



Special Commission of Inquiry into matters relating to the police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland–Newcastle



Report | Volume 2

Margaret Cunneen SC

30 May 2014

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The painting on the report's cover is *Hope* by artist Lina Basile, survivor of abuse by McAlinden. It is reproduced here with her kind permission.

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11 McAlinden: appointments and reported offending history

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Introduction

- 11.1 Denis McAlinden was born on 24 January 1923 and ordained a priest in Kilkenny, Ireland, on 5 June 1949.¹ Before McAlinden's ordination Father John Treacy² wrote to Bishop Edmund Gleeson of the Diocese of East Maitland (later known as the Diocese of Maitland–Newcastle),³ asking him to adopt McAlinden to the Diocese. Treacy described McAlinden as having difficulty in community life and being hard to get on with in ordinary life; he also referred to his difficult temper.⁴
- 11.2 McAlinden took up his first appointment in the Diocese on 13 December 1949.⁵ He remained incardinated into the Diocese until his death on 30 November 2005.⁶ The earliest incident of sexual abuse by him and reported to the Diocese occurred in 1949⁷ and the latest in 1996.⁸ Ms Maureen O'Hearn, the Coordinator of Healing and Support at Zimmerman Services (the Diocese's child protection unit) gave evidence that people abused by McAlinden (and Father James Fletcher) continue to come forward to the Diocese, some doing so as recently as August 2013.⁹ O'Hearn said she had spoken with about 28 victims of McAlinden.¹⁰
- 11.3 The following account written in 2008 by Ms Helen Keevers, the then Manager of Zimmerman House, describes McAlinden's modus operandi and the chronic nature of his sexual offending:
- DM [McAlinden] commonly took groups of young pre pubescent girls on picnics or for drives in his car. He often targeted sisters, cousins or friendship groups. The girl sitting next to him in the car on these trips was usually fondled as he drove. The last girl delivered home usually suffered further fondling, digital penetration or sometimes exposure of his genitals.
- He is known to have abused young girls in the confessional, usually sitting them on his lap after confession and inserting his fingers under their clothes into their vagina.
- Another of his tactics was to offer swimming lessons, taking young girls who could not swim into deep water where they depended on him for safety and slipping his hands inside their swimming costume as he held them up in the water.
- On more than one occasion he took girls on bush walks and got 'lost' with one of them. He would then expose himself or perform digital penetration.
- MacAlinden [sic] perpetrated abuse in this Diocese over a 30 year period. His victims are yet to be counted but are in double if not triple figures. Accounts of the abuse by his victims, who have never met one another, are very similar.¹¹
- 11.4 Given McAlinden's modus operandi, the five decades his abuse spanned, and the time he spent in Western Australia and overseas in Papua New Guinea, Ireland, New Zealand and the Philippines, undoubtedly there are other victims of his abuse who have not come forward and might never do so.

¹ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

² Father Treacy was a member of the Redemptorists order in Limerick, Ireland.

³ The now superseded Diocese of East Maitland was created by Papal Brief on 27 May 1847. The Diocese of Maitland–Newcastle was created by Papal Brief on 14 June 1995.

⁴ Letter from Treacy to Gleeson, dated 23 March 1949, ex 219, tab 1.

⁵ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁶ *ibid.*

⁷ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

⁸ Statutory declaration of AP, dated 16 August 2013, ex 284, para 25.

⁹ TOR 2, T2315.43–2316.2 (O'Hearn).

¹⁰ TOR 2, T2326.23–25 (O'Hearn).

¹¹ Letter from Keevers to Rolls re coverage with CGU for complaints by AZ and AX, dated 29 October 2008, ex 240.

1949 to 1959

Date	Event
5 June 1949	McAlinden ordained a priest in Kilkenny, Ireland ¹²
13 December 1949	McAlinden appointed assistant priest to the Parish of Tighes Hill (in the Diocese of East-Maitland) ¹³
1949–1952	Multiple incidents of sexual abuse of AZ (reported to Diocese 2007) ¹⁴
10 October 1952	McAlinden appointed assistant priest at Raymond Terrace ¹⁵
1953–1954	McAlinden sexually abuses and rapes AE on a number of occasions (reported to Diocese by AE's parents around 1954) ¹⁶
5 November 1954	McAlinden appointed assistant priest at Taree ¹⁷
November 1954–January 1959	McAlinden sexually abuses ABR on multiple occasions, beginning when she was aged 10; ¹⁸ he also sexually abused ABE (reported to Diocese in 2008) ¹⁹
1955–1960	McAlinden sexually abuses AC on multiple occasions, between ages of 7 and 11 (reported to Diocese in 2002) ²⁰
27 January 1959	McAlinden appointed assistant priest to the Parish of Singleton; ²¹ while there he sexually abused ABC ²²

Offending against AE and AC

- 11.5 While McAlinden was serving at Raymond Terrace he sexually abused AE on multiple occasions from 1953 to 1954, when she was 11 years old.²³ In 1999 AE made a complaint about this under the Towards Healing process, a mechanism the Catholic Church set up in 1996 for dealing with, among other things, child sexual abuse.²⁴ On 8 October 1999 AE reported the matter to the police and made a formal police statement.²⁵ The evidence indicates she was encouraged to do this by a church representative (see Chapters 12 and 16 for details).²⁶
- 11.6 From an early time McAlinden used 'grooming' techniques, ingratiating himself into the affections and confidence of parish families and children, lavishing gifts, cards and attention on children that he targeted.²⁷ Detective Inspector Mark Watters noted in his evidence that in those days this type of conduct – a priest showing considerable interest in a particular child –

¹² Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

¹³ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166; Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

¹⁴ Letter from Keevers to Rolls re coverage with CGU for complaints by AZ and AX, dated 29 October 2008, ex 240; Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

¹⁵ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166; Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

¹⁶ NSW Police statement of AE, dated 8 October 1999, ex 219, tab 312; statement of complaint by AE, dated 5 October 1999, ex 172.

¹⁷ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

¹⁸ TOR 2, T2327.2328.40 (O'Hearn).

¹⁹ Profile of Clerics Accused or Convicted of Child Sexual Assault document, undated, ex 243.

²⁰ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243; statement of complaint by AC, dated 12 June 2002, ex 179.

²¹ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

²² TOR 2, T5.35–6.13 (ABC in camera).

²³ NSW Police Force COPS Event Report E 8026529 re AE, dated 8 October 1999, ex 219, tab 333.

²⁴ Statement of complaint by AE, dated 5 October 1999, ex 172.

²⁵ NSW Police statement of AE, dated 8 October 1999, ex 219, tab 312.

²⁶ TOR 2, T27.35–43 (Watters).

²⁷ TOR 2, T342.17–22 (Fox); TOR 2, T60.39–43 (Watters). See, for example, letter from McAlinden to AC, dated 24 August 1960, ex 71.

would have made a small girl feel important.²⁸ Figure 11.1, a reproduction of a card sent to AC (then aged 11) in 1960, shows an example of McAlinden's grooming behaviour.²⁹

COPY

ST. PATRICK'S PRESBYTERY,
SINGLETON.

24th. August, 1960.

My dear **AC**,

I thought I'd better drop you a little note to explain how I vanished on last Monday in Taree, when I was waiting to bring you home to Flett St. after School. Well, it happened like this ... when I got to Jim Wilson's he wasn't there, so I went in search of him - but while searching I happened to meet some other people who stopped to talk, and I just couldn't get away. The result was when I went back for you, you could not be found anywhere, so I expect you had walked home. I do hate to disappoint people when I have made arrangements, especially to disappoint such a good little girl as you. However, I was so pleased to see you again and to know you are doing very well. I quite forgot to remind you that you promised to write to me : I know you have been working very hard. Maybe during the holidays you may be able to drop me a line (not one with a hook on it) to let me know how everything is going.

Figure 11.1 Letter from McAlinden to AC, 24 August 1960³⁰

A request to do missionary work

- 11.7 In March 1958 McAlinden asked Bishop John Toohey (then Bishop of the Diocese of East Maitland) to allow him to go to foreign missions, particularly in Africa.³¹ Toohey wrote to the Apostolic Delegation on 28 September 1958, saying, among other things, that there were two reasons why McAlinden could not be released to foreign missions. One was the shortage of priests in the Diocese. The second was somewhat cryptic:

²⁸ TOR 2, T61.2-7 (Watters).

²⁹ Handwritten statement of complaint by AC; typed and corrected statement of complaint by AC, dated 12 June 2002, ex 179.

³⁰ Letter from McAlinden to AC, dated 24 August 1960, ex 71.

³¹ Letter from McAlinden to Toohey, dated 25 March 1958, ex 219, tab 4.

... indications of a true vocation to the Foreign Missions is in question. For reasons which I prefer not to state, there are doubts concerning this latter. Your Excellency will appreciate that, if excardination is to be given, my responsibility is a grave one.³²

- 11.8 McAlinden repeated his request in September 1959, and Toohey again withheld permission.³³ Another request from McAlinden about missionary work in Africa, dated 3 December 1959, included the following: ‘Remembering our conversation of Sept.29th, and understanding that you felt you could not recommend me for incardination into another diocese, owing to previous misconduct ...’³⁴ That request was evidently rejected since by August 1960 McAlinden was still residing in Singleton,³⁵ and there is no evidence that he ever worked as a missionary in Africa.

1960 to 1973

Date	Event
1961–1962	McAlinden sexually abuses AJ (formally reported to Diocese in 1993) ³⁶
Early 1960s	McAlinden sexually abuses AL and AK ³⁷ (reported to Diocese in 1993/1995) ³⁸
1963–1964	McAlinden sexually abuses UR75 (reported to Diocese in 2010) ³⁹
1963–1964	McAlinden sexually abuses UR46 (reported to Diocese in 2007) ⁴⁰
1965–1966	McAlinden sexually abuses AX (reported to Diocese in 2007) ⁴¹
October 1964	McAlinden appointed assistant priest to the Parish of Sacred Heart, Hamilton ⁴²
1 February 1965	McAlinden appointed administrator to the Parish of St Josephs, Murrurundi ⁴³
1965	McAlinden appointed on a temporary basis to Kendall ⁴⁴
1965	McAlinden appointed to the Our Lady Help of Christians Parish at Boolaroo ⁴⁵
24 March 1966	McAlinden appointed priest in charge at St Catherine’s at Greta ⁴⁶
1966 to 1969	McAlinden sexually abuses ABA and AY whilst at Greta (reported to Diocese in 2008 and 2007 respectively) ⁴⁷
15 February 1969	On loan to New Guinea Missions (Diocese of Mendi and later Mt Hagen) until mid-1973 ⁴⁸

³² Letter from Toohey to the Apostolic Delegation, dated 28 September 1958, ex 219, tab 4B.

³³ Letter from McAlinden to Toohey, dated 8 September 1959, ex 219, tab 7; letter from Toohey to McAlinden, dated 9 September 1959, ex 219, tab 8.

³⁴ Letter from McAlinden to Toohey, dated 3 December 1959, ex 70.

³⁵ Letter from McAlinden to AC, dated 24 August 1960, ex 71.

³⁶ Excerpts of NSW Police statement of AJ, dated 29 June 2010, ex 304, paras 7–10.

³⁷ Letter from Sean Tynan to NSW Crown Solicitor, dated 6 February 2014, ex 310.

³⁸ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

³⁹ *ibid.*

⁴⁰ *ibid.*; letter from Maureen O’Hearn to NSW Crown Solicitor, dated 20 May 2014, ex 320.

⁴¹ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243; letter from Keevers to Rolls re coverage with CGU for complaints by AZ and AX, dated 29 October 2008, ex 240.

⁴² Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166; Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

⁴⁸ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

Date	Event
Pre 1972 and 1973–1974	In June 2013, the Diocese received a report from ABV that she was sexually abused by McAlinden in Ireland (prior to 1972) and in Australia (1973–1974) ⁴⁹
29 September 1973	McAlinden returns to Diocese of Maitland ⁵⁰

Postings to Papua New Guinea

- 11.9 Department of Immigration records show that McAlinden travelled back and forth to Papua New Guinea four times in the period 1960 to 1973.⁵¹
- 11.10 Between 1969 and 1972 a series of letters were exchanged between bishops in Papua New Guinea and Toohey in connection with McAlinden’s release to work in Papua New Guinea and later, after he had been working there, his return to the Diocese of East Maitland (as it was then known).⁵² In a letter dated 29 December 1971, Bishop Firmin Schmidt, of the Diocese of Mendi in Papua New Guinea, commented that there had been reports of McAlinden being ‘very rough with his Native [sic] people in recent months’ and that McAlinden seemed opposed to returning to Maitland.⁵³ Further correspondence between Toohey, Schmidt and McAlinden then ensued in relation to McAlinden’s return to Australia or whether he should be incardinated into the Diocese of Mendi. Ultimately, by letter dated 30 January 1972, Schmidt said he preferred not to incardinate McAlinden at that time, stating, ‘... I doubt whether incardination at this time would solve whatever problems exist. In simple words, I would hate to incardinate anyone who is not on the best of terms with his own Bishop’.⁵⁴
- 11.11 McAlinden returned to Maitland but, having negotiated permission with Toohey, returned to work in Papua New Guinea during 1972 and 1973, this time in Mt Hagen.⁵⁵

1973 to 1979

Date	Event
10 October 1973	McAlinden posted to Toronto as temporary administrator of the parish of Toronto ⁵⁶
1973	McAlinden sexually abuses ABT and ABS (reported to Diocese in 2010) ⁵⁷
29 January 1974	McAlinden appointed parish priest at Murrurundi ⁵⁸
1974	McAlinden sexually abuses UR74 (reported to Diocese in 2010) ⁵⁹

⁴⁹ Letter from Maureen O’Hearn to NSW Crown Solicitor, dated 20 May 2014, ex 230.

⁵⁰ *ibid.*

⁵¹ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

⁵² Letter from Bernarding to Toohey, dated 13 January 1969, ex 219, tab 17; letter from Toohey to Schmidt, dated 15 January 1969, ex 219, tab 18; letter from Toohey to McAlinden, dated 15 January 1969, ex 219, tab 19; letter from Toohey to Bernarding, dated 21 January 1969, ex 219, tab 20; letter from Schmidt to Toohey, dated 26 January 1969, ex 219, tab 21; letter from Schmidt to Toohey, dated 8 April 1969, ex 219, tab 22; letter from Toohey to Schmidt, dated 12 April 1969, ex 219, tab 23; letter from Toohey to McAlinden, dated 30 November 1971, ex 219, tab 24; letter from Schmidt to Toohey, dated 29 December 1971, ex 219, tab 25; letter from Toohey to McAlinden, undated, ex 219, tab 26.

⁵³ Letter from Schmidt to Toohey, dated 29 December 1971, ex 219, tab 25.

⁵⁴ Letter from Schmidt to Toohey, dated 30 January 1972, ex 219, tab 33.

⁵⁵ Minutes of meeting of Diocesan Consultors, dated 31 March 1972, ex 219, tab 37; letter from Schmidt to Toohey, dated 10 April 1972, ex 219, tab 39; letter from Bernarding to McAlinden, dated 23 April 1972, ex 219, tab 41; minutes of meeting of Diocesan Consultors, dated 27 June 1972, ex 219, tab 44; letter from Toohey to McAlinden, dated 15 August 1973, ex 219, tab 45.

⁵⁶ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁵⁷ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

⁵⁸ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁵⁹ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

Date	Event
17 May 1974	McAlinden appointed to Kendall Parish ⁶⁰
1 November 1975	McAlinden appointed to the parish of Forster–Tuncurry ⁶¹
1975–1976	McAlinden sexually abuses AO (reported in May 1976) ⁶²
15 May 1976	Diocesan consultors’ meeting at which complaints about McAlinden’s behaviour are minuted ⁶³
16 May 1976	Diocesan consultors’ meeting at which McAlinden’s behaviour and a meeting between Monsignor Cotter and families at Forster are discussed ⁶⁴
17 May 1976	Monsignor Cotter writes to Bishop Leo Clarke detailing the accusations (and the processes followed) regarding McAlinden and his sexual abuse of children ⁶⁵
17 May 1976	McAlinden signs a letter of resignation from Forster–Tuncurry parish ⁶⁶
28 October 1976	Maitland Clergy Central Fund pays for an open ticket to Port Moresby for McAlinden ⁶⁷
3 November 1976	McAlinden leaves Australia for Port Moresby ⁶⁸
4 November 1976	McAlinden’s clergy appointment document notes: ‘On loan [to] Diocese of Kerema, PNG, stationed at Terapo’ ⁶⁹
28 December 1977	McAlinden returns to Australia ⁷⁰
1 March 1978	McAlinden returns to Papua New Guinea ⁷¹
1978–1980	McAlinden sexually abuses AF on a number of occasions whilst visiting Australia (reported to police in 2001) ⁷²
25 October 1979	McAlinden returns to Australia ⁷³

1975 to 1976: Forster–Tuncurry and the Cotter–Clarke letter

- 11.12 Evidence before the Commission – particularly documents produced by the Diocese – reveals that during McAlinden’s time at Forster–Tuncurry he sexually abused a number of girls and that after a confrontation with Diocesan officials in May 1976 he ‘resigned’ from the parish on 17 May 1976.⁷⁴
- 11.13 Monsignor Patrick Cotter wrote a long letter to Bishop Clarke on 17 May 1976.⁷⁵ That letter detailed the accusations, the processes followed and the fact that admissions had been made to ‘indiscretions’ by McAlinden. The letter shows a recognition of the effect that abuse of this kind

⁶⁰ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁶¹ *ibid.*

⁶² Excerpt of private hearing transcript of AO, dated 26 March 2013 and related private hearing exhibit 99; statement of AO, dated 14 January 2013, ex 266; excerpt of private hearing transcript of BM, dated 15 April 2013 and related private hearing exhibit 125; statement of BM, dated 10 March 2013, ex 267; minutes of meeting of Diocesan Consultors, dated 15–16 May 1976, ex 219, tab 57.

⁶³ Minutes of meeting of Diocesan Consultors, dated 15 May 1976, ex 219, tab 57.

⁶⁴ *ibid.*

⁶⁵ Letter from Cotter to Clarke, dated 17 May 1976, ex 57.

⁶⁶ Letter of resignation from McAlinden to Cotter, dated 17 May 1976, ex 219, tab 58.

⁶⁷ Pan Australian Travel Agency Invoice – open ticket to Port Moresby for McAlinden, ex 124.

⁶⁸ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

⁶⁹ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁷⁰ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

⁷¹ *ibid.*

⁷² NSW Police statement of AF, dated 13 July 2001, ex 219, tab 334.

⁷³ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

⁷⁴ Letter of resignation from McAlinden to Cotter, dated 17 May 1976, ex 219, tab 58.

⁷⁵ Letter from Cotter to Clarke, dated 17 May 1976, ex 57.

has on children, as well as an intention to ‘move him along’ to another location for a period. The ‘Cotter–Clarke letter’ (see Appendix S) and other relevant documents of the time are examined in detail in Chapter 12.

- 11.14 Documents produced by the Diocese show that by October 1976 a posting for McAlinden had been agreed for the Diocese of Kerema in Papua New Guinea.⁷⁶

1980 to 1988

Date	Event
November 1979–May 1980	McAlinden appointed to Shortland ⁷⁷
June–July 1980	McAlinden appointed to Forster ⁷⁸
2 May 1981	McAlinden appointed to Belmont as assistant priest ⁷⁹
January 1981	McAlinden has first hip replacement operation ⁸⁰
October 1981–1983	McAlinden recorded as being ‘On loan to Geraldton Diocese’ ⁸¹
8 November 1981	McAlinden appointed parish priest at Wickham, Western Australia ⁸²
1982	McAlinden sexually assaults AR in Western Australia ⁸³
1983–1984	McAlinden appointed to Merriwa ⁸⁴
November 1983	McAlinden visits New Zealand for 12 days ⁸⁵
2 March 1984	McAlinden leaves Australia for New Zealand and is posted at Hamilton, New Zealand ⁸⁶
1984	McAlinden sexually abuses a young girl, ABB, whilst parish priest of Tokomaru Bay, New Zealand ⁸⁷
7 December 1984	McAlinden returns to Australia ⁸⁸
10 December 1984	McAlinden given a temporary appointment at Dungog ⁸⁹
13 February 1985	McAlinden temporarily appointed priest in charge at Morisset ⁹⁰
25 April 1985	McAlinden appointed parish priest at Merriwa ⁹¹
1985–1986	McAlinden reportedly abuses various children at Merriwa (dealt with in the confidential volume of this report) ⁹²

⁷⁶ *Ad Clerum*, dated 8 October 1976, ex 219, tab 62.

⁷⁷ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁷⁸ *ibid.*

⁷⁹ *ibid.*; see also letter from Clarke to McAlinden, dated 27 April 1981, ex 219, tab 77.

⁸⁰ Letter from Clarke to Thomas, dated 24 June 1981, ex 219, tab 84.

⁸¹ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁸² Letter from Foley to McAlinden, dated 8 November 1981, ex 219, tab 90.

⁸³ Western Australia Police Department, *Précis of evidence regarding complaint by AR against McAlinden and Summary of Offences*, dated 9 March 1992, ex 219, tab 188; see also letter from Bianchini to AR, dated 8 November 2013, ex 311; letter from Wright to AR, dated 16 January 2014, ex 312.

⁸⁴ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁸⁵ *Departures and Arrivals of McAlinden into and out of Australia*, annexure A to ex 217.

⁸⁶ *Departures and Arrivals of McAlinden into and out of Australia*, annexure A to ex 217; letter from Gaines to Clarke, dated 6 January 1984, ex 219, tab 101.

⁸⁷ Joint pastoral message to the people of the Dioceses of Hamilton and Maitland–Newcastle from Browne and Malone, dated 27 November 2008 and letter from Browne regarding McAlinden, dated 4 December 2008, ex 241.

⁸⁸ *Departures and Arrivals of McAlinden into and out of Australia*, annexure A to ex 217.

⁸⁹ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² *Profile of Clerics Accused or Convicted of Child Sexual Assault*, undated, ex 243; further details dealt with in the Confidential Volume of this report.

Date	Event
1 July 1986	McAlinden appointed parish priest at Adamstown ⁹³
1986–1987	McAlinden sexually abuses AQ, AP and ABI (reported to Diocese in 2008, 2009 and 2007 respectively) ⁹⁴
11 May 1987	John Hatton MP writes to the Archbishop of Sydney about reports he had received of McAlinden’s sexual misbehaviour with young children ⁹⁵
November 1987	Dr Derek Johns, a consultant psychiatrist retained by Bishop Leo Clarke to assess McAlinden regarding his behaviour with children, provides report regarding same ⁹⁶
15 July 1988	McAlinden leaves Sydney for Ireland ⁹⁷
26 August 1988	McAlinden returns to Sydney from Ireland ⁹⁸
7 October 1988	Bishop Leo Clarke writes to McAlinden, granting him permission to accept an invitation from Bishop Peter Quinn to work in the Diocese of Bunbury ⁹⁹

1981: on loan to Western Australia

- 11.15 In June 1981 Bishop Francis Thomas at Geraldton in Western Australia wrote to Bishop Leo Clarke asking to borrow a ‘highly recommended’ priest for two years.¹⁰⁰ Clarke responded by offering McAlinden:

You will remember me speaking to you about Father Denis McAlinden who had applied in 1976 to work in your Diocese. At the time there were some problems that I mentioned to you but as I said in Sydney, I think that these problems are now over ... I would really think he is worth a try.¹⁰¹

- 11.16 Correspondence from the time shows there was some delay while McAlinden had a hip replacement operation. In October 1981 he travelled to Western Australia, being appointed parish priest at Wickham in November.¹⁰²
- 11.17 At Wickham in 1982 McAlinden was reported to have allegedly sexually assaulted AR, a girl aged 9 to 10 years. This led to criminal proceedings against him for indecent assault 10 years later. McAlinden was arrested and charged on 4 September 1991¹⁰³ and acquitted in July 1992.¹⁰⁴ In 2013 the Bishop of Geraldton provided a written apology to AR, acknowledging the sexual abuse

⁹³ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

⁹⁴ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

⁹⁵ Letter from Hatton to Clancy, dated 11 May 1987, ex 219, tab 133.

⁹⁶ Report of Johns to Clarke, dated 5 November 1987, ex 59.

⁹⁷ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

⁹⁸ *ibid.*

⁹⁹ Letter from Clarke to McAlinden, dated 7 October 1988, ex 219, tab 164.

¹⁰⁰ Letter from Thomas to Clarke, dated 4 June 1981, ex 219, tab 78.

¹⁰¹ Letter from Clarke to Thomas, dated 11 June 1981, ex 219, tab 81.

¹⁰² Letter from Thomas to Clarke, dated 17 June 1981, ex 219, tab 82; minutes of meeting of Diocesan Consultors, dated 23 June 1981, ex 219, tab 83; letter from Clarke to Thomas, dated 24 June 1981, ex 219, tab 84; letter from Thomas to Clarke, dated 29 June 1981, ex 219, tab 85; letter from McAlinden to Thomas, dated 7 July 1981, ex 219, tab 86; minutes of meeting of Diocesan Consultors, dated 14 July 1981, ex 219, tab 87; letter from McAlinden to Foley, dated 15 September 1981, ex 219, tab 88; minutes of meeting of Diocesan Consultors, dated 16 October 1981, ex 219, tab 89; Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

¹⁰³ Western Australia Police Department, Précis of evidence regarding complaint by AR against McAlinden and Summary of Offences, dated 9 March 1992, ex 219, tab 188.

¹⁰⁴ District Court of Western Australia document, ‘The Queen against Denis McAlinden’, dated 4 May 1992, ex 219, tab 191; Western Australia Director of Public Prosecutions criminal records document re Denis McAlinden, dated 16 July 1992, ex 219, tab 192; file note by Quinn, dated 21 July 1992, ex 219, tab 193.

she suffered at the hands of McAlinden.¹⁰⁵ In the letter the Bishop also said, 'I wish to say that while the charges against him were dismissed in a court case, I believe your story and your allegations'.¹⁰⁶

1983: posting to New Zealand

- 11.18 Department of Immigration records show that McAlinden visited New Zealand for 12 days in November 1983.¹⁰⁷ In January 1984 Bishop Edward Gaines of Hamilton, New Zealand, wrote to Clarke accepting his 'generous offer' of the loan of McAlinden for two years.¹⁰⁸ Correspondence confirms this arrangement was agreed to,¹⁰⁹ and immigration records show McAlinden leaving Australia for New Zealand on 2 March 1984 and returning on 7 December 1984.¹¹⁰
- 11.19 The reason for the two-year period being cut short is not apparent from the material available to the Commission. Correspondence between Gaines and Clarke refers to McAlinden having left New Zealand 'in rather a hurry'.¹¹¹ Subsequent correspondence from Gaines discloses that McAlinden had given inconsistent reasons for leaving New Zealand: he told some people that some of his friends were dying of cancer and that he hoped to get home in time to see them and said that he had an interest in a parish in Maitland; he told others he was wanted back in Papua New Guinea.¹¹²
- 11.20 Diocesan records produced to the Commission show that while he was in New Zealand McAlinden sexually abused a young girl, ABB, who in 2008 reported this to the Hamilton Diocese. The then Bishop of Hamilton wrote an open letter to his parishioners, in which he stated:

In 1984 Bishop Edward Gaines accepted a priest from the Diocese of Maitland-Newcastle for a period of six months ... During his time as the parish priest of Tokomaru Bay, Father McAlinden was guilty of sexual offences that have left at least one victim still suffering after a passage of 25 years ...¹¹³

1985 to 1987: Merriwa and Adamstown

- 11.21 McAlinden's appointment document shows that on returning from New Zealand he had a temporary appointment as priest-in-charge at Dungog and then at Morisset; this was followed by an appointment as parish priest at Merriwa, beginning on 25 April 1985.¹¹⁴ It was reported that while McAlinden was at Merriwa he sexually abused a number of children. The details of this are dealt with in the confidential volume of this report.
- 11.22 Minutes of the College of Consultors confirm that in June 1986 Clarke recommended that McAlinden be appointed to Adamstown (following a request by McAlinden that he be moved to

¹⁰⁵ Letter from Bianchini to AR, dated 8 November 2013, ex 311. Although the original apology is dated November 2013, AR did not receive the apology until February 2014, as the letter was addressed incorrectly; see also letter from Wright to AR, dated 16 January 2014, ex 312.

¹⁰⁶ Letter from Bianchini to AR, dated 8 November 2013, ex 311.

¹⁰⁷ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

¹⁰⁸ Letter from Gaines to Clarke, dated 6 January 1984, ex 219, tab 101.

¹⁰⁹ Letter from Clarke to Gaines, dated 12 January 1984, ex 219, tab 102.

¹¹⁰ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

¹¹¹ Letter from Gaines to Clarke, dated 8 January 1985, ex 219, tab 101.

¹¹² Letter of Gaines to Clarke, dated 21 January 1985, ex 219, tab 115.

¹¹³ Letter from Browne regarding McAlinden, dated 4 December 2008, ex 241; correspondence between the NSW Crown Solicitor and the Diocese of Hamilton, dated 20 March 2013 to 16 April 2013, ex 248.

¹¹⁴ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

a warmer parish owing to health concerns).¹¹⁵ This move occurred on 1 July 1986.¹¹⁶ While he was at Adamstown he repeatedly sexually abused AQ,¹¹⁷ as well as AP and ABI.¹¹⁸

May 1987: John Hatton MP's letter to Cardinal Clancy regarding alleged sexual misbehaviour by McAlinden

11.23 On 11 May 1987 independent member of the New South Wales Legislative Assembly John Hatton sent a letter to the Archbishop of Sydney, Cardinal Edward Clancy, advising him of complaints he had received about McAlinden's behaviour with young children.¹¹⁹ Hatton said in the letter he was able to provide the names of people to whom inquiries might be directed if the Church was able to provide an assurance of protection from defamation or from retaliatory action from within the Church itself.¹²⁰ Notably, Hatton wrote:

It concerns allegations of sexual misbehaviour by Father D. McAlinden of the Catholic Church, Adamstown. I have been told that a complaint was made in 1976 and as a result of an investigation of that complaint Father McAlinden was transferred out of the Maitland Diocese. He later came back to the Diocese in Maitland being appointed to the Catholic Church, Merriwa. He left the Catholic Church, Merriwa, I am informed, in November last year and is currently in the parish of Adamstown, Newcastle.¹²¹

11.24 Chapter 12 and the confidential volume of the report discuss how the matters raised in Hatton's letter were dealt with. Evidence considered in the confidential volume suggests that McAlinden was informally stood down in or about August 1987 as a result of further allegations of child sexual abuse; he was, however, permitted to leave the Diocese in October 1988 to work as a priest in Bunbury, Western Australia, at the invitation of Bishop Peter Quinn.¹²²

November 1987: a psychiatric assessment

11.25 In November 1987 Dr Derek Johns, a consultant psychiatrist, provided to Clarke a written report on McAlinden. Johns reported that he had seen McAlinden four times and that McAlinden 'steadfastly maintained his innocence, in connection with sexual activity involving children'.¹²³ McAlinden did, however, admit to becoming 'a little over familiar' with children in Papua New Guinea during his missionary work there between 1968 and 1976. Johns said that in his opinion there was no evidence of any major psychiatric disorder. He also noted that McAlinden had spoken of allegations dating back to 1954, saying Bishop Toohey had discussed these with him (McAlinden).¹²⁴ Johns observed, 'The long period of time over which these alleged incident[s] have taken place on a recurring basis, certainly makes one suspicious as to Father McAlinden's intent'.¹²⁵

11.26 Other matters leading to Johns' engagement and reporting, and events occurring after the report was forwarded to the Diocese, are necessarily dealt with in the confidential volume of this report.

¹¹⁵ Minutes of meeting of Diocesan Consultors, dated 5 June 1986, ex 219, tab 128; letter from McAlinden to Clarke, dated 14 January 1985, ex 219, tab 112; letter from McAlinden to Clarke, dated 23 May 1985, ex 219, tab 117; letter from McAlinden to Clarke, dated 3 April 1986, ex 219, tab 126.

¹¹⁶ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

¹¹⁷ TOR 2, T2330.10-2332.36 (O'Hearn).

¹¹⁸ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

¹¹⁹ Letter from Hatton to Clancy, dated 11 May 1987, ex 219, tab 133.

¹²⁰ *ibid.*

¹²¹ *ibid.*

¹²² Letter from McAlinden to Quinn, dated 22 September 1988, ex 219, tab 161; letter from Quinn to McAlinden, dated 27 September 1988, ex 219, tab 162; letter from McAlinden to Quinn, dated 2 October 1988, ex 219, tab 163; letter from Clarke to McAlinden, dated 7 October 1988, ex 219, tab 164; letter from McAlinden to Quinn, dated 11 October 1988, ex 219, tab 165.

¹²³ Report of Johns to Clarke, dated 5 November 1987, ex 59, p 209.

¹²⁴ This is consistent with material at para 111.53 re AE and her parents' complaint to the Bishop re McAlinden's rape and abuse of her in 1953.

¹²⁵ Report of Johns to Clarke, dated 5 November 1987, ex 59, p 210.

1988: a request to return to Papua New Guinea

- 11.27 Early in 1988 Bishop Raymond Kalisz of the Diocese of Wewak asked that McAlinden be released to work in Papua New Guinea.¹²⁶ In a letter to Kalisz dated 2 February 1988 Clarke said:

... in all honesty I must tell you the following in strict confidence. Towards the end of last year allegations were made by some parents and the head teacher that Father's behaviour with small girls was worrying and because of his imprudent relationship and expressions of affection.

I had this matter investigated. Father categorically denied any seriousness or guilt, admitting only that he had been imprudent. The Investigation proved inconclusive – Father still maintaining his innocence. He voluntarily submitted to psychiatric assessment and once again no conclusion was reached by the doctor.

In view of the allegations, in his own opinion it would be unwise for him to continue to work in this Diocese ...¹²⁷

- 11.28 In March 1988 McAlinden wrote to Clarke protesting about the fact that Clarke had made it clear that he (Clarke) had to 'protect [himself] against threats from a certain politician who was in league with these 'accusers' as well as against media publication'. McAlinden also wrote that the allegations relating to Merriwa were totally false. He said there was a danger that Clarke might be inclined to think otherwise because he (McAlinden) had 'submitted so readily to punitive measures'.¹²⁸
- 11.29 It appears that McAlinden had been effectively relieved of any priestly duties for a period that is not documented. The Diocese's appointments document relating to McAlinden has the last recorded posting as 'Adamstown 1.7.86'. This is followed by a note 'Bunbury May 87',¹²⁹ although McAlinden did not, in fact, go to Bunbury until October 1988.¹³⁰ It appears McAlinden had a period of leave during which he had a second hip replacement operation,¹³¹ recuperated with relatives, and then proposed a visit to Ireland.¹³² Immigration records confirm that he left Sydney for Ireland on 15 July 1988 and returned to Sydney on 26 August that year.¹³³
- 11.30 In October 1988 Clarke wrote to McAlinden, granting permission for him to accept Bishop Quinn's invitation to work in the Diocese of Bunbury.¹³⁴ Clarke's letter to McAlinden was unqualified in its grant of permission; the Bishop wished McAlinden 'every blessing and happiness in your future apostolate in Bunbury'.¹³⁵
- 11.31 In July 1989 McAlinden wrote a letter to the 'Secretary' (presumably an office holder in the Diocese) asking that any Diocesan correspondence for him be forwarded to a Catholic presbytery in Kojonup, Western Australia.¹³⁶

¹²⁶ Letter from Kalisz to Clarke, dated 9 January 1988, ex 219, tab 143.

¹²⁷ Letter from Clarke to Kalisz, dated 2 February 1988, ex 219, tab 147.

¹²⁸ Letter from McAlinden to Clarke, dated 31 March 1988, ex 219, tab 150, p 234.

¹²⁹ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

¹³⁰ Letter from Clarke to McAlinden, dated 7 October 1988, ex 219, tab 164.

¹³¹ Letter from Clarke to McAlinden, dated 22 April 1988, ex 219, tab 154. McAlinden's first hip replacement operation was in 1981 (see para 11.16).

¹³² Letter from McAlinden to Clarke, dated 24 June 1988, ex 219, tab 155; letter from Clarke to McAlinden, dated 30 June 1988, ex 219, tab 156; letter from McAlinden to Clarke, dated 13 July 1988, ex 219, tab 157.

¹³³ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

¹³⁴ Letter from Clarke to McAlinden, dated 7 October 1988, ex 219, tab 164.

¹³⁵ Letter from McAlinden to Quinn, dated 11 October 1988, ex 219, tab 165.

¹³⁶ Letter from McAlinden to 'Secretary', dated 27 July 1989, ex 219, tab 171.

1991 to 1995

Date	Event
4 September 1991	McAlinden arrested and charged with indecent dealings with AR ¹³⁷
16 July 1992	McAlinden acquitted of all charges relating to AR (District Court of Western Australia) ¹³⁸
February–March 1993	Complaints made to Monsignor Hart by AL and AJ regarding McAlinden's sexual abuse of them when children ¹³⁹
February 1993	McAlinden recalled from Western Australia by Bishop Clarke ¹⁴⁰
February–March 1993	Father Lucas retained to deal with complaints about McAlinden; he interviews at least AJ (and, at some point during 1993, AL), as well as McAlinden ¹⁴¹
27 February 1993	McAlinden signs a declaration acknowledging the removal of his faculties; ¹⁴² McAlinden's clergy appointment document records 'Faculties – withdrawn' ¹⁴³
20 March 1993	Bishop Leo Clarke meets with McAlinden; records that McAlinden is to leave Australia for the United Kingdom on a Singapore Airlines flight on 23 March ¹⁴⁴
23 March 1993	McAlinden leaves Sydney on a flight to the United Kingdom ¹⁴⁵
20 June 1993	McAlinden writes to Bishop Clarke saying he would live in a small cottage in Cahir, Ireland ¹⁴⁶
18 September 1993	McAlinden arrives back in Perth, Australia ¹⁴⁷
30 August 1994	McAlinden leaves Australia from Perth for the Philippines ¹⁴⁸
4 January 1995	McAlinden returns to Perth ¹⁴⁹
25 January 1995	McAlinden leaves Perth for Singapore ¹⁵⁰
20 June 1995	Monsignor Hart writes to Father Castillo in San Pablo parish in the Philippines, advising that McAlinden's faculties have been removed ¹⁵¹

¹³⁷ Catholic Church Insurances inter-office memorandum from Fragomeni to Taylor, dated 27 September 1991, ex 219, tab 184; Western Australia Police Department, Précis of evidence regarding complaint by AR against McAlinden and Summary of Offences, dated 9 March 1992, ex 219, tab 188.

¹³⁸ District Court of Western Australia document, 'The Queen against Denis McAlinden', dated 4 May 1992, ex 219, tab 191; Western Australia Director of Public Prosecutions criminal records document re Denis McAlinden, dated 16 July 1992, ex 219, tab 192.

¹³⁹ Excerpts of NSW Police statement of AJ, dated 29 June 2010, ex 304; TOR 2, T1390.23–1393.43; T1395.9–1396.38; T1445.20–29 (Hart); T13.6–28 (Redgrove in camera, 22 July 2013).

¹⁴⁰ Priests' Register Entry for McAlinden, Diocese of Bunbury, undated, ex 219, tab 209.

¹⁴¹ TOR 2, T19.27–20.16 (Redgrove in camera, 22 July 2013); TOR 2, T1723.16–44; T1760.21–25; T1764.40–1765.13 (Lucas); excerpts of NSW Police statement of AJ, dated 29 June 2010, ex 304 paras 35–38; 50–55.

¹⁴² Diocese of Maitland declaration of McAlinden of acceptance of Administrative Decree, dated 27 February 1993, ex 61.

¹⁴³ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

¹⁴⁴ Handwritten note by re McAlinden, dated 27 February 1993, ex 219, tab 218.

¹⁴⁵ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

¹⁴⁶ Letter from McAlinden to Clarke, dated 20 June 1993, ex 219, tab 225.

¹⁴⁷ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

¹⁴⁸ *ibid.*

¹⁴⁹ *ibid.*

¹⁵⁰ *ibid.*

¹⁵¹ Letter from Hart to Castillo, dated 20 June 1995, ex 73.

Date	Event
2 August 1995	Deans of Maitland Diocese discuss McAlinden's return to Australia and resolve to move towards a laicisation procedure for McAlinden ¹⁵²
3 August 1995	McAlinden arrives back in Sydney ¹⁵³

1991 to 1992: arrest and trial in Western Australia

- 11.32 On 4 September 1991 McAlinden was arrested and charged with indecent dealings with AR.¹⁵⁴ During the same month Quinn contacted Catholic Church Insurances Limited to advise that McAlinden had been arrested for offences allegedly committed 10 years before, when he was a parish priest at Wickham, Western Australia, and the complainant, AR, was 10 years old.¹⁵⁵
- 11.33 Having been released on bail, McAlinden was acquitted of the charges in the District Court of Western Australia on 16 July 1992.¹⁵⁶

February to March 1993: AJ and others report allegations to officials of the Catholic Church

AJ's report to Monsignor Hart

- 11.34 In February 1993, when McAlinden was in Western Australia, he was recalled by Clarke.¹⁵⁷ The situation leading to his recall appears to have arisen when AJ contacted Monsignor Hart in February 1993 to tell him McAlinden had sexually abused her.¹⁵⁸ Hart reported the matter to Bishop Clarke; arrangements were then made for Father Brian Lucas to interview both AJ and McAlinden.¹⁵⁹
- 11.35 Lucas told the Commission he could not recollect speaking to AJ.¹⁶⁰ In relation to meeting McAlinden, Lucas said, 'So far as I'm aware there was only one meeting, but I don't recall it'; nor could he recall where the meeting was or 'what he [McAlinden] looked like or what he said'.¹⁶¹ There is relatively contemporaneous documentary evidence – written by both Clarke and McAlinden – to suggest that during his interview with Lucas McAlinden admitted to sexually abusive conduct involving children (further details about AJ's allegation and Hart's and Lucas's involvement are explored in Chapter 12).¹⁶²

¹⁵² Minutes of Deans' meeting of Maitland Diocese, dated 2 August 1995, ex 105.

¹⁵³ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

¹⁵⁴ Western Australia Police Department, Précis of evidence regarding complaint by AR against McAlinden and Summary of Offences, dated 9 March 1992, ex 219, tab 188.

¹⁵⁵ Catholic Church Insurances inter-office memorandum from Fragomeni to Taylor, dated 27 September 1991, ex 219, tab 184; District Court of Western Australia document, 'The Queen against Denis McAlinden', dated 4 May 1992, ex 219, tab 191.

¹⁵⁶ District Court of Western Australia document, 'The Queen against Denis McAlinden', dated 4 May 1992, ex 219, tab 191; Western Australia Director of Public Prosecutions criminal records document re Denis McAlinden, dated 16 July 1992, ex 219, tab 192; file note by Quinn, dated 21 July 1992, ex 219, tab 193.

¹⁵⁷ Priests' Register Entry for McAlinden, Diocese of Bunbury, undated, ex 219, tab 209.

¹⁵⁸ TOR 2, T1390.35–1391.29 (Hart); Excerpts of NSW Police statement by AJ, dated 29 June 2010, ex 304, para 28.

¹⁵⁹ TOR 2, T1402.30–42 (Hart).

¹⁶⁰ TOR 2, T1644.5–7 (Lucas).

¹⁶¹ TOR 2, T1581.44–1582.11 (Lucas).

¹⁶² Letter from Clarke to McGuinness, dated 1 April 1993, ex 63, p 443; Catholic Church Insurances Limited Proposal for Special Issues Liability Insurance, dated 23 November 1993, ex 219, tab 229; letter from Clarke to Brambilla, dated 23 May 1995, ex 219, tab 244, p 496; letter from Clarke to Bantigue, dated 10 May 1995, ex 219, tab 243; letter from Clarke to McAlinden, dated 19 October 1995, ex 67; letter from McAlinden to Clarke, dated 26 October 1995, ex 68.

