newcastle?

36 A. I signed it.

37

38 Q. Yes. You weren't told to do that by the Catholic
39 Bishops Conference or anyone else, were you?

40 A. No, certainly not.

41

42 Q. Did you tell the Catholic Bishops Conference you were
43 going to take that step?

44 A. Not at all, no.

45

46 Q. Did you copy flak for doing so?

47 A. I don't know that they knew about it, frankly, because

1 it was in the local paper.

2

3 Q. Behind tab 494 appears a text of that apology.

4 A. In volume?

5

6 Q. In volume 7. Would you just turn that up.

7 A. Yes.

8

9 MS LONERGAN: I'll tender that document, Commissioner.

10

11 THE COMMISSIONER: The document headed "An apology from
12 Bishop Michael Malone to the community", dated 8 May 2010,
13 behind tab 494, will be admitted and marked exhibit 101.

14

15 **EXHIBIT #101 DOCUMENT HEADED "AN APOLOGY FROM BISHOP**
16 **MICHAEL MALONE TO THE COMMUNITY" DATED 8/5/2010 (TAB 494)**

17

18 MS LONERGAN: Q. There are just a couple of short
19 matters to tidy up, Bishop Malone. We'll come back to that
20 apology at the end.

21 A. Yes.

22

23 Q. Were you a friend of Fletcher's whilst he was a priest
24 of the diocese and before his arrest?

25 A. I wouldn't have called him a friend, no.

26

27 Q. Did you feel any conflict on a personal level when
28 allegations of sexual abuse were made against him?

29 A. On a personal level? Well, only insofar as the
30 allegation of sexual abuse against a priest, any priest,
31 was abhorrent to me; so, in that sense, yes, I was
32 affronted by that situation.

33

34 MS LONERGAN: Commissioner, would that be a convenient
35 time?

36

37 THE COMMISSIONER: Yes, thank you Ms Lonergan. How long?

38

39 MS LONERGAN: Until 11.45.

40

41 THE COMMISSIONER: Very well. I will adjourn until 11.45.

42

43 **SHORT ADJOURNMENT**

44

45 MS LONERGAN: Commissioner, I apologise for that slightly
46 longer morning tea adjournment. There were matters that
47 needed to be attended to, and I apologise for keeping you

1 waiting, Bishop Malone.

2

3 There has been a request by the media for exhibits to
4 be released, numbers 97 to 101 inclusive. Could parties at
5 the Bar table let staff of the Special Commission of
6 Inquiry know whether they have any objections to those
7 documents being released to the press by a quarter past
8 one.

9

10 Q. Bishop Malone, I'm nearly finished. You will be
11 relieved to know we're nearly finished.

12 A. I'm pleased to hear that, thank you.

13

14 Q. On Thursday morning, I asked you some questions
15 about when you'd first seen that 1976 letter between
16 Monsignor Cotter and then Bishop Clarke. Do you remember
17 that?

18 A. I remember we spoke about that, yes.

19

20 Q. You answered to the effect you thought you first saw
21 it in the late 1990s and into the early 2000s?

22 A. Right.

23

24 MS LONERGAN: For those at the Bar table, I'm looking at
25 transcript page 851.

26

27 Q. I'll put the specific questions and answers to you.
28 On page 851 at line 19, I asked you:

29

30 *Q. No doubt you're well aware of a letter*
31 *that has received a bit of media attention*
32 *that goes back to 1976 between Monsignor*
33 *Cotter and Bishop Clarke?*

34 *A. Yes, I'm aware of that letter.*

35 *Q. When did you first become aware of that*
36 *letter?*

37 *A. It wouldn't have been until after*
38 *Bishop Clarke had retired and I was the*
39 *bishop of the diocese at that time.*

40

41 Then I asked you:

42

43 *Q. That covers a 16-year period. At what*
44 *point?*

45 *A. It was fairly early in the piece,*
46 *I have to say. It probably would have been*
47 *around about the late 1990s, into the early*

1 2000s that I encountered that letter.

2

3 Do you remember giving that evidence?

4 A. I do, yes.

5

6 Q. Then I asked you:

7

8 Q. How did you encounter it?

9 A. I'm not sure. It was obviously
10 triggered by something, yes, but I can't
11 recall what that was.

12

13 And then I asked you:

14

15 That file --

16

17 I think I corrected that to say "that letter" --

18

19 lived on McAlinden's file, didn't it? I'm
20 sorry, that document was on McAlinden's
21 personnel file, wasn't it?