Withdrawal of faculties

- 11.36 On 12 February 1993 Clarke wrote to McAlinden, advising him of the formal withdrawal of his priestly faculties.¹⁶³ This meant McAlinden was no longer permitted to dress as a priest¹⁶⁴ or celebrate any public mass or administer sacraments publicly.¹⁶⁵
- 11.37 On 27 February 1993 a letter from Clarke to McAlinden confirmed McAlinden's retirement from priestly ministry and withdrawal of faculties 'in light of [your] health'. It also included a request that McAlinden 'sign a document accepting the terms of this administrative decree'.¹⁶⁶ A declaration of acceptance of the decree, dated 27 February 1993, bears McAlinden's signature.¹⁶⁷ On 5 March 1993 Clarke wrote to McAlinden advising him that he would receive retirement fund payments at regular intervals.¹⁶⁸
- 11.38 A handwritten note prepared by Clarke and dated 20 March 1993 records that before McAlinden left for the United Kingdom Clarke summoned him to discuss reports that he (McAlinden) had been seen wearing crosses in apparent defiance of Clarke's orders.¹⁶⁹ Clarke reportedly emphasised that McAlinden was not permitted to wear crosses or to hold himself out as a priest. Clarke also noted that McAlinden's sister in England had not been told why he had retired – she thought it was because of his age and poor health. According to Clarke's note, McAlinden vehemently denied that he had ever interfered with AL and AK. The note also recorded that McAlinden was leaving on a Singapore Airlines flight on 23 March 1993.¹⁷⁰ Immigration records show that on 23 March 1993 McAlinden in fact left Sydney for England.¹⁷¹

AL's reports to Sister Redgrove and Monsignor Hart

- 11.39 Another of McAlinden's victims, AL, was prompted to report McAlinden's sexual abuse of her when she read newspaper reports about his acquittal in Western Australia.¹⁷²
- 11.40 Hart recalled that during a meeting he had with AL and Sister Paula Redgrove at the bishop's house in early 1993 AL told him she had been sexually abused by McAlinden.¹⁷³ He said the purpose of the meeting was to inform the bishop of AL's complaint. Hart later told the bishop (who was not present at the meeting) of AL's complaint.¹⁷⁴ These matters are more fully explored in Chapter 12.

March 1993 to September 1995: the United Kingdom and the Philippines

Time in the United Kingdom

- 11.41 On 9 March 1993 Clarke wrote to one of McAlinden's former parishioners in Western Australia, telling him, 'Father McAlinden, due to bad health, has retired from active priestly duties and will be living overseas'.¹⁷⁵
- 11.42 The true position in relation to McAlinden, however, was set out in a letter Clarke wrote three weeks later, on 1 April 1993, to Bishop James McGuinness in Nottingham, in which he states that

¹⁶³ Letter from Clarke to McAlinden, dated 12 February 1993, ex 60.

¹⁶⁴ Letter from Clarke to McGuinness, dated 1 April 1993, ex 63, p 443.

¹⁶⁵ Letter from Clarke to McAlinden, dated 27 February 1993, ex 61.

¹⁶⁶ *ibid.*

¹⁶⁷ Diocese of Maitland declaration of McAlinden of acceptance of Administrative Decree, dated 27 February 1993, ex 61.

¹⁶⁸ Letter from Clarke to McAlinden, dated 5 March 1993, ex 121, p 439.

¹⁶⁹ Handwritten note by Clarke re McAlinden, dated 27 February 1993, ex 219, tab 218.

¹⁷⁰ *ibid.*

¹⁷¹ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

¹⁷² TOR 2, T40.33–39; T49.33–50.35 (Redgrove in camera, 22 July 2013).

¹⁷³ TOR 2, T1445.17–29; T1478.35–1479.21 (Hart).

¹⁷⁴ TOR 2, T1478.35–1479.21 (Hart).

¹⁷⁵ Letter from Clarke to Barrow, dated 9 March 1993, ex 219, tab 217.

after 43 years working for the Diocese, following ‘a number of complaints and allegations ... made concerning his behaviour with small children some years ago, [McAlinden] admitted that he had offended in this matter’.¹⁷⁶ The letter also recorded that McAlinden had opted to reside with his married sister in Skegness in the United Kingdom and set out how the matter was to be managed: ‘Following the policy agreed upon by the Bishops of Australia I withdrew his faculties and obtained from him a promise that he would not dress as a priest nor carry out publicly any priestly functions’.¹⁷⁷

- 11.43 By letter dated 6 April 1993 McGuinness confirmed that he had received Clarke’s letter of 1 April 1993 and noted the restrictions placed on McAlinden.¹⁷⁸
- 11.44 In May 1993 Hart, as vicar general, wrote to McAlinden in the United Kingdom, recommending a retirement house in County Cork. The letter suggested Clarke had previously considered the question of McAlinden’s placement.¹⁷⁹ Hart also seems to have arranged accommodation for McAlinden with the Sisters of Nazareth in Mallow, County Cork.¹⁸⁰ McAlinden refused that offer, however, stating in correspondence that he could not ‘cope with being institutionalised, having lived on [his] own for most of [his] life’. He chose to live in a small cottage in Cahir, County Tipperary.¹⁸¹
- 11.45 In March 1994 a letter McAlinden sent to Monsignor Coolahan provided an address suggesting that he was in Ireland at that time. In the letter McAlinden noted that, since he was ‘moving around quite a bit’, money should be sent to an account in Cahir, County Tipperary.¹⁸²

1994 to 1995: the Philippines

- 11.46 In May 1994 McAlinden wrote to Clarke from San Pablo City in the Philippines, responding to a suggestion from Clarke that he should choose somewhere to live as a retired priest; McAlinden stated that the ‘district of the P.I. [Philippines] is quite suitable’ but added that ‘[a]s far as “retirement” goes, I consider [being] Chaplain to an institute as “retirement” and am aware of several priests who have taken on a chaplaincy after retirement’.¹⁸³
- 11.47 On 13 September 1994 McAlinden wrote again to Clarke, this time requesting excardination from Maitland–Newcastle Diocese or permission to work in the Philippines. In this letter McAlinden claimed to have informed the Bishop of San Pablo, Monsignor Bantigue, of his ‘unfortunate background’ and said Bantigue had suggested that he (McAlinden) should not be retired and that it would be more profitable for him to become involved in some active work in a place and manner ‘that would be remote from the outside world’.¹⁸⁴
- 11.48 By letters dated 8 November 1994 Clarke wrote to both McAlinden and Bantigue.¹⁸⁵ He confirmed to McAlinden that he had written to Bantigue and that he had refrained from giving Bantigue any background or reasons for his decision to refuse to grant approval for McAlinden to be excardinated from Maitland–Newcastle and incardinated into San Pablo Diocese or to be permitted to work in San Pablo with a view to future incardination.¹⁸⁶ Clarke informed Bantigue

¹⁷⁶ Letter from Clarke to McGuinness, dated 1 April 1993, ex 63, p 443.

¹⁷⁷ *ibid.*

¹⁷⁸ *ibid.*, p 444.

¹⁷⁹ Letter from Hart to McAlinden, dated 14 May 1993, ex 219, tab 221, p 446.

¹⁸⁰ Letter from Hart to the Sister Administrator of Poor Sisters of Nazareth, dated 20 May 1994, ex 130.

¹⁸¹ Letter from McAlinden to Clarke, dated 20 June 1993, ex 219, tab 225.

¹⁸² Letter from McAlinden to Coolahan, dated 30 March 1994, ex 137.

¹⁸³ Letter from McAlinden to Clarke, dated 27 May 1994, ex 219, tab 235.

¹⁸⁴ Letter from McAlinden to Clarke, dated 13 September 1994, ex 157.

¹⁸⁵ Letter from Leo Clarke to McAlinden, dated 8 November 1994, ex 158; letter from Clarke to Bantigue, dated 8 November 1994, ex 64.

¹⁸⁶ Letter from Clarke to McAlinden, dated 8 November 1994, ex 158.

that McAlinden knew why his request had been refused, but he offered no information to Bantigue by way of explanation.¹⁸⁷

- 11.49 It was not until six months later that Clarke revealed the truth – at least in part – to Bantigue, in a letter dated 10 May 1995.¹⁸⁸ The revelation appears to have been prompted by an approach to Hart (in his role as vicar general while Clarke was away) by AL in March 1995. AL and her sister had learnt that McAlinden was working in the Philippines.¹⁸⁹ Hart told the Commission he had not previously been aware that McAlinden was in the Philippines before AL approached him.¹⁹⁰
- 11.50 Hart wrote to Reverend Father Castillo, rector and parish priest of San Pablo parish, requesting a letter from that diocese indicating that they had removed McAlinden’s faculties and that he would be returning to England. Hart then observed, ‘Failing this procedure those who have lodged complaints intend to consider instituting criminal charges and compensation charges against the Church’.¹⁹¹ These matters are discussed in Chapter 12.
- 11.51 In a letter to Malone dated 5 December 1995 McAlinden reported that ‘he would have heard no less than 10 thousand confessions’ at the San Pablo Colleges complex, where there was ‘an enrolment of over 7500 pupils, from Kindergarten through primary, secondary, teachers’ college, university and including medical college ...’¹⁹²
- 11.52 McAlinden’s departure from the Philippines was secured in August 1995. The minutes of the August Diocesan deans meeting – attended by Clarke, Coadjutor Bishop Malone and Hart¹⁹³ – noted McAlinden’s return from the Philippines, together with a resolution to ‘move towards a [laicisation] procedure’.¹⁹⁴

October 1995 to November 2005

Date	Event
October 1995	Canon law process instituted by Bishop Leo Clarke against McAlinden ¹⁹⁵
26 October 1995	McAlinden writes to Bishop Clarke from Jolimont, Western Australia ¹⁹⁶
3 November 1995	Bishop Michael Malone takes up his appointment as Bishop of Maitland–Newcastle Diocese ¹⁹⁷
December 1995–February 1996	McAlinden writes a series of letters from Western Australia giving a post office box in Jolimont, Western Australia, as his address ¹⁹⁸
1 April 1996	McAlinden leaves Australia for Singapore ¹⁹⁹
13 July 1996	McAlinden returns to Australia ²⁰⁰

¹⁸⁷ Letter from Clarke to Bantigue, dated 8 November 1994, ex 64.

¹⁸⁸ Letter from Clarke to Bantigue, dated 10 May 1995, ex 65.

¹⁸⁹ TOR 2, T1480.16–21 (Hart).

¹⁹⁰ TOR 2, T1480.42–1481.8 (Hart).

¹⁹¹ Letter from Hart to Castillo, dated 20 June 1995, ex 73.

¹⁹² Letter from McAlinden to Malone, dated 5 December 1995, ex 78, pp 91–92.

¹⁹³ TOR 2, T1496.6–44 (Hart).

¹⁹⁴ TOR 2, T1495.27–1496.38 (Hart); minutes of Deans’ meeting of Maitland Diocese, dated 2 August 1995, ex 105.

¹⁹⁵ Documents regarding this matter are of necessity covered in the confidential volume of this report; however reference to the Canon Law process is made in correspondence between Clarke and McAlinden: letter from Clarke to McAlinden, dated 19 October 1995, ex 67.

¹⁹⁶ Letter from McAlinden to Clarke, dated 26 October 1995, ex 68.

¹⁹⁷ TOR 2, T791.4–6 (Malone).

¹⁹⁸ Letter from McAlinden to Malone, dated 5 December 1995, ex 78; letter from McAlinden to Malone, dated 27 January 1996, ex 76; letter from McAlinden to Malone, dated 15 February 1996, ex 219, tab 276.; letter from McAlinden to Malone, dated 27 February 1996, ex 107.

¹⁹⁹ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

²⁰⁰ *ibid.*

Date	Event
During the 1990s until 1996–1997	McAlinden sexually abuses AP on various occasions ²⁰¹
15 July 1999	McAlinden leaves Australia for the United Kingdom; ²⁰² (while there he celebrates his golden jubilee as a priest) ²⁰³
28 August 1999	McAlinden returns to Australia
8 October 1999	AE reports McAlinden to the Church under the Towards Healing protocol and to the police in connection with his sexual abuse of her in 1953 and 1954 ²⁰⁴
1 December 1999	Warrant issued for McAlinden’s arrest for the sexual abuse of AE ²⁰⁵
5 June 2000	McAlinden leaves Australia for the United Kingdom ²⁰⁶
8 September 2000	McAlinden returns to Australia from Ireland ²⁰⁷
24 September 2000	McAlinden leaves Australia for the United Kingdom ²⁰⁸
21 December 2000	McAlinden returns to Australia ²⁰⁹
28 May 2002	McAlinden leaves Australia for Ireland ²¹⁰
12 July 2002	McAlinden returns to Australia from Ireland ²¹¹
June 2005	McAlinden’s location in Western Australia discovered as a result of New South Wales Police Force Operation Peregrine ²¹²
16 September 2005	An extradition application is prepared for McAlinden to face charges relating to the sexual abuse of AE ²¹³
30 November 2005	McAlinden dies in Western Australia

October 1995: canon law proceedings begin

- 11.53 In October 1995 a canon law process was instituted against McAlinden. The date closely coincided with the date of arrest of Vincent Ryan, a priest of the Diocese who was charged with multiple child sexual assault offences. (Events surrounding the initiation of this canon law process against McAlinden are dealt with in the confidential volume of this report.)
- 11.54 One of the first tasks for Bishop Michael Malone, who was appointed coadjutor bishop in November 1994 and ordained as bishop in November 1995, was to continue with canonical procedures against McAlinden.²¹⁴ In response to a letter from Malone dated 2 November

²⁰¹ Statutory declaration of AP, dated 16 August 2013, ex 284.

²⁰² Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

²⁰³ *ibid.* See also: letter from Burston to Davoren, dated 10 August 1999, ex 93.

²⁰⁴ Statement of complaint by AE, dated 5 October 1999, ex 172; NSW Police Force COPS Report E 8026529 re AE, dated 8 October 1999, ex 219, tab 311; NSW Police statement of AE, dated 8 October 1999, ex 219, tab 312.

²⁰⁵ Warrant in the first instance to apprehend a person charged with an offence for McAlinden, dated 1 December 1999, ex 219, tab 322.

²⁰⁶ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

²⁰⁷ *ibid.*

²⁰⁸ *ibid.*

²⁰⁹ *ibid.*

²¹⁰ *ibid.*

²¹¹ *ibid.*

²¹² NSW Police IASK 777437 Request for full address of McAlinden, dated 22 June 2006 and Centrelink Release of Information form re Denis McAlinden, dated 27 June 2005, ex 219, tab 465.

²¹³ Application for the extradition of McAlinden by Watters, dated 25 September 2005, ex 34; Police recommendation for consideration to extradite McAlinden re sexual assault and warrant number W33798151 by Nicholas, dated 29 June 2005, ex 219, tab 466.

²¹⁴ TOR 2, T804.45–805.10 (Malone); letter from Malone to McAlinden, dated 2 November 1995, ex 74.

1995,²¹⁵ McAlinden wrote a series of remarkable letters to the bishop, variously asserting innocence, making at least partial admissions, piety and moral outrage and refusing to cooperate.²¹⁶ These letters date from December 1995 to February 1996 and were sent from Western Australia, citing a post office box in Jolimont as a return address. The last letter from McAlinden is dated 27 February 1996: in it, he said he was heading to Ireland to join a pilgrimage to the Holy Land and provided a contact address in Clonmel, County Tipperary.²¹⁷ A letter that Father William Burston (then vicar general) sent to that address in August 1999 was returned unopened.²¹⁸

- 11.55 After February 1996 McAlinden did not correspond with anyone in the Diocese, and there are only occasional references to the Diocese attempting to locate him until shortly before his death in 2005; there are, however, numerous references to his whereabouts being unknown.²¹⁹
- 11.56 In August 1997 the Maitland Clergy Central Fund cut off all payments to McAlinden, observing in the minutes of its meeting ‘... it seemed inappropriate, it was agreed, that he continue to receive payments from the Fund into his bank account while Diocesan authorities were trying, without success, to contact him’.²²⁰

1999 to 2005: police investigations into McAlinden

- 11.57 In October 1999 AE reported McAlinden’s rape and sexual abuse of her in 1954 to the police.²²¹ The investigation that ensued is detailed in Chapter 16. A warrant for McAlinden’s arrest was prepared by Detective Senior Constable Mark Watters in December 1999.²²² There was also a further police investigation of McAlinden in connection with allegations made by AF in 2001.²²³ This investigation is discussed in Chapter 17. McAlinden was not located by either of these investigations.
- 11.58 After October 1999 McAlinden left and returned to Australia on three occasions, first in June 2000 (returning in September 2000), then again late September 2000 (returning in December 2000) and finally in May 2002 (returning in July 2002).²²⁴
- 11.59 As a result of a New South Wales Police operation relating to outstanding warrants generally, McAlinden was found in Western Australia in June–July 2005.²²⁵ In September of that year Watters prepared an extradition application for McAlinden’s arrest (see Chapter 16).²²⁶ Detective Senior Constable Mark Grono of Western Australia Police recalled that, when informed that NSW Police had an arrest warrant for McAlinden to face charges of child sexual

²¹⁵ Letter from Malone to McAlinden, dated 2 November 1995, ex 74.

²¹⁶ Letter from McAlinden to Clarke, dated 26 October 1995, ex 68; letter from McAlinden to Malone, dated 27 November 1995, ex 219, tab 266; letter from McAlinden to Malone, dated 27 January 1996, ex 76; letter from McAlinden to Malone, dated 15 February 1996, ex 219, tab 276; letter from McAlinden to Malone, dated 27 February 1996, ex 107; letter from McAlinden to Malone, dated 5 December 1995, ex 78.

²¹⁷ Letter from McAlinden to Malone, dated 27 February 1996, ex 107.

²¹⁸ TOR 2, T901.32–35 (Malone); letter from Burston to McAlinden, dated 16 May 1996, ex 108.

²¹⁹ Minutes of meeting No. 37 of the Committee of the Maitland Clergy Central Fund, dated 5 August 1997, ex 219, tab 296, p 694; letter from Hickey to Malone, dated 28 June 2002, ex 103; letter from Burston to Stinson, dated 16 May 1996, ex 219, tab 284; letter from Burston to Davoren, dated 10 August 1999, ex 219, tab 304; letter from Malone to McDonald, dated 1 October 2004, ex 219, tab 444, p 1173.

²²⁰ Minutes of meeting No. 37 of the Committee of the Maitland Clergy Central Fund, dated 5 August 1997, ex 219, tab 296; fax message from Coolahan to Mears, dated 13 August 1997, ex 219, tab 297.

²²¹ NSW Police statement of AE, dated 8 October 1999, ex 219, tab 312; statement of complaint by AE, dated 5 October 1999, ex 172.

²²² Warrant in the first instance to apprehend a person charged with an offence for McAlinden, dated 1 December 1999, ex 219, tab 322.

²²³ NSW Police statement of AF, dated 13 July 2001, ex 219, tab 334.

²²⁴ Departures and Arrivals of McAlinden into and out of Australia, annexure A to ex 217.

²²⁵ NSW Police IASK 777437 Request for full address of McAlinden, dated 22 June 2006 and Centrelink Release of Information form re Denis McAlinden, dated 27 June 2005, ex 219, tab 465.

²²⁶ Application for the extradition of McAlinden by Watters, dated 25 September 2005, ex 34.

abuse, McAlinden responded, 'I was previously charged with child abuse matters and I beat those charges so if I am around long enough, I will beat these charges too'.²²⁷

- 11.60 Suffering from advanced terminal cancer at the time, McAlinden was not extradited to New South Wales.²²⁸ He died on 30 November 2005.²²⁹

²²⁷ Statutory declaration of Grono, dated 2 May 2013, ex 5, para 26.

²²⁸ Statutory declaration of Grono, dated 2 May 2013, ex 5, paras 39–40.

²²⁹ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166; phone messages re McAlinden death from heart attack, dated 1–2 December 2005, ex 219, tab 477.

12 Who knew what and when: church officials' awareness of McAlinden's propensity for child sexual abuse

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Introduction

- 12.1 This chapter examines the information that certain officials of the Catholic Church, particularly those in Maitland–Newcastle Diocese, had in relation to McAlinden's propensity for sexually abusing children and the circumstances of that knowledge.
- 12.2 Through its compulsory processes and the endeavours of its personnel, the Commission obtained a substantial quantity of documentation relating to McAlinden from the Diocesan holdings. To a very large extent the Diocese cooperated in the production of such documentation. The result is a large amount of material that is revelatory about Diocesan knowledge of and attitudes towards McAlinden at specific times. In particular, there is a substantial amount of documentary evidence supporting the proposition that senior Diocesan officials, including various bishops, were aware at various times of reports or complaints that McAlinden had sexually abused children.

- 12.3 In chronological terms, the first instance of reported sexual abuse by McAlinden occurred in 1949, although it appears not to have been recorded or reported until 2007.¹ Similarly, a reported incident of sexually inappropriate conduct by McAlinden in 1954 necessitated the involvement of the then bishop, John Toohey.² Significantly, in May 1976 a six-page handwritten letter from Monsignor Patrick Cotter to Bishop Leo Clarke contained information that would serve to highlight the danger McAlinden presented to children.³
- 12.4 The Commission also considered instances of knowledge on the part of particular Diocesan officials in the 1980s; having regard to its impact on potential criminal processes, the detail of this is examined in the confidential volume of this report. For present purposes it is sufficient to note that there were further reports of McAlinden's inappropriate touching of children, followed by some action at Diocesan level.
- 12.5 This was followed by McAlinden's arrest, trial and acquittal in Western Australia in 1991 and 1992. Clarke was kept informed of that criminal process.
- 12.6 The next revelations relate to allegations in 1993, about which the Commission heard evidence from current officials of the Catholic Church – in particular, Bishop Michael Malone, Father Brian Lucas, Father William Burston, Monsignor Allan Hart and Sister Paula Redgrove. Clarke withdrew McAlinden's faculties in February 1993.
- 12.7 In 1995 there was further agitation in the Diocese, this time in relation to McAlinden's presence in the Philippines. The agitation arose at least in part from parishioners in Maitland–Newcastle Diocese expressing concern that, although McAlinden had been removed from the Diocese, he continued to pose a risk to children at his new location. Aspects of the correspondence illuminate the attitude then adopted by certain Diocesan officials regarding McAlinden. These officials took particular steps at that stage to make some others aware of the danger McAlinden presented but failed to report McAlinden directly to the police.
- 12.8 In October 1995 canonical procedures were instituted against McAlinden.⁴ Those procedures and the circumstances surrounding them are necessarily dealt with in a limited way in this chapter; other aspects of the matter are dealt with in the confidential volume of this report.
- 12.9 In late 1997 the Diocese received a further report about McAlinden; it involved a male victim, and at least one church official, Malone, had knowledge of that complaint.⁵
- 12.10 The Commission considered events in 1999, 2001 and 2002, when further victims of McAlinden came forward to the police or to the Church under the processes of the Towards Healing protocol. (The bishops and leaders of religious institutes of the Catholic Church in Australia had introduced the protocol in December 1996 in order to formalise the principles and procedures for responding to complaints of sexual abuse involving personnel of the Catholic Church in Australia).⁶ In October 1999 AE reported McAlinden's repeated sexual abuse of her in 1954 to the Church under the Towards Healing protocol⁷ and then to the police.⁸ Her complaint led to then Detective Senior Constable Mark Watters starting an investigation of McAlinden in October

¹ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243.

² Report of Johns to Clarke, dated 5 November 1987, ex 59, p 210.

³ Letter from Cotter to Clarke, dated 17 May 1976, ex 57.

⁴ Letter from Clarke to McAlinden, dated 19 October 1995, ex 67.

⁵ Handwritten note of telephone message from UR55 to Malone, attached to handwritten note of Malone re conversation with UR55, ex 9; TOR 2, T907.17–18 (Malone).

⁶ Towards Healing principles and procedures in responding to complaints of sexual abuse against personnel of the Catholic Church in Australia, dated December 1996, ex 219, tab 292.

⁷ Statement of complaint by AE, dated 5 October 1999, ex 172.

⁸ NSW Police statement of AE, dated 8 October 1999, ex 219, tab 312.

1999 (as detailed in Chapter 16). In 2002 AC came forward, also via the Towards Healing protocol;⁹ her dealings with Malone and others are dealt with in paragraphs 12.341 to 12.349.

- 12.11 After McAlinden's death on 30 November 2005¹⁰ more victims came forward and reported to the Diocese instances of sexual abuse committed by him between 1949 and 1996 to 1997.
- 12.12 The role of this Commission is to report on the extent to which church officials facilitated and assisted relevant police investigations or hindered or obstructed them. This includes whether such officials took steps to report to police information that could have facilitated and/or assisted a police investigation of McAlinden's sexually inappropriate conduct with young children.
- 12.13 Documentary evidence and testimony before the Commission reveal that various church officials knew a great deal about McAlinden's propensity for sexually abusing children. It was not until August 1999, however, that the Diocese (by Malone using the Professional Standards Office of the Catholic Church) relayed any aspect of this reported offending history to the police.
- 12.14 The evidence reveals that particular Diocesan officials knew McAlinden had in fact admitted he had sexually abused children. Reference to these admissions was made in a letter between the then vicar general and the bishop in 1976¹¹ and again in correspondence about events in early 1993. The fact of those admissions was not conveyed to the police, even when the Diocese was made aware in 1999 that police were investigating the sexual abuse of AE that had occurred in 1954. Nor did the Diocese volunteer to provide to police Diocesan files on McAlinden when police made contact with the chancery in late 1999.
- 12.15 This chapter examines the records and evidence concerning what knowledge existed and when, and on the part of whom, in connection with McAlinden's sexually inappropriate conduct with children. Consideration is also given to whether there were failures to facilitate and assist police in their investigation of McAlinden. In this regard, as the evidence reveals, the Diocese repeatedly failed to report to police allegations made known to various church officials around 1954 and McAlinden's death in November 2005.

Potential criminal concealment of child sexual abuse

- 12.16 In some instances, failure to report a particular crime to the police can in itself be a crime. Chapter 5 provides an overview of offences that relate to the concealment of crimes. In short, until 1990 the common law offence of misprision of felony made it an offence in prescribed circumstances not to reveal knowledge about the commission of a felony.¹² Although that offence continues in effect for alleged misprision committed earlier in time,¹³ since 25 November 1990 it has otherwise been abolished.¹⁴ Section 316 of the *Crimes Act 1900* (NSW)¹⁵ has, since 17 March 1991, made it an offence to conceal a serious offence or, since 1 January 2000, to conceal a serious indictable offence.
- 12.17 In particular instances the question of whether there is, for the purposes of s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW), sufficient evidence warranting the prosecution of particular persons in connection with alleged criminal concealment of child sexual abuse is dealt with in the confidential volume of this report, having regard to the need to avoid adversely

⁹ Handwritten statement of complaint by AC; typed and corrected statement of complaint by AC, dated 12 June 2002, ex 179.

¹⁰ Statutory declaration of Tynan, dated 4 December 2013, ex 255.

¹¹ Handwritten letter from Cotter to Clarke and typescript by an officer of the NSW Crown Solicitor, dated 17 May 1976, ex 57.

¹² Being an offence that carried a penalty of penal servitude: s. 29 *Interpretation Act 1897 No 4* (NSW).

¹³ See s. 340 *Crimes Act 1900* (NSW).

¹⁴ *Crimes (Public Justice) Amendment Act 1990* (NSW).

¹⁵ The operation of which is also discussed at para 5.48, Chapter 5.

affecting potential criminal proceedings. In some other instances the Commission was not satisfied that it ought to make such a finding pursuant to s. 10(1) of the Act (see Chapter 13 for analysis in this respect).

Observations in relation to documents

- 12.18 The Commission heard evidence that canon law requires the destruction of particular documents relating to priests in specific circumstances.¹⁶ There is, however, no evidence that any such destruction of documents relating to McAlinden took place, and, as noted, the Commission compulsorily obtained a large amount of material from the Diocese, much of it illuminating as to Diocesan knowledge about McAlinden. Further, both Bishop William Wright and his predecessor, Malone, stated that destruction of documents did not occur during their respective times in office.¹⁷ The Commission accepts their evidence on that.
- 12.19 Documents from 1949 until the date of McAlinden's death (and, indeed, afterwards) were reviewed. Of particular assistance to the Commission's work were the four-volume 'Zimmerman Services McAlinden file' and the 'Bishop's Chancery file' dealing with McAlinden. Much of that material was tendered before the Commission as part of the seven-volume tender bundle for the public hearings in relation to the second term of reference.¹⁸
- 12.20 The Commission makes the following general observations arising from the documentary evidence:
- During his episcopacy Clarke occasionally stored some papers thought to be confidential in a briefcase.¹⁹ Material relating to McAlinden might have been in the briefcase during Clarke's time as bishop, although there is no evidence permitting a conclusive finding on this.
 - Malone gave evidence that it was common knowledge 'around the traps' that in any diocese there would be some confidential files on priests.²⁰
 - Malone's evidence was that at a brief handover with Clarke in November 1995 he had hoped to be shown where any secret documents relating to priests could be found. He said Clarke pointed to an extensive briefcase in the corner of his office and said that was where the documents were.²¹
 - Sometime after Malone took over from Clarke in November 1995 Malone removed all material in the briefcase relating to clergy and placed it in the files held in the bishop's office.²² Malone told the Commission he was unable to recall whether at that time there were papers in the briefcase referring to McAlinden (or Father James Fletcher).²³ During Malone's episcopacy the bishop's files included a file on McAlinden that by 2002 was extensive – one that Malone described to AC, a victim of McAlinden, as 'so large you couldn't jump over it'.²⁴
 - According to Ms Helen Keevers, Malone kept two sets of personnel files relating to priests: one set contained standard information about priests; the other files, which contained

¹⁶ TOR 2, T2376.30–35 (Usher); expert opinion report by Dr Austin, dated 3 July 2013, ex 209, pp 19–20.

¹⁷ TOR 2, T1007.44–1008.9; 1009.20–26 (Malone).

¹⁸ TOR 2 tender bundle, ex 219.

¹⁹ TOR 2, T812.41–813.2; T1057.24–26 (Malone).

²⁰ TOR 2, T789.14–16 (Malone).

²¹ TOR 2, T788.24–789.1 (Malone).

²² TOR 2, T813.4–7 (Malone); excerpts of TOR 2 in camera transcript of evidence of Malone, dated 22 November 2013, ex 306, T46.21–23.

²³ TOR 2, T 813.16–25; excerpts of TOR 2 in camera transcript of evidence of Malone, dated 22 November 2013, ex 306, T46.31–35.

²⁴ TOR 2, T849.13–25; T850.29–32 (Malone).

confidential information, were referred to as the ‘bad’ files.²⁵ The latter were kept in a particular drawer in the bishop’s office.²⁶ Keevers recalled that in the ‘bad’ file drawer there was a quite considerable file relating to McAlinden – an A4 folder ‘three to four inches thick’ and separate from his general personnel file.²⁷

- Malone acknowledged in his evidence that there was a confidential personnel file on McAlinden and that he did follow the canon law requirement to keep secret archives relating to priests.²⁸
- Nominated individuals had access to the files kept in the bishop’s office, and this would generally have included the vicar general, at least during Malone’s time.²⁹ Malone also afforded Keevers access to the files.³⁰
- Ms Elizabeth Doyle, the bishop’s secretary and personal assistant, also had access to the material but only after Malone became bishop.³¹
- At some time after the establishment of Zimmerman House in 2007³² (later renamed Zimmerman Services) the bishop’s file on McAlinden was photocopied or reconstructed, or both, to create or add to files to assist Zimmerman Services with the work it was doing with various victims of McAlinden.³³ Keevers’ evidence was generally consistent with that of Malone in this regard.³⁴
- Malone gave Zimmerman Services staff permission to use the bishop’s file on McAlinden if and when necessary.³⁵ This permission included Keevers being asked by Malone in or after 2004³⁶ to go through the ‘bad’ drawer and deal with any matters that had not been notified to authorities or had not been completely dealt with.³⁷
- After she had been at the Diocese for some time Keevers learnt there was much more information to which she could have access in the Diocesan archives. Documents in the archives were not kept in the form of particular complaint files.³⁸
- Malone gave evidence that he was aware of canon law requirements relating to the destruction of confidential documents in particular circumstances but said he had not destroyed any document in his time as bishop.³⁹

1954: first knowledge of McAlinden’s offending

12.21 Allegations and concerns about McAlinden’s sexual abuse of children date back to 1954, at which time Toohey reportedly had cause to discuss them with McAlinden.⁴⁰ In a report dated

²⁵ TOR 2, T2163.46–2164.6 (Keevers); T1951.47–1952.2 (Doyle).

²⁶ TOR 2, T2162.20–29 (Keevers).

²⁷ TOR 2, T2162.31–45 (Keevers).

²⁸ TOR 2, T1007.5–31 (Malone).

²⁹ TOR 2, T816.11–19; T880.16–21 (Malone); statement of Doyle, dated 2 July 2013, ex 167, para 21.

³⁰ TOR 2, T1005.22–28 (Malone).

³¹ TOR 2, T1945.8–21; T1962.36–46 (Doyle); statement of Doyle, dated 2 July 2013, ex 167, para 21.

³² Zimmerman House was formally opened on 4 September 2007. However, from 27 June 2011 following a restructure of the Diocese’s child protection services, it was renamed Zimmerman Services. For the Commission’s purposes, however, it is the same entity, and accordingly all references hereinafter will be to ‘Zimmerman Services’.

³³ TOR 2, T1005.30–42; T1006.3–21; T1007.39–42; (Malone).

³⁴ TOR 2, T2164.38–2165.21 (Keevers).

³⁵ TOR 2, T2162.2–9; T2163.4–15 (Keevers).

³⁶ TOR 2, T2163.30–37 (Keevers).

³⁷ TOR 2, T2163.4–15 (Keevers).

³⁸ TOR 2, T2164.8–18 (Keevers).

³⁹ TOR 2, T1007.44–1009.26 (Malone).

⁴⁰ Report of Johns to Clarke, dated 5 November 1987, ex 59.

5 November 1987 Dr Derek Johns, a consultant psychiatrist, recorded that McAlinden had told him of this during a psychiatric evaluation conducted against the background of allegations of child sexual abuse described as having then (in 1987) occurred ‘relatively recently’.⁴¹ After referring to the recent complaints against McAlinden, Johns wrote:

In any case according to Father McAlinden, there had been previous similar allegations, the first one occurring in 1954, when the late Bishop Toohey had cause to discuss the issue with Father McAlinden at that time.⁴²

12.22 There is also documentary evidence before the Commission, from AE, that in about 1954 she told her parents McAlinden had sexually abused her on multiple occasions; this included multiple instances of forced penile–vaginal intercourse.⁴³ She was aged about 11 at the time of the offences against her. AE recorded in her Towards Healing statement of complaint of October 1999 her recollection that her parents had made an appointment with the then bishop of the Diocese of Maitland to discuss the situation. Her understanding was that the bishop had later sent a letter to her parents about the matter.⁴⁴

12.23 AE recorded more detail about her parents’ complaint to the bishop in the statement she made to police on 8 October 1999, stating:

Later, mum and dad went over to see the Bishop at Newcastle and I remember going to a big house on the hill. I had to sit in the car and mum and dad went in to see the Bishop about what had been happening. The only thing they said was, ‘The Bishop doesn’t need to talk to you.’ ... Later, Father Barry O’Hearn who was also an assistant priest with Father McAlinden [sic] came to our house and talked with mum and dad. I hid but overheard some of the conversation. I remember dad saying something about receiving a letter from the Bishop. I don’t remember anything else being said at the meeting.⁴⁵

12.24 The Diocese did not produce the letter AE referred to – assuming such a letter once existed. Further, a written request for the letter was made in October 1999 by Watters, who was the investigating officer for the police investigation into McAlinden arising from AE’s complaint to police (as detailed in Chapter 16).⁴⁶ On the evidence before the Commission, his letter of request was not answered by any written communication from the Diocese.⁴⁷

12.25 However, Monsignor Allan Hart (vicar general of the Diocese from 1990 to 1995), agreed that by April 1993 he had been told by Bishop Leo Clarke that McAlinden had been accused of paedophile activity dating back about 40 years. Hart agreed that he told AL (another McAlinden victim whose complaint he received – as detailed in para 12.245 and following) this.⁴⁸ In 1993 AE’s complaint of sexual abuse would have occurred approximately 40 years before.

Conclusion

12.26 The Commission accepts that AE was sexually abused by McAlinden in around 1953 or 1954 when she was aged around 11 years.

⁴¹ *ibid*, p 209.

⁴² *ibid*, p 210.

⁴³ NSW Police COPS Event Report E 8026529, dated 8 October 1999, annexure D to ex 47. Malone gave evidence to the Commission indicating his acceptance of AE’s account: TOR 2, T917.11–921.15. In addition, in March 2003, Malone took steps to report AE to police as a victim of sexual abuse by McAlinden: Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency Form, dated 4 March 2003, ex 100; T997.21–998.16 (Malone); see para 12.345 and following.

⁴⁴ Statement of complaint by AE, dated 5 October 1999, ex 172.

⁴⁵ NSW Police statement of AE, dated 8 October 1999, ex 219, tab 312, p 778.

⁴⁶ Letter from Watters to Bishop’s Chancery Newcastle, dated 8 October 1999, ex 99.

⁴⁷ TOR 2, T37.29–35 (Watters).

⁴⁸ TOR 2, T1463.19–28 (Hart).

- 12.27 Having regard to the totality of the evidence, the Commission also accepts that in or around 1954 AE's complaint was reported to Bishop Toohey. AE's police statement and her Towards Healing statement of complaint (accepted into evidence on the basis that AE is deceased), detail her recollection that she told her parents of the abuse (aged 11), who then saw the Bishop to discuss the matter. This evidence, coupled with Dr John's 1987 report which records McAlinden stating that Bishop Toohey had had cause to discuss 'similar allegations' with him in 1954, and also Hart's reference to Clarke advising him in 1993 that McAlinden had been a paedophile for forty years, support this finding.

1957 to 1958: ABC reportedly informs Singleton parish priest of abuse by McAlinden

ABC's evidence

- 12.28 ABC was in his sixties when he gave evidence to the Commission⁴⁹ that he had been physically, verbally and sexually abused by McAlinden when in first class at primary school, and aged about 6 years. He said the sexual assaults went on for about two years, on and off.⁵⁰ His evidence was that the assaults occurred while he was learning Latin, after McAlinden would ask him to sit on his knee.⁵¹
- 12.29 ABC said he told a priest in the confessional about this interference, and after this 'they' started to denigrate him.⁵² He told the Commission that McAlinden:
- ... got hold of me and he cut the bit out of my trousers and actually assaulted me and – not that I want to go into that, but that's ... I just told it how it was ... I have been saying to Maureen [O'Hearn] he sodomised me, but I wouldn't have said that because I wouldn't have known what that meant and I wouldn't have known that word, but thinking – like, realising about it now, I just spoke like a little child.⁵³
- 12.30 ABC said a few days after his confession to one priest, a more senior priest in the parish visited the school with Sister Paula Redgrove and some other nuns and spoke to him in the playground:
- They told me if I ever repeated this or ever done it that I was going to hell. They said again, that I was an evil person and I was making these lies up about the church and that the church would ... that God would punish me ...⁵⁴
- 12.31 ABC said that in 1996 Redgrove came to his business premises. She told him she had come to apologise 'for what we've done to you'. They talked about school days, and ABC said Redgrove told him she was sorry for how they used to beat him.⁵⁵

Sister Redgrove's evidence

- 12.32 Sister Paula Redgrove is a retired Sister of Mercy. She had worked as a teacher in various schools in the Diocese and in later years, including in the 1990s, provided pastoral care to parishioners, particularly in the Nelson Bay area.⁵⁶
- 12.33 Redgrove denied being involved in the incident in the playground, as ABC had asserted. She recalled an incident where the senior priest identified in ABC's evidence told ABC he should not

⁴⁹ At an in camera hearing before the Commission on 11 July 2013.

⁵⁰ TOR 2, T6.21–33 (ABC in camera).

⁵¹ TOR 2, T10.16–25 (ABC in camera).

⁵² TOR 2, T8.30–36 (ABC in camera).

⁵³ TOR 2, T11.11–22 (ABC in camera).

⁵⁴ TOR 2, T12.15–19 (ABC in camera).

⁵⁵ TOR 2, T16.25–45 (ABC in camera).

⁵⁶ TOR 2, T2.39–45; T6.10–25 (Redgrove in camera, 22 July 2013).

be involved in a particular sporting activity he usually took part in, but she had no recollection of any incident in which ABC was called to account by that priest for telling lies in the confessional about McAlinden – or, indeed, for telling lies at all.⁵⁷ She gave evidence that in her view it was unlikely the priest had said anything to ABC about what he (ABC) had told a priest in confession since she believed he would have been ‘too scrupulous’ to do so. Redgrove said the rules that apply to confession are sacrosanct: a priest should never disclose what a child says to him in confession.⁵⁸

12.34 Redgrove did, however, recall that on one occasion, when ABC was aged about 11, she observed McAlinden verbally abusing him while he (ABC) was waiting with others for the school bus to arrive.⁵⁹

12.35 Redgrove agreed that years later (probably in the 2000s) she went to ABC’s business premises and spoke with him. She said she did this because she felt sorry for him because McAlinden had verbally abused him as he just stood there. She wanted to apologise to him on behalf of the Church.⁶⁰

Conclusions

12.36 The senior priest identified by ABC is deceased⁶¹ and the events about which ABC gave evidence happened many years ago. There appears to be a conflict in ABC’s and Redgrove’s evidence relating to the playground incident. The Commission perceived both ABC and Redgrove to be witnesses who were aiming to give a truthful account of the matters in question.

12.37 The Commission accepts that ABC was sexually abused by McAlinden. As to the precise events in the playground and the confessional, the events occurred more than 55 years ago and, as might be expected, there are no contemporaneous records. In respect of the confessional, the priest identified by ABC is deceased. ABC was also endeavouring to recall events that happened in distressing circumstances when he was about 6 years of age. In such circumstances, the Commission is unable to make any positive findings as to the matter relating to the confessional.

12.38 Redgrove was firm in her evidence that, contrary to ABC’s evidence, the playground incident did not occur in her presence. She was generally an impressive witness. She gave evidence on this and other matters in a careful manner, giving the Commission confidence that it could generally rely on her accounts.

12.39 On the weight of the evidence it is not possible to find that Redgrove was present during any incident in which ABC was told he would ‘go to hell’ for telling lies about the Church.

May 1976: reports of McAlinden sexually abusing children at Forster–Tuncurry

12.40 In 1975 AO, then aged 12 years, was abused by McAlinden, the then parish priest at Forster–Tuncurry parish, during a picnic at Lake Cathie, north of Forster.⁶² AO told the Commission:

The abuse happened while I was swimming by myself in the lake. Father McAlinden came up behind me as I was pushing a surf mat. I was breast deep in water. Father McAlinden put his left arm around my shoulders and his right hand down inside the front of my bikini bottoms

⁵⁷ TOR 2, T45.27–46.4 (Redgrove in camera, 22 July 2013).

⁵⁸ TOR 2, T55.38–T56.7; T56.25–37 (Redgrove in camera, 22 July 2013).

⁵⁹ TOR 2, T38.18–39.14 (Redgrove in camera, 22 July 2013).

⁶⁰ TOR 2, T38.35–37; T39.16–47 (Redgrove in camera, 22 July 2013).

⁶¹ Statutory declaration of Tynan, dated 4 December 2013, ex 255.

⁶² Submission of AO, dated 14 January 2013, ex 266.

and held me very tightly. His fingers went inside me. He pushed himself hard up against me. I could not get away for some time and struggled. Eventually he let go and I swam to the shore and cried.⁶³

- 12.41 AO reported the abuse to her mother, BL, a 'long time' – possibly as long as 12 months – after the abuse.⁶⁴ BL organised a meeting with other parents from AO's school and AO told the meeting of the abuse.⁶⁵ In early 1976, after AO had reported the abuse to BL, a parents' meeting was also held at the home of Mr John Vaughan, himself a parent, to discuss 'serious matters that Father McAlinden had performed on their children'.⁶⁶
- 12.42 This report coincides with matters mentioned in the minutes of two meetings of the Diocesan consultors and the 'Cotter–Clarke letter' of 17 May 1976, as follows.

The minutes of the Diocesan consultors

- 12.43 The minutes of the meeting of Diocesan consultors that took place on 15 May 1976 recorded that 'complaints had come from Forster parishioners concerning Fr. D. McAlinden & the children'. The minutes also noted that 'Msgr Cotter said he would visit Forster parish on the following Sunday'.⁶⁷ This appears to correlate with the circumstances AO described.
- 12.44 At the time of the meeting Monsignor Patrick Cotter was Vicar Capitular, and thus interim head of the Diocese, following the death of Bishop Toohey in September 1975.⁶⁸ Cotter held that position from September 1975 to June 1976.
- 12.45 The minutes of the consultors' meeting held on the following day, Sunday 16 May, recorded the following:
- Msgr P Cotter reported on his visit to Forster, his discussion with Father McAlinden and a separate discussion with some of the parents. Consultors agreed that Reverend Father McAlinden should leave Forster. They also agreed Father McAlinden be given permission to seek work in Geraldton Diocese.⁶⁹
- 12.46 These incidents are also referred to in a letter from Vaughan, who was present at the meeting with Cotter and who wrote to AO in 1993 responding to her request for information about what action had been taken at the time. In his letter Vaughan said they (the parents) took immediate action with the Catholic Education Office and McAlinden was then relieved of his duties at the parish.⁷⁰
- 12.47 Cotter attended the relevant two meetings of the consultors, along with Monsignor Casey and Fathers Flatley, Simms, Sylvester and Wilkinson.⁷¹ With one exception, all those listed as present are now dead.⁷² Simms is alive, but he was unfit to give evidence to the Commission because of his advanced age and health problems.

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ Excerpt of private hearing transcript of AO, dated 26 March 2013 and related private hearing exhibit 99, statement of AO, dated 14 January 2013, ex 266; excerpt of private hearing transcript of BM, dated 15 April 2013 and related private hearing exhibit 125, statement of BM, dated 10 March 2013, ex 267.

⁶⁷ Minutes of Diocesan Consultors' meeting, dated 15 May 1976, ex 72.

⁶⁸ Diocese of Maitland clergy appointment document of Cotter, undated, ex 219, tab 516; statutory declaration of Tynan, dated 4 December 2013, ex 255, para 1.

⁶⁹ Minutes of Diocesan Consultors' meeting, dated 15 May 1976, ex 72.

⁷⁰ Letter from Vaughan to AO, dated 13 October 1993, ex 266; minutes of Diocesan Consultors' meeting, dated 15 May 1976, ex 72.

⁷¹ Minutes of Diocesan Consultors' meeting, dated 15 May 1976, ex 72.

⁷² Statutory declaration of Tynan, dated 4 December 2013, ex 255.

The Cotter–Clarke letter

- 12.48 An important document the Commission uncovered is the 17 May 1976 handwritten letter from Cotter to Clarke (referred to here as the Cotter–Clarke letter) – see Appendix S. The letter recorded, among other things, further details about McAlinden and the Forster–Tuncurry incidents. As noted, Cotter was Vicar Capitular following the death of the previous bishop. Clarke was at the time the bishop elect for the Diocese.
- 12.49 The letter began, ‘A trouble which I knew existed flared up during Thursday and Friday last week’. Cotter then referred to McAlinden’s background and his desire to go to somewhere else to work. He also referred to McAlinden’s move while in Papua New Guinea from the Diocese of Mendi to the Diocese of Mount Hagan, observing that it ‘must have been for some reason’.⁷³ Cotter noted that Toohey had ‘hinted’ that it involved an incident associated with McAlinden’s bad temper but that in any case he had returned to Maitland and sought permission to go to Western Australia, pleading genuine interest in the missions. Cotter believed this to be sincere, but Toohey had declined to give permission. Following this, on 1 November 1975, McAlinden had received the appointment to Forster–Tuncurry.⁷⁴
- 12.50 Cotter then described further incidents arising in relation to Forster–Tuncurry:

On May 6 (I think) a deputation came from Forster-Tuncurry to the Education Office to complain that Father Mac had struck a child about the head while giving a religion lesson in preparation for forthcoming confirmation. Father Coolahan passed the situation on to me. A week later while I was away in Sydney for our talk, a further deputation (led by a young solicitor) came to Newcastle with other charges against Father Mac. In my absence Father Coolahan saw them. These charges have to do with ‘de sexto’ in an unusual way but I think not extremely serious.

On Saturday morning I discussed the situation and the charges with the other consultors. On Saturday evening I went to Forster-Tuncurry to meet a group of some 10 or 12 people convened by telephone independently of Father Mac. I stayed with them to a late hour but they insisted that Father Mac had to go. He has lost all credibility, the children are scared of him – in the circumstances he himself should not want to stay in the parish etc.

The de sexto business. Father Mac has an inclination to interfere (touching only) with young girls aged perhaps 7 to 12 or so. The furore caused by striking a boy about the head in the presence of the whole class caused the girls to give the other information to their mothers which they had til then withheld. On examination this is found to be factual. Having dealt with the people, I had a long session with Father Mac at the Presbytery. **Slowly, very slowly, he admitted some indiscretions but then agreed that it was a condition that had been with him for many years. He feels no such inclination towards the mature female but towards the little ones only.** There never has been any physical assault or damage but inevitably it leaves a psychological scar on the child’s mind and attitude and religious outlook. Father Mac finally came to the point of asking me to try and arrange some treatment for him. He is willing to resign his charge of the parish – beginning to feel some embarrassment saying mass and preaching.

I’ve never heard of this condition before and knowing Father Mac, as we do, we think it cannot be real serious, nor do we believe that there is any danger of a development into assault or rape. At the same time what has been going on is more than can be tolerated.

Last night we had a further meeting of consultors and agreed to accept Father Mac’s resignation and to fill the parish by promoting Father A Brady, Senior Curate at present at Raymond Terrace ...⁷⁵ [emphasis added]

⁷³ Letter from Cotter to Clarke, dated 17 May 1976, ex 57, p 81.

⁷⁴ Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

⁷⁵ Letter from Cotter to Clarke, dated 17 May 1976, ex 57, pp 86–87.

12.51 The following further extract from the letter is revelatory of Diocesan attitudes and conduct in May 1976:

The point is that I would still say that we can recommend Father Mac to Bishop Thomas provided of course the Bishop is told something of all this background. **The reason why Father wants to go so very much now is because it will afford a good cover-up for his resigning the parish.** The priest and his own family, most of whom live in Sydney, will not wonder because his desire to go to Geraldton a few years ago was well known. My recommendation is that we try to find some appropriate treatment for him over the next two months or so, during which time he stays with members of his family in Sydney. Then that **Bishop Thomas be asked to accept him for one or two years, after which he would come back to the Diocese.**⁷⁶ [emphasis added]

12.52 From the extract above it would seem that McAlinden initiated the suggestion that he go to Western Australia to ‘afford a good cover-up for his resigning the parish’. Cotter, at that time the most senior clergyman in the Diocese, apparently endorsed McAlinden’s proposal to cover up the circumstances relating to the Forster–Tuncurry complaints by recommending that after ‘some appropriate treatment ...’ he go to Western Australia for ‘one or two years after which he would come back to the Diocese’.⁷⁷

12.53 The matters minuted by the consultors on 15 and 16 May 1976 demonstrate that Cotter had already implemented actions consistent with that approach before writing the letter to Clarke, such as by agreeing that McAlinden should leave Forster and be given permission to work in Geraldton Diocese.⁷⁸ That Cotter was prepared to document for the incoming bishop McAlinden’s proposal of a ‘cover-up’ and his agreement with it reveals much about the attitude Cotter perceived to be acceptable in connection with such matters.

12.54 Commission personnel located a copy of the Cotter–Clarke letter in the McAlinden files held by Zimmerman Services, among documents the Diocese provided for inspection in January 2013. Keevers, who had first seen the letter some time in 2007, explained that it was originally part of a file on McAlinden held in the bishop’s office and that ‘it was practice to create Zimmerman House files from files in the bishop’s office when a priest was under investigation’.⁷⁹

12.55 Clarke died on 3 June 2006.⁸⁰ There is nothing to suggest that Clarke did not receive the Cotter–Clarke letter. The Commission finds that Clarke received and read the letter. In this respect, the following matters are relevant:

- Cotter wrote the letter.
- A copy of the letter was found in the Diocesan holdings.
- The contents of the letter are of crucial importance – namely, a Diocesan priest having to resign following complaints of inappropriate conduct towards children.
- As incoming bishop, Clarke needed to be apprised of important Diocesan developments.
- Cotter needed to ensure that Clarke was apprised of such developments, particularly as they related to McAlinden.

⁷⁶ *ibid*, p 87.

⁷⁷ *ibid*, p 87.

⁷⁸ Minutes of Meeting of Diocesan Consultors, 17 May 1976, ex 219, tab 57.

⁷⁹ Statutory declaration of Keevers, dated 22 December 2013, ex 271. In addition, in response to a summons, Catholic Church Insurances Ltd produced a copy of the Cotter–Clarke letter from its holdings relating to McAlinden. The evidence is that material on the bishop’s files at the Diocese (which included the Cotter–Clarke letter) was copied for Zimmerman Services sometime after 2005 (TOR 2, T1005.30–42; T1006.3–21; T1007.39–42 (Malone)).

⁸⁰ Statutory declaration of Tynan, dated 4 December 2013, ex 255, para 1.

- 12.56 In a subsequent letter, dated 11 June 1981, to Bishop Thomas of the Diocese of Geraldton, Western Australia, Clarke referred to his earlier discussion with Thomas ‘about Father Denis McAlinden who had applied in 1976 to work in your Diocese’.⁸¹ Clarke then stated, ‘At that time there were some problems that I mentioned to you but as I said in Sydney, I think that these problems are now over’. That letter clearly shows that in 1976 Clarke had knowledge of ‘problems’ at the time in connection with McAlinden, and the Commission finds this statement to be a reference to the accusations and related matters discussed in the Cotter–Clarke letter.
- 12.57 Monsignor Coolahan, referred to in the Cotter–Clarke letter, was at the relevant time a representative of the Catholic Education Office.⁸² He died on 27 August 2000.⁸³
- 12.58 A letter of resignation from Forster–Tuncurry parish, addressed to Cotter, dated 17 May 1976 and bearing McAlinden’s signature, records the date on which McAlinden resigned from his parish.⁸⁴ Documents the Diocese produced show that on 20 May 1976 a Father Brady was appointed (apparently being ‘promoted’) parish priest at Forster–Tuncurry.⁸⁵
- 12.59 Fathers Burston and Saunders were both priests of the Diocese in 1976. Burston gave evidence that he knew nothing about the allegations of McAlinden’s sexual abuse until the 1990s. Saunders acknowledged that he had heard rumours in the late 1980s.⁸⁶
- 12.60 The Cotter–Clarke letter is important for a number of reasons. It reveals that senior officials of the Diocese, being at least the vicar capitular (Cotter), the bishop elect (Clarke) and a representative from the Catholic Education Office (Coolahan) were made aware of the very serious complaints about McAlinden’s conduct with children. The Cotter–Clarke letter noted, among other things, the following:
- McAlinden had been ‘interfering’ with young girls.
 - The recent complaints from Forster–Tuncurry in relation to McAlinden had been ‘found to be factual’.
 - McAlinden had admitted to ‘indiscretions’.
 - McAlinden had an ‘inclination’ towards young females but not towards mature females.
 - McAlinden’s conduct was such as to ‘inevitably’ leave ‘a psychological scar on the child’s mind and attitude and religious outlook’.
 - Cotter had met with the parents who had complained about McAlinden’s conduct.
 - McAlinden’s conduct was such that he had asked for treatment in connection with his inclinations.
 - McAlinden’s conduct was such that the consultors were prepared to accept his resignation as parish priest.⁸⁷

⁸¹ Letter from Clarke to Thomas, dated 11 June 1981, ex 219, tab 80, p 128.

⁸² Letter from Makinson & d’Apice to the NSW Crown Solicitor regarding Monsignor Coolahan, dated 30 January 2014, ex 307. A summons issued to the Catholic Education Office (now known as the Catholic Schools Office) led to a response to the effect that they were unable to locate any documents relevant to these events: Summons and Response, Catholic Education Office Diocese in Maitland–Newcastle, ex 245.

⁸³ Statutory declaration of Tynan, dated 4 December 2013, ex 255.

⁸⁴ Letter of resignation from McAlinden to Cotter, dated 17 May 1976, ex 219, tab 58.

⁸⁵ Letter from Cotter to Brady, dated 20 May 1976, ex 219, tab 60.

⁸⁶ TOR 2, T1158.37–1159.32 (Saunders).

⁸⁷ Letter from Cotter to Clarke, dated 17 May 1976, ex 57.

- 12.61 The fact that in the letter Cotter was minded even to discuss the question of whether McAlinden’s suggested conduct (as he reported it) might ‘develop into assault or rape’ is also revelatory. It represents further evidence of the potential seriousness of the conduct in question, given that the discourse concerned whether or not McAlinden’s conduct might ‘develop’ into assault or rape.
- 12.62 The Commission summonsed documents relating to McAlinden from a number of entities, including the Diocese and the New South Wales Police Force. It received no documents or other evidence suggesting that either Clarke or Cotter, or any person on their behalf, had notified police of complaints from parents about McAlinden and the matters touched on in the Cotter–Clarke letter. Further, the Cotter–Clarke letter – including as it did the reference to a move to Geraldton as ‘affording good cover-up for his resigning from the parish’ – indicates a willingness, on the part of Cotter at least, not to disclose to anyone outside the church hierarchy the true state of affairs relating to McAlinden and his propensity for sexually abusing children.
- 12.63 On the basis of the Cotter–Clarke letter alone, there can be little doubt that from 1976 the Diocese – through two of its most senior clergy, Clarke and Cotter – had information that would have been of material assistance to police in any investigation of McAlinden’s offending, whether begun at that time or later. The Commission’s second term of reference requires a consideration of, among other things, the extent to which officials of the Catholic Church facilitated police investigations. Reporting McAlinden’s offending conduct to police in 1976 would have facilitated a police investigation by putting police on notice that there were matters warranting investigation.
- 12.64 In addition, putting aside the question of whether the Diocese had any strict legal obligation to do so, the Diocese, if acting in good conscience, should have provided such information to police in 1976.
- 12.65 Mr Vaughan’s letter to AO in 1993 provides some important background to this:
- Given the facts that we had to work with, and the attitudes prevailing at that time, the parents did not want the matter taken to the Civil Court and the Church authorities took it upon themselves to ensure that there would be no repeat of his behaviour.⁸⁸
- 12.66 Even allowing for the fact that the prevailing mindset at the time may not have been as attuned to perceived reporting obligations as the present day, the failure of the Diocese to report McAlinden to police was, in the Commission’s view, inexcusable.⁸⁹
- 12.67 The Forster–Tuncurry events demonstrate that by 1976 parents with children involved in the church school system were prepared to be vocal about the misconduct of McAlinden and had an expectation that Diocesan officials would act to protect children from him.
- 12.68 The Cotter–Clarke letter records that the Diocese, by virtue of a very senior official, Cotter, agreed to execute what he referred to as a ‘cover-up’ of the ‘resignation’ of McAlinden. The device, seemingly proposed by McAlinden himself, was a move to Geraldton. Subsequently, the Diocese arranged for McAlinden’s departure to Papua New Guinea (as discussed in the next section).⁹⁰
- 12.69 The Commission finds that the information set out in the Cotter–Clarke letter would clearly have been of assistance to any police investigation of McAlinden and, had it been disclosed during or

⁸⁸ Letter from Vaughan to AO, dated 13 October 1993, ex 266.

⁸⁹ Report of Johns to Clarke, dated 5 November 1987, ex 59, p 210.

⁹⁰ Pan Australian Travel Agency Invoice – open ticket to Port Moresby for McAlinden dated 28 October 1976, ex 219, tab 63.

after the investigation of AE's allegations in 1999 (described in detail in Chapter 16), would have facilitated and assisted the investigation of McAlinden.

- 12.70 Following the Cotter–Clarke letter and the non-reporting by Clarke and the Diocese of related matters to the police in and after 1976, McAlinden continued to sexually abuse children – in the late 1970s, the 1980s and into the 1990s. Reported instances are set out in Chapter 11.⁹¹

Further comments in relation to Cotter

- 12.71 In his letter to Clarke in May 1976, Cotter evinced an understanding that McAlinden had admitted to engaging in conduct with children that was wrong.⁹² Although the Commission saw no evidence that Cotter was made aware of the sexual abuse of AE, the events in Merriwa in 1987, the sexual abuse of AJ, AL and AK or the suggestion of admissions made to Lucas in early 1993, he was certainly aware of the 1976 events. His letter to Clarke shows he was prepared to engage in conduct that, as he described it, afforded McAlinden a 'cover-up' for leaving Forster–Tuncurry parish. Cotter retired in 1989 and died in July 2007.⁹³

- 12.72 A letter in evidence before the Commission, from Cotter to Clarke in June 1996, after the arrest of Father Vincent Ryan (a priest of the Diocese subsequently convicted of multiple sexual offences against children), noted that Cotter did not initially report Ryan to the police because he had 'no firm evidence' at that time.⁹⁴ It went on to say:

I ask myself whether, even if I had direct evidence, would I have reported to the police.
Probably not. In the context and circumstances of today – yes; of twenty years ago probably
No, I think I would have tried to keep it in house.⁹⁵

- 12.73 The Commission considers this illustrative of the attitude of senior Diocesan clergy at the time – that is, an intention to keep matters that would bring scandal on the Church 'in house' and away from civil authorities.

October 1976: a one-way ticket to Papua New Guinea

- 12.74 The evidence shows that McAlinden did not go to Western Australia in 1976, as contemplated in the Cotter–Clarke letter, but instead went to Papua New Guinea on a one-way airline ticket. The invoice for that flight, dated 28 October 1976, was forwarded to Clarke at the Diocesan offices in Newcastle.⁹⁶ It shows a flight from Brisbane to Port Moresby and then from Port Moresby to Kerema 'A/C Reverend Father D. McAlinden'. As can be seen from Figure 12.1, it bears a handwritten annotation 'paid by cheque from the M[aitland] Clergy Central Fund' on 9 November 1976.

- 12.75 Monsignor Allan Hart held office as auditor of the Sick and Retired Priests Fund in 1978 and was elected secretary of the Maitland Clergy Central Fund in 2000.⁹⁷ Although he was not an MCCF office holder in 1976, from his position in the Diocese he was able to speak in general terms about the MCCF's usual processes. He told the Commission it would have been 'exceptional' for

⁹¹ See, for example: submission of AO, dated 13 January 2013, ex 266; Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243, which indicates abuse of ABS (in 1973); ABT (1973); ABI (mid-1980s) and AQ (mid 1980s); and statutory declaration of AP, dated 16 August 2013, ex 284, in which AP states she was abused by McAlinden until 1996.

⁹² Letter from Cotter to Clarke, dated 17 May 1976, ex 57.

⁹³ Diocese of Maitland clergy appointment document of Cotter, undated, ex 219, tab 516; statutory declaration of Sean Tynan, dated 4 December 2013, ex 255.

⁹⁴ Letter from Cotter to Clarke, dated 2 June 1996, ex 219, tab 285, p 610.

⁹⁵ *ibid*, pp 611–612.

⁹⁶ Pan Australian Travel Agency Invoice – open ticket to Port Moresby for McAlinden, dated 28 October 1976, ex 219, tab 63.

⁹⁷ Statutory declaration of Hart, dated 16 March 2013, ex 138, para 1.

the MCCF to have bought a ticket of this nature for a priest.⁹⁸ Father Burston also said it would have been 'fairly unusual'.⁹⁹

Pan Australian Travel Agency Pty. Ltd.
 * ALSO AT ADELAIDE, PERTH, BRISBANE, CANBERRA & HOBART & MELBOURNE.
 150 - 152 Elizabeth Street, SYDNEY, 2000

INVOICE
 No 14610
 Date 28th October, 1976.

Reverend Bishop L. M. Clarke,
 Catholic Church Offices,
 396K,
 NEWCASTLE, N.S.W. 2300

BOOKING DETAILS							
Ref	Ticket No.	Date	From	Dep. Time	Flight Ship	Class	Amount
		03/11/76	BRISBANE/PORT MORESEY	0940	QF 25	Ecoy	142 80
		OPEN	PORT MORESEY/KEREMA	OPEN	OPEN	"	
A/c Reverend Father D. McAlinden							
SUNDRIES							
paid by cheque from M. Clary, Central Area cheque No 203532 Nov. 9, 1976							
TOTAL							\$ 142 80

Figure 12.1 Pan Australian Travel Agency Pty Ltd invoice: open ticket to Port Moresby for McAlinden¹⁰⁰

12.76 The existence of the one-way airline ticket invoiced directly to Clarke further supports the notion, as found by the Commission, that Clarke, being the head of the Diocese, had been apprised of the details of McAlinden’s reported sexual abuse of children, as outlined in the Cotter–Clarke letter, and that he approved McAlinden’s relocation to Papua New Guinea from the Diocese in 1976.

12.77 As described in Chapter 11, McAlinden remained in Papua New Guinea until early 1981, when he returned to Maitland Diocese (as it was then known) and was appointed parish priest at Belmont by letter dated 27 April 1981 from Clarke.¹⁰¹

1981: Geraldton, Western Australia

12.78 As noted, on 11 June 1981 Bishop Clarke sent a letter to Bishop Thomas recommending McAlinden for loan to Geraldton Diocese in Western Australia.

⁹⁸ TOR 2, T1422.5–23 (Hart).

⁹⁹ TOR 2, T1275.18–21 (Burston).

¹⁰⁰ *ibid.*

¹⁰¹ Letter from Clarke to McAlinden, dated 27 April 1981, ex 219, tab 77, p 124.

- 12.79 While on loan to Geraldton Diocese and within 18 months of his arrival, McAlinden was reported to have sexually abused AR. He was charged in relation to this alleged offending in September 1991 (as described below).

May 1987: a letter from John Hatton MP to Archbishop Clancy

- 12.80 On 11 May 1987 Mr John Hatton, independent member of the New South Wales Legislative Assembly, wrote to the Archbishop of Sydney, Cardinal Edward Clancy, raising concerns about McAlinden's reported behaviour with young children in the Maitland Diocese.¹⁰² It is apparent that a copy of the letter was forwarded to the Diocese since the Diocese produced a copy of it to the Commission. Hatton's complaint related, at least in part, to incidents in the town of Merriwa, where McAlinden served as parish priest in 1985 and 1986.
- 12.81 In his letter Hatton told Clancy he was writing 'in a very confidential way about an extremely delicate matter' that, he believed, 'should be handled within the Church'.¹⁰³ Hatton noted that there had been several complaints about McAlinden's behaviour with young children and that there was 'a great deal of concern at his continuing access to young people'.¹⁰⁴ He also recorded that people were reluctant to come forward, 'particularly if they feel that they will be the subject of some form of suppression or retaliatory action within the church structure'.¹⁰⁵ Hatton proposed that the archbishop appoint an envoy from outside the Diocese to provide an independent evaluation. He ended his letter thus:

Your direct intervention, even at a confidential level, would ensure that the problem cannot be in any way masked or avoided from within the Diocese and a permanent and satisfactory solution found.¹⁰⁶

- 12.82 The Diocese's response to the concerns Hatton raised is dealt with in the confidential volume of this report. That has been done to avoid compromising potential future criminal proceedings.

1988: McAlinden seeks permission to work in Wewak, Papua New Guinea

- 12.83 As described in Chapter 11, on 2 February 1988 Clarke sent a letter to Bishop Raymond Kalisz of the Diocese of Wewak in Papua New Guinea in response to a request by Kalisz that McAlinden be released to work in his diocese. Clarke referred to 'allegations towards the end of last year' that were made by some parents regarding McAlinden's behaviour with small girls because of his imprudent relationships and expressions of affection. He wrote that he had had the matter investigated but that the outcome proved inconclusive, and he noted that McAlinden had 'categorically denied any seriousness or guilt, admitting only that he had been imprudent'.¹⁰⁷ Clarke stated that in view of the allegations it would be 'unwise' for McAlinden to continue to work in Maitland Diocese and it would be 'a charity for some Bishop to take him on, knowing the problems that have arisen'.¹⁰⁸
- 12.84 Although Clarke's letter notified Kalisz of the reported incident the previous year, it did not advise Kalisz that there had in fact been multiple previous incidents leading to concern about McAlinden's conduct with children. Specifically, Clarke's letter made no reference to either the

¹⁰² Letter from Hatton to Clancy, dated 11 May 1987, ex 219, tab 133, p 202.

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*, p 203.

¹⁰⁷ Letter from Clarke to Kalisz, dated 2 February 1988, ex 58, p 229.

¹⁰⁸ *ibid.*

1976 events referred to in the Cotter–Clarke letter¹⁰⁹ or the 1954 events involving AE, as referred to in Dr Johns’ report to Clarke dated 5 November 1987¹¹⁰ (see para 12.21 and following). Since Clarke had written to Johns thanking him for his November 1987 report, a reasonable inference can be drawn that Clarke read the report and had thus seen the reference to the 1954 allegations that Bishop Toohey had discussed with McAlinden.¹¹¹ To the extent that Clarke did not already know McAlinden was the subject of allegations in 1954 of inappropriate conduct with children, the Johns report provided in 1987 must have brought this matter to his attention.

- 12.85 Had Clarke’s letter to Kalisz included reference to such earlier concerns, the risks McAlinden posed to young children would have been highlighted. It would seem, however, that even the limited disclosure made to Kalisz had some effect: it appears McAlinden did not go to work in the Diocese of Wewak¹¹² as had been proposed.

1988: Bunbury, Western Australia

- 12.86 Instead of staying in Papua New Guinea, McAlinden travelled to Bunbury, Western Australia,¹¹³ pursuant to a 7 October 1988 letter Clarke wrote to McAlinden, giving him permission to accept the invitation of Bishop Quinn (then the bishop of Bunbury Diocese) and wishing him well.¹¹⁴ That letter contained no reference to the sexual abuse allegations and suspicions surrounding McAlinden. Further, on the material before the Commission (including documents produced by Bunbury Diocese),¹¹⁵ there is no evidence that Clarke wrote to Quinn to alert him to any concerns about McAlinden. Nor is there any file note in the material provided that suggests any other warning was given to Quinn. Quinn died on 23 August 2008.¹¹⁶

September 1991: McAlinden charged

- 12.87 As noted, while on loan to Geraldton Diocese, McAlinden was reported to have sexually abused AR. On 4 September 1991 he was charged with three counts of indecent dealing with AR, then aged 9 to 10 years.¹¹⁷ He was committed for trial in May 1992 in the District Court of Western Australia. When the three counts proceeded to trial, the prosecution was obliged to prove each matter beyond reasonable doubt.
- 12.88 AR was 20 years old when she gave evidence at McAlinden’s trial. She told the court her father had cancer in 1982 and her mother, who had a paying job, also had responsibility for a disabled son. AR gave evidence of having been touched in the genital area by McAlinden when he was her parish priest, while she was with him in the presbytery. McAlinden’s counsel asked AR why she kept returning to the presbytery. She said:

¹⁰⁹ Letter from Cotter to Clarke, dated 17 May 1976, ex 57.

¹¹⁰ Report of Johns to Clarke, dated 5 November 1987, ex 59, p 209.

¹¹¹ Letter from Clarke to Johns, dated 10 November 1987, ex 219, tab 140.

¹¹² Statutory declaration of Frearson, dated 25 June 2013, ex 217.

¹¹³ This represented a second visit to Western Australia and records McAlinden as being ‘on loan to Geraldton Diocese’, 1981–1983: Diocese of Maitland clergy appointment document of McAlinden, undated, ex 166.

¹¹⁴ Letter from Clarke to McAlinden, dated 7 October 1988, ex 219, tab 164.

¹¹⁵ Bundle of documents from the Catholic Diocese of Bunbury, various dates, ex 219, tab 205; relevant correspondence between the NSW Crown Solicitor and the Diocese of Bunbury, Western Australia, dated 18 February – 5 March 2013, ex 247.

¹¹⁶ The Australian Catholic Directory List of Deceased Clergy in Australia, 1788 – 2013 entry re Most Rev Peter Quinn, dated 23 August 2008, ex 239.

¹¹⁷ Western Australia Police Department, Precis of Evidence for Denis McAlinden, dated 9 March 1992, ex 219, tab 188.

It made me feel important having little jobs to do over there. He made me feel important. He called me his little secretary. I was – I didn't have many friends in the town.¹¹⁸

12.89 Another young woman, who was present (as a young girl) when the third offence against AR was alleged to have taken place, gave evidence that she was also indecently touched on that occasion while sitting on McAlinden's knee and being tickled. She was cross-examined by defence counsel:

Q. You see, this isn't 1952, is it? It's 1982, and you were at the school ... and I'm sure you would have been taught about stranger-danger and matters of that nature ... You were taught about the danger of keeping away from strange people, particularly strange men?

A. Father McAlinden wasn't a stranger though.¹¹⁹

12.90 McAlinden gave evidence in his own defence and agreed he had often tickled the complainant, including on occasions when she was sitting on his knee.¹²⁰ He agreed he had told investigating police, 'she would have jumped and perhaps slipped down and my hand went further up'.¹²¹ The trial judge warned the jury of the danger of convicting on the uncorroborated evidence of a child, in the following terms:

The warning is this: It would be extremely dangerous to convict in cases of this nature, or in this case, on the uncorroborated testimony of the child as she then was, and as I say, the reason for that I think is obvious.¹²²

12.91 The judge later reminded the jury there was no corroborative evidence for the first two charges. McAlinden was acquitted of all three charges on 16 July 1992.

12.92 Documents provided to the Commission by the Diocese of Bunbury¹²³ and the Office of the Director of Public Prosecutions for Western Australia reveal no correspondence between the ODP and Clarke. It is apparent, however, that Clarke was kept aware of developments in the criminal proceedings in Western Australia. A letter dated 21 July 1992 from Bishop Quinn (then Bishop of Bunbury) to McAlinden stated:

Now that the dreadful legal actions have been put to a favourable conclusion I welcome you back to pastoral activity.

I have kept Bishop Clarke informed of the outcome of the case and of course he shares our relief.

Nothing to the contrary having been said I presume his permission for you to continue to work in Bunbury is included in his open permission of October 7 1988.¹²⁴ [emphasis added]

12.93 This letter was written five days after the verdicts of acquittal.

12.94 The Commission infers that Quinn's communication to McAlinden that Clarke 'shares our relief' is based on Clarke's communications with Quinn. That is consistent with the context of the letter, which proceeds on the basis that Quinn and McAlinden similarly shared a relief at the acquittal.

¹¹⁸ Excerpts from the hearing of *R v Denis McAlinden* (No 672 of 1992) dated 4 March – 16 July 1992 produced by the Office of the Director of Public Prosecutions for Western Australia and related correspondence, dated 31 January to 7 February 2013, ex 265, p 77.

¹¹⁹ *ibid*, p 110.

¹²⁰ *ibid*, p 197.

¹²¹ *ibid*, p 209.

¹²² *ibid*, p 260.

¹²³ Bundle of documents from the Catholic Diocese of Bunbury, various dates, ex 219, tab 205; relevant correspondence between the NSW Crown Solicitor and the Diocese of Bunbury, Western Australia, dated 18 February – 5 March 2013, ex 247.

¹²⁴ Letter from Quinn to McAlinden, dated 21 July 1992, ex 219, tab 195.

- 12.95 In addition to the complaints alleged by AR (of which McAlinden was acquitted) Clarke by this time would also have been aware of at the least following reports relating to McAlinden:
- Bishop Toohey having discussions with McAlinden about misbehaviour dating to 1954 (as referred to in Dr Johns' report of 5 November 1987)
 - complaints from Forster–Tuncurry in 1976 (as raised in the Cotter–Clarke letter)
 - complaints referred to by John Hatton MP in 1987 relating to events at Merriwa (in which Clarke was involved).
- 12.96 For Clarke to feel 'relief' at the eventuality of acquittals indicates, among other things, his apparent focus on the avoidance of scandal, rather than any consideration of the child protection concerns remaining as a result of McAlinden retaining his liberty.
- 12.97 On 5 August 1992 Quinn completed a Catholic Church Insurances questionnaire, stating that in September 1991 an allegation was made concerning sexual offences allegedly committed 10 years ago, when the accused priest (clearly a reference to McAlinden) was working in the Diocese of Geraldton. He noted that the priest belonged to the Diocese of Maitland and was in August 1991 on loan to Bunbury Diocese. He also noted that the case resulted in a trial before a jury and the accused was found not guilty by unanimous verdict.¹²⁵
- 12.98 McAlinden's bishop, Clarke, gave him permission to work in Bunbury. At all times while working in Western Australia, McAlinden remained a priest incardinated into Maitland–Newcastle Diocese. Quinn's letter of 21 July 1992 recorded that he had 'kept' Clarke informed of the outcome of the case.¹²⁶ This wording suggests that, before that letter, Quinn had communicated with Clarke about the charges and the criminal process in Western Australia. Quinn would obviously have been aware of such matters and, the Commission finds, he would have advised Clarke of developments.
- 12.99 The position in relation to other Diocesan officials' knowledge of the Western Australian criminal proceedings is less certain. In 1991 and 1992 Monsignor Hart was Vicar General of Maitland–Newcastle Diocese.¹²⁷ He gave evidence that he became aware of that situation 'much later in the 90s', when he learnt about it from Clarke.¹²⁸ He believed this conversation had occurred in 1993, in circumstances where Hart had become party to particular knowledge about individuals who alleged that McAlinden had sexually abused them (as discussed in detail below).¹²⁹
- 12.100 Father Burston gave evidence that he did not recall when (before 1996) he first began to hear of concerns about McAlinden.¹³⁰ From 1992 to 1997 Burston was a consultor to the bishop.¹³¹ It is highly improbable that something as significant as the arrest and criminal trial of a priest incardinated into the Diocese for the sexual abuse of a child, even though the alleged abuse occurred interstate, was a circumstance that would not have been discussed at senior levels of the Diocesan hierarchy. The Commission considers that the matter of McAlinden would have been discussed among senior members of the Maitland–Newcastle Diocese hierarchy at about that time (namely, the early 1990s).

¹²⁵ Catholic Church Insurances Ltd Confidential Questionnaire re Special Issues Liability Insurance by Quinn, dated 5 August 1992, ex 219, tab 196.

¹²⁶ Letter from Quinn to McAlinden, dated 21 July 1992, ex 219, tab 195.

¹²⁷ TOR 2, T1380.41–47 (Hart).

¹²⁸ TOR 2, T1388.45–1389.6 (Hart).

¹²⁹ TOR 2, T1388.40–1389.35 (Hart).

¹³⁰ TOR 2, T1233.45–1234.3 (Burston).

¹³¹ TOR 2, T1226.4–25 (Burston); Diocese of Maitland clergy appointment document of Burston, undated, ex 115.

Establishment of protocols and committees for dealing with allegations of child sexual abuse

- 12.101 The Australian Catholic Bishops Conference is the national body that facilitates the collaborative work of bishops and their dioceses in Australia. At its November 1988 plenary meeting, the ACBC established a Special Issues Committee, in response to allegations of criminal behaviour relating to children against clerics and other religious.¹³² Father Brian Lucas, a member of the Special Issues Committee from early 1989, told the Commission the committee was required to establish and advise on a protocol to be observed by bishops and major superiors when an accusation was made against a priest or religious alleging criminal behaviour.¹³³
- 12.102 Lucas said an initial draft protocol was adopted in May 1990 for 12 months; a further version was presented at the ACBC plenary meeting in April 1992. The protocol, entitled ‘Protocol for Dealing with Allegations of Criminal Behaviour’, emphasised the personal responsibility a bishop bears for decisions made concerning the investigation and resolution of allegations of criminal behaviour by priests, together with the critical importance of a uniform approach to these matters across the country.¹³⁴
- 12.103 Immediate notification to the police was not required by the protocol, which defines police as ‘departmental officers’. The protocol noted that ‘the freedom of people, and in some instances, an obligation in law, to make a complaint to departmental officers must be respected’.¹³⁵
- 12.104 The 1992 protocol was silent on the need for clergy to report criminal behaviour to the police. Despite being directed at allegations of criminal behaviour, nowhere did the protocol state that there was any *obligation* to refer criminal allegations to the police.¹³⁶ Nor did it provide that clergy were to encourage complainants to report such matters to the police. Instead, it prescribed an alternative process that did not require police involvement.
- 12.105 In particular, the protocol required that a Special Issues Resource Group be established, consisting of personnel skilled in dealing with allegations of criminal behaviour, and that when a complaint of alleged criminal behaviour was received it should immediately be referred to that group, unless the allegation was ‘of a most serious and extraordinary nature’.¹³⁷

Father Lucas’s practices in dealing with sexual abuse complaints

- 12.106 Father Lucas, a lawyer and General Secretary of the Australian Catholic Bishops Conference, was a member of the Special Issues Committee established in 1988 at the plenary meeting of the conference.¹³⁸ In 1993 he was Secretary to the Archdiocese of Sydney and a member of the Special Issues Resource Group.¹³⁹

¹³² Affidavit of Lucas, dated 11 March 2013, ex 142, para 4.

¹³³ *ibid.*

¹³⁴ Australian Catholic Bishops’ Conference Protocol for dealing with allegations of criminal behaviour, dated April 1992, annexure C to ex 142, paras 3.1–3.6.

¹³⁵ *ibid.*, para 7.5.

¹³⁶ Clause 7.5 of the protocol merely stated a need to respect the freedom or obligation of people (complainants) to make a complaint to departmental officers (including police) and stated that no such attempt should be made to discourage such action. At no point, however, does the protocol provide that such a step should be encouraged or that clergy themselves should report such matters to police.

¹³⁷ *ibid.*, para 6.1.

¹³⁸ Affidavit of Lucas, dated 11 March 2013, ex 142, para 1, 4.

¹³⁹ *ibid.*, para 4.

- 12.107 Lucas agreed that by early 1993 it was his role to persuade a priest accused of sexually abusing children to leave the ministry.¹⁴⁰
- 12.108 Lucas told the Commission that in this role he rarely took complaints from complainants and that Monsignor John Usher¹⁴¹ mostly dealt with them. In this regard, Lucas agreed he was aware that being in possession of knowledge of the specific nature of sexual abuse (from a complainant) might well place him as having knowledge of a felony and thus at risk of misprision of felony. He agreed with the proposition, put to him by counsel assisting, that he was prepared to go about church business in such a way that there was a risk that he might be misprising a felony.¹⁴²

Refraining from taking notes

- 12.109 Lucas told the Commission he did not take any notes when dealing with priests suspected of child sexual abuse.¹⁴³ He said when he was trying to persuade a priest to resign from ministry it was 'counterproductive' to write notes because 'if you're sitting in front of him taking notes, he will not say anything. That was my experience'.¹⁴⁴
- 12.110 Lucas also acknowledged, however, that a motivation for him not taking notes was to avoid the creation of documents that might have to be disclosed in any subsequent legal process. On this he gave the following evidence:
- Q. Is the real position as to why you didn't want to take any note that you didn't want it to have to be disclosed in any subsequent legal process?
- A. I think that would be a reasonable comment.
- Q. And you have on occasion published advice and your thoughts on that particular subject, that it is wise on occasion not to have notes so that they can't be compelled to be disclosed in later legal proceedings?
- A. That would be a position in some instances, given the circumstances of duress in which a perpetrator has made some statements, yes.
- Q. What I'm asking about, though, is your writings, independent of any particular notes you did or didn't take in these types of conversations we've been talking about, where you have published views for the benefit of other clergy to the effect that **it's a good idea not to take notes, so that a subsequent legal process that would compel production of them cannot be successful?**
- A. In some instances that would be accurate, yes.¹⁴⁵ [emphasis added]
- 12.111 Lucas confirmed he had published articles to this effect, and that it was a view he held in 1992 to 1993 and a view that he currently holds.¹⁴⁶

¹⁴⁰ TOR 2, T1565.34–46 (Lucas).

¹⁴¹ Monsignor John Usher was ordained as a priest in the Catholic Archdiocese of Sydney in 1972 and has been the Chancellor of the Catholic Archdiocese of Sydney since 2005: statutory declaration of Usher, dated 9 August 2013, ex 226, paras 1 and 2. He was the director of Centacare, a Catholic welfare agency from 1983, and remained in that role until 2004: TOR 2, T2344.39–47 (Usher). In that position, Usher received allegations of sexual abuse against clergy from people in dioceses or from the bishop of a Diocese, and was often referred victims: TOR 2, T2345.2–11 (Usher). Additionally, from 1995 Usher was part of the Australian Bishops Special Issues Committee, and served in that capacity for four or five years: TOR 2, T2347.12–28; T2348.33–35 (Usher).

¹⁴² TOR 2, T1619.8–11 (Lucas).

¹⁴³ TOR 2, T1649.22–1650.19 (Lucas).

¹⁴⁴ TOR 2, T1566.41–1567.8 (Lucas).

¹⁴⁵ TOR 2, T1579.7–27 (Lucas).

¹⁴⁶ TOR 2, T1579.7–36 (Lucas).

- 12.112 In an article published in 1996 that began with the question ‘To shred or not to shred?’ Lucas discussed the Church’s obligations in canon and civil law relating to the creation, retention, production and destruction of documents (see Figure 12.2).¹⁴⁷

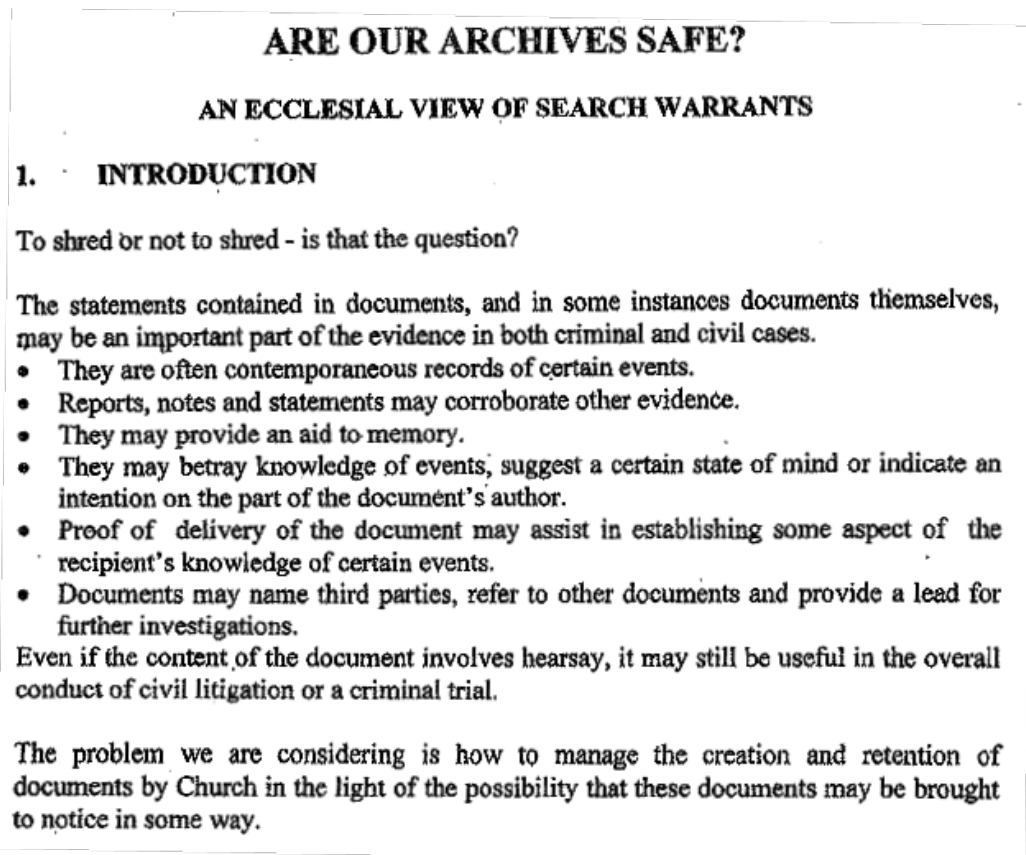


Figure 12.2 Extract from a paper Father Lucas gave at the 30th annual conference of the Canon Law Society of Australia and New Zealand, 7–11 October 1996¹⁴⁸

- 12.113 While noting the proposition that, generally speaking (and not in the context of clergy abuse), documents can be of assistance to church officials, Lucas’s article cautioned:

There may be cases that appear to be so sensitive that it is in the best interests of the parties, or one of them, and of the Church, that the documents not be created in the first place.¹⁴⁹

- 12.114 In evidence before the Commission, Lucas was reluctant to accept that the position he was adopting in 1992 and 1993 in refraining from taking notes was designed to avoid the creation of a paper trail. He stated:

We’re dealing with a person who has his right to silence. We’re putting extreme pressure and duress upon him. Probably anything he said would not be admissible subsequently, anyway. But to sit in front of him and take notes would mean he wouldn’t say anything. If you are going to take a note, and there are good reasons for taking that note, I think fairness and procedural fairness to him suggests that he should see that note so that it’s accurate.¹⁵⁰

¹⁴⁷ Paper entitled ‘Are our Archives Safe’, given by Lucas at the proceedings of the 30th annual conference of the Canon Law Society of Australia and New Zealand, 7–11 October 1996, ex 147.