22 A. Yes, I believe so.

23

24 A. Yes.

25

26 Q. Then I asked you some other questions on page 852, at
27 lines 6 to 25. I was trying to find out or place in time
28 what circumstances led to you seeing that letter?

29 A. Yes.

30

31 Q. And I asked you:

32

33 Q. [AC] was 2001. [AE] was 1999. Does
34 that assist you as to whether that's when
35 you opened McAlinden's file and had a look
36 at --

37 A. It may have been, yes.

38

39 Then I asked you:

40

41 Q. It may have been. Was it October 1999,
42 a Towards Healing application?

43 A. On the part of [AE]?

44 Q. Yes.

45 A. Yes.

46 Q. Does that ring a bell as something that
47 prompted you to go and look at McAlinden's

1 file?

2 A. It would have done, yes.

3 Q. You saw that 1976 letter at that point
4 the Cotter/Clarke letter?

5 A. At some point I did. Whether it was
6 precisely October 1999 or not, I don't
7 know.

8

9 What I want to ask you is whether you're confident as to
10 when you first saw the Cotter/Clark letter or you're very
11 much uncertain about that matter, or uncertain, or how
12 would you class the strength or otherwise of your
13 recollection of that?

14 A. Yes. Look, it's very hazy. I don't have any
15 recollection of when I saw it.

16

17 Q. If I suggest to you that you saw as it early as 1996
18 or 1997, is that something that you would disagree with?

19 A. I would think that's probably a little early.

20

21 Q. Do you recall stating on a previous occasion that you
22 had seen that letter in 1996 or 1997?

23 A. I don't remember saying that, no.

24

25 Q. Do you recall saying earlier that the circumstances of
26 you finding that letter would have been digging into the
27 file and you found the letter then?

28 A. Yes. Yes.

29

30 Q. When you say you recall --

31 A. Yes, I would have --

32

33 Q. -- that was the position?

34 A. I would have found it in the file, yes.

35

36 Q. Do you disagree it would have been as early as 1996 or
37 1997?

38 A. I would imagine so, but I can't be sure.

39

40 Q. So, from your answer, do we take it that you don't
41 agree that it was as early as 1996 or 1997?

42

43 MR HARBEN: I think the witness has answered that about
44 three times. He qualified the answer, firstly, by saying
45 it's a completely hazy recollection. My learned friend has
46 now taken him to the same question three times. He has
47 said that, in his recollection, 1996 or 1997 appears to be

1 a bit early.

2

3 THE COMMISSIONER: A little early, yes.

4

5 MR HARBEN: That's what he said.

6

7 THE COMMISSIONER: Yes, that's right, Ms Lonergan.

8

9 MS LONERGAN: I'm trying to get clarification to make sure
10 I understand the witness's evidence. I'm not meaning to
11 badger him or make life difficult for him. That's why
12 I prefaced the series of questions to be how strong or
13 otherwise his recollection was to give him an opportunity
14 to explain that it is not a very strong recollection.

15

16 Q. Bishop, is it the position you're unable to assist the
17 Commission at all in terms of recollection as to the
18 circumstances in which you became aware of the
19 Cotter/Clarke letter?

20

21 A. Yes, I'd say it is, yes. I did see it, but when or

22

23 how or what prompted it, I'm not sure.

24

25 Q. In terms of you discussing it with any other officials
26 of the Maitland-Newcastle diocese, again, are you able to
27 assist with recollection as to who you discussed it with,
28 if anyone?

29

30 A. No, I don't know that I discussed it with anyone,
31 which is not to say I didn't, but I have no recollection.

32

33 Q. You just don't remember?

34

35 A. Yes.

36

37 Q. Thank you. In terms of the apology that I took you to
38 before the break --

39

40 A. Yes, I have it here.

41

42 Q. It is behind tab 494. What led you to publish that
43 apology?

44

45 A. The apology was published by the diocese in a rather
46 unprecedented way because there was a certain amount of
47 negative publicity going out of the Newcastle Herald, and
we had been trying to do good things through Zimmerman
House, but that message was not being communicated widely.
So, on the strength of that, we issued this public ad in
the newspaper.

48

49 Q. Did you also deliver that apology from the pulpit in a

1 preaching capacity?

2 A. No, I didn't, no. I mean, I had done that on previous
3 occasions.

4

5 Q. On previous occasions the same kind of sentiments were
6 expressed from the pulpit?

7 A. Yes, pretty much, yes.

8

9 Q. Was that in 2010 or earlier?

10 A. Earlier than 2010. This would have been getting
11 near towards the end of the last things that I was doing,
12 which - I retired 12 months after this.