¹⁴⁸ *ibid*, p 49.

¹⁴⁹ *ibid*, p 73.

¹⁵⁰ TOR 2, T1579.38–1580.8 (Lucas).

12.115 Lucas suggested that any notes taken would be inadmissible in legal proceedings. He further said:

Oh, look, I think you're talking about a person who – and as I understand the general procedures, people have a right to be silent. Whether we agree with that being the law or not is a different question. Generally people are cautioned before they make comments adverse to their interests. **The practicalities of dealing with these priests were that one had to, in a sense, seduce them into agreeing to resign.** And I understand the unfairness of that, but that was the practical outcome'.¹⁵¹ [emphasis added]

Conclusions

12.116 In the Commission's view, Lucas's evidence in relation to the practice of not taking notes was unsatisfactory in that, even if it were the case that taking notes in front of the alleged perpetrator might deter the making of admissions (which may not always be the case), Lucas provided no satisfactory explanation for why he could not take notes immediately following his attendance with the priest concerned or in respect of the matter generally.

12.117 Lucas's practice of not taking notes was intended to avoid the creation of documentary records. A consequence of this practice was that documents that could later reveal to church outsiders (including complainants in civil litigation and police) matters that could reflect poorly on and bring scandal on the Church, including admissions of wrongdoing by the priest concerned, did not come into existence.

12.118 Lucas's practice of refraining from taking notes of his dealings with priests suspected of child sexual abuse was also closely aligned with the Australian Catholic Bishops Conference 1992 protocol, which did not require clergy either to report alleged perpetrators to the police or to encourage the complainant to report the matter to police.

February to May 1993: the allegations of AJ and AL

AJ's evidence

Sexual abuse by McAlinden: 1961 or 1962

12.119 AJ, aged 64 years, gave evidence before the Commission. She adopted as part of her evidence the contents of a 29 June 2010 statement she had given to police.¹⁵² From a devout Catholic family,¹⁵³ AJ was abused by McAlinden in 1961 or 1962 in Singleton during the summer holidays, when she was 11 or 12 years old. While she was sitting on McAlinden's lap at her family's kitchen table (opposite her mother), McAlinden had stroked her vaginal area under her shorts and underpants and also digitally penetrated her.¹⁵⁴

AJ's disclosure to Sister Redgrove regarding abuse by McAlinden: January 1993

12.120 In her police statement AJ said that in January 1993 the topic of McAlinden sexually abusing children came up in conversation at a 50th birthday party attended by Sister Paula Redgrove¹⁵⁵ and others. Another person present told Redgrove that AJ had been sexually abused by

¹⁵¹ TOR 2, T1580.42–1581.5 (Lucas).

¹⁵² Excerpts of TOR 2 in camera transcript of evidence of AJ, dated 8 July 2013, ex 305, T3.5–9, 23–26; NSW Police statement of AJ, dated 29 June 2010, ex 304.

¹⁵³ NSW Police statement of AJ, dated 29 June 2010, ex 304, para 3.

¹⁵⁴ *ibid*, paras 7–9.

¹⁵⁵ Redgrove is a retired member of the Institute of the Sisters of Mercy of Australia Order: TOR 2, T2.39–46 (Redgrove in camera, 22 July 2013). As a Sister of Mercy, Redgrove taught in various schools in the Maitland–Newcastle area: TOR 2, T3.11–37 (Redgrove in camera, 22 July 2013). Redgrove first met McAlinden in 1958: TOR 2, 3.44–45 (Redgrove in camera, 22 July 2013).

McAlinden.¹⁵⁶ AJ said Redgrove told her she was aware that McAlinden had also abused AK and AL.¹⁵⁷

- 12.121 A few weeks after the party Redgrove spoke to AJ after Mass.¹⁵⁸ Redgrove encouraged AJ to report the matter to the bishop.¹⁵⁹ She told AJ what had been discovered in relation to McAlinden, which included his having been charged in Perth and the fact that others to whom she had spoken had told her they had been abused by McAlinden.¹⁶⁰

AJ's report to Monsignor Hart

- 12.122 In her police statement AJ said Redgrove asked her in 1993 to approach the bishop and Monsignor Allan Hart¹⁶¹ 'because of her [AJ's] close relationship and access with them'.¹⁶² AJ recalled phoning the bishop's house in Maitland, speaking to Hart, and seeing him on the same day at the bishop's house. She told him McAlinden had sexually abused her. She recalled Hart asking whether the assault was 'skin to skin' and whether she was 'prepared to take the matter any further'. AJ said she was prepared to take the matter further because she wanted him stopped.¹⁶³ She recalled that Hart then said words to this effect:

We've been waiting for this day. We have had numerous complaints of sexual abuse from young parishioners over the years. We've never been able to pin him down as he always had the excuse it was an accident or had not realised that he was touching that area.¹⁶⁴

- 12.123 AJ said Hart had also told her there had been an allegation from Merriwa and another from Taree. She said she told Hart she wanted to get McAlinden 'off the street' and stop him re-offending and that Hart had said he would 'take ... [it] further and tell the Bishop'. She also gave him Redgrove's name so that he could contact her and ask her to contact AK and AL to have them come forward.¹⁶⁵
- 12.124 AJ said she subsequently received a phone call from Hart, who told her he had spoken to the bishop and they had decided on a course of action. He told AJ it was the first time the Diocese had 'gone down this path with a priest' and that they had contacted Father Lucas in Sydney.¹⁶⁶ He explained that Lucas was also a lawyer and would need to take a statement from her and the other victims mentioned.¹⁶⁷

The first telephone call from Father Lucas

- 12.125 A short time later AJ received a telephone call from Father Brian Lucas during which he asked her specific questions about her complaint.¹⁶⁸ In her police statement¹⁶⁹ AJ described the encounter with Lucas:

I got a call a short time later from Father Lucas.

¹⁵⁶ Excerpts of TOR 2 in camera transcript of evidence of AJ, dated 8 July 2013, ex 305, T34.6–38.

¹⁵⁷ NSW Police statement of AJ, dated 29 June 2010, ex 304, para 24.

¹⁵⁸ Excerpts of TOR 2 in camera transcript of evidence of AJ, dated 8 July 2013, ex 305, T34.38.

¹⁵⁹ *ibid*, T34.47–35.7.

¹⁶⁰ NSW Police statement of AJ, dated 29 June 2010, ex 304, para 25.

¹⁶¹ Hart is incardinated to the Maitland–Newcastle Diocese and was ordained a Monsignor in 1966: TOR 2, T1380.14–19 (Hart); Hart was appointed vicar general to Clarke on 23 September 1990 and held the position until 31 December 1995: TOR 2, T1380.41–47 (Hart).

¹⁶² NSW Police statement of AJ, dated 29 June 2010, ex 304, para 27.

¹⁶³ *ibid*, para 28–29.

¹⁶⁴ *ibid*, para 29.

¹⁶⁵ *ibid*, paras 30 and 31.

¹⁶⁶ *ibid*, para 33.

¹⁶⁷ *ibid*.

¹⁶⁸ Excerpts of TOR 2 in camera transcript of evidence of AJ, dated 8 July 2013, ex 305, T72.22–73.14.

¹⁶⁹ Which AJ adopted as part of her sworn evidence given in camera on 8 July 2013.

He wanted a statement from me ... He then said, 'Okay tell me what happened?' 'How old were you?' 'What did he do?' 'Where did this happen?' 'What did he do to you?' I remember that question and as this went on I became appalled as I realised he was taking a statement from me over the phone in a very cold and insensitive manner. His tone was very brusque. There was no pastoral care or compassion in his manner or the way this was done. I was shocked and very disappointed. I was given the impression he was writing a statement as we spoke or he was taking notes to prepare a statement from me.¹⁷⁰

- 12.126 In oral evidence AJ confirmed that in her telephone encounter with Lucas he asked her questions about what had happened and she provided a brief description of what McAlinden had done, as well as telling Lucas that she was 11 or 12 at the time.¹⁷¹ AJ told the Commission, however, that she had 'left out the part of the intrusive digital' (penetration) and had simply told Lucas that McAlinden 'stroked on the outside of the vagina'.¹⁷² AJ said she had felt disinclined to give Lucas full details of the assault because of the tone in which he spoke to her and his 'removed' manner.¹⁷³
- 12.127 In her police statement AJ said that Lucas had asked her questions about another victim of McAlinden (AI)¹⁷⁴ and that this made her feel terrible to think he was going to contact AI and take her statement in the way he had taken hers.¹⁷⁵ AJ understood that Lucas did in fact contact AI because AI told her so.¹⁷⁶
- 12.128 AJ gave evidence that within days, or a week at most, either Lucas or Hart had phoned her and told her he intended to contact McAlinden's bishop in Western Australia and have McAlinden return by plane. Hart subsequently told AJ that McAlinden had deliberately missed the flight booked for him and had absconded.¹⁷⁷

AJ's wishes in connection with police involvement

- 12.129 AJ said it was at this stage that Hart spoke to her about involving the police in view of her disappointment with how the matter was being handled. In her police statement (adopted in evidence before the Commission) AJ said Hart said words to the following effect:

[He said] 'Do you want to report him to the police or what do you want AJ?' He was as concerned as me that he [McAlinden] had now effectively disappeared. Despite the Church making a mess of getting him back I was confident that he would be removed from his duties and placed in some place where he could be supervised and removed from contact with young children. I still believed they were trying to do the right thing so I said I would leave it with the church.¹⁷⁸

- 12.130 In the statement AJ also said she 'would not take the complaint to the police because of her faith and loyalty to the Church'.¹⁷⁹ In oral evidence AJ confirmed that in 1993 she did not want Lucas, Hart or anyone else to go to the police.¹⁸⁰ In her police statement, however, AJ said if she had known that McAlinden was refusing to comply with the Diocese's requests and if 'they would have supported me going to the police, I definitely would have taken that course of action'.¹⁸¹ She stated that the only reason she did not go to the police was because of her

¹⁷⁰ NSW Police statement of AJ, dated 29 June 2010, ex 304, paras 35–36.

¹⁷¹ Excerpts of TOR 2 in camera transcript of evidence of AJ, dated 8 July 2013, ex 305, T70.6–20.

¹⁷² *ibid*, T72.34–73.14.

¹⁷³ NSW Police statement of AJ, dated 29 June 2010, ex 304, para 36.

¹⁷⁴ The Commission explored these matters with AI but she was unable to recall any details of conversations in relation to these matters.

¹⁷⁵ NSW Police statement of AJ, dated 29 June 2010, ex 304, para 38.

¹⁷⁶ *ibid*, para 39.

¹⁷⁷ *ibid*, paras 43 and 45.

¹⁷⁸ *ibid*, para 47.

¹⁷⁹ *ibid*, para 79.

¹⁸⁰ Excerpts of TOR 2 in camera transcript of evidence of AJ, dated 8 July 2013, ex 305, T47.11–20.

¹⁸¹ NSW Police Statement of AJ, dated 29 June 2010, ex 304, para 61.

religious beliefs: she would have done so with the ‘blessing, support and pastoral care’ of Bishop Clarke, Monsignor Hart and Father Lucas.¹⁸²

- 12.131 AJ said Lucas did not ask her about going to the police and she did not raise the question with him.¹⁸³ For his part, Lucas gave evidence that he thought he was aware that AJ did not wish to involve the police before he first spoke with her on the telephone.¹⁸⁴

Another telephone call from Father Lucas

- 12.132 In her police statement AJ recounted that a day or two later she received a call from Lucas, who said in an impersonal tone, ‘I’m just calling to let you know I’ve interviewed Fr McAlinden and he has been removed’. From that she understood McAlinden had been removed from performing any of his priestly duties and would not be a priest again.¹⁸⁵

- 12.133 In the statement AJ also said Lucas told her that McAlinden ‘has made admissions to me about his behaviour and that he sexually abused [AK] and [AL] and [AI]’ but that when he put forward AJ’s name McAlinden had been ‘puzzled’, saying he did not know a person by that name and proceeded to name other people with the same first name as AJ.¹⁸⁶ AJ was pressed for further details about this in her evidence before the Commission. She confirmed that Lucas made it clear to her that he had not obtained an admission from McAlinden that he had abused AJ.¹⁸⁷ AJ was annoyed because Lucas told her he did not use her maiden name with McAlinden, who would not have recognised her married name. She felt disappointed that an opportunity for McAlinden to make an admission about his sexual abuse of her had been lost.¹⁸⁸ During AJ’s cross-examination by counsel for Lucas, the following exchange occurred in relation to what Lucas had told her about McAlinden’s admissions:

Q. Is it your recollection he told you that he had got an admission from McAlinden that he had abused (suppressed) [AK and AL] and the other woman AI when she was a girl?

A. I don't know whether I said that in here [the police statement]. All I know is he admitted that he had been abusing girls.¹⁸⁹

- 12.134 AJ gave evidence that precisely what acts of abuse (if any) were acknowledged by McAlinden as having occurred were not conveyed to her.¹⁹⁰

Timing of the meeting between Father Lucas and McAlinden

- 12.135 As to the timing of the meeting between Lucas and McAlinden, AJ said in her police statement that she recalled being told on 24 February 1993 (Ash Wednesday) that McAlinden had been instructed to go to Sydney to be interviewed. A day or two later she received a call from Lucas, who said he had interviewed McAlinden and McAlinden had been ‘removed’ (as noted).¹⁹¹
- 12.136 This timing essentially accords with a letter dated 27 February 1993 from Clarke to McAlinden, enclosing a document signed by McAlinden and confirming that he had read the terms of the administrative decree, issued on 27 February 1993 by Clarke, withdrawing McAlinden’s priestly

¹⁸² *ibid*, para 97.

¹⁸³ *ibid*, para 37.

¹⁸⁴ TOR 2, T1644.9–13 (Lucas).

¹⁸⁵ NSW Police Statement of AJ, dated 29 June 2010, ex 304, para 50.

¹⁸⁶ *ibid*, para 51.

¹⁸⁷ Excerpts of TOR 2 in camera transcript of evidence of AJ, dated 8 July 2013, ex 305, T43.14–17.

¹⁸⁸ NSW Police statement of AJ, dated 29 June 2010, ex 304, para 52.

¹⁸⁹ Excerpts of TOR 2 in camera transcript of evidence of AJ, dated 8 July 2013, ex 305, T43.31–35.

¹⁹⁰ NSW Police Statement of AJ, dated 29 June 2010, ex 304, paras 50–51.

¹⁹¹ *ibid*, paras 49–50.

faculties, and that he understood and accepted it in 'every respect'.¹⁹² Clarke's decree stated, among other things:

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

Because of the circumstances as discussed with Fr. B Lucas, I hereby withdraw your faculties as of the date of this letter. This means that you may not engage in any public priestly ministry eg. Mass, Sacraments, Funerals etc., nor may you present yourself as a priest or be known as a priest wherever you live ...¹⁹³ [emphasis added].

AJ's conversations with Monsignor Hart

12.137 In her police statement AJ said immediately after learning from Sister Redgrove that McAlinden was 'walking around like nothing had happened' she telephoned Hart to tell him of her dissatisfaction with the process.¹⁹⁴ She stated that she said to Hart, 'This 60 Minutes story¹⁹⁵ is getting bigger. He is now on the loose. He admitted what he did and you had him. He is in denial turning up at AK and AL's home'. She said Hart had asked her what she wanted him to do and she had replied, 'I cannot believe this. He has to be removed. He has to be strictly supervised and put in a safe house near you who are privy to his crimes and then stripped of all his robes'. AJ stated that Hart then said words to the effect of 'Leave it with me. I have to meet McAlinden with Bishop Clarke. I will call you and let you know what happens'.¹⁹⁶

12.138 AJ stated in her police statement that she received a subsequent call from Hart in which he told her:

This is what we have decided to do with him [AJ]. We have suggested that he could go and live elsewhere now that he is no longer a priest. Father McAlinden has decided he will go to England where his sister and her husband live. We have agreed to buy him a one way ticket.¹⁹⁷

12.139 AJ said she asked Hart whether McAlinden's relatives in England were to be informed about his crimes against children. Hart said they were not but that they would let the bishop of that diocese know and McAlinden would have to report to that bishop once a week. AJ said she communicated her outrage about this to Hart, saying, 'You've got to be joking. This story for 60 Minutes keeps getting bigger ... Who is to say that he will not continue to abuse children for the rest of the week'. She stated that Hart replied that McAlinden 'is an old man now and ... he won't be able to do that any more'. She stated that she had replied, 'What! Are you going to cut off his hands?'¹⁹⁸ AJ further stated that she had also asked Hart, 'Who is to say when he goes to England, he will not buy a return ticket to come back to Australia?' AJ said Hart had told her he did not believe this would be the case.¹⁹⁹

12.140 AJ said she understood from her conversations with Hart in 1993 that he had conveyed information about her abuse to Bishop Clarke.²⁰⁰

¹⁹² Letter from Leo Clarke to Denis McAlinden attaching Diocese of Maitland declaration of McAlinden of acceptance of Administrative Decree, dated 27 February 1993, ex 61.

¹⁹³ *ibid.*

¹⁹⁴ NSW Police statement of AJ, dated 29 June 2010, ex 304, para 58–59.

¹⁹⁵ Earlier in her police statement AJ said that on learning that McAlinden had missed a flight booked for his return from Western Australia to be interviewed about the allegations of AK, AL, AI and AJ, she said to Hart, 'This is a 60 minutes story': NSW Police statement of AJ, dated 29 June 2010, ex 304, para 45, 59.

¹⁹⁶ NSW Police statement of AJ, dated 29 June 2010, ex 304, para 59.

¹⁹⁷ *ibid.*, para 60.

¹⁹⁸ *ibid.*

¹⁹⁹ *ibid.*, para 64.

²⁰⁰ *ibid.*, paras 30–33.

Monsignor Hart's evidence

Conflicting statements about knowledge of McAlinden's behaviour

- 12.141 In February 1993 Hart was Vicar General of the Diocese. He initially told the Commission he had not had any conversations with Clarke concerning allegations that McAlinden had sexually abused children – not even one word.²⁰¹ Later, however, he gave evidence that he had a conversation with Clarke that, to the best of his recollection, took place in 1993. The conversation related to the circumstances in which Hart had become party to particular knowledge about individuals who alleged that McAlinden had sexually abused them; those people had come forward to him personally.²⁰² Hart said that during this conversation Clarke discussed with him the allegations against McAlinden in Western Australia.²⁰³ At this point in his evidence Hart testified that there had been no other conversations with Clarke in which allegations relating to McAlinden sexually abusing children had been discussed. He said there had been only one conversation with Clarke about the time he (Hart) was dealing with people coming forward in relation to McAlinden, one of whom was AJ.²⁰⁴
- 12.142 Hart subsequently gave further evidence that he did in fact have 'very brief' discussions with Clarke about allegations of McAlinden having sexually abused children.²⁰⁵ He said there had been at least one discussion and then modified that further, saying there were 'not a lot' of discussions and 'probably two or three'.²⁰⁶
- 12.143 In relation to what Hart knew about allegations regarding McAlinden's sexual abuse of children, Hart said that by the time of AJ's complaint in February 1993 (as detailed below) he was already aware from another clergy member that there had been previous reports of McAlinden sexually abusing children.²⁰⁷ As to the specifics of what he knew, Hart initially told the Commission he was aware of allegations made against McAlinden in 1976 from a letter from Monsignor Cotter to Clarke that was published in the *Newcastle Herald*.²⁰⁸ He later said, however, that (at some point while still bishop) Clarke had 'acknowledged [to Hart] there were problems' as far back at 1976, but did not go into explicit details (as contained in the Cotter–Clarke letter) and instead just 'brushed across them'.²⁰⁹ Hart also agreed that by April 1993 he had been told by Clarke that McAlinden had been accused of paedophile activity dating back about 40 years.²¹⁰ Hart agreed that he told AL (another McAlinden victim whose complaint he received – as detailed in para 12.245 and following) this.²¹¹

Contact with AJ in early 1993

- 12.144 Hart's evidence was that he recalled AJ contacting him in February 1993²¹² and that he had met with her at 7 pm the same day, as noted in his diary.²¹³ He said he knew AJ because she was a

²⁰¹ TOR 2, T1383.3–17 (Hart).

²⁰² TOR 2, T1389.32–41 (Hart).

²⁰³ TOR 2, T1389.43–T1390.2 (Hart).

²⁰⁴ TOR 2, T1390.11–25 (Hart).

²⁰⁵ TOR 2, T1434.38–47 (Hart).

²⁰⁶ TOR 2, T1435.2–22 (Hart).

²⁰⁷ TOR 2, T1392.22–27 (Hart).

²⁰⁸ TOR 2, T1463.40–46 (Hart).

²⁰⁹ TOR 2, T1489.33–1490.10 (Hart).

²¹⁰ Notably, AE's allegations relating to McAlinden, as at 1993, had been raised in 1954 which was approximately 40 years prior (see further paras 12.21 to 12.27 above).

²¹¹ TOR 2, T1463.19–28 (Hart).

²¹² TOR 2, T1390.23–33 (Hart).

²¹³ TOR 2, T1390.35–T1391.16 (Hart).

parishioner; he thought she was a ‘wonderful lady’.²¹⁴ He also described AJ as ‘excellent’ and ‘always truthful’ and said that if she told him something he would accept it as truthful.²¹⁵

- 12.145 Hart confirmed that AJ had told him McAlinden had sexually abused her and told him how old she was at the time. He was, he said, ‘horrified’.²¹⁶ AJ asked him to tell the bishop, and he did so the next day.²¹⁷
- 12.146 As noted, AJ gave evidence that at this meeting Hart told her there was previous knowledge in relation to McAlinden, specifically referring to the incidents at Merriwa and Taree (see para 12.123). Hart, in contrast, gave evidence that he did not tell AJ anything about his knowledge of previous complaints of sexual abuse by McAlinden.²¹⁸ He acknowledged, however (as noted), that at this stage he was already aware of previous reports of McAlinden sexually abusing children.²¹⁹
- 12.147 Hart told the Commission he was aware from the time he began as vicar general of the Diocese in 1990 that the sexual abuse of children was a crime.²²⁰ He said he told AJ in their very first conversation that the matter should be taken to the police but that she said she did not want to do that.²²¹ Hart accepted AJ’s wishes not to report McAlinden to the police.
- 12.148 In evidence Hart confirmed that there were a number of subsequent meetings with AJ.²²² He said he did not tell AJ he was going to take any particular course of action because she had asked him to take the matter to the bishop.²²³ He conceded that AJ said words to the effect of ‘I want to get him off the street and stop him re-offending’.²²⁴ Hart said he saw his role as referring the matter to the bishop only: the bishop then had his own committee – this being primarily a reference to Lucas, as his evidence was understood – to deal with the matter.²²⁵
- 12.149 Hart pointed out that at that time he had not received any particular training in how allegations of sexual abuse on the part of clergy should be managed in the Diocese.²²⁶ He also told the Commission he was not ‘wearing his vicar general’s hat’ when dealing with AJ’s complaint but was instead acting as Diocesan administrator,²²⁷ trying to support AJ.²²⁸ In addition, Hart subsequently told the Commission he was fulfilling a pastoral role with AJ and trying to ‘walk with her’.²²⁹

Notification of complaint to Bishop Clarke and communication with Father Lucas

- 12.150 As noted, Hart gave evidence that a day after receiving AJ’s complaint he notified his bishop (Clarke) of McAlinden’s reported abuse of AJ.²³⁰ He said Clarke told him, fairly soon after Hart had notified him, that he (Clarke) had contacted Lucas.²³¹ Hart said he did not have any role to

²¹⁴ TOR 2, T1395.37–42 (Hart).

²¹⁵ TOR 2, T1440.6–12 (Hart).

²¹⁶ TOR 2, T1391.40–1392.10 (Hart).

²¹⁷ TOR 2, T1392.12–20 (Hart).

²¹⁸ TOR 2, T1396.14–16, 27–33 (Hart).

²¹⁹ TOR 2, T1392.22–27 (Hart).

²²⁰ TOR 2, T1502.2–24 (Hart).

²²¹ TOR 2, T1393.21–38 (Hart).

²²² TOR 2, T1396.25 (Hart).

²²³ TOR 2, T1393.13–16 (Hart).

²²⁴ TOR 2, T1393.40–46 (Hart).

²²⁵ TOR 2, T1394.1–8 (Hart).

²²⁶ TOR 2, T1394.22–26 (Hart).

²²⁷ TOR 2, T1394.16–17 (Hart); a diocesan administrator, formerly vicar capitular, is a priest chosen to govern the diocese in the event the diocese becomes vacant (for example by the death or resignation of the bishop) and no other provision has been made by the Pope (see paras 6.21 to 6.23).

²²⁸ TOR 2, T1394.10–20 (Hart).

²²⁹ TOR 2, T1471.29–34 (Hart).

²³⁰ TOR 2, T1392.12–20 (Hart).

²³¹ TOR 2, T1402.30–42 (Hart).

play in speaking to McAlinden about AJ's allegations and that Clarke made the arrangements for managing the situation.²³² He said that to his knowledge there was no contact made with McAlinden at about the time AJ made her complaint to him but stated that he was not part of the 'inner circle'.²³³ Hart also told the Commission that Clarke did not tell him what steps were going to be taken in terms of raising the matter with McAlinden.²³⁴ He said that so far as he was concerned it was Clarke's 'team' that was looking after the situation, not him.²³⁵ In contrast, as noted in paragraph 12.122, AJ said in her police statement that she recalled Hart referring to his needing to meet with McAlinden and Clarke to discuss the allegations.²³⁶

12.151 There is no documentation before the Commission confirming whether Hart did in fact meet with McAlinden, although a note by Clarke dated 20 March 1993 refers to his own meeting with McAlinden.²³⁷ A letter by Clarke dated 23 May 1995 to the Apostolic Nuncio²³⁸ (Archbishop Brambilla), however, states the following in relation to Hart's involvement, as vicar general, in the 1993 complaint against McAlinden:

In March 1993 a parishioner of Maitland approached the Vicar General with serious accusations concerning a priest of the Diocese, Fr Denis McAlinden.

The Vicar General contacted Fr Brian Lucas who stipulated the following procedure:

- that I was to ring Bishop Quinn and acquaint him with the accusations and request him to remove Fr McAlinden's faculties
- that he inform Fr Denis to proceed immediately to Sydney to be interviewed by Fr Lucas.

This was done. [emphasis added]²³⁹

12.152 Hart was questioned about whether he knew where McAlinden was at the time AJ made her complaint to him – he told the Commission he was sure he did not know where McAlinden was but did not believe that McAlinden was in the Diocese at the time.²⁴⁰ Hart also said he did not recollect that McAlinden was formally recalled from Western Australia by Bishop Clarke (after AJ's complaint);²⁴¹ nor could he recollect any conversations with anyone about that matter or whether McAlinden came back into New South Wales in response to a request by Bishop Clarke in 1993.²⁴² Later, however, he told the Commission (in the context of whether he believed that McAlinden should be reported to the police):

... I always said that my expectation was that when he was coming back from Western Australia, Bishop Leo said he was going to be arrested when he got off the plane.²⁴³

Hart said he understood this was the position because of the allegations that McAlinden had sexually abused AJ.²⁴⁴ In this regard (as noted in para 12.128), AJ's evidence was to the effect that either Hart or Lucas phoned her to advise of the intention to contact McAlinden's bishop in

²³² TOR 2, T1401.14–20 (Hart).

²³³ TOR 2, T1406.10–16 (Hart).

²³⁴ TOR 2, T1397.9–11 (Hart).

²³⁵ TOR 2, T1405.31–32 (Hart).

²³⁶ NSW Police statement of AJ, dated 29 June 2010, ex 304, para 59.

²³⁷ Handwritten note of Clarke, dated 20 March 1993, ex 219, tab 218.

²³⁸ An Apostolic Nuncio is a bishop or archbishop appointed by the Pope as his representative to the particular churches (archdioceses and dioceses) in a country; he also acts as ambassador of the Holy See according to international law (see paras 4.5 and 4.6).

²³⁹ Letter from Clarke to Brambilla, dated 23 May 1995, ex 66.

²⁴⁰ TOR 2, T1397.13–28 (Hart).

²⁴¹ TOR 2, T1401.2–12 (Hart).

²⁴² TOR 2, T1404.19–24 (Hart).

²⁴³ TOR 2, T1455.17–24 (Hart).

²⁴⁴ TOR 2, T1455.30–35 (Hart).

Western Australia and have McAlinden return by plane. She also said Hart subsequently told her McAlinden had missed the flight booked for him and had absconded.

- 12.153 In terms of his recollection of the processes that were being instituted in relation to McAlinden, Hart told the Commission he did not recall a conversation with AJ in which he told her what church officials had done in terms of confronting McAlinden with the allegations;²⁴⁵ nor did he recall being told what other church officials had decided to do about confronting McAlinden.²⁴⁶ He did, however, accept that he might have been told these things and that he had just forgotten them.²⁴⁷ Hart also agreed that from a pastoral perspective it was part of his role to communicate back to AJ what was being done in relation to McAlinden, and he tried to keep her informed.²⁴⁸
- 12.154 As to Hart's knowledge of McAlinden's involvement with Lucas, Hart initially said Clarke and Lucas did not tell him when or if an interview with McAlinden had occurred.²⁴⁹ Hart also said he did not pursue information about what Lucas did in relation to McAlinden since 'that was his [Lucas's] role'.²⁵⁰ Hart conceded later, though, that he probably did report back to AJ that Lucas had interviewed McAlinden, but he said he was now unable to remember the conversation.²⁵¹ He also conceded he knew 'they' were trying to arrange 'something'²⁵² and that if he had told AJ Lucas had met with McAlinden then that must have been what happened.²⁵³ Hart acknowledged that he made a number of phone calls to AJ, trying to keep her informed about matters relating to McAlinden.²⁵⁴ He did not recall Clarke telling him what plans were being made, saying it was 'his team that was looking after it, not me'.²⁵⁵
- 12.155 In relation to the question of whether McAlinden made any admissions to Lucas, Hart first told the Commission he could not say 'yes or no'.²⁵⁶ He also said Clarke did not tell him anything about McAlinden's meeting with Lucas.²⁵⁷ He subsequently agreed, however, that from discussions with Clarke he was aware in 1993 that McAlinden had made admissions about his offending to Lucas.²⁵⁸
- 12.156 In terms of his own contact with Lucas, Hart said he had had contact with Lucas after AJ's complaint was reported to him in 1993.²⁵⁹ He could not recall the content of his first conversation with Lucas.²⁶⁰ He said he 'only rang Lucas when the bishop was out of the office, when I needed ... advice'.²⁶¹ Hart otherwise told the Commission that he recalled next speaking with Lucas in 1995.²⁶²

²⁴⁵ TOR 2, T1404.37–42 (Hart).

²⁴⁶ TOR 2, T1404.44–1405.1 (Hart).

²⁴⁷ TOR 2, T1405.3–6 (Hart).

²⁴⁸ TOR 2, T1401.22–33 (Hart).

²⁴⁹ TOR 2, T1470.32–40 (Hart).

²⁵⁰ TOR 2, T1471.45–1472.6 (Hart).

²⁵¹ TOR 2, T1470.42–44 (Hart).

²⁵² TOR 2, T1470.46–1471.2 (Hart).

²⁵³ TOR 2, T1471.12–14 (Hart).

²⁵⁴ TOR 2, T1405.17–21 (Hart).

²⁵⁵ TOR 2, T1405.23–32 (Hart).

²⁵⁶ TOR 2, T1472.15–18 (Hart).

²⁵⁷ TOR 2, T1469.42–1470.6 (Hart).

²⁵⁸ TOR 2, T1473.14–35; T1476.8–12 (Hart).

²⁵⁹ TOR 2, T1444.30–1145.4 (Hart).

²⁶⁰ TOR 2, T1445.43–45 (Hart).

²⁶¹ TOR 2, T1444.1–6 (Hart).

²⁶² TOR 2, 1446.30–40 (Hart).

Removal of McAlinden's faculties

12.157 Hart said the removal of McAlinden's faculties²⁶³ in 1993 was effected 'by the Bishop [Clarke] of his own will'²⁶⁴ and that there were no discussions with him about that matter, notwithstanding that he was the vicar general at the time.²⁶⁵ Hart said he never saw the decree that removed McAlinden's faculties, although he knew the process had happened. He thought it had happened quickly and that Clarke simply told him it had occurred.²⁶⁶

McAlinden's relocation to the United Kingdom

12.158 Hart said he had no role in arranging where McAlinden would next be posted, and his understanding was that McAlinden and Lucas were going to work that out. He said he believed Clarke told him this was the arrangement.²⁶⁷

12.159 Hart initially also told the Commission that he had no knowledge of when or where McAlinden went in 1993.²⁶⁸ He later conceded in evidence that he had in fact told AJ that McAlinden would go to England to live with his relative.²⁶⁹ He denied, however, any knowledge of McAlinden being given a one-way ticket to the United Kingdom.²⁷⁰ As noted in paragraph 12.138 and following, AJ's evidence was that the source of her information about this matter was Hart and that when he had told her of this plan she had expressed grave concern about the inadequacy of the arrangement.²⁷¹

The facsimile of 25 March 1993

12.160 In his evidence Hart said he had no role in making decisions or plans about what was going to happen with McAlinden and that it was not he and Clarke who decided on a course of action but rather Clarke and Lucas.²⁷²

12.161 During his evidence Hart was shown a facsimile dated 25 March 1993 and addressed to him (as vicar general).²⁷³ It had been sent from Westminster Diocese, London, and provided the name and address of the Right Reverend James McGuinness, Bishop of Nottingham. It also confirmed that Nottingham was the diocese within which Skegness was situated (that being the town where McAlinden was to reside with a relative). Hart said the explanation for the facsimile was that McAlinden was having accommodation problems at the time and he (Hart) had 'asked Father Brian Lucas, did he know anyone over there [the United Kingdom], who could give us some information [about accommodation]'.²⁷⁴ Hart agreed that what he was doing at the time was facilitating the posting of a priest of the Diocese while the bishop was absent²⁷⁵ and confirmed that 'we' were asking for a place where McAlinden could be looked after²⁷⁶ and that that was the information provided in response.²⁷⁷

²⁶³ Priestly faculties, such as the entitlement to wear priestly garb and to conduct services in public, can be removed by the decree of a supervising bishop. See expert opinion report by Dr Austin, dated 3 July 2013, ex 209, paras 10, 40, Appendix D.

²⁶⁴ TOR 2, T1406.39–41 (Hart).

²⁶⁵ TOR 2, T1407.3–10 (Hart).

²⁶⁶ TOR 2, T1407.35–1408.18 (Hart).

²⁶⁷ TOR 2, T1414.1–26 (Hart).

²⁶⁸ TOR 2, T1421.16–22 (Hart).

²⁶⁹ TOR 2, T1421.24–31 (Hart).

²⁷⁰ TOR 2, T1414.33–36 (Hart).

²⁷¹ Excerpts of NSW Police statement of AJ, dated 29 June 2010, ex 304, para 60.

²⁷² TOR 2, T1448.20–1449.15 (Hart).

²⁷³ TOR 2, T1417.9–37 (Hart); fax message from Chancellor's Secretary to Hart, dated 25 March 1993, ex 122.

²⁷⁴ TOR 2, T1417.44–1418.4 (Hart).

²⁷⁵ TOR 2, T1418.6–11 (Hart).

²⁷⁶ TOR 2, T1418.23–26 (Hart).

²⁷⁷ TOR 2, T1418.28–29 (Hart).

- 12.162 Hart said he subsequently became aware that McAlinden had left Australia and gone to the United Kingdom. He recalled that later there were discussions with AJ about the adequacy of that arrangement and AJ told him of her concern because she felt there was no one to supervise McAlinden.²⁷⁸ As to the specifics of the arrangements, Hart told the Commission he was 'just mystified' about how McAlinden had travelled to the United Kingdom.²⁷⁹

McAlinden's correspondence from the United Kingdom, April 1993

- 12.163 McAlinden wrote to Clarke from the United Kingdom in April 1993. The bishop was away, so Hart opened and read the letter.²⁸⁰ In the letter McAlinden asserted he had been told that Hart had told AL (another victim of McAlinden) that he (McAlinden) had been a paedophile for more than 40 years.²⁸¹ Hart initially said he did not tell AL that before April 1993²⁸² but later said he was trying to be supportive of AL and it was possible he could have exaggerated the information about McAlinden.²⁸³ Details of Hart's involvement and meeting with AL are provided in paragraph 12.245 and following. Hart agreed, however, that as at April 1993 he knew (on the basis of what Clarke had told him) there were allegations about McAlinden going as far back as 40 years before 1993; Clarke had also said to him, 'There's always been difficulties'.²⁸⁴

Monsignor Hart's correspondence to McAlinden, May 1993

- 12.164 Hart wrote to McAlinden on 14 May 1993, while Clarke was overseas.²⁸⁵ Hart liaised with Lucas about the letter²⁸⁶ and sought his approval of its contents.²⁸⁷ He then sent another letter to McAlinden on 18 May 1993²⁸⁸ and thereafter a letter to the Poor Sisters of Nazareth on 20 May,²⁸⁹ in an effort to arrange accommodation for McAlinden. The letter to the Poor Sisters of Nazareth noted certain restrictions placed on McAlinden and stated that he was 'not allowed to say public Masses or to appear in public as a priest'.²⁹⁰

Father Lucas's evidence

Retained to assist with McAlinden

- 12.165 Lucas gave evidence that he could not recall whether it was Clarke or Hart who retained him to assist in relation to dealing with McAlinden.²⁹¹
- 12.166 A letter from Clarke to McAlinden dated 12 February 1993, however, records Clarke's involvement in the matter. The letter noted the requirements of a protocol that was to be followed 'when serious allegations are made about a priest's conduct' and told McAlinden it was necessary for him to 'contact and see Lucas who has been appointed by the NSW Bishops to handle such cases'.²⁹² In referring to the protocol, Clarke explained that it had been developed

²⁷⁸ TOR 2, T1453.41–1454.7; T1454.18–39 (Hart).

²⁷⁹ TOR 2, T1459.3–15 (Hart).

²⁸⁰ TOR 2, T1460.9–28 (Hart); letter from McAlinden to Clarke, dated 27 April 1993, ex 219, tab 220.

²⁸¹ TOR 2, T1461.12–16 (Hart).

²⁸² TOR 2, T1461.21–24 (Hart).

²⁸³ TOR 2, T1461.41–1462.11 (Hart).

²⁸⁴ TOR 2, T1463.19–25 (Hart).

²⁸⁵ TOR 2, T1465.2–4 (Hart); letter from Hart to McAlinden, dated 14 May 1993, ex 219, tab 221.

²⁸⁶ Fax message from Hart to Lucas, dated 14 May 1993, ex 219, tab 222.

²⁸⁷ TOR 2, T1466.41–43 (Hart).

²⁸⁸ Letter from Hart to McAlinden, dated 18 May 1993, ex 219, tab 223.

²⁸⁹ Letter from Hart to the Poor Sisters of Nazareth, dated 20 May 1993, ex 219, tab 224.

²⁹⁰ TOR 2, T1468.31–34 (Hart).

²⁹¹ TOR 2, T1585.45–1586.5 (Lucas).

²⁹² Letter from Clarke to McAlinden, dated 12 February 1993, ex 60.

to ensure ‘... (a) that the accused is treated with justice and charity while an investigation is carried out and after the result is known’.²⁹³

12.167 The protocol to which Clarke referred was that prepared by the Special Issues Committee in April 1992 (see para 12.102 and following), which stated that in dealing with allegations of criminal behaviour against an accused ‘the competent ecclesial [sic] authority is obliged to take into account and preserve various values’, one of these being ‘to act with justice, mercy and charity’.²⁹⁴

12.168 Lucas told the Commission the 1992 protocol broadly informed his activities in February 1993 in connection with McAlinden.²⁹⁵

Persuading McAlinden to leave ministry

12.169 As noted in paragraph 12.107, Lucas gave evidence that by early 1993 it was his role to persuade a priest accused of sexually abusing children to leave the ministry.²⁹⁶

12.170 In relation to his involvement with McAlinden, Lucas’s evidence was to the effect that the procedure he was carrying out in attempting to have McAlinden resign from ministry was outside canon law processes:

Q. Let me ask some preliminary questions. Do you see the role that you were carrying out as having absolutely no need to comply with any canon law processes?

A. It depends on what the canon law processes were. I think the general view at the time, and a view certainly that I had at that time, was that the canon law processes, the formal structured canon law processes, were unworkable and we needed to find a different way of dealing with these allegations.

Q. So are we to understand your answer as suggesting that your process was outside any canon law processes?

A. That would be a general observation of which many canon lawyers have been very critical.

Q. Is that an accurate observation, though?

A. I think so.

Q. Were your processes outside canon law processes?

A. I don't think they were – well, I'll put it this way. There were some canon lawyers who took the view that the manner of dealing with a priest in soliciting from him a willingness to resign his ministry did not do justice to his canonical rights. I understand that view. I don't accept it. But that was certainly a view that was expressed strongly by some canon lawyers.

Q. What about in circumstances where the alleged perpetrator admitted that he had engaged in criminal conduct – would not notes of that admission or those admissions have been useful to pass on to those who thought a canon law process would be an appropriate further way to deal with the priest?

A. I'm not sure – once he had agreed to resign his ministry, there generally wasn't any need for a canonical process.²⁹⁷

²⁹³ *ibid.*

²⁹⁴ Australian Catholic Bishops’ Conference Protocol for dealing with allegations of criminal behaviour, dated April 1992, annexure C to ex 142, para 4.1.

²⁹⁵ TOR 2, T1648.39–41 (Lucas). Lucas also annexed a copy of the 1992 Protocol to an affidavit 11 March 2013 provided to the Commission: ex 142.

²⁹⁶ TOR 2, T1565.34–46 (Lucas).

12.171 The 1992 protocol included provision for a ‘preliminary investigation’ of a complaint of clerical sexual abuse to be carried out by the Special Issues Resource Group. Lucas was asked to identify the part of the 1992 protocol that governed his dealings with McAlinden. He said it was not the ‘preliminary investigation’ referred to in the protocol,²⁹⁸ stating:

I’m not quite sure you’d find it in those words. I think to some extent the protocol had been concertinaed into a conversation with McAlinden to induce his resignation from priesthood. The more elaborate processes there and all of the different policies and principles enunciated here to some extent were taken for granted and short-circuited.²⁹⁹

12.172 Asked why it was appropriate for him to ‘short-circuit’ these documented processes and policies, Lucas said, ‘Because that was the best outcome’.³⁰⁰ He stated:

This was not a common practice but a reasonable practice that John Usher and I had adopted within the spirit of this protocol but without necessarily going through every particular part of a process if the circumstances were such that you could induce his resignation from ministry.³⁰¹

Involvement with AJ

12.173 Lucas told the Commission he had no recollection of any conversations with AJ.³⁰² As noted, AJ gave evidence about two telephone conversations she had with Lucas – one before Lucas met with McAlinden and one after.

12.174 Notwithstanding that absence of recollection, Lucas told the Commission he ‘came to the understanding that she didn’t want the matter reported to the police, from the information I was given before I spoke to her’³⁰³ but could not recall who conveyed that information to him. He said if he had believed AJ might have wanted to go to the police he would have been very reluctant to engage with her until after she had done so.³⁰⁴ He ultimately agreed, however, that he assumed AJ did not want to go to the police.³⁰⁵

12.175 As noted, Lucas said he rarely took complaints from complainants: Monsignor John Usher mostly dealt with them.³⁰⁶ In response to questions relating to AJ and AL, Lucas said, ‘I would not say that I took complaints. The complaints had already been made’.³⁰⁷ He admitted that there could have been instances (unrelated to McAlinden) where he did take complaints and in fact made notes of this.³⁰⁸

12.176 Although Lucas thought it unlikely he would have taken AJ’s complaint by telephone, asked for details or discussed any other complainant with AJ, he had no actual memory of the call and no contemporaneous notes to assist with recollection.³⁰⁹ The McAlinden matter was just one of many he had been involved with concerning priests suspected of child sexual abuse. In contrast, as noted, AJ had a recollection of the two conversations she had with Lucas.

²⁹⁷ TOR 2, T1570.30–1571.18 (Lucas).

²⁹⁸ TOR 2, T1648.43–45 (Lucas).

²⁹⁹ TOR 2, T1649.1–7 (Lucas).

³⁰⁰ TOR 2, T1649.9–12 (Lucas).

³⁰¹ TOR 2, T1649.15–20 (Lucas). Note that this evidence differs significantly from the evidence of Usher, who stated that his role was more victim-focused, while Lucas generally dealt with alleged perpetrators (see para 12.107).

³⁰² TOR 2, T1644.5–7 (Lucas).

³⁰³ TOR 2, T1644.11–13 (Lucas).

³⁰⁴ TOR 2, T1644.38–43 (Lucas).

³⁰⁵ TOR 2, T1644.45–47 (Lucas).

³⁰⁶ TOR 2, T1566.27–30 (Lucas).

³⁰⁷ TOR 2, T1572.37–38 (Lucas).

³⁰⁸ TOR 2, T1566.27–38 (Lucas).

³⁰⁹ TOR 2, T1584.35–1585.40; T1674.24–47 (Lucas).

12.177 Lucas told the Commission that Clarke had told him McAlinden had been reported to the police for sexual abuse offences in Western Australia and had been tried and acquitted. He knew this at the time he spoke with AJ (and at the time of the meeting with McAlinden and AL's complaint, as noted below). Lucas told the Commission this knowledge had caused him to suspect that what AJ (and subsequently AL) had said might have some basis to it.³¹⁰

A meeting with McAlinden following AJ's allegations

12.178 Lucas told the Commission that, having read Diocesan documents provided by the Commission, he believed he met with McAlinden in early 1993.³¹¹ He gave evidence that there was only one meeting, but he did not recall it and could not construct where it was, what McAlinden looked like or what he said.³¹² He did recall, though, that the purpose of the meeting was to negotiate McAlinden's resignation from priestly ministry in the light of the allegations about him.³¹³

12.179 Lucas agreed that when he met McAlinden he knew he had already been charged with and acquitted of child sexual abuse in Western Australia, because that 'was partly what brought the whole matter to light',³¹⁴ and that he had known this when he spoke to AL and AJ. He said, 'That's what made them angry – that he had been acquitted'.³¹⁵

12.180 As noted in paragraph 12.135, as to the timing of Lucas's meeting with McAlinden, AJ gave evidence that placed it between 24 and 26 February 1993; this timing accords with the decree issued by Clarke on 27 February 1993 withdrawing McAlinden's faculties 'because of the circumstances as discussed with Fr. B Lucas' (showing the meeting had taken place by that time).

Diocesan documents relating to McAlinden's admissions

12.181 A number of Diocesan documents contain references to admissions having been made by McAlinden. Either expressly or in context, such references clearly relate to admissions by McAlinden about the sexual abuse of children.

12.182 Thus, in a letter to the Bishop of Nottingham, the Right Reverend James McGuinness, dated 1 April 1993, Clarke wrote:

After a number of complaints and allegations had been made concerning his behaviour with small children some years ago, he [McAlinden] **admitted that he had offended in this matter**. However, he also claimed that he has not offended over the past 5 years ...³¹⁶
[emphasis added]

12.183 Later that year, on an insurance proposal form dated 23 November 1993, Clarke wrote:

One of my priests working in another Diocese was tried for a case alleged to have taken place when he served there some time ago. He was found not guilty, however a number of people in this Diocese came to know of this case and were incensed that he was exonerated. They complained that they had been victims many years back & their complaints were referred to **Fr Brian Lucas. He handled this case with great dexterity and extracted a confession from the priest [to the effect] that he had offended**. He has returned to Ireland & was told that should he return here these angry women will pursue him. The priest concerned is 70 years of age.³¹⁷ [emphasis added]

³¹⁰ TOR 2, T1606.6–14 (Lucas).

³¹¹ TOR 2, T1581.44–1582.19 (Lucas); TOR 2 tender bundle, ex 219.

³¹² TOR 2, T1582.6–11 (Lucas).

³¹³ TOR 2, T1648.47–1649.20 (Lucas).

³¹⁴ TOR 2, T1643.37–45 (Lucas).

³¹⁵ TOR 2, T1643.47–1644.3 (Lucas).

³¹⁶ Letter from Clarke to McGuinness, dated 1 April 1993, ex 123, p 443.

³¹⁷ Catholic Church Insurances Limited Proposal for Special Issues Liability Insurance, dated 23 November 1993, ex 219, tab 229, p 464.

12.184 In a letter to Monsignor Bantigue in the Philippines dated 10 May 1995 Clarke relevantly said:

In 1994³¹⁸ serious allegations were made against Fr Denis. **In being confronted by these accusations by a priest deputed by the Australian Episcopal Conference, Fr Denis admitted to the accusations ...**³¹⁹ [emphasis added]

12.185 As noted, in a letter to the Apostolic Nuncio in Canberra (the Vatican's representative in Australia) dated 23 May 1995 Clarke wrote:

In March 1993 a parishioner of Maitland approached the Vicar General with serious accusations concerning a priest of the Diocese, Fr Denis McAlinden.

Fr McAlinden was at that time not working in the Diocese but in the Diocese of Bunbury.

The Vicar General contacted Fr Brian Lucas who stipulated the following procedure:

- that I was to ring Bishop Quinn and acquaint him with the accusations and to request him to remove Fr McAlinden's faculties.
- that he inform Fr Denis to proceed immediately to Sydney to be interviewed by Fr Lucas.

This was done.

At the interview Fr Denis admitted to Fr Brian Lucas that the accusations were true ...³²⁰ [emphasis added]

12.186 In a letter dated 19 October 1995 to McAlinden, setting out a request that McAlinden petition the Holy See for a rescript (decree) of laicisation, Clarke prefaced the request thus: 'In the light of your admission to Fr Brian Lucas and other evidence ...'³²¹

12.187 In a handwritten reply sent from Western Australia and dated 26 October 1995 McAlinden stated:

... incidentally, the word 'confidential' has a very hollow ring as far as Maitland is concerned: Brian Lucas convinced me, against my better judgment, to accept that the information I gave him would be held in strict confidence by the Bishop; yet, within a few weeks, the same [redacted] mentioned above, was able to repeat it on the testimony of Allan Hart.³²²

12.188 In a letter dated 5 December 1995 from McAlinden to Malone, which included his formal response to the suggestion that he cooperate with a process of declaration of impediment to exercise orders,³²³ McAlinden wrote:

Canon 277³²⁴

... Yes, here I have failed miserably in observation of 'perfect and perpetual continence' in relation to my vow of chastity in matters about which I have been accused and of which I have accused myself, **though some of the individual cases mentioned by Lucas (1993) did not occur**, most of all that concerning [AK] ... neither did the case happen that was brought to court in W.A. in 1992.

³¹⁸ From the evidence before the Commission, this date is likely to be a typographical error – allegations against McAlinden are known to have surfaced in 1993, but not in 1994.

³¹⁹ Letter from Clarke to Bantigue, dated 10 May 1995, ex 65, p 495.

³²⁰ Letter from Clarke to Brambilla, dated 23 May 1995, ex 66, p 496.

³²¹ Letter from Clarke to McAlinden, dated 19 October 1995, ex 67, p 532.

³²² Letter from McAlinden to Clarke, dated 26 October 1995, ex 68, p 536. Although the term 'admission' is not used, this extract does include a reference to 'confidential information' McAlinden had provided to Lucas.

³²³ Report of Dr R Austin, dated 3 July 2013, ex 209, pp 39–44.

³²⁴ Canon 277 obliges clergy to observe 'perfect and perpetual continence', be celibate and to behave with prudence in relation to persons who may be a danger to their continence. The bishop also has authority under Canon 277 to establish more detailed rules regarding these matters.

... However as I explained to Lucas in '93, that, by the Grace of God and the help of our Blessed Lady, I had already become completely free from all such wrong-doings, in fact, regarded such as an abomination ...³²⁵ [emphasis added]

12.189 In a letter to Malone dated 27 January 1996 McAlinden wrote:

For my part I dispute the claim that any such relationship as mentioned 'continued over a lengthy period of time' with any child. Neither do I know the names of the said accusers. I submitted to Fr. Lucas all the cases that I was aware of. Some of the names given by him were certainly not correct: one of these was that of [AK] ... another name he mentioned was [AJ]; 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.³²⁶

12.190 For his part, in his evidence before the Commission, Malone confirmed that Clarke told him in 1995 that Lucas was successful in 'getting some admissions from McAlinden' relating to having sexually abused children but without providing further details.³²⁷

Reporting the admission to Bishop Clarke

12.191 Lucas said his practice was to make a telephone call to the bishop or the superior immediately after his exchanges or meetings with priests.³²⁸ In this respect, the Diocesan correspondence referred to above includes Clarke's reference to Lucas having extracted a confession from McAlinden (among other references to this matter).

Awareness of and involvement with the proposal to relocate McAlinden to the United Kingdom

12.192 Lucas gave evidence that he was aware of a plan to relocate McAlinden to the United Kingdom but did not know when he became aware of that plan.³²⁹ He denied, however, that he had any involvement in the plan.³³⁰ Lucas told the Commission that he was consulted in May 1993 in relation to signs of McAlinden's disobedience in the United Kingdom.³³¹ This evidence was in contrast to that of Hart, who said that it was in fact Lucas and Clarke who were involved in the arrangements regarding McAlinden in 1993.³³² In particular, Hart told the Commission that (in or around March 1993) he had asked Lucas whether he had any contacts in the United Kingdom who could provide information about accommodation for McAlinden (as noted in para 12.161).

12.193 Notably, by letter dated 27 April 1993 McAlinden wrote to Clarke referring to the difficulties with his living arrangements in the United Kingdom and stating, 'I'll be writing to Fr. Brian Lucas to inform him of the situation; I think he already expressed doubts of the wisdom of going to Skegness in the first place'.³³³

Father Lucas's attitude to reporting

12.194 Lucas gave evidence that 'Ideally, you would certainly want a priest to be prosecuted'. He also referred to the difficulty that arises when a victim is unwilling to go to the police for good

³²⁵ Letter from McAlinden to Malone, dated 5 December 1995, ex 78, p 89.

³²⁶ Letter from McAlinden to Malone, dated 27 January 1996, ex 76, ex 219, tab 275, p 587.

³²⁷ TOR 2, T807.40–808.12 (Malone).

³²⁸ TOR 2, T1575.28–32; T1650.15–19 (Lucas); affidavit of Lucas, dated 11 March 2013, ex 142, para 7.

³²⁹ TOR 2, T1640.36–42 (Lucas).

³³⁰ TOR 2, T1640.44–45 (Lucas).

³³¹ TOR 2, T1724.28–35 (Lucas).

³³² TOR 2, T1448.20–1449.15 (Hart).

³³³ Letter from McAlinden to Clarke, dated 27 April 1993, ex 127.

reason.³³⁴ Lucas told the Commission he would not go to the police against the victim's wishes and that he neither encouraged nor discouraged victims from going to the police.³³⁵

Sister Redgrove's evidence

12.195 In oral evidence Redgrove confirmed to the Commission that she recalled being present with AJ at a 50th birthday party in early 1993. Redgrove told the Commission that before attending the party she had already been suspicious that McAlinden had abused children other than AL (see para 12.241 and following regarding AL's disclosure to Redgrove).³³⁶ Her recollection was that there was a disclosure at the party by AJ of having been abused by McAlinden. Redgrove recalled saying, 'Heavens above. He was up for that in Western Australia'.³³⁷ She said she told those present about the contents of a newspaper article she had been sent about McAlinden's sexual abuse of a child in Western Australia (see para 12.240).³³⁸

12.196 Redgrove recalled that a few months after the birthday party AJ told her she had been in contact with Hart about the abuse.³³⁹ Redgrove said she did not feel any obligation to do anything further about the information received from AJ, since contact had been made with Hart and Redgrove saw herself as providing support only.³⁴⁰ She recalled having a number of conversations with AJ after the party, but could not recall whether there was any discussion about whether the allegations should be taken to the police.³⁴¹

McAlinden the 'hardest nut to crack'

12.197 Redgrove gave evidence that she remembered learning, at some stage in early 1993, that McAlinden was to be called back from Western Australia, but she was unable to recall who told her so.³⁴² At some point after the meeting with AL and Lucas (see para 12.246 and following) Redgrove received a message that McAlinden had come to Sydney from Western Australia and that she was to telephone Lucas that night after he had 'cross-examined' McAlinden.³⁴³ In that telephone call, Redgrove said, Lucas told her, 'He gave in. I found him the hardest nut to ever crack'. Redgrove took this to mean that McAlinden had admitted he was guilty.³⁴⁴

12.198 Redgrove told the Commission she did not discuss with Lucas the procedure he had adopted. She also said Lucas did not say anything to her about reporting McAlinden to the police.³⁴⁵

12.199 For his part, Lucas gave evidence about the comment attributed to him – 'He gave in. I found him the hardest nut to ever crack' – saying, 'It doesn't ring a bell but could well be the case'.³⁴⁶ Lucas said, 'That doesn't sound like my language' but conceded that 'words to that effect [are] quite likely.'³⁴⁷

³³⁴ TOR 2, T1610.2–14 (Lucas).

³³⁵ TOR 2, T1600.43–47; T1603.11–13 (Lucas). Lucas gave further evidence to the Commission that around 1995 a series of situations which arose changed the position of the Church so that the wishes of victims in relation to the police was recorded in writing: TOR 2, T1603.18–26 (Lucas). In contrast, Usher gave evidence that he (Usher) adopted an approach of facilitating and actively encouraged complainants to report to police – see further para 12.202 below.

³³⁶ TOR 2, T17.27–32 (Redgrove in camera, 22 July 2013).

³³⁷ TOR 2, T11.15–39 (Redgrove in camera, 22 July 2013).

³³⁸ TOR 2, T49.33–50.13; T50.46–51.1 (Redgrove in camera, 22 July 2013).

³³⁹ TOR 2, T12.4–13.4 (Redgrove in camera, 22 July 2013).

³⁴⁰ TOR 2, T26.40–27.3 (Redgrove in camera, 22 July 2013).

³⁴¹ TOR 2, T36.18–29 (Redgrove in camera, 22 July 2013).

³⁴² TOR 2, T64.38–47 (Redgrove in camera, 22 July 2013).

³⁴³ TOR 2, T32.42–33.41 (Redgrove in camera, 22 July 2013).

³⁴⁴ TOR 2, T33.34–34.2; 34.30–32 (Redgrove in camera, 22 July 2013).

³⁴⁵ TOR 2, T35.37–42 (Redgrove in camera, 22 July 2013).

³⁴⁶ TOR 2, T1613.29–30 (Lucas).

³⁴⁷ TOR 2, T1659.6–7 (Lucas).

Monsignor Usher's evidence

- 12.200 Monsignor John Usher was ordained as a priest in the Catholic Archdiocese of Sydney in 1972 and has been the Chancellor of the Catholic Archdiocese of Sydney since 2005.³⁴⁸ He was the director of Centacare, a Catholic welfare agency, from 1983 until 2004.³⁴⁹ In that position Usher received allegations of sexual abuse against clergy from people in dioceses or from the bishop of a diocese, and victims were often referred to him.³⁵⁰ Additionally, from 1995 Usher was part of the Australian Catholic Bishops Conference Special Issues Committee and served in that capacity for four years.³⁵¹
- 12.201 Although Lucas said in his evidence that on occasion he would meet priests (who were to be persuaded to leave ministry) in the company of Usher,³⁵² Usher's recollection differed. In particular, Usher said his processes at that time tended to be victim focused, while Lucas generally dealt with the alleged perpetrators.³⁵³ Usher said he did not believe he had any role at all in connection with McAlinden.³⁵⁴
- 12.202 More generally, Usher told the Commission that when working with victims of sexual abuse he facilitated the reporting of their complaints to the police because it was 'helpful to them'.³⁵⁵ When dealing with those victims who were 'adamant' about not going to the police, Usher said, he would encourage them to go to the police, telling them if they did that he would help them and offering support in terms of counselling.³⁵⁶ Usher stated that those counsellors who worked with him would 'work very, very diligently to try and encourage that person to speak to the police'³⁵⁷ and that he used his counsellors to try to convince a person that it was in their best interest and there would be some closure for them if they did speak to the police.³⁵⁸

Conclusions

AJ's sexual abuse by McAlinden

- 12.203 AJ was an impressive and credible witness. The Commission accepts her evidence that she was abused by McAlinden in 1961 or 1962, when she was 11 or 12 years old.³⁵⁹

AJ's interactions with Sister Redgrove regarding her abuse by McAlinden

- 12.204 The Commission accepts that at some point in early 1993, following events at a birthday party, Sister Redgrove became aware that as a girl AJ had been sexually abused by McAlinden. The Commission accepts AJ's evidence that Redgrove encouraged her to report the matter to the bishop and to Hart.
- 12.205 Redgrove gave evidence that AJ subsequently told her she had made contact with Hart. The Commission accepts Redgrove's evidence that, once advised of this, she saw her role as providing support to AJ.

³⁴⁸ Statutory declaration of Usher, dated 9 August 2013, ex 226, paras 1–2.

³⁴⁹ TOR 2, T2344.39–42 (Usher).

³⁵⁰ TOR 2, T2345.2–11 (Usher).

³⁵¹ TOR 2 T2347.12–28; T2348.33–35 (Usher).

³⁵² TOR 2, T1568.40–1569.8 (Lucas).

³⁵³ TOR 2, T1569.23–31 (Lucas; statutory declaration of Usher, dated 9 August 2013, ex 226, para 36.

³⁵⁴ TOR 2, T2402.35–41 (Usher); see also email from Usher to Casey, dated 20 June 2012, ex 227.

³⁵⁵ TOR 2, T2377.42–47 (Usher).

³⁵⁶ TOR 2, T2379.29–39 (Usher).

³⁵⁷ TOR 2, T2379.47–2380.2 (Usher).

³⁵⁸ TOR 2, T2374.18–22 (Usher).

³⁵⁹ Further, her evidence on this aspect was not subject to challenge by any person authorised to appear (including the Diocese).

- 12.206 Redgrove recalled a number of conversations with AJ after the party but could not recall whether the question of taking the allegations to the police was discussed.
- 12.207 Chapter 13 sets out an analysis of matters relating to s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW) concerning the sufficiency of evidence warranting prosecution in relation to Redgrove with respect to her knowledge of a serious offence committed against AJ. In summary, however, the Commission finds that there is not the sufficiency of evidence required by s. 10 of the Act.

AJ's complaint to Monsignor Hart

- 12.208 The Commission finds that in or about February 1993 AJ disclosed to Hart, then vicar general of the Diocese, that McAlinden had sexually abused her when she was a girl, that it had been 'skin on skin', and that 'he was horrified'. Hart believed AJ: she was someone he knew and whom he accepted to be truthful.
- 12.209 The Commission accepts AJ's evidence that at this initial meeting Hart told her there had been previous incidents of sexual abuse by McAlinden and rejects Hart's evidence to the contrary. AJ was an impressive and credible witness; her account of the meeting with Hart was persuasive. In addition, Hart agreed in evidence that at the time of meeting with AJ he was aware of other instances of sexual abuse on the part of McAlinden. From AJ's perspective, coming forward to the Diocese with her complaint was a matter of great personal importance, and the information conveyed by Hart about other instances of McAlinden's offending would have been memorable.
- 12.210 Hart, however, gave evidence to the Commission that was inconsistent in relation to the question of his discussions with Clarke about the allegations that McAlinden had sexually abused children. Hart initially told the Commission there had not been 'one word' of discussion on this matter but then proffered a recollection of one conversation with Clarke in 1993 concerning McAlinden in the context of Hart having received complaints from McAlinden's victims; he later conceded that there were probably 'two or three' such discussions with Clarke. Given the totality of the evidence regarding Hart's involvement in receiving complaints – not just from AJ but also from AL (as noted at para 12.260 and following) – and conveying those to the bishop, together with the evidence about his involvement in dealing with those complaints in 1993 and 1995, the Commission finds that Clarke and Hart had discussions about reports that McAlinden had sexually abused children beyond the two or three discussions he ultimately conceded would have occurred. The Commission considers that in his evidence Hart was at times reluctant to reveal how much he knew at relevant times in the past about McAlinden's propensity for sexually abusing children.
- 12.211 The Commission finds that, in accordance with AJ's request, Hart promptly reported AJ's complaint about McAlinden to Bishop Clarke.

Monsignor Hart's liaison with Father Lucas and McAlinden

- 12.212 Hart gave evidence that it was Clarke who contacted Lucas and that he (Hart) did not play any role in communicating with McAlinden about AJ's allegations. To similar effect, Hart said Clarke and his 'team' were looking after the matter and making the necessary arrangements for managing the situation: he was not part of the 'inner circle'. The Commission rejects this evidence. It finds that, consistent with Clarke's letter of 23 May 1995, Hart did in fact communicate with Lucas about the procedures to be followed in relation to the complaint against McAlinden. In addition, the correspondence of March and May 1993 (see paras 12.160 and following) about overseas arrangements for McAlinden demonstrates Hart's ongoing involvement in management of the McAlinden problem in consultation with Lucas (as illustrated by Hart sending Lucas his letter of 14 May 1993 for approval before sending it to McAlinden).

- 12.213 The Commission formed the view that, in his evidence Hart was attempting to distance himself from the appearance of having played an important role in the management of the McAlinden problem in 1993. The Commission finds that, consistent with his senior position in the Diocese as vicar general and, for periods during March to May 1993, as Diocesan administrator (in the absence of Clarke), and as confirmed by the objective evidence (such as the correspondence noted above), Hart played a central role in the Diocesan management of McAlinden in 1993.
- 12.214 Hart also gave evidence that, in terms of whether McAlinden had made admissions to Lucas, he could not say ‘yes or no’; he also said Clarke did not tell him anything about McAlinden’s meeting with Lucas. He later conceded, however, that he was actually aware in 1993 that McAlinden had made admissions to Lucas about his offending. This evidence was a further instance of Hart’s efforts to distance himself from the appearance of having knowledge of McAlinden’s sexual abuse of children and his (Hart’s) awareness of steps taken to deal with the issue.
- 12.215 In a similar vein Hart gave conflicting evidence on the question of whether he was aware that McAlinden was recalled from Western Australia by Bishop Clarke. He first said he did not know where McAlinden was at the time of AJ’s complaint or whether he was recalled by Clarke after AJ’s complaint. Subsequently, however, Hart volunteered an answer that shows he did possess such knowledge: ‘... When he was coming back from Western Australia, Bishop Leo said he was going to be arrested when he got off the plane’.

Monsignor Hart’s non-reporting of McAlinden to the police

- 12.216 Hart was aware from the time he began as vicar general of the Diocese in 1990 that sexual abuse of children was a crime. At the time of her disclosure in 1993, however, AJ told Hart she did not want her allegations conveyed to the police. Hart took no steps to report McAlinden to the police or to counsel and encourage either AJ or Bishop Clarke to take such steps.³⁶⁰
- 12.217 In the Commission’s view, AJ’s determination not to go to the police was based on her ‘devotion to the Church’. The Commission accepts AJ’s evidence that she would have reported McAlinden to the police had she received the blessing, support and pastoral care of Clarke, Hart and Lucas. Hart’s ready acceptance of AJ’s preference not to go to the police represented a lost opportunity for police action against McAlinden to be initiated.

Plans to relocate McAlinden to the United Kingdom

- 12.218 The Commission accepts AJ’s account of what Hart told her about the proposed arrangements for dealing with McAlinden and relocating him to the United Kingdom, including that Hart referred to the Diocese having agreed to buy a one-way ticket for McAlinden. One of the reasons AJ had come forward was to ask the Diocese to ensure that McAlinden could not continue to sexually abuse children. AJ accordingly had a keen interest in the arrangements that were being made for where McAlinden would go and what he would be doing (her evidence being that she wanted him kept in a supervised safe house). She also gave evidence of her concerns about the adequacy of the proposed arrangements. Her evidence as to these matters, and that Hart was being informative and helpful to her, providing her with updates on McAlinden’s status, is accepted. In contrast, Hart gave conflicting evidence on this. He initially said he had no knowledge of when or where McAlinden went in 1993. He later conceded in evidence that he had in fact told AJ McAlinden would go to England to live with his sister. The Commission finds that Hart was aware in early 1993 that the Diocese was arranging for McAlinden to travel to the United Kingdom and that he conveyed that information to AJ.

³⁶⁰ Note, by contrast, the stated practice of Monsignor John Usher that he sought to facilitate and support victims report to the police (as noted in para 12.202).

- 12.219 In view of the evidence confirming Hart’s involvement in arrangements for McAlinden to relocate to the United Kingdom, the Commission also rejects Hart’s evidence that he was ‘mystified’ about how McAlinden came to be in the United Kingdom. The facsimile message to Hart (as vicar general), transmitted as it was from London on 25 March 1993, shows he was closely involved in arranging for McAlinden to live in the United Kingdom. Hart’s evidence about being ‘mystified’ was an instance of Hart trying to distance himself from the appearance of having knowledge of plans to relocate McAlinden as part of the ‘solution’ to matters that arose in early 1993. The correspondence in 1993 – the facsimile dated 25 March 1993 (as noted) and Hart’s two letters to McAlinden dated 14 and 18 May 1993, as well as his letter to the Poor Sisters of Nazareth on 20 May 1993 about accommodation for McAlinden – further confirms that Hart had a role in making arrangements for McAlinden’s relocation to and accommodation requirements in the United Kingdom beyond that which he was prepared to acknowledge to the Commission.
- 12.220 In the Commission’s assessment, having regard to the totality of the evidence, Hart had a central role in acting on AJ’s complaint and making arrangements for McAlinden’s relocation to the United Kingdom in his role as either vicar general or Diocesan administrator (in Clarke’s absence). Contrary to his evidence, he also knew that McAlinden was to be recalled from Western Australia and was later made aware by Clarke that McAlinden had made admissions about his offending to Lucas. In his oral evidence Hart tried to distance himself from the appearance of having knowledge of the particulars of McAlinden’s offending and any responsibility for management of the matter at the Diocesan level in a manner that was, the Commission finds, inconsistent with the true state of affairs. The Commission ultimately formed the view that Hart was an unsatisfactory and unimpressive witness in certain respects, as set out in Chapter 20.
- 12.221 Chapter 13 sets out an analysis of matters relating to s. 10 of the *Special Commissions of Inquiry Act 1983 (NSW)*, concerning the sufficiency of evidence warranting prosecution in relation to Hart with respect to his knowledge of a serious offence committed against AJ. In summary, however, the Commission finds that there is not the sufficiency of evidence required by s. 10 of the Act.

Father Lucas being retained by Bishop Clarke to deal with AJ’s complaint against McAlinden

- 12.222 The Commission finds that, following AJ’s complaint, Lucas was retained by Bishop Clarke to deal with the allegations against McAlinden. Clarke’s taking of such a step was consistent with his role as head of the Diocese.

Father Lucas’s involvement with AJ

- 12.223 As to Lucas’s involvement with AJ, the Commission finds that in February 1993 Lucas received from AJ a report of an instance of sexual abuse against her by McAlinden when she was a young girl.
- 12.224 The Commission also accepts AJ’s account of her interactions with Lucas, which would have been unusual and memorable from her perspective, particularly because it was the first time she had encountered Lucas. As AJ had complained to Hart, she found Lucas’s manner ‘cold and insensitive’ when he questioned her about the abuse. Such a manner is consistent with Lucas adopting a pragmatic approach to extracting from AJ the information he required – What happened? How old were you? Where did this happen? What did he do to you? (as was AJ’s evidence on the questions Lucas asked her)³⁶¹ – in order to confront McAlinden and persuade him to resign his ministry. The Commission accepts AJ’s evidence that during the first phone call

³⁶¹ Excerpt of NSW Police statement of AJ, dated 29 June 2010, ex 304, para 36.

AJ told Lucas what McAlinden had done to her when she was a young girl (that is, that he had stroked her on the outside of her vagina) but not the fact that he had digitally penetrated her. The Commission is accordingly comfortably satisfied that in 1993 Lucas received a first-hand complaint from AJ of an indecent assault committed on her by McAlinden.³⁶²

- 12.225 By the time he took AJ's complaint, Lucas knew (from Clarke) that McAlinden had been reported to the police for sexual abuse offences in Western Australia and had been tried and acquitted. This gave him cause to suspect that AJ's complaint had some basis to it.

Father Lucas's meeting with McAlinden in February 1993: admissions made

- 12.226 The Commission finds that Father Lucas met with McAlinden at some time between 24 and 27 February 1993 with a view to negotiating his resignation from ministry. The Commission accepts AJ's evidence of the meeting having taken place during this period (given McAlinden's acceptance of Clarke's decree withdrawing his priestly faculties on 27 February 1993). As noted, Clarke's decree of 27 February 1993 referred to the 'circumstances as discussed' by McAlinden and Lucas, such that the meeting must have occurred by this time; this aspect is also consistent with AJ's evidence in relation to the timing of the meeting.
- 12.227 Lucas maintained that he had no memory of meeting with McAlinden. Yet there were certain matters relating to McAlinden that might be expected to have made him (McAlinden) memorable, such as the fact that he had been tried and acquitted of child sexual abuse offences in Western Australia (which would have been a notable matter in 1992) and that anger by other victims about McAlinden's acquittal was partly the impetus for Lucas's involvement. In addition, at least one of McAlinden's victims was someone with whom he (McAlinden) had a close relationship. Notwithstanding these factors, Lucas was unable to assist the Commission with his recollection of what occurred at the meeting with McAlinden in 1993.
- 12.228 Lucas could not prompt his recollection by referring to notes of his meeting with McAlinden: his practice was to refrain from taking notes of the meetings in which he encouraged priests to resign from ministry on the basis of misbehaviour allegations (an approach the Commission criticises as unsatisfactory, as noted in para 12.116). This, coupled with Lucas's stated absence of any recollection and the unavailability of McAlinden, makes it difficult to determine exactly what McAlinden admitted in his interview.
- 12.229 The Commission finds that, although Lucas made no notes about his meeting with McAlinden and stated that he did not recollect the meeting, there is nonetheless reliable evidence available confirming that at that meeting McAlinden made admissions of having sexually abused children. The evidence includes, in particular, AJ's recollection of what Lucas told her at the time. The evidence does not, however, establish the precise names of the victims who were the subject of McAlinden's admissions.
- 12.230 In addition, it is apparent that the letters (and the insurance proposal form) referred to in paragraphs 12.181 to 12.190 relate to admissions McAlinden made to Lucas about his (McAlinden's) sexual abuse of children. In this respect, McAlinden's letter of 5 December 1995 to Malone, in which he admits he has failed to observe 'perfect and perpetual continence' in relation to 'my vow of chastity in matters about which I have been accused', is, in context,³⁶³ clearly a reference by McAlinden to his sexual abuse of children.³⁶⁴ Further, the Commission finds that McAlinden's assertion in that letter that 'some of the individual cases mentioned by

³⁶² See further Chapter 13 regarding the sufficiency of the evidence with respect to s. 316 of the *Crimes Act 1900* (NSW) (having regard to the duty of the Commissioner to consider this aspect, pursuant to s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW)).

³⁶³ See for example para 12.188 and the letter of 5 December 1995, ex 78.

³⁶⁴ There was also no suggestion in any evidence before the Commission that McAlinden had sexual relations with any adult person.

Lucas (1993) did not occur' amounts to an acknowledgment that some of the cases did in fact occur. Taken together, these internal Diocesan documents provide additional support for the Commission's conclusion that McAlinden in fact made admissions of child sexual abuse to Lucas.

Father Lucas's reporting of McAlinden's admissions to Bishop Clarke

12.231 The Commission finds that Lucas, in accordance with his usual practice, spoke to Clarke after the meeting with McAlinden and told him of McAlinden's admissions on a date on or before 1 April 1993 (as supported by the Diocesan documents set out in paras 12.181 to 12.190).

Subsequent discussion between AJ and Lucas after McAlinden's admissions

12.232 The Commission finds that Lucas subsequently told AJ that McAlinden had made admissions to him that he had sexually abused girls. Precisely what acts of abuse were acknowledged as having occurred were not conveyed to AJ. Lucas told her, however, that McAlinden had not recognised her name and thus had not made any admissions to him (Lucas) about his abuse of her.

Father Lucas's involvement in plans to relocate McAlinden to the United Kingdom

12.233 Lucas's evidence was that, although aware of the plan to relocate McAlinden to the United Kingdom, he did not know when he became aware of that plan and denied any involvement with it. Although the Commission accepts that Lucas might not have been the 'architect' of the plan to relocate McAlinden overseas, the evidence establishes that he was certainly consulted, by at least Hart, about the plan's execution – including in relation to accommodation contacts in March 1993. In the Commission's view, in denying any involvement with the plan, Lucas sought to distance himself from the appearance of having knowledge about McAlinden's relocation to the United Kingdom in a way that was inconsistent with the true state of affairs.

Father Lucas's failure to report McAlinden to the police

12.234 Lucas stated, 'Ideally, you would certainly want a priest to be prosecuted'. He also referred to the difficulty that arises when a victim is unwilling to go to the police for good reason. Lucas did not, however, ask AJ what her position was in relation to reporting her complaint about McAlinden to the police, and there is no evidence – apart from Lucas's own belief that he *might* have known this information before speaking to AJ – that Lucas knew that was her position (he ultimately agreed he simply assumed that to be AJ's position). There is also no evidence that he encouraged AJ to report to the police.³⁶⁵

12.235 In the Commission's view, however, AJ's determination not to go to the police was based on her 'devotion to the Church' (as noted in para 12.217). The Commission accepts AJ's evidence that she would have reported McAlinden to the police had she received the blessing, support and pastoral care of Clarke, Hart and Lucas in relation to taking that course. As noted in connection with Hart (see para 12.130 and 12.217), Lucas's apparent acceptance of AJ's preference not to go to the police represented a lost opportunity for police action against McAlinden to be initiated.

12.236 There is otherwise evidence that Lucas knew that McAlinden was going to the United Kingdom (without having been reported to the police). As a lawyer, Lucas was well aware of the importance of admissions – even general ones – to investigating authorities such as police.

12.237 Lucas, and the Diocese, failed to report McAlinden to the police in 1993. Lucas possessed information that would have facilitated a police investigation of McAlinden, yet he never informed the police of any of his dealings with or knowledge about McAlinden. In this regard,

³⁶⁵ Note, by contrast, the stated practice of Monsignor Usher that he sought to facilitate and support victims in reporting to the police (as noted at para 12.202 above).

even if Lucas assumed that AJ was reluctant or unwilling to report her complaint to the police, he failed subsequently to report McAlinden to the police by way of a 'blind-report' (which provided an option for reporting without identifying victims), as set out at in paragraph 12.273.

Monsignor Usher: no dealings with McAlinden

12.238 The Commission accepts the evidence of Monsignor Usher that he did not have any role in connection with McAlinden. There is no weight of credible evidence that Usher in fact met with McAlinden or was otherwise involved in dealing with the 1993 complaint relating to him.

AL's disclosure

12.239 AL is an adult woman who in 1993 reported (as an adult) that on numerous occasions McAlinden had sexually abused her when she was a child.³⁶⁶

Sister Redgrove's evidence

12.240 Early in 1993 AL sent Sister Paula Redgrove, who was then based in Melbourne, a clipping from a Canberra newspaper reporting that McAlinden had been accused of sexually abusing a child in Western Australia but had 'got out of it'.³⁶⁷

12.241 When Redgrove returned from Melbourne she visited AL, who then disclosed that she had been sexually abused by McAlinden, although she did not give details of precisely what McAlinden had done to her or when it had occurred.³⁶⁸ Redgrove said that AL disclosed to her to seek her (Redgrove's) support, that she did not want her mother to know of the abuse, and that she expected Redgrove to keep the disclosure confidential.³⁶⁹

12.242 Redgrove told AL she would report what AL had told her to Father William Burston of the Diocese.³⁷⁰ She thought Burston might be able to help. At the time Redgrove gave evidence, Burston had been a friend of hers for 60 years. She knew he was also a psychologist.³⁷¹

12.243 Redgrove's recollection was that a short time after speaking with AL she spoke privately with Burston, either in person or on the phone. She was unable to remember whether she told him AL had been sexually abused but recalled that she did tell him something had happened to AL when she was a little girl. She could not remember whether this conversation with Burston occurred when she already knew of AJ's allegation and so could not remember whether she also mentioned AJ to Burston. She was also unable to recall what Burston had said to her.³⁷²

12.244 Redgrove did not remember talking to Burston again about the matter, but she did expect him to do something. Given that a meeting was subsequently organised with Lucas and AL (as noted below), she did not feel the need to discuss the matter again with Burston.³⁷³

AL, Monsignor Hart and Sister Redgrove: the first meeting, 1993

12.245 Redgrove recalled being present at a meeting with Monsignor Hart and AL at the Sacred Heart Presbytery in Hamilton, but she was unable to remember the month or date on which this meeting occurred. She recalled that she drove AL to the meeting and that, apart from AL, Hart

³⁶⁶ Profile of Clerics Accused or Convicted of Child Sexual Assault, undated, ex 243. AL communicated to the Commission that she did not want to give evidence in camera and, consistent with the Commission's policy for victims, was not compelled to do so.

³⁶⁷ TOR 2, T8.1–9.2 (Redgrove in camera, 22 July 2013).

³⁶⁸ TOR 2, T10.19–11.8 (Redgrove in camera, 22 July 2013).

³⁶⁹ TOR 2, T57.29–58.5 (Redgrove in camera, 22 July 2013).

³⁷⁰ TOR 2, T24.26–25.2, T59.13–46 (Redgrove in camera, 22 July 2013).

³⁷¹ TOR 2, T52.14–53.37 (Redgrove in camera, 22 July 2013).

³⁷² TOR 2, T25.4–26.23, T29.25–42, T52.40–53.45 (Redgrove in camera, 22 July 2013).

³⁷³ TOR 2, T53.39–54.44 (Redgrove in camera, 22 July 2013).

and her, no one else was present.³⁷⁴ She could not recall details of the meeting but did remember Hart was going to make arrangements for her to accompany AL to Sydney to see Lucas.³⁷⁵ Hart offered to drive them to that meeting. Redgrove also recalled that AL did not give details of the abuse at this first meeting.³⁷⁶ From what Hart said, Redgrove understood that the purpose of driving to Sydney to see Lucas was so that AL could talk to Lucas about McAlinden's sexual abuse of her.³⁷⁷

AL, Father Lucas and Sister Redgrove: the second meeting, 1993

- 12.246 Redgrove recalled that on this occasion Lucas happened to be in the area, attending a meeting in Monte Pio, Campbells Hill, so there was in fact no need for her to drive AL to Sydney to meet him. Instead, a meeting was to take place at the bishop's house. Either Hart or AL had told her this was the alternative to travelling to Sydney to meet with Lucas.³⁷⁸
- 12.247 In attendance at this meeting were Redgrove, AL and Lucas. Redgrove's recollection was that Hart and Usher also attended,³⁷⁹ although both deny attending such a meeting (as noted in paras 12.260 and following). She believed this meeting took place a couple of months after the initial one with Hart.³⁸⁰ AL was interviewed at this further meeting. Redgrove said Lucas did most of the talking.³⁸¹ She did not see anyone taking notes at the meeting.³⁸²
- 12.248 Redgrove recalled that AL outlined some of McAlinden's sexually abusive conduct, including specifically that he made her touch his penis 'and things like that'.³⁸³ Redgrove was shocked by what AL said³⁸⁴ and thought a priest would never engage in that sort of conduct with a child.³⁸⁵
- 12.249 Redgrove did not recall any discussion at this meeting about reporting the abuse to the police. She thought she would have remembered if it had been discussed since going to the police would have been a very serious step.³⁸⁶
- 12.250 Redgrove expected that Lucas would do something with the information arising from the meeting but did not know whether this included notifying the police.³⁸⁷

AL not wanting the matter to go to the police

- 12.251 In relation to AL's disclosure to Redgrove that McAlinden had sexually abused her, Redgrove thought (on the basis of what AL told her) AL wanted her to keep that information secret and not do anything specific about it at that stage.³⁸⁸ Redgrove did not contact the police herself because she thought she had done her part by reporting the complaint to the Diocese.³⁸⁹ Redgrove also said that AL was most reluctant to take the matter to the police because of the effect that might have had on her mother: 'She didn't want her mother to know; she thought it

³⁷⁴ TOR 2, T18.47–19.4 (Redgrove in camera, 22 July 2013).

³⁷⁵ TOR 2, T19.10–25 (Redgrove in camera, 22 July 2013).

³⁷⁶ TOR 2, T19.35–39 (Redgrove in camera, 22 July 2013).

³⁷⁷ TOR 2, T20.13–16 (Redgrove in camera, 22 July 2013).

³⁷⁸ TOR 2, T27.5–20 (Redgrove in camera, 22 July 2013).

³⁷⁹ TOR 2, T27.22–35 (Redgrove in camera, 22 July 2013).

³⁸⁰ TOR 2, T60.28–30 (Redgrove in camera, 22 July 2013).

³⁸¹ TOR 2, T27.37–40 (Redgrove in camera, 22 July 2013).

³⁸² TOR 2, T60.37–39 (Redgrove in camera, 22 July 2013).

³⁸³ TOR 2, T27.45–28.5 (Redgrove in camera, 22 July 2013).

³⁸⁴ TOR 2, T28.3–5 (Redgrove in camera, 22 July 2013).