13

14 MS LONERGAN: Commissioner, I tender the document that
15 I showed Bishop Malone dated 2 September 2002, the summary
16 of facilitated meeting.

17

18 THE COMMISSIONER: Yes. The document headed, "Towards
19 Healing summary of facilitated meeting" - held in Sydney on
20 29 August 2002 - will be admitted and marked exhibit 102.

21

22 **EXHIBIT #102 DOCUMENT HEADED, "TOWARDS HEALING SUMMARY**
23 **OF FACILITATED MEETING" - MEETING HELD ON 29/8/2002 -**
24 **(TAB 102)**

25

26 MS LONERGAN: That's the examination, Commissioner.
27 Because we now need to convene some in-camera hearings -
28 this has been discussed with the legal representatives
29 present and, as well, notified to members of the press and
30 public - it is proposed that we adjourn, at least for a
31 short period, in terms of the legal practitioners to
32 ascertain the way in which we'll manage those in-camera
33 hearings.

34

35 In terms of the press and the members of the public
36 who are present in court, we can safely say that they
37 should be gone until 2 o'clock. It is a little difficult
38 to predict how long the in-camera hearings will take. So,
39 at this stage, as presently advised, members of the press
40 and public would not be permitted access to the court until
41 at least 2pm.

42

43 THE COMMISSIONER: Is it a possibility, then, that no
44 public hearing would resume on this day?

45

46 MS LONERGAN: It is more than a possibility. I have been
47 instructed to use that provisional time frame at least for

1 the moment, but it does appear most unlikely that any
2 public hearings will continue today.

3
4 THE COMMISSIONER: I see. Thank you, Ms Lonergan.

5
6 MS LONERGAN: In that event, it is proposed that we would
7 adjourn until 9am on Monday, but at this stage until 2pm.

8
9 THE COMMISSIONER: Is it premature to adjourn the public
10 hearings until 9am on Monday?

11
12 MS LONERGAN: I think it is premature to adjourn until 9am
13 Monday, at this stage, but I will give an indication that
14 that may be the position.

15
16 THE COMMISSIONER: Very well. Yes, Mr Gyles?

17
18 MR GYLES: Can I raise one matter while Bishop Malone is
19 here? There is some material that Bishop Malone was taken
20 to in cross-examination which has not been tendered. At
21 some appropriate time, we would wish to do that. I refer,
22 for example, to the document you saw, Commissioner, at 352.
23 It could be done now, but I assume that, at some
24 appropriate time, we can tender the documents in the bundle
25 that we propose to put before him.

26
27 MS LONERGAN: I'll tender the documents that were put to
28 the witness. There is no need for Mr Gyles to feel that he
29 has to do so. I'm happy to liaise with him as to which
30 ones I have missed. I certainly meant to tender the
31 relevant documents as I went and if I've missed any, I'd be
32 very happy to do so.

33
34 THE COMMISSIONER: Doubtless Mr Gyles wishes them tendered
35 at the same time as the other documents which perhaps he
36 thinks may not be as favourable to his client as the ones
37 he wished tendered; is that right, Mr Gyles? Is there a
38 question of balance at the moment that must swiftly be
39 redressed or can it wait?

40
41 MR GYLES: I wouldn't put it in that category. I'm happy
42 to liaise with my learned friend.

43
44 THE COMMISSIONER: Thank you, Mr Gyles. I will adjourn.

45
46 **ADJOURNMENT**

47

1 **UPON RESUMPTION:**

2

3 MS LONERGAN: Commissioner, for the benefit of those in
4 the body of the court and those legal representatives who
5 weren't present for the in-camera hearing that was just
6 conducted, those who assist you have determined that the
7 other in-camera hearings we need to attend to will take the
8 rest of this afternoon, and also Bishop Malone needs to
9 have a break now.

10

11 In those circumstances, Commissioner, it is proposed
12 that we would adjourn the public hearings until 9.30 next
13 Monday and proceed to conduct the further confidential
14 hearings that we're proceeding with this afternoon.

15

16 THE COMMISSIONER: Thank you, Ms Lonergan. The public
17 hearings are now adjourned until 9.30 on Monday.

18

19 **AT 2.12PM THE COMMISSION WAS ADJOURNED TO**
20 **MONDAY, 15 JULY 2013 AT 9.30AM**

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