³⁸⁵ TOR 2, T28.15–20 (Redgrove in camera, 22 July 2013).

³⁸⁶ TOR 2, T30.47–31.7, T62.45–63.29 (Redgrove in camera, 22 July 2013).

³⁸⁷ TOR 2, T48.9–19; T62.45–64.4; T65.17–30 (Redgrove in camera, 22 July 2013).

³⁸⁸ TOR 2, T57.29–45 (Redgrove in camera, 22 July 2013).

³⁸⁹ TOR 2, T58.42–59.1 (Redgrove in camera, 22 July 2013).

would kill her mother'.³⁹⁰ AL never mentioned to Redgrove any change of mind about her intention not to report the abuse to the police.³⁹¹

- 12.252 Redgrove told the Commission she believed 'they' (the Diocese) would take charge of the matter after she had reported it to them: in short, she thought her work was done.³⁹² In terms of her own ability to deal with the matter, Redgrove added that she would not discipline a priest or call a priest into line; she would have first needed to consult her major superior and expected that in that event the bishop would then be consulted.³⁹³

Father Burston's evidence

- 12.253 In early 1993 Father William Burston was a director of Centacare (a Catholic welfare organisation) and the parish priest in Mayfield West. He was also vicar general from 1 January 1996 to early 2001 and performed a role as one of the Diocesan consultors to Bishop Clarke in June 1981 and again from 1992 to 1997.³⁹⁴ In relation to his role as a consultor, Burston said the bishop called meetings irregularly and that matters of pastoral care relating to priests could have been dealt with in these meetings.³⁹⁵

'I cannot recall'

- 12.254 In his evidence before the Commission Burston did not recall any matter relating to the disciplining of priests arising at any meetings of consultors;³⁹⁶ nor could he recall any occasion on which the question of a priest being subject to disciplinary action by the bishop was recorded in the minutes of consultors. He said his 'guess' was that the bishop did not always bring those matters to consultors' meetings but instead dealt with them separately.³⁹⁷
- 12.255 Burston also said he could not remember when it was that he first heard there were concerns about McAlinden; nor could he remember the context in which the subject first arose or its source.³⁹⁸ Similarly, he could not recall the nature of any complaint he first heard about McAlinden.³⁹⁹ He did, however, think McAlinden was the first priest of the Diocese about which concerns of that nature had been raised.⁴⁰⁰
- 12.256 Generally, Burston said he perceived himself to have some problems with his memory and that this affected his ability to accurately recall past events, including events relating to McAlinden.⁴⁰¹ In this regard, a medical report from Burston's general practitioner opined that the author had the 'impression' that Burston had a 'mild impairment of memory.'⁴⁰² As noted in paragraph 12.279, that report is subject to significant limitations affecting the weight that it can be given.
- 12.257 Whatever the actual state of his memory, Burston maintained that he did not recall any conversation with any church official about McAlinden and the risks he posed.⁴⁰³

³⁹⁰ TOR 2, T31.15–26 (Redgrove in camera, 22 July 2013).

³⁹¹ TOR 2, T31.36–43 (Redgrove in camera, 22 July 2013).

³⁹² TOR 2, T58.42–59.1 (Redgrove in camera, 22 July 2013).

³⁹³ TOR 2, T58.21–40 (Redgrove in camera, 22 July 2013).

³⁹⁴ TOR 2, T1225.38–1227.35 (Burston); Diocese of Maitland clergy appointment document of Burston, undated, ex 115.

³⁹⁵ TOR 2, T1230.43–1231.6 (Burston).

³⁹⁶ TOR 2, T1231.8–12 (Burston).

³⁹⁷ TOR 2, T1232.32–40 (Burston).

³⁹⁸ TOR 2, T1233.45–1234.12 (Burston).

³⁹⁹ TOR 2, T1234.14–18 (Burston).

⁴⁰⁰ TOR 2, T1235.3–6 (Burston).

⁴⁰¹ TOR 2, T1264.33–1265.6 (Burston).

⁴⁰² Report of Dr Frost re Burston, dated 24 July 2013, ex 165.

⁴⁰³ TOR 2, T1266.10–16 (Burston).

Father Burston's recollection of the conversation with Sister Redgrove

- 12.258 In evidence Burston was, however, prepared to accept that he had had a conversation with Redgrove about AL having been sexually abused by McAlinden and that such a conversation might have occurred in about 1993 to 1994.⁴⁰⁴ He said he could not remember the conversation precisely or whether it was in person or by telephone.⁴⁰⁵ He was prompted to recall that AL had said McAlinden had sexually abused her, that she had confided that information to Sister Paula (Redgrove) and that, 'if I recall, there was a very strong refusal to take it to the police'.⁴⁰⁶
- 12.259 Although he could not remember any detail, Burston thought he did advise Redgrove to take the report to the authorities in the Church because of AL's strong reluctance to take matters to the police.⁴⁰⁷ He considered this was the sort of thing he *would* have told her, although he said he did not actually recall what he had in fact told her.⁴⁰⁸ His reference to 'authorities in the Church' was a reference to either the vicar general (Hart) or Clarke. His evidence was that he did not see it as his role to convey the information to either Hart or Clarke. Although he said he was unable to recall, he did not think he took any steps to notify them.⁴⁰⁹

Monsignor Hart's evidence

- 12.260 Monsignor Hart recalled having a meeting with AL and Redgrove at the bishop's house but did not remember attending a meeting with Lucas and/or Usher and AL (and said he was confident that he did was not present on this occasion).⁴¹⁰
- 12.261 Hart told the Commission that at this meeting AL outlined her abuse by McAlinden.⁴¹¹ Hart said the purpose of the meeting was to inform the bishop of AL's complaints and that he did so.⁴¹²
- 12.262 Hart said he had no recollection of any arrangements for AL to meet with Lucas or Usher in relation to McAlinden and if such a meeting had occurred he did not arrange it and was not present at it. Hart said he was confident in that recollection.⁴¹³
- 12.263 Hart's evidence differs from that of Redgrove, who recalled that Hart was instrumental in organising AL's meeting with Lucas. She was also confident that he (Hart) was present at the meeting (see para 12.247). Redgrove also believed that, in addition to Lucas and Hart, Usher was there. Lucas and Usher do not remember that being the case.⁴¹⁴
- 12.264 Hart also recalled a further meeting with Redgrove and AL, during which AL again outlined her abuse, but said that this was at a time when AL had become aware McAlinden was working in the Philippines and she had come to express her concern about that (see further paras 12.299 to 12.305).⁴¹⁵
- 12.265 Chapter 13 sets out an analysis of matters relating to s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW) concerning the sufficiency of evidence warranting prosecution in relation to Hart with respect to his knowledge of a serious offence committed against AL. In summary,

⁴⁰⁴ TOR 2, T1932.10–19 (Burston).

⁴⁰⁵ TOR 2, T1932.21–23 (Burston).

⁴⁰⁶ TOR 2, T1932.28–31, T1938.6–12 (Burston).

⁴⁰⁷ TOR 2, T1933.7–15 (Burston).

⁴⁰⁸ TOR 2, T1933.17–23 (Burston).

⁴⁰⁹ TOR 2, T1933.34–1934.3 (Burston).

⁴¹⁰ TOR 2, T1478.25–1479.46 (Hart).

⁴¹¹ TOR 2, T1539.46–1540.1 (Hart).

⁴¹² TOR 2, T1479.12–21 (Hart).

⁴¹³ TOR 2, T1479.31–46 (Hart).

⁴¹⁴ TOR 2, T27.5–35 (Redgrove in camera, 22 July 2013); T1628.25–36 (Lucas); T2380.46–2381.35 (Usher).

⁴¹⁵ TOR 2, T1539.38–1540.6 (Hart).

however, the Commission finds that there is not a sufficiency of evidence required by s. 10 of the Act.

Father Lucas's evidence

12.266 Father Lucas recalled meeting with AL and a religious sister (whom he accepted to have been Redgrove). He did not recall either Usher or Hart attending that meeting.⁴¹⁶ His evidence was that he did not recall the details of the conversation other than that AL 'led [him] to believe that she may have been sexually abused'.⁴¹⁷ Lucas said there were some aspects of the interview with AL about which he had a clear recollection. He recalled, in particular, that she did not want any police involvement and that this was connected with not wanting her mother to know what had occurred.⁴¹⁸

12.267 When asked about his recollection of whether AL outlined the abuse that had happened to her in any physical terms, Lucas said, 'I don't recall that, and I would have been very cautious of allowing her to do that'.⁴¹⁹ Lucas further explained:

... I was always very concerned not to get into detail with victims, partly for the fact of the pain of them having to restate a story, but mostly on the question of putting words in their mouth or running the risk of contaminating what they might say if there were subsequent proceedings.⁴²⁰

12.268 It was put to Lucas that AL did describe the abuse to him in physical terms. Lucas said, 'I think if there was a detailed description given to me and if, contrary to my practice, I allowed her to do that, that would have been something I would recall'.⁴²¹

12.269 In contrast, and as noted in paragraph 12.248, Redgrove gave evidence that at the meeting AL described the sexually abusive conduct by McAlinden when she was a child, including an instance where McAlinden had made her touch his penis.⁴²²

Father Lucas's views on the protection of children

12.270 Lucas told the Commission, 'Our focus was on the fact that ... [being] a priest, would give him [McAlinden] greater access to children and that's what we wanted to remove'.⁴²³ Lucas gave evidence that the removal of a priest from ministry:

... may or may not be published. Again there's issues of privacy both to him and to his victim, but he would be – and this is a matter still of some contention as to whether his name is put in the official directory of the Catholic Church and in what category. If he was removed from ministry, he would probably be in the list that has 'no appointment' or 'retired'.⁴²⁴

12.271 There was then the following exchange:

- Q. How are the children protected in terms of this information that appears to remain private to the Catholic Church from somebody who, not long ago or maybe a long time ago, was Father X?
- A. The answer to that is the fact that he has no parochial appointment. He would be forbidden to engage in any parochial appointment. He ought then to be living

⁴¹⁶ TOR 2, T15.95.37–45; T1628.25–47 (Lucas).

⁴¹⁷ Affidavit of Lucas, dated 11 March 2013, ex 142, para 6.

⁴¹⁸ TOR 2, T1596.12–24 (Lucas); affidavit of Lucas, dated 11 March 2013, ex 142, para 6.

⁴¹⁹ TOR 2, T1596.30–35 (Lucas).

⁴²⁰ TOR 2, T1596.38–43 (Lucas).

⁴²¹ TOR 2, T1597.3–5 (Lucas).

⁴²² TOR 2, T28.3–5 (Redgrove in camera, 22 July 2013).

⁴²³ TOR 2, T1611.25–35 (Lucas).

⁴²⁴ TOR 2, T1607.1–7 (Lucas).

somewhere where he is not known as Father X. The difficulty of him living too close to where he is known as Father X is that people will put pressure on him and ask him to do a wedding or funeral or, worse still, he will still have friendships and ingratiate himself with those families.⁴²⁵

12.272 On the matter of the risk posed by a priest who had had his faculties removed for paedophilic behaviour, there was also the following exchange between Lucas and counsel assisting:

- Q. ... How would it become publicly known that this person who had had his faculties removed for paedophile behaviour – how would it be published to members outside the church, people outside the church, that this man was no longer a priest and known to have committed paedophile acts?
- A. I think it goes the other way. It's not that you tell the entire world that he's a paedophile, but you make sure he is not in a position where someone can think that he is a priest.
- Q. But he could go to a playground and hand out lollies and continue to be a risk to the community, couldn't he?
- A. Theoretically that's possible, but it's the relationship of being a priest that generally is the biggest risk.
- Q. The relationship, or the fact of a person being a priest gives him more access in a trusted situation to children, doesn't it?
- A. Yes.
- Q. But it doesn't prevent him accessing other children in the community outside of that priestly relationship, does it?
- A. No.⁴²⁶

Blind-reporting

12.273 In addition, Lucas told the Commission that, in relation to historical complaints, an adult who complained of sexual abuse but would not go to the police was a 'constant and serious and worrying dilemma'.⁴²⁷ Lucas said that he was not involved in finalisation of the system for anonymous reporting to the police of intelligence matters relating to an offender (or 'blind-reporting'), which was introduced in about 1996.⁴²⁸ He told the Commission he 'had no access or involvement in blind reporting', which was a matter between the various bishops and the Professional Standards Office.⁴²⁹ Lucas agreed, however, that he never took steps in 1997 or subsequently to contact the Bishop of Maitland–Newcastle (at that time, Bishop Michael Malone until 2011) to advise him of the information that he (Lucas) possessed regarding McAlinden in order to assist the bishop in blind-reporting to the police.⁴³⁰

12.274 For his part, Bishop Malone ultimately adopted the format of a blind-report in or about August 1999, when he caused a report to be made to the New South Wales Police Force (Child Protection Enforcement Agency) through Mr John Davoren of the Professional Standards Office, in relation to the complaints of AK and AL (as noted in para 12.322). That report stated that AK and AL had 'not indicated at this stage any wish to take the matter to the police'.⁴³¹

⁴²⁵ TOR 2, T1607.35–47 (Lucas).

⁴²⁶ TOR 2, T1608.27–1609.5 (Lucas).

⁴²⁷ TOR 2, T1816.45–1817.4; T1824.44–47 (Lucas).

⁴²⁸ TOR 2, T1817.45–1818.7 (Lucas).

⁴²⁹ TOR 2, T1825.2–8 (Lucas).

⁴³⁰ TOR 2, T1825.34–42 (Lucas).

⁴³¹ Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency form, dated 24 August 1999, ex 171. A copy of the report is set out in Chapter 16, Figure 16.2.

Conclusions

AL's disclosure of abuse to Sister Redgrove

12.275 The Commission accepts that in early 1993 AL disclosed to Redgrove that she had been sexually abused by McAlinden, although she did not give precise details of what McAlinden had done or when it occurred. Redgrove was a careful witness, whom the Commission accepted to be candid in her recollection of events.

Redgrove's non-reporting of McAlinden to the police

12.276 As to why Redgrove did not take AL's disclosure to the police, she said she thought she had done her part by reporting the complaint to the Diocese. She considered that the Diocese would take charge of the matter after that. Redgrove also understood that AL disclosed to her because she was seeking support, and expected that Redgrove would keep the information confidential, as she (AL) did not want her mother to know of the abuse. As noted below, Redgrove also raised the matter with Burston. The Commission accepts that Redgrove understood that the church authorities were in fact taking steps on the basis of the complaints of both AL and AJ. Redgrove also understood that AL did not want to report the matter to police.

12.277 Redgrove's stated position that she would not discipline a priest or call a priest into line was a reasonable one to take in view of the information conveyed to her by Lucas and the apparent action being taken about McAlinden by senior church officials, coupled with her understanding that AL did not want to involve the police. The Commission also notes that Redgrove was in fact instrumental in bringing these complaints to the Diocese's attention and supporting AL in making her to complaint to the church authorities with a view to action being taken.

12.278 Chapter 13 sets out an analysis of matters relating to s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW) concerning the sufficiency of evidence warranting prosecution in relation to Redgrove with respect to her knowledge of a serious offence committed against AL. In summary, however, the Commission finds that there is not the sufficiency of evidence required by s. 10 of the Act.

Father Burston's poor recollection

12.279 The legal representatives for Burston provided to the Commission a one-page report from his general practitioner relating to Burston's memory.⁴³² That report was, however, subject to significant limitations that attenuate the weight that can be given to it. In particular, the author of the report had no baseline testing of Burston against which to measure any memory loss. The author's statement that Burston had a 'mild impairment of memory' was stated to be an 'impression' only. Taking into account the limited utility of that evidence, together with Burston's demeanour as a witness (as noted below), the Commission does not accept the suggestion that there was a medical problem affecting Burston's memory. This is so bearing in mind the sharp and specific recall he maintained in relation to certain matters that could be perceived as tending to explain his past actions or exculpate him. This was juxtaposed with his asserted absence of recollection of events that might cast him in a less favourable light.

12.280 More specifically, Burston professed a complete absence of recollection in relation to many relevant matters and particularly those that tended to suggest he might have had knowledge (or earlier knowledge) of allegations about McAlinden having sexually abused children. In contrast, when it came to matters that might potentially exonerate him in terms of his knowledge or conduct, his recollection was at times acute and striking in its particularity. For example, he recollected that in the case of AL's complaint there was a 'very strong refusal to take it to the

⁴³² Report of Dr Frost re Burston, dated 24 July 2013, ex 165.

police'. This evidence was in connection with a conversation he had initially said he could not be precise about.

- 12.281 The regularity with which Burston replied 'I don't recollect' was a feature of his testimony. It left an unavoidable impression that, in relation to many matters about which he was questioned, he was not prepared to consider the question fully or to examine or explore his memory in order to assist the Commission. Having regard to the totality of his evidence, the Commission found Burston to be an unimpressive witness in certain respects. These matters are discussed in Chapter 20.

Sister Redgrove's disclosure to Father Burston regarding McAlinden's sexual abuse of AL

- 12.282 The Commission accepts Sister Redgrove's evidence that there was a conversation with Burston about 'something' having happened to AL when she was a little girl. That such a conversation occurred probably in 1993 or 1994 and that Redgrove had in fact told him that AL had been sexually abused was also accepted by Burston. Redgrove could not otherwise recall the content of the conversation, while Burston recalled AL's 'strong refusal' to report the abuse to the police.
- 12.283 The Commission finds that Burston advised Redgrove to report the matter to the vicar general (Hart) or Bishop Clarke. The Commission also finds that, consistent with his evidence, Burston did not convey Redgrove's information about AL's abuse to anyone else in the Diocese. In the circumstances, it would have been appropriate for Burston himself to have conveyed AL's complaint (as reported to him by Redgrove) to either Hart, as vicar general, or Bishop Clarke. In this regard, Redgrove's evidence was that she expected Burston to 'do something'.

The first meeting in 1993: AL, Monsignor Hart and Sister Redgrove

- 12.284 The Commission accepts Redgrove's evidence that there was a meeting in Hamilton attended by Hart, AL and herself. Redgrove was, however, unable to recall the details of the meeting. Hart's evidence that the purpose of this meeting was to inform the bishop of AL's complaint and that he did this after meeting with AL is accepted.⁴³³ He also said that at the meeting AL gave an outline of McAlinden's sexual abuse of her. The Commission accepts this evidence, too: in order for Hart to inform the bishop of AL's complaint, it would be necessary for him to understand the nature of it by obtaining from AL an outline of the abuse. The Commission also accepts that, in accordance with his evidence, Hart advised Bishop Clarke of AL's complaint.

The second meeting in 1993: AL, Father Lucas and Sister Redgrove

- 12.285 Redgrove gave evidence of her recollection as to what occurred at a meeting attended by Lucas, AL and herself, including that AL outlined some of McAlinden's sexually abusive conduct – specifically that he made her touch his penis 'and things like that'. Although Redgrove recalled that Hart and Usher also attended this meeting, those witnesses denied such involvement (nor could Lucas recall their presence), and the Commission cannot be comfortably satisfied as to their attendance.
- 12.286 The Commission finds that a meeting between Lucas, AL and Redgrove took place in 1993, and accepts Redgrove's evidence that a description of the abuse was provided at the meeting and that she was shocked by what AL had told her. In the Commission's view, this would have made the event more memorable for Redgrove.

⁴³³ Although a conflict arose between the evidence of Hart and Redgrove regarding Hart's role in arranging for AL to see Lucas (Redgrove recalling that Hart was involved in such arrangements, Hart stating he had no such role), the Commission need not resolve this matter. Relevantly, the evidence clearly establishes that AL in fact saw Lucas at a subsequent meeting in 1993, as noted in para 12.246 and following.

- 12.287 Lucas recalled meeting with AL and a religious Sister (whom he accepted as Redgrove), but he could not recall the details of what was discussed, other than that AL led him to believe she had been sexually abused. In this regard, Lucas told the Commission that at the time his practice was to be very cautious about allowing complainants to outline the abuse they had suffered: he was concerned not to get into the details so as to avoid the risk of contaminating the complainant's evidence in any future proceedings.
- 12.288 The Commission finds, however, that Lucas's evidence as to his asserted practice in this regard is at odds with his stated objective – namely, the resignation from ministry of the relevant priest. In this respect, from his perspective the meeting with AL (and, indeed, any complainant) served a particular purpose – for him to obtain information with which to confront McAlinden, so as to persuade him to resign his ministry. It was not a meeting for the purpose of pastoral care or victim support. Lucas needed to elicit certain important information from AL, including information about the nature of the offending.⁴³⁴ The Commission finds that Lucas obtained such details of the sexual abuse from AL (as supported by Redgrove's evidence). In particular, the Commission finds that Lucas was present when AL described at least one act of sexual abuse by McAlinden – that is, placing AL's hand on his penis. That action, if proved, amounted to an indecent assault.
- 12.289 The Commission also accepts, however, that at all relevant times AL was firm in her view that she did not want the matter reported to the police, as recalled by both Redgrove and Lucas.
- 12.290 Chapter 13 sets out an analysis of matters relating to s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW) concerning the sufficiency of evidence warranting prosecution in relation to Lucas and Redgrove regarding their respective knowledge of a serious offence committed against AL. In summary however, the Commission finds that with respect to both Lucas and Redgrove, there is not the sufficiency of evidence required by s. 10 of the Act.

Failure to blind-report McAlinden to police

- 12.291 Lucas did not report McAlinden to the police in 1993 or at any other time in relation to his offences against AL. By this time Lucas had heard admissions that McAlinden had sexually abused children. He also knew (from Clarke) that McAlinden had been convicted and acquitted of child sexual abuse offences in Western Australia. Further, he was aware of AJ's complaint against McAlinden.
- 12.292 In the Commission's view Lucas should have taken steps to provide to police intelligence relating to the reports of McAlinden's sexual abuse of AL and AJ. Once the 'blind-reporting' regime had been established by the Professional Standards Office in or about 1997, that was a particular avenue available to Lucas to provide to police the information about McAlinden.
- 12.293 Lucas did not, however, arrange to blind-report McAlinden to the police when the practice of the anonymous reporting to police of alleged inappropriate behaviour by priests was introduced around 1997. Nor did Lucas contact the new bishop of the Diocese, Bishop Malone, to suggest that, as bishop, he should arrange for the information to be provided by way of blind-report to the police.⁴³⁵ No satisfactory explanation was offered for why this step was not taken. Even if the report had been made in blind-report format, the information would have facilitated a police investigation of McAlinden – and, indeed, would have been the first report to police about him.

⁴³⁴ Note that, as set out in paragraph 12.224, the Commission accepted AJ's evidence as to her interaction with Lucas, which included a series of questions asked in a 'brusque' manner, evidently for the purposes of eliciting information about McAlinden's sexual abuse of her.

⁴³⁵ TOR 2, T1825.34–38 (Lucas).

- 12.294 Notably, Bishop Malone ultimately adopted the format of a blind-report in or about August 1999, when he caused a report to be made to the New South Wales Police Force (Child Protection Enforcement Agency) through Mr John Davoren of the Professional Standards Office in relation to the complaints of AK and AL (as shown in Figure 16.3, Chapter 16). In this instance the victims' wishes were not considered the primary consideration, and the report to police was made regardless of the victims' views. This was a form of reporting the Diocese could well have adopted in relation to McAlinden before August 1999.
- 12.295 Given Lucas's stated focus of protecting children from the continuing risk posed by McAlinden – which ought to have been the overriding concern – it was incumbent upon Lucas to report McAlinden to the police despite the wishes of the victims.⁴³⁶ There was no pastoral aspect to the information Lucas acquired with respect to McAlinden's offending that would have precluded him from doing so. On the instigation of a police investigation into McAlinden, investigators could have discovered details about his offending independent of the victims (then unwilling to engage with the police). It is also conceivable that, on being faced with a request for assistance from the police, victims might have changed their mind about their involvement or sought to provide assistance 'anonymously'. This would have assisted police in carrying out their inquiries – for example, by directing investigators to make inquiries of relevant teachers and parents in parishes where McAlinden previously resided, such as Merriwa and Forster–Tuncurry. The approach adopted instead, of attempting to have McAlinden 'leave' the priesthood, was short-sighted and failed to have regard to the continuing risk to children posed by McAlinden. This risk would have persisted when McAlinden moved to a new location, even if he had resigned from ministry.
- 12.296 The Commission finds that the Diocese (through Clarke) and Lucas, should have reported McAlinden to the police in 1993, if not earlier in the case of the Diocese. The approach of the Diocese and Lucas in not reporting to police was motivated, at least in part, by a desire to avoid scandal being associated with the Church. This approach distorted what should have been the primary concern at all times – the protection of children who might be abused by McAlinden. The Diocese and Lucas failed to have proper regard to what should have been the overriding objective of the protection of children.

1994 to 1995: McAlinden's continued work as a priest in the Philippines

- 12.297 In September 1994 Clarke became aware that McAlinden was in the Philippines and was professing an interest in pursuing 'active work in a place and manner that would be remote from the outside world'.⁴³⁷ McAlinden also asked to be incardinated into San Pablo Diocese, either immediately or at some time in the future.⁴³⁸ In his 8 November 1994 letter of reply to McAlinden Clarke stated:

Given the climate here in Australia at the present time it is impossible for me to give permission for you to exercise your priesthood anywhere either here in Australia or overseas. I have written a letter to Msgr Bantigue [sic] stating that but not giving him any background or reasons for my decision.⁴³⁹

- 12.298 Clarke wrote to Monsignor Bantigue the same day, saying he could give neither approval for McAlinden to be immediately incardinated into San Pablo Diocese nor permission for him to

⁴³⁶ As is the current position: TOR 2, T1726.31–1727.9 (Lucas).

⁴³⁷ As per a putative arrangement with the Bishop of the San Pablo Diocese, Bantigue; see letter from McAlinden to Clarke, dated 13 September 1994, ex 157, p 480.

⁴³⁸ Letter from McAlinden to Clarke, dated 13 September 1994, ex 157, p 481.

⁴³⁹ Letter from Clarke to McAlinden, dated 8 November 1994, ex 158.

work there with a view to future incardination.⁴⁴⁰ He said, 'Your Excellency I cannot give approval of either option and Fr McAlinden is fully aware of the reasons for this decision'.⁴⁴¹ Clarke did not, however, warn Bantigue of the particular risks McAlinden posed to children.⁴⁴² Such information should have been provided, particularly since in his letter of 13 September 1994 to Clarke McAlinden had said he was seeking to pursue priestly work ministering in the Philippines.⁴⁴³

March 1995: agitation against McAlinden working in the Philippines

12.299 What prompted Clarke to revise his position of silence in relation to the authorities in the Philippines appears to have been the fact that AL (and possibly her sister, AK) reported to the Diocese their understanding that McAlinden was working in the Philippines and demanded that something be done to stop him.⁴⁴⁴ It was only then that any action was taken, first by Hart, who, as vicar general, was looking after Diocesan matters while Clarke was absent.

12.300 Hart's diary entries for March 1995 show there was a meeting with Redgrove and AL on 19 March 1995.⁴⁴⁵ Hart said he had not been aware of where McAlinden was and that it was AL who had told him McAlinden was in the Philippines and 'we needed to get him out'.⁴⁴⁶ Hart thought that was a reasonable request.⁴⁴⁷ His recollection was that he rang the Apostolic Nuncio in Canberra to ask him to ring his counterpart in the Philippines in order to locate McAlinden.⁴⁴⁸

12.301 On his return to the Diocese, Clarke wrote to Bantigue on 10 May 1995, saying serious allegations had been made against McAlinden, who had made admissions, and that there was agreement that McAlinden should retire to Ireland. He continued:

... Some people of my Diocese have now learnt that he is not in Ireland but is supposedly working in your Diocese. They have demanded to know whether it is true.⁴⁴⁹

12.302 A few weeks later Clarke also wrote to the Apostolic Nuncio, seeking assistance in expediting contact with Bantigue because of difficulties making telephone contact as a result of the remoteness of San Pablo Diocese.⁴⁵⁰

12.303 On 2 August 1995 a deans meeting was held at the Diocese; it was attended by Clarke, Coadjutor Malone, Hart, and five individuals identified as deans – Monsignor Simms, T Brady, R Callinan, G Nugent and J Saunders. Under the heading 'Correspondence' the following is noted in the minutes of the meeting:

The Bishop tabled correspondence from:

...

Bishop Bantigue of the Philippines regarding Father Denis McAlinden and enclosing a letter from Fr Denis.

⁴⁴⁰ Letter from Clarke to Bantigue, dated 8 November 1994, ex 64.

⁴⁴¹ *ibid.*

⁴⁴² As Clarke had done in the letter to Kalisz in 1988: see para 12.83 above; letter from Clarke to Kalisz, dated 2 February 1988, ex 58, p 229.

⁴⁴³ Letter from McAlinden to Clarke, dated 13 September 1994, ex 157, p 481.

⁴⁴⁴ TOR 2, T1480.16–21; T1481.37–40 (Hart).

⁴⁴⁵ TOR 2, T1480.23.44; diary entry of Hart, dated 19–25 March 1995, ex 134.

⁴⁴⁶ TOR 2, T1481.38–40 (Hart).

⁴⁴⁷ TOR 2, T1482.10–11 (Hart).

⁴⁴⁸ TOR 2, T1482.28–33 (Hart).

⁴⁴⁹ Letter from Clarke to Bantigue, dated 10 May 1995, ex 65.

⁴⁵⁰ Letter from Clarke to Brambilla, dated 23 May 1995, ex 66.

Discussion took place, the Bishop indicating that Fr Denis would arrive back in Australia on 5 August

It was resolved that we move towards a [laicisation]⁴⁵¹ procedure, since Father Denis would not confirm to the restriction placed upon him by Bishop Leo.⁴⁵²

- 12.304 The correspondence tabled at the meeting was in all likelihood the 8 June 1995 letter from Bantigue to Clarke (stamped as received on 2 August 1995).⁴⁵³ This letter enclosed a letter from McAlinden, although there were no further particulars as to the date or detail of that letter. In the circumstances, the reference to an enclosed letter from McAlinden is likely to be to the handwritten letter from McAlinden, addressed from the chaplain's residence in San Pablo City and dated 27 May 1994 (which should have been 1995).⁴⁵⁴
- 12.305 The evidence before the Commission does not reveal the detail of the discussions at the deans meeting of 2 August 1995. The Commission finds that the letters from Bantigue and McAlinden were tabled and, in these circumstances, it is probable that there would have been at least general reference to the importance of McAlinden's return, in view of the history of allegations against him and the withdrawal of his faculties two years before on account of these allegations.

October 1995: a canonical process attempted

- 12.306 In October 1995 a canonical process was instituted against McAlinden.⁴⁵⁵ Clarke was involved in the beginning of the process, which was then continued by Malone when his episcopacy began in November 1995.
- 12.307 By 1996 pursuit of the process had, at least in part, been delegated to Burston, who had by then been appointed vicar general. Laicisation of McAlinden was never achieved because at that time the process required cooperation and agreement on the part of the priest concerned. The necessary cooperation was never forthcoming.

January 1996: advice about misprision of felony

- 12.308 A 5 January 1996 letter to Hart⁴⁵⁶ from Mr Laurie Rolls of Catholic Church Insurances enclosed an advice, dated 28 November 1995, from law firm Dunhill Madden Butler in relation to misprision of felony.⁴⁵⁷ Hart said he recalled receiving and reading the letter and had a 'hazy recollection' that he also read the advice.⁴⁵⁸ He told the Commission he did not seek advice from Rolls personally.⁴⁵⁹
- 12.309 Hart said he thought the question of misprision of felony might have arisen before or during 1995. He did not recall having sought any particular advice about the matter.⁴⁶⁰ His evidence was that he knew from 'day one' when he took over as vicar general that the sexual abuse of a child was criminal behaviour.⁴⁶¹

⁴⁵¹ The note originally had the word 'legislation' but this had been crossed out. Given the context, the intended word was probably 'laicisation': TOR 2, T1951.18–22 (Doyle); TOR 2, T1496.20–30 (Hart).

⁴⁵² Minutes of the Deans' Meeting, dated 2 August 1995, ex 105.

⁴⁵³ Letter from Bantigue to Clarke, dated 8 June 1995, ex 88.

⁴⁵⁴ Letter from McAlinden to Clarke, dated 27 May 1994, ex 219, tab 235.

⁴⁵⁵ Details of the canonical process and related matters are contained in the confidential volume of the report.

⁴⁵⁶ Letter from Rolls to Hart, dated 5 January 1996, ex 133.

⁴⁵⁷ Letter from Gamble to Rolls, dated 28 November 1995, ex 133.

⁴⁵⁸ TOR 2, T1500.26–1501.14; T1504.12–30 (Hart).

⁴⁵⁹ TOR 2, T1500.34–35 (Hart).

⁴⁶⁰ TOR 2, T1501.31–38; T1501.20–23 (Hart).

⁴⁶¹ TOR 2, T1502.15–24 (Hart).

12.310 Hart said he did not discuss the contents of the legal advice but he assumed the Diocese would have distributed it so that clergy were being informed.⁴⁶² He said he had never talked to anybody about the contents of the advice, despite acknowledging that the advice raised things that gave him cause for concern in terms of his own conduct until that time.⁴⁶³

October 1995 to February 1996: correspondence with McAlinden

Bishop Malone's evidence

12.311 Bishop Malone initially sought to pursue the canonical process Clarke had initiated. He said that in 1995 he knew only about AK and AL and did not know about other individuals who might or might not have come forward.⁴⁶⁴ He confirmed, though, that at some time during 1995 he would have known about the allegation against McAlinden that had been made in Western Australia.⁴⁶⁵ Malone said he could not remember Clarke telling him that McAlinden's faculties had been removed in early 1993 or that that had been related to AJ. He said he always thought the process had been related to AK's and AL's complaints.⁴⁶⁶ He was unable to say why formal canonical proceedings were not initiated in relation to the AK and AL complaints before October 1995.⁴⁶⁷

12.312 Malone agreed that McAlinden's letter of 5 December 1995⁴⁶⁸ demonstrated that McAlinden was not prepared to comply with the laicisation process and that the process could succeed only if the priest consented to laicisation.⁴⁶⁹ In these circumstances there was evidently a degree of futility about the laicisation.

12.313 Although in his letter of 5 December 1995 McAlinden suggested he would go to the police accusing himself, Malone said that in the context of the letter he thought that was 'rubbish'.⁴⁷⁰ He agreed he was concerned on reading in McAlinden's letter that McAlinden had heard thousands of confessions⁴⁷¹ since that would have probably meant McAlinden having had unsupervised access to children; he thought a far better way to deal with him would have been to report him and his admissions to the police.⁴⁷²

Father Burston's evidence

12.314 As vicar general, Father Burston was required to write to McAlinden to seek his cooperation with the laicisation process.⁴⁷³ Burston told the Commission he was merely assisting the bishop with the particular task delegated to him and that the bishop remained involved in the process.⁴⁷⁴ He emphasised that he did not have responsibility for the laicisation process but was simply trying to contact McAlinden to ask him to cooperate.⁴⁷⁵

⁴⁶² TOR 2, T1504.46–1505.29 (Hart).

⁴⁶³ TOR 2, T1505.42–1506.10 (Hart).

⁴⁶⁴ TOR 2, T838.4–25 (Malone).

⁴⁶⁵ TOR 2, T844.11–47 (Malone).

⁴⁶⁶ TOR 2, T859.14–18 (Malone).

⁴⁶⁷ TOR 2, T859.40–860.34 (Malone).

⁴⁶⁸ Letter from McAlinden to Malone, dated 5 December 1995, ex 78.

⁴⁶⁹ TOR 2, T873.38–47 (Malone).

⁴⁷⁰ TOR 2, T868.44–869.18 (Malone).

⁴⁷¹ As stated in a letter from McAlinden to Malone, dated 5 December 1995, ex 78.

⁴⁷² TOR 2, T871.29–872.39 (Malone).

⁴⁷³ TOR 2, T1237.30–40; T1245.16–19 (Burston).

⁴⁷⁴ TOR 2, T1244.15–44 (Burston).

⁴⁷⁵ TOR 2, T1245.12–37 (Burston).

- 12.315 Burston was keen to distance himself from the appearance of having gained access to McAlinden's file in order to deal with any of the correspondence. He said that as far as he could recall he did not have any communication with Hart about the laicisation process⁴⁷⁶ and that for the correspondence he was preparing it was not necessary to look at McAlinden's file in the bishop's office so as to put himself in a position to write letters or ensure their accuracy.⁴⁷⁷ Burston seemed to be at pains to emphasise that he did not see whatever file or information was used to obtain the material in the letter he was asked to write for the bishop.⁴⁷⁸ He told the Commission he had no recollection of ever looking at the bishop's files.⁴⁷⁹ Malone's evidence, however, was that the vicar general usually had access to the files kept in the bishop's office.⁴⁸⁰
- 12.316 Burston said he did not recall Malone telling him anything about evidence supporting the allegations that led to the pursuit of the laicisation,⁴⁸¹ did not recall having seen Clarke's formal letter to McAlinden dated 19 October 1995 that was in pursuit of the laicisation,⁴⁸² did not recall Malone or anyone else telling him that McAlinden had made an admission to Lucas,⁴⁸³ and did not recall Malone telling him in 1996 that some people were threatening to take the 'whole matter' to the police.⁴⁸⁴
- 12.317 It is improbable that Burston would have written such letters to McAlinden without having read earlier and related correspondence in order to understand the context in which he was writing, to ensure the accuracy of his letters, and to understand McAlinden's responses. The Commission considers that in his oral evidence, Burston tried to distance himself from appearing to have any knowledge of McAlinden's offending.

1997: the parent of another victim contacts Bishop Malone

- 12.318 A file note in the handwriting of Malone records that in 1997 he was contacted by the parent of a young man alleging that McAlinden had abused him (the son) from the time he was aged 7 for about 10 years.⁴⁸⁵ Malone noted that he advised the parent to report the matter to the police. There is no further record available to the Commission to show that any such report eventuated.

August 1997: 'sick and retired priest' payments

- 12.319 On 5 August 1997 at a meeting of officers of the Maitland Central Clergy Fund it was agreed that all payments to McAlinden would be stopped, as recorded in the following minuted resolution:

The Bishop said Fr McAlinden's whereabouts are unknown, although he is believed to be back in Australia but not practising as a priest. It seemed inappropriate, it was agreed, that he continue to receive payments from the Fund into his bank account while Diocesan authorities were trying, without success, to contact him. It was agreed to stop all payments in the hope that this action would cause him to make contact.⁴⁸⁶

⁴⁷⁶ TOR 2, T1251.9–19 (Burston).

⁴⁷⁷ TOR 2, T1251.21–29 (Burston).

⁴⁷⁸ TOR 2, T1253.8–19 (Burston).

⁴⁷⁹ TOR 2, T1254.34–37 (Burston).

⁴⁸⁰ TOR 2, T816.11–19; 880.16–21 (Malone); statement of Doyle, dated 2 July 2013, ex 167, para 21.

⁴⁸¹ TOR 2, T1267.22–25 (Burston).

⁴⁸² TOR 2, T1267.27–43 (Burston).

⁴⁸³ TOR 2, T1268.3–11 (Burston).

⁴⁸⁴ TOR 2, T1268.13–22 (Burston).

⁴⁸⁵ Handwritten note of telephone message from UR55 to Malone, attached to handwritten note of Malone in relation to conversation with UR55, ex 91. Note: date on telephone message not legible, but secondary evidence dates this file note as 3 December 1997: see TOR 2, T907.17–18 (Malone).

⁴⁸⁶ Minutes of Meeting No. 37 of the Committee of the Maitland Clergy Central Fund, dated 5 August 1997, ex 92, p 692.

- 12.320 Malone confirmed that the minute accurately reflected the position in August 1997.⁴⁸⁷
- 12.321 It is probable that in the discussion about the cessation of payments and McAlinden's whereabouts those present at the meeting would have been given some further background on McAlinden's status, which could have included noting that there had been child sexual abuse allegations about him and the related withdrawal of his faculties. There is, however, no recorded detail on this.

Reporting during Bishop Malone's episcopacy

August 1999: notification to the Professional Standards Office

- 12.322 The Catholic Church in Australia established the Professional Standards Office in 1997 as an adjunct to the Towards Healing protocol, to assist in dealing with complaints against officials of the Church, including complaints about the sexual abuse of children by priests.
- 12.323 Mr John Davoren was the first director of the office, beginning work there in 1997. His job was to set up office procedures in accordance with the Towards Healing protocol.⁴⁸⁸ In the early days, part of this involved establishing the system whereby allegations about priests could be reported to the police.⁴⁸⁹ In his statement prepared for the Commission, Malone said he had regular contact with Davoren in connection with the Professional Standards Office, as defined in Towards Healing. He said he did not necessarily record such contacts, other than occasionally making a file note if he believed the matter was of some significance.⁴⁹⁰ In relation to Davoren's role in filtering information or providing to police information based on what Malone had provided to him, Malone said, 'It was our accept[ed] protocol that Davoren would be used as the conduit between the bishops of New South Wales, ACT and the police'.⁴⁹¹
- 12.324 Counsel assisting asked Malone why he had not, before the dealings with the Professional Standards Office in August 1999, reported McAlinden to the police. Malone said he had not reported McAlinden to police before then because such reporting did not cross his mind until later, when they were 'having trouble pinning McAlinden down' in their efforts to laicise him. Malone said the prompt for the tip-off to police in 1999 was 'a series of frustration [sic] about McAlinden's unwillingness to cooperate with a process that we were putting in place for him. And he was dodging for cover'.⁴⁹²
- 12.325 As to the circumstances relating to the reporting of McAlinden to police in August 1999 (through the Professional Standards Office), Malone's recollection was that Burston wrote to Davoren at the PSO and Malone thereafter telephoned Davoren and asked him to act on his behalf to notify the police about McAlinden.⁴⁹³ Malone gave evidence, however, that he thought there was no need for the police to have the statements of AL and AK⁴⁹⁴ at that point; the police could subpoena documents and look through the file themselves if they wished.⁴⁹⁵
- 12.326 Three letters, each dated 10 August 1999, from Burston to Davoren, to Reverend McGuinness (the Bishop of Nottingham) and to McAlinden via Skegness in the United Kingdom, evinced some

⁴⁸⁷ TOR 2, T908.2–909.18 (Malone).

⁴⁸⁸ TOR 2, T1977.8–31 (Davoren).

⁴⁸⁹ TOR 2, T1978.9–17 (Davoren).

⁴⁹⁰ Statement of Malone, dated 8 July 2013, ex 85, para 2.3.

⁴⁹¹ TOR 2, T991.32–38 (Malone).

⁴⁹² TOR 2, T823.22–45 (Malone).

⁴⁹³ TOR 2, T913.16–23 (Malone).

⁴⁹⁴ These statements were obtained from AK and AL in the context of the canonical proceedings brought against McAlinden in October 1995. The statements detailed McAlinden's sexual abuse of AK and AL as children.

⁴⁹⁵ TOR 2, T913.33–39 (Malone).

frustration with McAlinden's lack of cooperation with the Diocese.⁴⁹⁶ In the letter to Davoren Burston stated:

I write to notify you that one of our priests, Fr Denis McAlinden, has been accused by [AL] and [AK] of sexual assault of children.

This information has come to us from [AL] and [AK] who do not wish to be involved in any civil action in this regard. We also believe that there are other victims apart from [AL] and [AK]. These have not indicated at this stage any wish to take the matter to police. There is reference in one of his letters to a court case in Perth but we have no other details of it.

However, I think this is a matter where '*intelligence*' could well be given to police. We do not have an address for him in this country. At present he is in England celebrating his Golden Jubilee despite the fact that his faculties have been removed since 1993.⁴⁹⁷

- 12.327 This correspondence appears consistent with Malone's evidence, noted earlier, as to the frustrations held in relation to McAlinden by this time.
- 12.328 A form had been created for use by the PSO when recording and forwarding to police information on child sexual abuse. The form was entitled the Child Sexual Abuse Information Dissemination to NSW Police Force Child Protection Enforcement Agency Form, referred to as the CPEA form.⁴⁹⁸
- 12.329 On 24 August 1999 one of these forms was completed on behalf of Malone, with Davoren as the notifying person.⁴⁹⁹ Davoren told the Commission his usual practice was to ensure that the information on the form was transmitted very soon after it had been prepared.⁵⁰⁰ In view of the date on the form and the likelihood that Davoren would have prepared it promptly on notification, the Commission finds that the date on which Malone instructed Davoren to pass on information to the police was either 24 August 1999 or shortly before that.
- 12.330 Malone said Davoren would have been reliant on him to say what could be forwarded to the police because that was his (Malone's) responsibility as head of the Diocese and the bishop was the one who had the call on how such matters were processed.⁵⁰¹ Thus, the ultimate decision as to what the PSO could report to the police rested with the bishop. In his evidence Lucas also highlighted the determinative role of the bishop in this blind-reporting process.⁵⁰²
- 12.331 The CPEA form dated 24 August 1999 contained a brief narrative of allegations of sexual assault in relation to AL and AK only (as shown in Figure 16.2, Chapter 16). There was nothing about AJ or any of the other matters known to the Diocese at the time, which would have included AE from the 1950s and the complaints from Forster–Tuncurry in 1976.
- 12.332 By letter dated 24 August 1999, Davoren told Burston he intended to pass the matter on to the police (that is, the things referred to in the letter of 10 August 1999) and to send him a copy of the formal communication.⁵⁰³

⁴⁹⁶ Letter from Burston to Davoren, dated 10 August 1999, ex 93; letter from Burston to McGuinness, dated 10 August 1999, ex 94; letter from Burston to McAlinden, dated 10 August 1999, ex 95.

⁴⁹⁷ Letter from Burston to John Davoren, dated 10 August 1999, ex 93.

⁴⁹⁸ TOR 2, T1981.43–1982.17 (Davoren); Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency form, dated 24 August 1999, ex 171.

⁴⁹⁹ Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency form, dated 24 August 1999, ex 171.

⁵⁰⁰ TOR 2, T1982.32–36 (Davoren).

⁵⁰¹ TOR 2, T1002.45–1003.22 (Malone).

⁵⁰² TOR 2, T1825.2–9 (Lucas).

⁵⁰³ Letter from Davoren to Burston, dated 24 August 1999, ex 164.

- 12.333 Records obtained from the New South Wales Police Force make it clear that PSO information about AK and AL was passed on to the police and recorded in the police intelligence systems on 18 November 1999 (as shown in Figure 16.3, Chapter 16).⁵⁰⁴
- 12.334 The CPEA form Davoren prepared noted that McAlinden was thought to be in England and that there was a suspicion he would return to Australia and reside somewhere in the Bunbury region of Western Australia, although his family was unable to give a precise address.⁵⁰⁵
- 12.335 Although this series of actions illustrates the PSO carrying out its functions properly, it should be noted that release of information to the police could occur only on the bishop's direction.
- 12.336 The transfer of information to the PSO in August 1999, rather than at an earlier time, appears to be the result of accumulated frustration and annoyance at McAlinden's lack of cooperation with church processes, rather than any principled approach to reporting relevant disclosures to the police as soon as possible. Malone gave evidence that he knew AL and AK did not want to report their abuse to the police. He did not, however, identify any change of circumstance in 1999 that would have affected that. In any event, the report the PSO provided did not name AL and AK and was evidently conveyed for 'intelligence' purposes, as Burston mentioned.
- 12.337 There was no notification in connection with AJ, but equally (when considering Malone's position) no written record that referred to AJ was located in the Diocesan records. It would have been necessary for Hart or Lucas to have reported orally what they knew about AJ to Malone, and there is no evidence that they did so – although AJ said Malone had raised her history of abuse with her at a formal dinner in 2003, saying 'I understand you are a victim of Denis McAlinden'.⁵⁰⁶
- 12.338 In this regard, Malone initially told the Commission he had heard from BS that AJ had complained in about 2003⁵⁰⁷ and, although he could possibly have attended a finance committee dinner in 2003 at the Newcastle Club, he did not recall meeting AJ at one of those dinners, although his memory of the evening was 'hazy'. Malone agreed that it was possible that the conversation occurred but said it sounded '... like a very insensitive thing to say and it doesn't sound like me'.⁵⁰⁸

October 1999: reporting AE's complaint regarding McAlinden to the police

- 12.339 McAlinden sexually abused AE while he was assistant priest at Raymond Terrace in 1953 and 1954, when she was aged 11 years. The sexual assaults included forced penile–vaginal sexual intercourse on four occasions.⁵⁰⁹
- 12.340 On 5 October 1999 AE made a formal complaint to the Church via Towards Healing. The complaint detailed repeated rapes and sexual abuse when she was 11.⁵¹⁰ As noted in Chapter 11, it appears that in the process of lodging the complaint under Towards Healing the Church encouraged AE to report the matter to the police.⁵¹¹ On 8 October 1999 AE reported allegations of sexual abuse by McAlinden to the police. An investigation into McAlinden ensued, led by (then) Detective Senior Constable Mark Watters (as detailed in Chapter 16).

⁵⁰⁴ NSW Police Service Intelligence Information System, Information Report Summary I 7885027, dated 18 November 1999, annexure D to ex 181.

⁵⁰⁵ Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency form, dated 24 August 1999, ex 171.

⁵⁰⁶ Excerpts of NSW Police Statement of AJ, dated 29 June 2010, ex 304, para 69.

⁵⁰⁷ TOR 2, T846.46–847.4 (Malone).

⁵⁰⁸ TOR 2, T1071.41–1072.20 (Malone).

⁵⁰⁹ NSW Police Force COPS Event Report E 8026529 re AE, dated 8 October 1999, annexure D to ex 47.

⁵¹⁰ Statement of Complaint by AE, dated 5 October 1999, ex 172.

⁵¹¹ TOR 2, T27.41–43 (Watters).

2002: reporting AC's complaint regarding McAlinden to the Professional Standards Office and the police

- 12.341 McAlinden indecently assaulted AC on multiple occasions between 1955 and 1958, when she was aged 7 to 11 years and he was the assistant priest at Taree.⁵¹²
- 12.342 In June 2002 AC completed a 'statement of complaint' in the context of Towards Healing and it was provided to the PSO.⁵¹³ Davoren and Malone acknowledged receiving the complaint on 14 and 20 June 2002 respectively.⁵¹⁴ What was not acknowledged at that time, however, was AC's preparedness to have details of McAlinden's sexual abuse of her used in corroboration of accounts by other victims, as clearly set out in her statement of complaint. Malone told the Commission he could not recollect having taken any action in terms of AC's notification of her willingness to have her evidence used in corroboration and agreed that he ought to have done so.⁵¹⁵
- 12.343 Other evidence suggests that AC's position was qualified: she said in a letter dated 22 June 2002 to Malone that at that stage she would not go to the police, 'having confidence that the Church has, at last, the necessary conviction and will to deal fairly and with compassion to everyone concerned'.⁵¹⁶ Subsequent correspondence suggests, however, that her position changed again. In a letter to Malone dated 15 August 2002 she noted Malone's comment to her about McAlinden's 'wider history of abuse'.⁵¹⁷ Malone agreed in his evidence that he did say to AC the file on McAlinden was 'so big you can't jump over it'.⁵¹⁸ Although noting that that reference was 'a little bit of hyperbole', Malone did acknowledge there was certainly a large file by that time.⁵¹⁹
- 12.344 In his evidence Malone confirmed that he had told AC at a Towards Healing facilitated meeting on 29 August 2002 that he had arranged for McAlinden's case to be raised with the police,⁵²⁰ as recorded in a summary of that meeting prepared by Mr Michael Salmon.⁵²¹ Malone also confirmed that, as noted in the summary, he had acknowledged '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'.⁵²² Additionally, Malone was also reported as having said to AC that, despite McAlinden's advanced age, it was his opinion that the matter needed to be handled by the police.⁵²³
- 12.345 It was not, however, until March 2003 that Malone instructed Davoren at the PSO to pass on further information to the CPEA.⁵²⁴ The CPEA form stated in the 'Brief narrative' section:

Two complaints received from two women relating to McAlinden, while he was holding office as a priest of the Catholic Church.

⁵¹² Profile of Clerics Accused or Convicted of Sexual Assault, undated, ex 243; statement of Complaint by AC, dated 12 June 2002, ex 179; letter from Davoren to AC, dated 14 June 2002, ex 180; letter from Malone to AC, dated 20 June 2002, ex 219, tab 346.

⁵¹³ Statement of Complaint by AC, dated 12 June 2002, ex 179.

⁵¹⁴ Letter from Davoren to AC, dated 14 June 2002, ex 180; letter from Malone to AC, dated 20 June 2002, ex 291, tab 346.

⁵¹⁵ TOR 2, T968.7–15 (Malone).

⁵¹⁶ Letter from AC to Malone, dated 22 June 2002, ex 219, tab 349.

⁵¹⁷ Letter from AC to Malone, dated 15 August 2002, ex 219, tab 354.

⁵¹⁸ TOR 2, T848.43–849.31 (Malone).

⁵¹⁹ TOR 2, T849.14–31 (Malone).

⁵²⁰ As noted, Malone caused notification to the Police to be made re the complaints of AL and AK via the PSO, Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency form, dated 24 August 1999, ex 171.

⁵²¹ TOR 2, T 968.29–969.8 (Malone); Towards Healing Summary of Facilitated Meeting, dated 2 September 2002, ex 102. Mr Salmon (current Director of the Professional Standards Office) was recorded as 'facilitator' of that meeting.

⁵²² Towards Healing Summary of Facilitated Meeting, dated 2 September 2002, ex 102.

⁵²³ *ibid.*

⁵²⁴ Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency Form, dated 4 March 2003, ex 100.

One complaint was received in 1999 and one in 2001. Neither complainant was prepared to talk to the police. The Church appointed two independent investigators – one for each complaint. After considerable delays both matters were found to have been substantiated on the balance of probabilities.⁵²⁵

- 12.346 That form in fact contained inaccurate information in terms of stating that the complainants were not prepared to speak to the police. Malone knew that in 1999 AE was prepared to and did in fact talk to the police; he also knew from reading AC’s statement of complaint that she wanted her information used in corroboration of anyone else who had raised serious complaints about McAlinden.
- 12.347 Malone was unable to explain why he did not arrange for the information to be released to the police until March 2003 and, further, why he failed to advise police of AC’s willingness to have her complaint used in corroboration.⁵²⁶ Malone said that, although Davoren had access to the complaint document completed for AC, in which her willingness to assist other complainants was noted, Davoren would not have been permitted to forward the complaint in its entirety to the police and would be reliant on Malone’s request to do that.⁵²⁷
- 12.348 The record of the facilitated meeting with AC included a statement attributed to Malone that he had personally liaised with bishops in the Philippines and Western Australia to warn them of McAlinden’s history. This was false. Malone acknowledged in his evidence that he did not warn those bishops about McAlinden’s history.⁵²⁸
- 12.349 Significantly, the information conveyed to the Child Protection Enforcement Agency was both late and inaccurate. Notwithstanding those flaws, this action did represent a form of very limited cooperation with police.

Recent developments and the establishment of Zimmerman House

- 12.350 After 2005 Malone showed leadership in dealing with the question of child sexual abuse in the Diocese. He was prepared to confront the problem, meet with the victims, and speak openly about it. This was despite the fact that, as he himself admitted, it took him some time to come to the stage of such an epiphany. As Ms Helen Keevers, who worked with him at the time, said in her evidence, Malone admitted that he was not a perfect man and that he had made some major mistakes that were very evident in his approach to the McAlinden and Fletcher matters. Keevers’ evidence was that he honestly wanted to learn from what he had done and wanted completely independent advice about what he should do in the future.⁵²⁹ She observed he was a man who was continually judged for the mistakes he had made but that he was also judged from within the Church for the changes he tried to introduce.⁵³⁰ She emphasised that he was keen for independent advice, including non-clerical advice, and that he defended her right to be in her role and the importance of her independence.⁵³¹ Malone was also instrumental in establishing Zimmerman Services, the child protection arm of the Diocese, which opened in 2007.

⁵²⁵ *ibid.*

⁵²⁶ TOR 2, T1001.41–1002.8 (Malone).

⁵²⁷ TOR 2, T1002.45–1003.22 (Malone).

⁵²⁸ TOR 2, T994.10–995.42 (Malone).

⁵²⁹ TOR 2, T2158.33–40 (Keevers).

⁵³⁰ TOR 2, T2159.18–21 (Keevers).

⁵³¹ TOR 2, T2159.7–14 (Keevers).

12.351 Keevers said there was growing criticism and resistance from within the Church in connection with the changes Malone wanted to bring about. She said the resistance heightened when he:

... stood alone in a packed cathedral in 2007 and told people that he was no longer conflicted about where his allegiances lay and he stood with survivors of abuse.⁵³²

12.352 Keevers said that from 2005 to 2009 during her time at Zimmerman House there was no doubt within the Diocese that everything needed to be reported to the police: that was the clear message, and Malone agreed with that approach.⁵³³

Bishop Malone's review of the McAlinden file

12.353 When initially questioned about when he had first read the McAlinden file, Malone stated that as bishop of a large and busy diocese he did not have time to go 'trawling' through the archives; he said, '... I didn't quite know what I might try to find, you know. I had no idea there was other information at all'.⁵³⁴ He said he did not open any of the personnel files because he 'wasn't all that familiar with accessing the files much in those days and months'.⁵³⁵ He did not recollect sitting down and examining the McAlinden file.⁵³⁶ He ultimately conceded, however, that, by the time people started coming forward to him complaining of sexual abuse at the hands of McAlinden, he looked at the file.⁵³⁷

12.354 Malone was generally evasive in his responses to questions about when he first read the McAlinden file and, as a result, it is not clear when he first saw the Cotter-Clarke letter. Malone thought he would not have become aware of the letter until the late 1990s or early 2000s.⁵³⁸ He said his recollection on this was 'very hazy', but he felt it was not as early as 1996.⁵³⁹ He added that, by the time he read the letter, McAlinden had already been stood aside from ministry.⁵⁴⁰ He said he would have preferred to have been told about the letter earlier because in late 1995 he was in contact with McAlinden, and that would have 'added a lot of weight' to what they were doing at the time.⁵⁴¹

12.355 Malone told the Commission he was 'not able to say' whether he would have taken or reported McAlinden to the police in late 1995 had he known about the Cotter-Clarke letter but that he 'would have liked to have thought that [he] would'.⁵⁴² He said he did feel 'let down' by Clarke about that and probably other things about McAlinden too.⁵⁴³

Conclusions

12.356 On reading the letters that he admitted to reading in late 1995 and early 1996 – and in particular McAlinden's letter of 5 December 1995 – Malone must have become aware that McAlinden had admitted to having sexually abused children. In view of this the Commission finds that Malone's failure to report McAlinden to the police earlier than he did constitutes a failure to report criminal conduct to the police. It is evident from his comments to AC about the size of McAlinden's file that he must have realised the information in that file could have assisted the police in their investigation of McAlinden.

⁵³² TOR 2, T2159.38–2160.6 (Keevers).

⁵³³ TOR 2, T2174.30–2175.12 (Keevers).

⁵³⁴ TOR 2, T811.2–14 (Malone).

⁵³⁵ TOR 2, T811.31–36 (Malone).

⁵³⁶ TOR 2, T815.44–816.4 (Malone).

⁵³⁷ See for example TOR 2, T849.36–851.17 (Malone).

⁵³⁸ TOR 2, T851.19–31 (Malone).

⁵³⁹ TOR 2, T1016.9–38 (Malone).

⁵⁴⁰ TOR 2, T854.16–26 (Malone).

⁵⁴¹ TOR 2, T857.25–47 (Malone).

⁵⁴² TOR 2, T858.2–6 (Malone).

⁵⁴³ TOR 2, T858.8–26 (Malone).

- 12.357 In or about October 1999 Malone knew that AE had taken her complaint to the police and that the police were investigating McAlinden. By 24 August 1999, however, he had already caused McAlinden to be reported to the police by means of the CPEA blind-reporting form (sent to through the Professional Standards Office), which set out the incidents involving AL and AK that he knew about.⁵⁴⁴ What he did not do was pass on to the police, once the investigation in relation to AE’s allegations was on foot in October 1999, other information in the McAlinden file or the offer of assistance AC made when he met with her in 2002. Such information would obviously have facilitated or assisted a police investigation,⁵⁴⁵ yet Malone did not provide it. This constituted a failure on the part of Malone (and the Diocese of which he was head) to facilitate or assist the police investigation of McAlinden.
- 12.358 The delay in forwarding to the police information about McAlinden’s abuse of AK and AL – despite Malone having become aware of it on taking up his episcopacy – and subsequently AC, also constitutes a failure to facilitate or assist the police investigation of McAlinden. Notwithstanding that it appears AK and AL remained unwilling to report the matters associated with McAlinden to police directly, from 1997 Malone should have been aware of the option of blind-reporting to the police or should have encouraged the complainants to consider reporting themselves, or both. The potential importance to a complainant of approval of this course of action by a bishop or senior clergyman is clear from AJ’s evidence (as referred to in para 12.130 and 12.217).
- 12.359 Chapter 13 sets out an analysis of matters relating to s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW), concerning the sufficiency of evidence warranting prosecution in relation to Malone with respect to his knowledge of a serious offences committed against AK and AL. The Commission finds that there is not a sufficiency of evidence required by s. 10 of the Act.

Bishop Clarke’s desire to avoid scandal and keep matters ‘in house’: from 1976 to 2003

- 12.360 The relevant evidence, including the Cotter–Clarke letter, has been previously canvassed in this chapter.

Conclusions

- 12.361 The Cotter–Clarke letter disclosed that Clarke was told by Vicar Capitular Cotter that McAlinden had admitted to sexually abusing children in 1976. As noted, that letter contained information that would obviously have been of interest to police and would have facilitated a police investigation of McAlinden.
- 12.362 It is clear, however, that Clarke did not want to notify police, or any church outsiders, about problems associated with McAlinden lest it bring scandal on the Church. Clarke was thus highly selective in revealing to non-clergy the extent of his knowledge about McAlinden. An illustration of this is a letter of 9 March 1993 he sent to one of McAlinden’s former parishioners in Western Australia. In the letter Clarke said McAlinden had retired from active priestly duties because of ‘bad health’ and would be living overseas.⁵⁴⁶ In reality, however, Clarke had stripped McAlinden of his priestly faculties only two weeks earlier, following complaints about McAlinden having sexually abused children and, the Commission is comfortably satisfied, had also been told by Lucas that McAlinden had admitted to instances of sexual abuse of children. In contrast with his

⁵⁴⁴ Child Sexual Abuse Information Dissemination to NSW Police Child Protection Enforcement Agency form, dated 24 August 1999, ex 171.

⁵⁴⁵ At the least by providing material that might be used as either tendency or coincidence evidence: ss. 97, 98 *Evidence Act 1995* (NSW).

⁵⁴⁶ Letter from Clarke to Barrow, 9 March 1993, ex 219, tab 217.

letter to the parishioner, three weeks later Clarke wrote to Bishop McGuinness in Nottingham, revealing that allegations had been made about McAlinden's behaviour with small children and that he had admitted offending.⁵⁴⁷

12.363 Even when it came to church officials outside Australia, Clarke would at times provide only limited information about McAlinden, as shown by his letter to Bantigue of San Pablo Diocese in the Philippines in November 1994: he stated that he could not approve McAlinden's requests to be incardinated into that diocese but did not provide any reasons for that decision (see paras 12.297 to 12.298). It was not until May 1995, when it appears threats were made to involve police or other civil authorities, that Clarke revealed to Bantigue what had happened and that serious allegations had been made against McAlinden (who had ultimately admitted to the accusations).⁵⁴⁸

12.364 Even in circumstances where admissions and information were passed on – as with the 1976 Cotter–Clarke letter and Lucas's dealings with McAlinden in 1993 – Clarke did not acknowledge in correspondence the history of which he must have known, beginning with McAlinden's sexual abuse of AE in 1954 and ending with knowledge about AK and AL in October 1995, just before Clarke retired. Although it could be that he did not learn about AE until it was mentioned in the report of Dr Derek Johns in November 1987, Clarke was nevertheless the repository of a significant amount of knowledge relating to McAlinden's offending. This included that McAlinden had made admissions in 1976 about interfering with children and had made similar admissions to Lucas in 1993.

12.365 A stark illustration of Clarke's stance against disclosing information to church outsiders is provided by two letters sent within a day of each other. On 18 October 1995 Clarke wrote to the then New South Wales Commissioner of Police and stated the following in relation to the arrest of Father Vincent Ryan days before:

Last week one of my priests stationed at Taree was charged with offences against minors dating back to 1975.

I do not wish to comment on this particular matter but I am writing to make comments about the police who were involved in the events of last week.

I wish to commend very highly the three police from the Taree station who called on the priest ... On Saturday and Sunday I called to Taree and spoke to the people (approximately 800 at 2 Masses). In the course of my words I paid public tribute to all these police for their efficiency, kindness, courtesy and especially their sensitivity.⁵⁴⁹

12.366 The following day, however, Clarke wrote to McAlinden, telling him 'your good name will be protected by the confidential nature of this process', asking him to petition the Holy See for a rescript of laicisation and:

... for the sake of souls and the good of the Church, to cooperate in this matter so that it may be speedily resolved.

A speedy resolution of this whole matter will be in your own good interests as I have it on very good authority that **some people are threatening seriously to take this whole matter to the police.**⁵⁵⁰ [emphasis added]

12.367 There is a striking contrast in these two communications concerning dealings with the police.

⁵⁴⁷ Letter from Clarke to McGuinness, dated 1 April 1993, ex 63.

⁵⁴⁸ Letter from Clarke to Bantigue, dated 10 May 1995, ex 65.

⁵⁴⁹ Letter from Clarke to Lauer, dated 18 October 1995, ex 168.

⁵⁵⁰ Letter from Clarke to McAlinden, dated 19 October 1995, ex 67.

- 12.368 In view of his involvement in matters relating to McAlinden since 1976 until his retirement in 1995, Clarke was in a better position than anyone to appreciate the continuing risk McAlinden posed to children as a result of the extent and apparently intractable nature of his offending. Clarke was in receipt of allegations about McAlinden from multiple complainants, in disparate locations and over an extended period.
- 12.369 Clarke must also have been aware that, in reality, no constraints were placed on McAlinden's access to children. As McAlinden's bishop, Clarke was also uniquely placed to know about and influence McAlinden's geographic movements.
- 12.370 Notwithstanding that, there is no evidence that Clarke (or others working in the Diocese during his episcopacy) ever analysed the aggregation of this information and moved to protect children by reporting McAlinden to the police, until a blind-report was made by Malone in or about August 1999.
- 12.371 There is no evidence – including from the records of the New South Wales Police Force and the Diocese obtained by the Commission – that Clarke, at any time, reported to police any of the allegations made about McAlinden. The Commission finds that from May 1976 until his retirement in November 1995 and following, including in 2003 when questioned by Detective Chief Inspector Fox (as set out in Chapter 16), Clarke failed to notify police of instances of alleged criminal behaviour by McAlinden.
- 12.372 There is little doubt that what Clarke knew about McAlinden – including the knowledge revealed in the numerous documents Clarke wrote – was information that would have facilitated and/or assisted a police investigation of McAlinden. By failing to provide that information to police, Clarke (and the Diocese of which he was head) failed to facilitate an investigation of McAlinden and failed to assist or facilitate the police investigation of McAlinden once on foot in October 1999.

13 Conduct of certain Church officials pursuant to section 10 of the Special Commissions of Inquiry Act: an analysis

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Introduction

- 13.1 As explained in Chapter 5, it is the Commissioner's duty pursuant to s. 10 of the *Special Commissions of Inquiry Act 1983* (NSW) to report, in connection with the subject matter of the Commission, on whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence.
- 13.2 Certain matters pertaining to s. 10 of the Act (and involving positive findings under that section) are necessarily dealt with in the confidential volume of this report so as not to adversely affect any future criminal proceedings. In this chapter the Commission analyses whether there is evidence warranting the prosecution of certain individuals for offences relating to their respective knowledge about Father Denis McAlinden's sexual abuse of children. In each instance the Commission considers there is not the sufficiency of evidence required by s. 10 of the Act.
- 13.3 No analysis under s. 10 of the Act is provided in relation to clergy such as Bishop Leo Clarke and Monsignor Patrick Cotter, who are deceased and therefore not amenable to prosecution.

Section 316 of the Crimes Act: concealing serious offence

- 13.4 Given the applicable time frames, the relevant potential criminal offence in relation to alleged concealment of a serious offence by officials of the Catholic Church is s. 316 of the *Crimes Act*

1900 (NSW), as in force from 17 March 1991 until 1 January 2000, when the offence under s. 316 became known as concealing serious indictable offence.¹

- 13.5 Chapter 5 provides a detailed overview of the elements the prosecution must prove beyond reasonable doubt in order to establish an offence under s. 316 of the *Crimes Act* (as constituted at different times). In short, the elements are as follows:
- A. A person has committed a serious offence.
 - B. Another person knows or believes the offence has been committed.
 - C. That person has information that might be of material assistance in securing the apprehension, prosecution or conviction of the offender.²
 - D. That person fails without reasonable excuse to bring the information to the attention of a member of the police force or other appropriate authority.³
- 13.6 Section 9(4) of the *Special Commissions of Inquiry Act* mandates that, in considering under s. 10 offences that might or might not have been committed, the Commissioner is required to disregard evidence that would not be likely to be admissible in criminal proceedings. Consistent with s. 23(2) of the *Special Commissions of Inquiry Act*, this would include oral evidence provided unwillingly by a person (the potential accused in criminal proceedings) when subject to a compulsory summons to attend to give evidence before the Commission.

Monsignor Hart

Possession of information relating to AJ's complaint of sexual abuse

- 13.7 There is evidence that McAlinden committed a serious offence against AJ in 1961 or 1962. As described in Chapter 12, AJ gave evidence, adopting the contents of her police statement, in which she described conduct by McAlinden that at the time of its commission in 1961 or 1962 would have constituted an indecent assault contrary to s. 76 of the *Crimes Act*, aggravated by the fact that AJ was under the age of 16 years (being either 11 or 12 years old).⁴ At the time, the offence carried a maximum penalty of penal servitude of five years. The offence was a felony and was a 'serious offence' for the purposes of s. 316 of the *Crimes Act* because it was punishable by penal servitude of five years.⁵
- 13.8 On the evidence, the Commission is comfortably satisfied that Monsignor Allan Hart knew or believed an offence had been committed against AJ. In her police statement AJ described her disclosure to Hart in early 1993 of McAlinden's abuse of her. She stated that Hart inquired whether the abuse was 'skin on skin', and she answered in the affirmative. At the time of the

¹ For alleged concealment occurring before 1990, the common law offence of misprision of felony is relevant. For the purposes of the analysis under s. 10 of the *Special Commissions of Inquiry Act*, it is not considered that it would be proved beyond reasonable doubt that Hart, Lucas, Redgrove or Malone had the requisite knowledge before 1990 that would support an offence of misprision of felony (as discussed in paragraphs 5.27 and following).

² This element requires that the perpetrator of the abuse (for example, McAlinden) be alive, and thus liable to be arrested, prosecuted or convicted, at the time that the alleged concealment took place. In other words, the alleged concealment in connection with McAlinden must have occurred before his death in 2005. An alleged concealer may, however, continue to be liable to be prosecuted, notwithstanding the subsequent death of the perpetrator.

³ 'Without reasonable excuse' is not an element to be established initially by the prosecution. Rather, a defendant may seek to rely on reasonable excuse and if so bears an evidentiary burden to elicit, or point to, evidence that legitimately raises the issue of reasonable excuse. If reasonable excuse is so raised, the prosecution is then obliged to negative the reasonable excuse raised beyond reasonable doubt as part of its general onus to prove the elements beyond reasonable doubt.

⁴ NSW Police Statement of AJ, dated 29 June 2010, ex 304; excerpts from TOR 2 transcript of in camera evidence of AJ, dated 8 July 2013, ex 305 (T3.23–26).

⁵ Section 311(1)(a) of the *Crimes Act 1900* as in force between 17 March 1991 and 1 January 2000.

disclosure AJ was an adult and known to Hart as a parishioner. This evidence is sufficient for Hart to have been aware that an offence had been committed.⁶

- 13.9 The Commission is also comfortably satisfied that in the circumstances – namely, that Hart had received a first-hand account of McAlinden’s sexual offending against AJ – Hart had information that might have been of material assistance in securing the apprehension, prosecution or conviction of McAlinden (while he was alive).
- 13.10 In summary, in relation to AJ’s disclosure to Hart in 1993, there is sufficient evidence of each of the first three elements of the offence under s. 316 of the *Crimes Act*.
- 13.11 The fourth element requires there to have been a failure to report to police or other appropriate authority ‘without reasonable excuse’. In this context, in determining the sufficiency of evidence for the purposes of s. 10 of the *Special Commissions of Inquiry Act*, the Commission can consider the effect of the totality of the evidence likely to be admissible in criminal proceedings.⁷ In her police statement AJ stated:

Although I was asked by Msgr Hart a number of times if I wished to take my matter to the police I knew that was not an option because of my loyalty to the Church. I believe he may have been sincere in saying that but knew that I wouldn’t because of my faith. It was impossible. I had no alternative than to leave it in the hands of the Church and hope that they dealt with it appropriately.⁸

- 13.12 AJ also told the Commission Hart raised the question of going to the police with her on ‘definitely two’, and possibly three, occasions.⁹ In view of this evidence, the Commission considers it likely that in any potential future criminal proceedings Hart would be able sufficiently to raise the issue of reasonable excuse – specifically that, to his knowledge, AJ (then an adult) did not want the matter reported to the police. In the Commission’s view, the prosecution would not be in a position to negative beyond reasonable doubt the absence of reasonable excuse.
- 13.13 As a result, it is considered that there is insufficient evidence warranting the prosecution of Hart in relation to any failure by him to report to the police the offending by McAlinden against AJ.¹⁰

Possession of information relating to AL’s complaint of sexual abuse

- 13.14 As noted in paragraph 12.239 and following, AL was a victim of McAlinden who reported her complaint to the Diocese in 1993; she provided to Hart an outline of the abuse she had suffered.
- 13.15 The Commission does not, however, consider that there is sufficient evidence to warrant the prosecution of Hart in relation to his non-reporting of AL’s complaint to the police, pursuant to s. 316 of the *Crimes Act*. AL did not give evidence at in camera hearings before the Commission. In these circumstances, and because Hart’s evidence cannot be used against him, there is not sufficient evidence before the Commission that would be both available and admissible in any criminal proceedings as to the details of the offences McAlinden committed on AL and that would establish the first element under s. 316 of a ‘serious indictable offence’ having been committed.¹¹ In addition, in relation to the fourth element, Hart would be likely to raise the issue of ‘reasonable excuse’ on the basis that, as the evidence revealed, AL was unwilling to

⁶ Consistent with s. 313 of the *Crimes Act*, it is not necessary for the prosecution to prove that the accused knew the offence was a serious offence.

⁷ Excluding, as indicated, any compelled evidence from Hart; s. 23(2) *Special Commissions of Inquiry Act 1983* (NSW).

⁸ NSW Police Statement of AJ, dated 29 June 2010, ex 304, para 79.

⁹ Excerpts from TOR 2 transcript of in camera evidence of AJ, dated 8 July 2013, ex 305 (T7.17–18).

¹⁰ Letter from Clarke to McAlinden, dated 12 February 1993, ex 60 (TOR 2 tender bundle, tab 210, ex 219).

¹¹ AL did not give evidence before the Commission and thus the Commission cannot be satisfied as to the availability of this evidence.

report to the police. In such circumstances, the prosecution would be unlikely to be able to prove beyond reasonable doubt the absence of reasonable excuse.

Father Lucas

Possession of information relating to AJ's complaint of sexual abuse

- 13.16 As noted in paragraph 13.7, there is evidence that McAlinden committed a serious offence against AJ.
- 13.17 AJ gave evidence that she disclosed to Father Brian Lucas during his first telephone call to her what McAlinden had actually done.¹² She stated, however, that she left out the part about intrusive digital penetration and told Lucas that McAlinden had 'stroked me on the outside of the vagina'.¹³
- 13.18 The Commission is satisfied that the evidence establishes that in 1993 (and afterwards) Lucas knew or believed that an offence had been committed.¹⁴ The Commission is further comfortably satisfied that, on the basis of AJ's disclosure to him, Lucas knew or believed that McAlinden was the offender and had information that might be of material assistance in securing the apprehension, prosecution or conviction of McAlinden.
- 13.19 In short, in relation to AJ's disclosure to Lucas, there is sufficient evidence of each of the first three elements of the offence under s. 316 of the *Crimes Act*.
- 13.20 As noted, the fourth element goes to a failure to report to police or other appropriate authority without reasonable excuse.¹⁵ In considering the effect of the totality of the evidence likely to be admissible in criminal proceedings, regard may be had to AJ's evidence that:
- Father Lucas never asked me at any time if I wanted to take my complaint to the police. Equally I never raised it either, but then again I never got the chance with him, he just wanted the facts. It was a short three to five minute phone call.¹⁶
- It is likely that in any future criminal proceedings Lucas would be able to raise in the prosecution case, in cross-examination of AJ, her stance in 1993 that she did not want the matter reported to police and, further, that Hart had asked her on a number of occasions whether she wanted to take the matter to the police but that she resisted such a course (see paras 13.11 to 13.12). Although there is no evidence before the Commission that Hart told Lucas of AJ's attitude to going to the police, it would be difficult for the prosecution to exclude the possibility that Lucas knew of AJ's attitude to involving the police. Further, there is no evidence that, to Lucas's knowledge, AJ's stance on reporting to the police changed at any later time.
- 13.21 It is thus likely that in any potential future criminal proceedings Lucas would be sufficiently able to raise the issue of 'reasonable excuse' – specifically, that to his knowledge or understanding AJ (then an adult) did not want the matter reported to the police. In the Commission's view, the prosecution would probably not be in a position to negative that matter beyond reasonable doubt.
- 13.22 As a result, it is not considered that there is sufficient evidence warranting the prosecution of Lucas in relation to any failure by him to report to the police the offending by McAlinden against AJ.

¹² Excerpts from TOR 2 transcript of in camera evidence of AJ, dated 8 July 2013, ex 305 (T70.6–11).

¹³ Excerpts from TOR 2 transcript of in camera evidence of AJ, dated 8 July 2013, ex 305 (T72.34–73.14).

¹⁴ The relevant offence being an indecent assault contrary to s. 76 of the *Crimes Act 1900*.

¹⁵ See para 13.11 above as to the onus in relation to reasonable excuse.

¹⁶ NSW Police Statement of AJ, dated 29 June 2010, ex 304, para 37.

Possession of information relating to AL's complaint of sexual abuse

- 13.23 The Commission does not consider that there is sufficient evidence to warrant the prosecution of Lucas pursuant to s. 316 of the *Crimes Act* in relation to his non-reporting of AL's complaint to the police. There is evidence, from Sister Paula Redgrove, that AL outlined to Lucas some of McAlinden's sexually abusive conduct (see para 12.246 and following) and, further, that Lucas did not report AL's complaint to the police. There is not, however, direct evidence from AL as to the sexual abuse suffered, and in those circumstances there is not sufficient evidence before the Commission that would be both available and admissible in any criminal proceedings as to the details of the offences committed by McAlinden on AL and that could thus make out the first element under s. 316 of the *Crimes Act* of a 'serious indictable offence' having been committed.¹⁷
- 13.24 In addition, the Commission considers that, in a prosecution under s. 316, Lucas would be likely to be sufficiently able to raise the issue of 'reasonable excuse' on the basis that the evidence suggests AL was unwilling to report to the police, and the prosecution would be unlikely to be able to prove the absence of reasonable excuse beyond reasonable doubt.

Sister Redgrove

Possession of information relating to AJ's complaint of sexual abuse

- 13.25 As noted in paragraph 12.120 and following, in 1993 AJ disclosed to Sister Paula Redgrove that she had been sexually abused by McAlinden. Redgrove did not report AJ's complaint to the police.
- 13.26 The Commission does not, however, consider that there is sufficient evidence to warrant the prosecution of Redgrove in relation to her non-reporting of AJ's complaint to police pursuant to s. 316 of the *Crimes Act*. On the available evidence likely to be admissible in criminal proceedings, Redgrove had no real detail about McAlinden's abuse of AJ so as to give rise to knowledge or belief on her part that a particular offence had been committed. Notwithstanding the provisions of s. 313 of the *Crimes Act*,¹⁸ there is accordingly insufficient evidence as to the second element under s. 316 – namely Redgrove's knowledge or belief that a particular offence had been committed.
- 13.27 The Commission also takes into account that AJ was firm in her desire not to go to the police. Redgrove could point to evidence raising a 'reasonable excuse', and the prosecution in any future criminal proceedings would be unlikely to be able to negative that beyond reasonable doubt.

Possession of information relating to AL's complaint of sexual abuse

- 13.28 As noted in paragraph 12.246 and following, in 1993 AL also outlined to Redgrove some of McAlinden's sexually abusive conduct. Redgrove did not report AL's complaint to the police.
- 13.29 The Commission does not, however, consider that there is sufficient evidence to warrant the prosecution of Redgrove in relation to her non-reporting of AL's complaint to the police pursuant to s. 316 of the *Crimes Act*. For the reasons described in paragraph 13.5, there is not sufficient evidence before the Commission that would be both available and admissible in any criminal proceedings as to the details of the offences committed by McAlinden on AL and that could thus make out the first element under s. 316 of the *Crimes Act* of a 'serious indictable

¹⁷ As AL did not give evidence at public (in camera) hearings for the second term of reference, the Commission cannot be satisfied as to the availability of this evidence.

¹⁸ Section 313 provides that, in relation to the offence of concealing a serious indictable offence, the prosecution is not required to establish that the accused knew the offence was a serious indictable offence.

offence' having been committed.¹⁹ In addition, having regard to the evidence that AL was unwilling to report to the police and that she disclosed the abuse to Redgrove in confidence to seek support²⁰, would be likely to be sufficiently able to raise the issue of 'reasonable excuse', and the prosecution would be unlikely to be able to prove the absence of reasonable excuse beyond reasonable doubt

Bishop Malone

Possession of information relating to AK's, AL's and AC's complaints of sexual abuse

- 13.30 The Commission does not consider that there is sufficient evidence to warrant the prosecution of Malone in relation to his failure to report information relating to AK's, AL's and AC's complaints of sexual abuse by McAlinden to the police, pursuant to s. 316 of the *Crimes Act*.
- 13.31 In this respect there is not sufficient evidence before the Commission that would be both available and admissible in any criminal proceedings as to Malone's knowledge of the details of the offences committed by McAlinden with respect to AK and AL.²¹ In contrast to Lucas and Hart, Malone did not take any direct report from these victims but instead derived his knowledge from documents on McAlinden's file.²²
- 13.32 Further, on the material available it is unlikely, if Malone sufficiently raised the issue of reasonable excuse, that the prosecution would be able to prove the absence of reasonable excuse beyond reasonable doubt, given that the evidence indicates AL and AK did not want to involve the police.²³
- 13.33 In relation to AC, documentary evidence indicates that in June 2002 Malone was apprised of the details of her complaint against McAlinden, which would have constituted an indecent assault under s. 76 of the *Crimes Act*.²⁴ Having regard to particular correspondence between Malone and AC in June 2002, however, if Malone raised the issue of reasonable excuse on the basis that AC was not prepared to report her complaint against McAlinden to the police, it is unlikely that the prosecution would be able to prove the absence of reasonable excuse beyond reasonable doubt.²⁵

¹⁹ See also footnote 17.

²⁰ TOR 2, T57.29–58.5 (Redgrove in camera, 22 July 2013).

²¹ As noted, AL and AK did not evidence at public (in camera) hearings for the second term of reference, the Commission cannot be satisfied as to the availability of this evidence.

²² Nor did AK, AL or AC give evidence at public (in camera) hearings – there is accordingly no evidence before the Commission likely to be admissible in criminal proceedings as to the details of the offences committed by McAlinden.

²³ Letter from Burston to Davoren, 10 Aug 1999, (tab 304) stating: '... [AK and AL] have not indicated at this stage any wish to take the matter to the police'; CPEA form dated 24 Aug 1999 (tab 309), including information as provided by Burston above.

²⁴ Statement of complaint by AC dated 12 June 2002 (tab 344); letter from Bishop Malone to AC dated 20 June 2002 (tab 346).

²⁵ Letter from Bishop Malone to AC dated 20 June 2002 (tab 346); letter from AC to Bishop Malone dated 22 June 2002 (tab 349). This correspondence relevantly shows that AC did not wish to report her complaint to the police.

14 Fletcher: appointments and reported offending history

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- 14.1 James Patrick Fletcher was born on 20 November 1941 in Scone, New South Wales. He trained to be a priest at St Columba's College in Springwood and St Patrick's College in Manly. He was ordained on 7 December 1968 by Bishop John Toohey, at Mayfield in the Catholic Diocese of Maitland–Newcastle.¹
- 14.2 A chronology showing Fletcher's appointments in the Diocese and aspects of his offending history is set out in Table 14.1, at the end of this chapter.

Offending history

- 14.3 Fletcher had an extensive history of perpetrating child sexual abuse in the Diocese, exclusively abusing young males, particularly altar boys. The Commission is aware of the identities of at least five of his victims.
- 14.4 The Commission received evidence that Fletcher's offending began in the 1970s, while he was working at St Joseph's in East Maitland, and that the Diocese knew about it from at least 1976. These matters are dealt with in the confidential volume of the Commission's report.

Offending against Peter Gogarty, 1974 to 1978

- 14.5 In August 2004 Peter Gogarty reported to then Detective Sergeant Peter Fox that Fletcher had abused him on about six separate occasions between 1974 and 1978, when he was aged between about 14 to 18 years old.² He told Fox that Fletcher befriended him, along with a number of other boys of similar age, and told crude and sexually offensive jokes in their presence. Fletcher also showed pornographic videos to the group.³
- 14.6 At some time between Christmas 1977 and March 1978 Gogarty met Fletcher in Fletcher's room at the bishop's house in Maitland. Gogarty told police that during the meeting Fletcher fondled his (Gogarty's) genitals on the outside of his clothing, continuing to do so until Gogarty objected. Gogarty continued his friendship with Fletcher over the years and, as a young adult, was not

¹ Diocese of Maitland clergy appointment document of Fletcher, undated, ex 219, tab 518.

² NSW Police COPS Event Report E 21385336, dated 16 August 2004, ex 219, tab 432.

³ *ibid.*

subjected to further sexual abuse. When Fletcher approached Gogarty for a reference before his trial for child sexual abuse in 2004, however, Gogarty reported his abuse to Fox.

- 14.7 In September 2004 the New South Wales Police Force laid a charge of indecent assault against Fletcher in relation to his sexual abuse of Gogarty. The charge was, however, withdrawn in May 2005, after Fletcher was convicted and sentenced in connection with the sexual abuse of AH.⁴

Offending against AB, 1982 to 1984

- 14.8 In April 2004 AB told Father Glen Walsh that as a young boy he had been sexually abused by Fletcher. Shortly after, on 27 April 2004, Walsh reported the matter to NSW Police on behalf of AB, who subsequently made a report to NSW Police himself. AB reported that Fletcher had abused him from 1982 to 1984, while he was an altar boy in Maitland.⁵ AB gave tendency evidence at Fletcher's trial,⁶ but no charges were brought against Fletcher in relation to his abuse of AB. For further details of Walsh's notification to police and other authorities in relation to the abuse of AB, see Chapter 15.

Offending against AH, 1989 to 1991

- 14.9 AH was born and grew up in the Maitland–Newcastle area. The eldest son of a Catholic family that was very involved in the local parish, he first had contact with Fletcher when Fletcher became the parish priest at Dungog in December 1987. At that time AH was an altar boy at the Dungog church.⁷

- 14.10 Fletcher became very close to AH's family and regularly visited the family home for dinner. On 26 July 2013 BJ, AH's mother, gave evidence before the Commission about the 'special place' Fletcher had in the 'life of the family':

He took an interest in our children. He celebrated mass in our home. He would be interested in the latest cricket scores. He arrived with sweets and cordial. He was a fairly generous man. He attended birthday parties – my 40th birthday party. His mother and my mother struck up some sort of a friendship, and I had them to dinner 10 times. We socialised with other families with Father Jim, his special friends.⁸

- 14.11 AH often travelled with Fletcher in his car to the Dungog church.⁹

- 14.12 Fletcher indecently assaulted AH in 1989, when AH was 13 years old. The assault took place during one of the car trips to Dungog church. Fletcher then sexually abused AH on a further eight occasions during 1990 and 1991, each time warning AH not to tell anyone about it.¹⁰ The Commission received evidence that Fletcher continued sexually abusing AH until March 1994, when AH was studying for the Higher School Certificate.¹¹

⁴ Memorandum from Fitzhardinge to Maher, dated 9 May 2005, ex 219, tab 462.

⁵ NSW Police Force COPS Case Report C 20724079, dated 3 May 2004, ex 219, tab 419.

⁶ In certain circumstances, juries are able to consider tendency evidence pursuant to s. 97 of the *Evidence Act 1995* (NSW). If permitted, tendency evidence, if accepted by the jury, can establish that an accused had a tendency to behave in a particular way. At Fletcher's trial the jury was invited to consider AB's evidence as evincing Fletcher's tendencies of '... grooming', '... inappropriate sexual behaviour with young boys' and 'inappropriate sexual contact': *R v Fletcher* [2005] NSWCCA 338 at [12].

⁷ NSW Police statement of Malone, dated 18 November 2004, ex 219, tab 451. Altar boys assist during services, bringing articles to the priest as required. The priest is involved in training the altar boys and has direct supervision and authority over them – analogous to a teacher–student relationship.

⁸ TOR 2, T1852.26–34 (BJ).

⁹ Remarks on sentencing of Judge Armitage in the matter of *Regina v James Patrick Fletcher*, dated 11 April 2005, ex 219, tab 461, p 1201).

¹⁰ *ibid*, pp 1201–1208.

¹¹ *ibid*, p 1208.

- 14.13 In September 1995 AH attempted suicide. After the suicide attempt his parents took him to see Fletcher at Branxton, where AH stayed the night in the presbytery. AH believes that he was again sexually assaulted by Fletcher, having gone to sleep fully clothed and woken up naked.¹²

AH's reporting of abuse

- 14.14 It was not until some time in 2000 that AH told his family about the abuse by Fletcher. On 13 December 2000 AH's father, BI, who was at that time employed by Maitland–Newcastle Diocese, told Bishop Michael Malone he believed his son might have been abused by Fletcher about six years previously. Malone made a note of the conversation,¹³ recording that he asked his Vicar General, Father William Burston, to speak to AH's father about the matter.
- 14.15 BI said Malone told him he would have Burston speak to him (BI) in the New Year since he (Malone) was going to be away. As far as BI was concerned, 'That conversation ... has never happened'.¹⁴ As noted in paragraph 15.25, Burston had no recollection of any conversation at that time with either Malone or BI in relation to AH's allegations.
- 14.16 In evidence before the Commission, Malone said he asked Burston to discuss the matter with BI (see Chapter 15 for further details).
- 14.17 On 3 June 2002 AH reported his allegations of sexual abuse by Fletcher to then Detective Sergeant Fox. This report followed the broadcasting on 2 June 2002 of a *60 Minutes* television program dealing with child sexual abuse by certain members of the Catholic clergy in Victoria. A police investigation into the allegations was initiated, with Fox as the officer in charge; this culminated in the arrest and charging of Fletcher on 14 May 2003.¹⁵

Prosecution and trial

- 14.18 Fletcher was charged with eight offences of homosexual intercourse with a male aged less than 18 years and one offence of indecent assault. In an electronically recorded interview Fletcher denied all the charges.¹⁶
- 14.19 On 23 May 2003 Fletcher appeared before East Maitland District Court and pleaded not guilty to all nine charges. The matter was set down for hearing on 25 July 2003.
- 14.20 Fletcher's criminal trial began in East Maitland District Court on 24 November 2004. For three days AH gave evidence about Fletcher's sexual abuse of him. After rulings by the trial judge, AB gave tendency evidence in relation to two instances of Fletcher's sexual abuse of him when he (AB) was about 12 and 13 years old. A further ruling meant that other evidence about 'low grade sexual activity' by Fletcher in connection with multiple other male teenagers was not available for the jury's consideration.¹⁷
- 14.21 On 6 December 2004, two weeks after the trial had begun, the jury found Fletcher guilty of all nine charges. In referring to AH's evidence, Judge Armitage noted that AH 'appeared to me to be a down to earth young man who was completely truthful, and who was endeavouring to do his best to tell his story without elaboration'.¹⁸ In his remarks on sentencing, the judge recorded that Fletcher:

¹² NSW Police Force COPS Case Report C 16128387, dated 3 June 2002, ex 219, tab 342.

¹³ Handwritten note by Malone, dated 13 December 2000, ex 219, tab 329.

¹⁴ TOR 2, T7.9–12 (BI in camera).

¹⁵ NSW Police COPS Event Report E 143484559, dated 3 June 2002, ex 219, tab 341.

¹⁶ NSW Police report by Fox re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56, p 1051.

¹⁷ Judgment of Simpson J (McClellan CJ at CL agreeing), *R v Fletcher* [2005] NSWCCA 338, at [27].

¹⁸ Remarks on sentencing of Judge Armitage in the matter of *Regina v James Patrick Fletcher*, dated 11 April 2005, ex 219, tab 461.

... set out on a deliberate course to ingratiate himself with the victim and his family for the very purpose of putting himself in a position where he could take advantage of the victim. He was prepared to go to the lengths of preying upon him when he knew his parents were out of the way, and luring him away at night from his grandfather's birthday party. What he did was a gross and inexcusable breach of trust.¹⁹

- 14.22 In noting that the mitigating factor of contrition was not present, Judge Armitage said Fletcher continued 'to protest his innocence in the face of some of the most compelling evidence I have heard in a case such as this'.²⁰
- 14.23 On 11 April 2005 Fletcher was sentenced to imprisonment for a total of nine years, 11 months and 29 days, with a non-parole period of seven years, five months and 30 days.
- 14.24 Fletcher appealed. On 23 September 2005 the New South Wales Court of Criminal Appeal dismissed his appeal.²¹ Fletcher then sought leave to appeal to the High Court. The application was continued by his executor after Fletcher's death. On 10 March 2006 the High Court dismissed the application for special leave to appeal.²²
- 14.25 Fletcher died on 7 January 2006 in hospital, after having suffered a stroke²³ in his cell at the John Morony Correctional Complex in Windsor.²⁴ The coroner noted that Fletcher's medical history showed he had suffered a stroke eight years before his death and that he suffered from high blood pressure and was on medication.²⁵ The coroner found that Fletcher had died of a natural cause and that there was nothing suspicious about his death.²⁶ Fletcher was buried in the priests' section of Sandgate Cemetery, Newcastle.

Table 14.1 Fletcher's appointments and offending history: a chronology

Date	Event
7 December 1968	Fletcher ordained at Mayfield by Bishop John Toohey ²⁷
9 January 1969	Fletcher appointed to East Maitland parish ²⁸
17 August 1973	Fletcher transferred to Waratah parish ²⁹
1974	Fletcher begins sexually abusing Peter Gogarty ³⁰
6 March 1977	Fletcher appointed assistant priest at Maitland ³¹
1980	In March 2013, the Diocese received a report from ABM that he was sexually abused by Fletcher in 1980 ³²
1982	Fletcher begins sexually abusing AB while AB was an altar boy in Maitland; the abuse continued until 1984 ³³

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ Notification of court's determination of application, Court of Criminal Appeal, dated 23 September 2005, ex 219, tab 470.

²² *Fletcher v The Queen*, [2006] HCA Trans 127.

²³ Findings in the inquest into the death of Fletcher, dated 5 May 2006, ex 295, T2.18–21.

²⁴ *ibid.*, T1.47–2.2.

²⁵ *ibid.*, T1.41–45.

²⁶ *ibid.*, T2.4–5.

²⁷ Diocese of Maitland clergy appointment document of Fletcher, undated, ex 219, tab 518.

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ NSW Police COPS Event Report E 21385336, dated 16 August 2004, ex 219, tab 432.

³¹ Diocese of Maitland clergy appointment document of Fletcher, undated, ex 219, tab 518.

³² Letter from Maureen O'Hearn to NSW Crown Solicitor, dated 20 May 2014, ex 320.

³³ NSW Police Force COPS Case Report C 20724079, dated 3 May 2004, ex 219, tab 419.

Date	Event
1 October 1983	Fletcher transferred to Gateshead parish as assistant priest ³⁴
25 April 1985	Fletcher appointed parish priest at Denman ³⁵
12 December 1987	Fletcher transferred to Dungog, initially as priest in charge and later as parish priest ³⁶
1989–1991	Fletcher begins sexually abusing AH when AH was 13 years old ³⁷
28 January 1995	Fletcher appointed parish priest at Branxton ³⁸
13 December 2000	AH's father, BI, tells Bishop Malone he believes his son might have been abused ³⁹
3 June 2002	AH reports his allegations of sexual abuse by Fletcher to Detective Sergeant Peter Fox; police investigation led by Fox begins
1 August 2002	Fletcher's role extended to include Lochinvar parish ⁴⁰
18 March 2003	Fletcher stood down from ministry
14 May 2003	Fletcher charged with eight counts of homosexual intercourse with a child and one count of indecency (relating to sexual abuse of AH)
April 2004	AB tells Father Glen Walsh that he had been sexually abused by Fletcher ⁴¹
August 2004	Peter Gogarty gives statement to Detective Fox, reporting abuse by Fletcher ⁴²
September 2004	A charge of indecent assault against Fletcher in relation to abuse of Mr Gogarty brought ⁴³
22 November 2004	Fletcher's trial begins ⁴⁴
6 December 2004	Fletcher found guilty of all nine charges ⁴⁵
11 April 2005	Fletcher sentenced to imprisonment (nine years, 11 months)
May 2005	Charges against Fletcher in relation to abuse of Mr Gogarty withdrawn ⁴⁶
23 September 2005	Appeal by Fletcher against his convictions dismissed by NSW Court of Criminal appeal ⁴⁷
7 January 2006	Fletcher dies in Hawkesbury District Hospital ⁴⁸
10 March 2006	Application for special leave to appeal to High Court dismissed ⁴⁹

³⁴ Burston remembered Fletcher being moved rather abruptly but said he could not recall whether there was any controversy about the move, or any concern about his inappropriate behaviour with boys: TOR 2, T1293.46–1294.13 (Burston).

³⁵ Diocese of Maitland clergy appointment document of Fletcher, undated, ex 219, tab 518.

³⁶ *ibid.*

³⁷ Remarks on sentencing of Judge Armitage in the matter of *Regina v James Patrick Fletcher*, dated 11 April 2005, ex 219, tab 461, p 1201.

³⁸ *ibid.*

³⁹ Handwritten note by Malone, dated 13 December 2000, ex 219, tab 329.

⁴⁰ Diocese of Maitland clergy appointment document of Fletcher, undated, ex 219, tab 518.

⁴¹ TOR 2, T6.5–24 (Walsh in camera, 26 June 2013 at 6.43pm).

⁴² NSW Police COPS Event Report E 21385336, dated 16 August 2004, ex 219, tab 432.

⁴³ NSW Police Facts Sheet re Fletcher, dated 16 September 2004, ex 219, tab 439.

⁴⁴ Judgment of Simpson J (McClellan CJ at CL agreeing), *R v Fletcher* [2005] NSWCCA 338 at [27].

⁴⁵ Remarks on sentencing of Judge Armitage in the matter of *Regina v James Patrick Fletcher*, dated 11 April 2005, ex 219, tab 461.

⁴⁶ Memorandum from Fitzhardinge to Maher, dated 9 May 2005, ex 219, tab 462.

⁴⁷ Notification of court's determination of application, Court of Criminal Appeal, dated 23 September 2005, ex 219, tab 470.

⁴⁸ This was the second stroke Fletcher had suffered: in a statement given to NSW Police on 21 May 2003 Father James Saunders referred to the fact that 'Jim had not been a well man up to this time and had suffered a stroke earlier' (NSW Police statement of Saunders, dated 21 May 2003, ex 219, tab 391, para 7. The coroner noted that Fletcher's medical history showed he suffered a stroke eight years before his death, that he suffered from high blood pressure and was on medication. The Coroner found that, 'Clearly the deceased has died of a natural cause, there is nothing suspicious about his death' (Findings in the inquest into the death of Fletcher, dated 5 May 2006, ex 295, T1.41–T2.5).

⁴⁹ *Fletcher v the Queen* [2006] HCA Trans 127 (10 March 2006).

15 Who knew what and when: church officials' awareness of Fletcher's propensity for child sexual abuse

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- 15.1 Father James Fletcher was a paedophile who repeatedly committed sexual abuse on young males. The Catholic Diocese of Maitland–Newcastle has, at least in recent times, acknowledged him as such and Bishop William Wright made a public apology on the first day of the Commission’s public hearings for the second term of reference, referring to Fletcher as a ‘sexual predator’ who ‘repeatedly committed acts of sexual abuse of children’.¹
- 15.2 This chapter explores the information some officials of the Diocese had about Fletcher’s propensity to commit acts of sexual abuse against children and the circumstances and timing of that information. It is important to examine the extent of that information because the second term of reference requires that the Commission consider whether Church officials engaged in particular acts or omissions, including ‘the failure to report alleged criminal offences’. Bishop Michael Malone was the head of the Diocese from 15 February 1995² until mid-June 2011³ and it is necessary to explore what information he had in relation to Fletcher and his propensity for the sexual abuse of young boys. A substantial part of this chapter focuses on an evidentiary contest that arose between Malone and other witnesses from the Diocese and the Catholic education system in relation to Malone’s conduct after AH’s allegations against Fletcher surfaced in early June 2002.

First knowledge: 1976

- 15.3 The Commission received evidence that from 1976 at least one official of the Diocese had knowledge of Fletcher’s propensity for sexually abusing young boys in the early 1970s. These matters are in part the subject of the confidential volume of the report. The relevant evidence was taken confidentially to protect the integrity of potential future criminal proceedings relating to those matters. The period between 1976 and 1996 relating to Fletcher is examined in the confidential volume of this report.

Bishop Malone’s knowledge

First notification: 1996

- 15.4 It appears from available documents that Malone was first warned about a suspicion in relation to Fletcher’s ‘inappropriate behaviour with boys’⁴ at some time in 1996, in a conversation with Mr Patrick Roohan, principal of a school at Singleton.
- 15.5 After counsel assisting had shown him a handwritten note dated 1996 (see Figure 15.1) Malone confirmed that the writing on the note was his and that he recalled having made the note about Fletcher’s conduct with boys.⁵

¹ TOR 2, T21.41–47 (Wright).

² TOR 2, T778.13–14 (Malone).

³ TOR 2, T1031.10–11 (Malone).

⁴ Malone’s file note, dated 1996, ex 219, tab 273.

⁵ TOR 2, T883.39–47 (Malone).

1996
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Patrick Roohan :

— suspicion about Jim Fletcher +
inappropriate behaviour with boys
Jim Callinan warned Patrick
Jim Finucane knew something
Colleen Timoshenko may know? *saw her!*
spoke to Michael Bowman

Figure 15.1 Malone's file note dated 1996⁶

Bishop Malone's evidence

- 15.6 Malone gave evidence that he thought the reference in the note to 'Jim Callinan warned Patrick' meant that Mr Jim Callinan (then director of schools in the Diocese) must have said something to Roohan about 'coming forward with regard to Fletcher'.⁷
- 15.7 Malone confirmed that Roohan informed him that Mr Jim Finucane and Ms Colleen Timoshenko 'may know something about this inappropriate behaviour'.⁸ Malone testified that, of the people whose names were referred to in his handwritten note, he spoke only to Timoshenko, who was 'unable to confirm that suspicion'.⁹
- 15.8 Malone agreed that he had not recorded any details of his conversation with Timoshenko in his handwritten note, but he said to the Commission that if Timoshenko had told him something of concern about Fletcher he would have recorded it because he was 'getting used to the idea of making some file notes by this time'.¹⁰
- 15.9 Additionally, Malone did not think he discussed the information Roohan had given him with his deans or consultors because 'it was reported as a suspicion only'¹¹ and Timoshenko was unable to confirm the suspicion.¹² Malone told the Commission he did not remember speaking to the deans at the August 1995 meeting about the information he had received in relation to Fletcher's inappropriate behaviour with boys. This was despite the fact that Bishop Leo Clarke had discussed at that meeting a rumour about another priest (McAlinden).¹³ It otherwise appears that Malone took the reported suspicion no further.

Ms Timoshenko's evidence

- 15.10 In a police statement taken by Detective Chief Inspector Peter Fox during the police investigation of Fletcher, which was tendered in evidence before the Commission, Timoshenko

⁶ Malone's file note, dated 1996, ex 219, tab 273, ex 219. The file note reads: 'Patrick Roohan: — suspicion about Jim Fletcher + inappropriate behaviour with boys. Jim Callinan warned Patrick. Jim Finucane knew something. Colleen Timoshenko may know? saw her! spoke to Michael Bowman'.

⁷ TOR 2, T884.15–18 (Malone).

⁸ TOR 2, T884.25–26 (Malone).

⁹ TOR 2, T884.32–34; T884.46–47 (Malone).

¹⁰ TOR 2, T885.6–16 (Malone).

¹¹ TOR 2, T884.40–45 (Malone).

¹² TOR 2, T884.46–7 (Malone).

¹³ TOR 2, T885.18–35 (Malone).

confirmed that Malone spoke to her about Fletcher on 4 February 1997.¹⁴ She said Malone asked her why the past director of schools would advise a principal in the Diocese (meaning Roohan) not to leave boys alone with Fletcher. Timoshenko told Malone she had no idea why he would do that. She said that while she was principal at Dungog no child had made any disclosure to her about Fletcher. Her police statement referred to Malone telling her he was pleased to hear that and would pass the information on to Father William Burston (at that time vicar general of the Diocese).¹⁵ When questioned about this, Burston could not recall having a discussion with Malone about Fletcher's inappropriate behaviour with boys; he also thought it would probably be something he would recall.¹⁶

Mr Bowman's evidence

- 15.11 Malone's handwritten note about the conversation with Roohan also recorded that he spoke to Mr Michael Bowman, who had become Director of Catholic Schools on the retirement of Jim Callinan. Bowman held the position as director from January 1996 to January 2004.¹⁷
- 15.12 In evidence Bowman could not recall having such a conversation with Malone;¹⁸ nor was his recollection prompted on being shown Malone's handwritten note (see Fig 15.1 above).¹⁹ Bowman did not deny that such a conversation took place, but said he could not recall it so many years later.²⁰

Conclusions

- 15.13 From 1996 Malone knew there were concerns about Fletcher's behaviour with young boys. He made only cursory inquiries at the time, in response to Roohan's concerns. He did not interview each of the people Roohan had said might have knowledge of the matter. By his own account, Malone did not contact either Jim Callinan or Finucane in relation to the suspicion about Fletcher, despite the fact that the original warning about Fletcher's behaviour apparently came from Callinan. Malone's file note stated, 'Jim Finucane knew something'; this is in contrast with Timoshenko, who only 'may know something'. Timoshenko was, however, the only person referred to in the note that Malone spoke to about the matter.
- 15.14 Bishop Malone's apprehension was that Jim Callinan had encouraged Roohan to come forward about Fletcher, but in the light of Timoshenko's account it appears that Callinan had warned Roohan about the risks associated with Fletcher and had advised him, as a school principal, not to leave boys alone with Fletcher.
- 15.15 Although Jim Callinan had retired by the time Malone had the conversation with Roohan, he probably would have been able to provide more information about Fletcher's behaviour than Bowman, who had only started as director of schools in January 1996. Malone's note recorded that he spoke to Bowman. Moreover, Malone gave no evidence of having approached Fletcher in relation to the matter – Timoshenko and Bowman being the only people he gave evidence of speaking to about it. The Commission considers that Malone made inadequate inquiries in relation to the first notification he received about Fletcher, having failed to speak with those who were best placed to provide information, being Finucane, Jim Callinan and Fletcher.

¹⁴ NSW Police statement of Timoshenko, 2 June 2003, ex 219, tab 400, para 9, obtained during Fox's investigation and tendered in evidence before the Commission.

¹⁵ *ibid.*

¹⁶ TOR 2, T1293.22–37 (Burston).

¹⁷ TOR 2, T2077.4–10 (Bowman).

¹⁸ TOR 2, T2078.1–4 (Bowman).

¹⁹ TOR 2, T2078.35–39 (Bowman).

²⁰ TOR 2, T2086.37–46 (Bowman).

Second notification: 2000

- 15.16 From the time of the 1996 notification until 18 March 2003²¹ Fletcher continued to act as a parish priest in the Diocese and to have contact with children.²²
- 15.17 Malone told the Commission that after the first notification in 1996 he did not hear anything further about Fletcher interfering with children until 13 December 2000, when he had a confidential conversation with BI, AH's father.²³

Bishop Malone's evidence

- 15.18 Malone said he prepared a handwritten file note about a confidential conversation he had on 13 December 2000, in which BI told him his son might have been molested by Fletcher about six years beforehand. Malone said he made the note on the day the conversation occurred.²⁴

- 15.19 When asked why he made this particular note, Malone said:

Well, simply because when these sorts of things are communicated to me, I thought it was important to make a note of it, just to reflect the seriousness of the complaint or allegation, or whatever it might have been, the information.²⁵

- 15.20 The note recorded:

[BI] in a confidential conversation confided that his son, [AH], may have been molested by Jim Fletcher about six years ago.

[AH claimed there had been a previous instance of sexual abuse when he was aged 19 years by an unknown person] ... although BI suspected that AH knew him [the assailant].

Since then, [AH]'s behaviour changed radically – he drank to excess, had extreme outburst of anger, mood swings. He attempted suicide soon after.

[BI] took [AH] to see Jim Fletcher after the suicide attempt. [AH] stayed at Branxton overnight. He went to bed fully clothed and woke up naked.

[BI made a comment on the emotional state of AH and the impact on the reliability of his account.]

I discussed this with Vicar General [Burston] on 14.12.2000. He agreed to speak with [BI] before any further action taken. M. J. Malone 18.12.2000.²⁶ [emphasis added]

- 15.21 Malone told the Commission that AH's complaint, as conveyed by BI, 'certainly concerned me when I heard about it'.²⁷ He confirmed that by this time he was developing an awareness that the kind of behaviour being demonstrated by AH could be consistent with the behaviour of someone who had been sexually abused when younger.²⁸ It also occurred to Malone that there could be a link between the information BI had given him in relation to Fletcher and the rumours he had heard about Fletcher in 1996.²⁹ Malone did not, however, go and speak to Fletcher about the assertion: he instead asked Burston to do that. Malone then said, 'I don't know that he went to Fletcher ... I think he spoke to BI'.³⁰ Malone said he discussed the information BI had given

²¹ When Malone stood Fletcher down from active duty; handwritten note by Malone re phone call from McDonald, undated, ex 219, tab 374.

²² TOR 2, T954.38–43; T955.7–956.16; T959.32–959.13 (Malone).

²³ TOR 2, T923.7–23 (Malone).

²⁴ TOR 2, T4.35–47 (Malone in camera, 16 July 2013, at 2.20pm).

²⁵ TOR 2, T923.26–30 (Malone).

²⁶ TOR 2, T924.16–23 (Malone); handwritten note by Malone, dated 18 December 2000, ex 219, tab 329.

²⁷ TOR 2, T924.46 (Malone).

²⁸ TOR 2, T924.8–14 (Malone).

²⁹ TOR 2, T925.38–42 (Malone).

³⁰ TOR 2, T925.8–9 (Malone).

him with Burston on 14 December 2000, and he said they agreed that Burston would speak to BI, before any further action was taken.³¹ On Malone's account, however, neither he nor Burston spoke to Fletcher about AH's discussion with BI.

- 15.22 On 3 January 2001 Malone made a note saying he had spoken with Burston about his (Burston's) conversation with BI. The note stated:

Bill Burston has spoken to [BI] about [AH's] "allegation" that he was molested by Jim Fletcher.

[BI]'s response was to suggest that [AH] was seeking attention and that this was atypical of Jim Fletcher.

In the absence of any complaint, either formal or informal, decision was made to not act on this matter at this time.³²

- 15.23 In evidence Malone said that, having discussed the situation, he and Burston had both decided 'there was insufficient evidence to take the matter further'.³³ Neither Malone nor Burston, who was also a qualified psychologist, spoke to AH about the allegations.³⁴

- 15.24 Malone said he was 'scared stiff ... about the possibility of yet another person coming forward'³⁵ and he chose not to act on the suggestion that AH had been a victim of Fletcher's because:

... at the time when certain matters were reported about Fletcher, both the first ones [the 1996 notification] ... and BI's conversation with me on 3 January 2001, there was, as I say, smoke. There was very little in the way of fact, and when you don't have any sort of facts to act on, it's hard to act.³⁶

Malone also wondered whether 'AH would have denied it or whether Fletcher would have denied it'; he considered that at that point the chances were both would have done so.³⁷

Father Burston's evidence

- 15.25 As with many aspects of his evidence, Burston said he had no recollection of speaking with Malone and BI about AH's allegations. He thought the first occasion on which anyone spoke to him about concerns relating to Fletcher and AH was after the *60 Minutes* television program aired on 2 June 2002.³⁸

BI's evidence

- 15.26 In his oral evidence BI told the Commission he had spoken to Malone in December 2000 in relation to a concern about Fletcher³⁹ and that Malone's handwritten note broadly summarised the conversation. BI said, however, that there was a 'slightly different slant' on it, in that Malone referred to AH's sudden deterioration in behaviour, whereas in fact AH's difficult behaviour had been going on for a long time.⁴⁰

³¹ TOR 2, T924.35–42 (Malone).

³² Handwritten note by Malone, dated 3 January 2001, ex 219, tab 330.

³³ TOR 2, T926.18–20 (Malone).

³⁴ TOR 2, T926.22–31; T926.41–43 (Malone).

³⁵ TOR 2, T928.17–18 (Malone).

³⁶ TOR 2, T928.22–27 (Malone). The Commission notes that Malone was in error in referring to his conversation with BI on 3 January 2001. Malone's evidence was to the effect that (following his conversation with BI on 13 December 2000) he (alone) met with BI: T926.8–10 (Malone).

³⁷ TOR 2, T928.29–38 (Malone).

³⁸ TOR 2, T1292.43–47 (Burston).

³⁹ TOR 2, T5.9–12 (BI in camera).

⁴⁰ TOR 2, T5.35–6.6 (BI in camera).

- 15.27 BI said Malone had told him he was going to be away and he would get 'Bill' (Burston) to talk to him in the New Year. BI said, 'As far as I am concerned, that conversation [with Burston] never happened', and his evidence was that Burston had not made any contact with him about the matter.⁴¹

Conclusions

- 15.28 The Commission considers that for Malone to characterise what BI reported about AH as 'smoke' was to significantly underestimate the seriousness of BI's report. This in particular relates to the material about AH having stayed overnight at the presbytery with Fletcher and having woken up naked.
- 15.29 In view of the earlier reports about Fletcher's suspected conduct with young boys, Malone's original concerns must have been reinforced when in 2000 BI told him Fletcher might have abused AH. Malone did not question Fletcher about this; nor did he speak to AH about the allegations. Malone asserted that he asked Burston to speak to BI, and his file note recorded that Burston had done so; Burston had no recollection of any conversation with Malone about the matters BI raised or of any conversation with BI. For his part, BI was adamant that Burston had never contacted him.
- 15.30 The Commission does not need to resolve the conflict in the evidence about whether Burston ever in fact contacted BI. This is because, on any view, Malone should himself have taken further steps to investigate or follow up the allegations at the time, including approaching both Fletcher and AH about the matter. Such steps were obviously warranted in view of the fact that this was the second report Malone had received raising concerns about Fletcher's conduct with young boys. In such circumstances Malone could not properly be sure that 'there was very little in the way of fact' relating to the allegations about Fletcher.

Third notification: 2002

- 15.31 On 4 June 2002 BI informed Malone that his son, AH, had made allegations to the police about his (AH's) abuse by Fletcher.⁴² Malone agreed that in his mind he married this conversation with what BI had told him in 2000 and 2001 and that it verified what BI had said to him in relation to AH's allegations.⁴³
- 15.32 Immediately after the conversation with BI on 4 June 2002 Malone spoke to Father James Saunders (his vicar general at the time)⁴⁴ and they travelled together to see Fletcher.⁴⁵ Malone told Fletcher an allegation of sexual abuse had been made against him and that the person making the allegation was AH.⁴⁶ (The ensuing investigation Fox conducted in response to these allegations, including his meeting with Malone on 20 June 2002 to discuss the 'tipping off'⁴⁷ of Fletcher about AH's complaint, is detailed in Chapter 18.)
- 15.33 As described in Chapter 14, on 14 May 2003 Fletcher was charged in relation to offences against AH. He was ultimately convicted of nine offences on 6 December 2004.

⁴¹ TOR 2, T6.41–7.12 (BI in camera).

⁴² TOR 2, T931.15–28 (Malone).

⁴³ TOR 2, T931.30–6 (Malone).

⁴⁴ TOR 2, T932.5–8 (Malone).

⁴⁵ TOR 2, T932.44–45 (Malone).

⁴⁶ TOR 2, T933.13–43 (Malone).

⁴⁷ Being Fox's characterisation of Malone's conduct in visiting Fletcher at Branxton Presbytery on 4 June 2002 (TOR 2, T932.44–45 (Malone)).

Detective Chief Inspector Fox's investigation

- 15.34 In the context of Fox's investigation of Fletcher the Commission received evidence of the steps Malone took at the request of the police to stand Fletcher down from parish duties (including having contact with children) while the police investigation was proceeding. In this regard Fox gave evidence that, after receiving from AH a complaint that Fletcher had sexually abused him, he (Fox) visited Malone at the chancery in Hamilton on 20 June 2002 and spoke with him about Fletcher. Saunders, as vicar general, was also in attendance.⁴⁸
- 15.35 Fox told the Commission that during the visit he told Malone he was investigating child sexual abuse allegations against Fletcher.⁴⁹ He said he told Malone the police investigation would take 'a few months' and that he (Fox) would speak with Fletcher but that he would not do so until he had finished taking AH's statement.⁵⁰ Fox spoke with Malone about what was to occur with Fletcher while the police investigation continued: he asked that Malone consider standing Fletcher down during that period, which could be for a number of months.⁵¹ (For further details of Fox's assertions about a lack of assistance during his investigation of Fletcher, see Chapter 18).

Bishop Malone's actions in relation to Fletcher: 2002 and 2003

- 15.36 Malone did not in fact stand Fletcher down from parish duties until 18 March 2003.⁵² He gave evidence, however, about specific steps he said he took in relation to Fletcher in 2002 and 2003. Those actions, including steps Malone said he took on 20 June 2002, after Fox's visit, require examination, among other things to determine whether they provide evidence, at least to some extent, of cooperation with Fox's request while the Fletcher investigation was continuing.
- 15.37 In this context, and as described below, during the public hearings a significant evidentiary contest arose in connection with the extent to which, if at all, on 20 June 2002 Malone consulted both a local school principal, Mr William Callinan, and the Director of Catholic Schools, Mr Michael Bowman, about steps that should or could be taken in respect of Fletcher. There was also some divergence in the evidence about whether Mr John Davoren, then the Director of the Professional Standards Office, gave Malone advice on whether Fletcher should be stood down.

Bishop Malone's pastoral message: 16 May 2003

- 15.38 On 16 May 2003, after the charging of Fletcher on 14 May 2003 concerning AH's police complaint, Malone issued a written pastoral message to the Diocese. It included the following passages:

You will have learnt from the media that Fr James Fletcher, a priest of this Diocese ... was charged by Police on 14th May, 2003. He was charged with sexual assault involving a minor, following an accusation made to the Police in June 2002.

In accord with normal procedures Fr Fletcher has been withdrawn from active ministry. The charges against him will now be dealt with by the criminal justice system.

...

There have been accusations in the media that I was negligent in not removing Fr Fletcher from his parish when the allegation was first known in June 2002.

⁴⁸ TOR 2, T130.5–25 (Fox).

⁴⁹ TOR 2, T330.45–46 (Fox).

⁵⁰ TOR 2, T299.06–32 (Fox).

⁵¹ TOR 2, T370.33–45; T370.2–15 (Fox).

⁵² TOR 2, T965.14–33 (Malone); statement of Malone dated 8 July 2013, ex 85, para 6.2 (viii).

It is true that I knew of the accusation then, but at that stage it was made clear to me that it was an unsubstantiated accusation yet to be investigated by the police.

I sought advice from the NSW Professional Standards Office (Towards Healing process) and others. I also consulted the Director of Catholic Schools and the local School Principal at the time and informed them of the situation.

Based on the advice I received and an assessment of the potential risk as per NSW Child Protection Legislation, I decided to leave Fr Fletcher in place, aware also of his poor health and near fatal stroke a few years ago.⁵³ [emphasis added]

The asserted consultation with Mr Callinan, school principal

Mr Callinan's police statement: 12 June 2003

15.39 Almost a month later, on 12 June 2003, in the context of the Fletcher investigation Fox obtained a statement from William Callinan, then principal of two Catholic primary schools, one at Branxton and one at Greta.⁵⁴ Callinan had been a friend of Fletcher for about seven years.⁵⁵ In his police statement he described receiving a telephone call from Malone on 19 March 2003:⁵⁶

13. ... he [Malone] said to me, "I am just ringing to advise you that Father Jim has been stood down from his position as the Parish Priest. The reason I have taken this action is that I have been told that charges against Father FLETCHER are imminent". He then went on to say, **"We would like to try and keep everything quiet at the moment. If anyone asks you can you just let them know that Father Jim isn't well at the moment & needed some time away"**. I agreed with this & he said, "The Ombudsman's Office is also conducting an inquiry into the handling of this since June last year. The Ombudsman is not happy about the way this matter has been handled." I am a bit reluctant to use exact conversation at this point, as I am not certain as to the exact words that were used, but he said to me something like, "We have spoken about the matter when it first surfaced in a conversation through a phone call I made to you at that time. We spoke about Father continuing in his role in his capacity as Parish Priest within the two schools." I was taken aback by this & did not respond, as I had not had such a conversation. I cannot recall having ever spoken to the Bishop around that time, let alone in relation to Father FLETCHER ... I had independently made a decision between Father FLETCHER & myself to allow his role within the school to continue, but I had never discussed this with the Bishop.

...

16. I was concerned regarding the alleged phone call between Bishop MALONE & I. On Sunday following Father being charged I received a Pastoral Message letter distributed at the Diocesan Masses. In that message signed by Bishop Malone & dated the 14th of May 2003 it states, "... I consulted the Director of Catholic Schools & the local School Principal at the time & informed them of the situation." In the context where that is raised it suggests the Bishop around the time of the allegation first surfacing spoke to me. To the best of my knowledge, no consultation took place between the Bishop & myself.⁵⁷ [emphasis added]

15.40 At the time of giving his statement to police, William Callinan had not raised these matters with the bishop or anyone else in the Diocese. He told the Commission he regarded himself as compelled to tell the police everything that had happened, regardless of the personal

⁵³ Media release – Pastoral message to Diocesan Community from Malone, dated 16 May 2003, ex 104.

⁵⁴ Statutory declaration of Callinan dated 23 November 2013, ex 242, para 2.

⁵⁵ TOR 2, T2109.15–28 (Callinan).

⁵⁶ TOR 2, T2093.30–2094.2 (Callinan) (where the witness corrected that the date of the call as recorded in the police statement should be 19 March 2003 and not 18 March 2003).

⁵⁷ NSW Police statement of Callinan, dated 12 June 2003, ex 194, paras 13, 16.

consequences, because he was preparing a witness statement and was under a compulsion to tell the truth.⁵⁸

Mr Callinan's evidence

15.41 William Callinan gave evidence on this at the Commission's public hearings. He said when he first heard the suggestion, on 19 March 2003, about the asserted conversation with Malone in June 2002 he was 'in disbelief'.⁵⁹ From the discussion on 19 March 2003 Callinan understood the nature of the earlier purported contact to be a phone call Malone said he had made to him about the Fletcher matter.⁶⁰ Callinan understood Malone was suggesting that the two of them had had a previous conversation about Fletcher being suitable to stay with the school⁶¹ after the allegations of abuse had surfaced. In evidence before the Commission, however, Malone said it was in fact during a visit to see Callinan that the conversation occurred (see para 15.59).

15.42 Callinan said his practice was to keep a daily diary and to write in it notes from 'that particular day about whatever events'.⁶² He checked his diary to see whether there was an entry to do with the discussion with Malone, being unable to recall any such conversation. There was no entry in his diary for 20 June 2002 relating to any conversation with or visit from Malone.⁶³ Taking this step of reviewing his diary confirmed Callinan's view that the conversation had not occurred.⁶⁴ Unscheduled contact from the bishop by way of a visit or a telephone call was something Callinan said he would have noted in his diary; he said it was 'very, very unusual for a bishop to come and visit a school principal off the street about something so important'.⁶⁵ Indeed, Callinan said that in the time he had served at the two schools since 1999 there had never been an unscheduled visit from Malone.⁶⁶

15.43 On 19 March 2003, after the telephone call from Malone, Callinan made the following diary entry:

Bishop rang re: Father Fletcher. Tell people he is sick. Told me he had been stood down pending charges. Ombudsman indicated he should have been stood down earlier. Indicated we had a conversation about the situation then and we thought he would not be a harm to the children. **I could not recall this conversation.** 19/3/03⁶⁷ [emphasis added]

15.44 Callinan said the call from Malone was not scheduled and 'just came out of the blue.'⁶⁸ He said he signed and dated this particular diary entry because he thought it was a 'very, very important conversation'.⁶⁹ Counsel for Malone cross-examined at length about his failure to note other significant conversations in his diary – including his awareness of Malone's attendance on Fletcher in June 2002⁷⁰ and the discussion with Mr Garry Muirhead on 19 May 2003.⁷¹ Callinan's note that 'I could not recall this conversation' was also explored, counsel for Malone suggesting that if the conversation in June 2002 had not occurred Callinan would have instead recorded an express denial.⁷² Callinan explained that immediately after the conversation he 'wrestled with'

⁵⁸ TOR 2, T2144.18–29 (Callinan).

⁵⁹ TOR 2, T2095.37–38 (Callinan).

⁶⁰ TOR 2, T2095.40–47 (Callinan).

⁶¹ TOR 2, T2130.26–29 (Callinan).

⁶² TOR 2, T2095.2–9 (Callinan).

⁶³ Diary entry of Callinan, dated 20 June 2002, ex 195.

⁶⁴ TOR 2, T2104.17–27 (Callinan).

⁶⁵ TOR 2, T2096.24–31 (Callinan).

⁶⁶ TOR 2, T2097.18–22 (Callinan).

⁶⁷ Extract from diary entry of Callinan, dated 19 March 2003, ex 196.

⁶⁸ TOR 2, T2098.22–27 (Callinan).

⁶⁹ TOR 2, T2099.24–34 (Callinan).

⁷⁰ TOR 2, T2122.35–2123.5 (Callinan).

⁷¹ TOR 2, T2110.11–37 (Callinan).

⁷² TOR 2, T2130.40–43 (Callinan).

trying to work out what the conversation was and when it occurred⁷³ but ‘just couldn’t recall any conversation previously’.⁷⁴ As he told the Commission, he later checked his diary and came to the conclusion that the conversation had not occurred (as discussed above).

- 15.45 Callinan noted in his police statement that he was ‘taken aback’ by Malone’s suggestion of a previous conversation about Fletcher and made no response to the bishop.⁷⁵ Callinan explained the reason for this:

... I was trying – wrestling with myself trying to work out when this conversation took place – the conversation between the bishop and myself where we decided that Fletcher would be okay to stay in the schools because I just could not recollect any conversation before 19 March that I had with the bishop in relation to the Fletcher situation.⁷⁶

- 15.46 As to the likelihood of his remembering such a conversation, Callinan said, ‘I think I would have remembered it, because it’s not very often that a bishop calls you, and especially about something that was so important’.⁷⁷ Callinan said he ultimately concluded that the conversation did not take place because:

... if a bishop had contacted me off-the-cuff, one off, which very, very rarely happened, it was a very significant event and I am fairly sure that I would have remembered it.⁷⁸

- 15.47 As to why he never contacted the bishop to say that the conversation did not occur, Callinan replied:

Well, I was concerned for myself and my position as principal, with his authority, and I suppose for a long time I still wrestled with the fact that I couldn’t recall any conversation that we had had in relation to that prior to 19 March 2003.⁷⁹

- 15.48 Callinan told the Commission it was not common practice for the principal of a Catholic school to question a bishop, and he had never done so.⁸⁰

- 15.49 Callinan’s police statement referred to his having independently made the decision to allow Fletcher’s role in the school to continue after the allegations had been made and said that this was never discussed with the bishop.⁸¹ Nor did Callinan show any greater vigilance in keeping track of Fletcher’s movements after the allegations surfaced.⁸² He said he accepted responsibility for that decision⁸³ and conceded that he was initially sceptical about the charges brought against Fletcher, who had been a good support for him while he was a principal.⁸⁴ Indeed, in June 2002 Callinan did not think Fletcher capable of such things as were alleged against him:⁸⁵ he believed Fletcher was innocent.⁸⁶

Circumstances in which Mr Callinan became aware of the pastoral message

- 15.50 In a 23 November 2013 statutory declaration Callinan responded to an inconsistency between his evidence to the Commission and an account he had provided to Commission personnel

⁷³ TOR 2, T2130.47–2131.8 (Callinan).

⁷⁴ TOR 2, T2134.43–45 (Callinan).

⁷⁵ NSW Police statement of Callinan, dated 12 June 2003, ex 194, para 13.

⁷⁶ TOR 2, T2104.9–15 (Callinan).

⁷⁷ TOR 2, T2100.30–34 (Callinan).

⁷⁸ TOR 2, T2133.6–9 (Callinan).

⁷⁹ TOR 2, T2104.35–39 (Callinan).

⁸⁰ TOR 2, T2143.28–34 (Callinan).

⁸¹ NSW Police statement of Callinan, dated 12 June 2003, ex 194, para 13.

⁸² TOR 2, T2102.31–36 (Callinan).

⁸³ TOR 2, T2101.6–17 (Callinan).

⁸⁴ TOR 2, T2108.21–28 (Callinan).

⁸⁵ TOR 2, T2124.28–34 (Callinan).

⁸⁶ TOR 2, T2125.16–24 (Callinan).

during an interview at Wallsend on 20 March 2013.⁸⁷ In the statutory declaration Callinan stated that, although he had initially said he first saw the pastoral message of 16 May 2003 (referred to in para 15.54) when he went to church – stating, ‘I think I left church. I didn’t even stay at church. I then got hold of it, screwed it up and just swore a fair bit,⁸⁸ – this was incorrect. After the interview at Wallsend his wife, who had attended it with him, reminded him that he was in fact at sport with his son on that day and she showed the pastoral message to him when he came home.⁸⁹

- 15.51 In his oral evidence at the public hearings Callinan gave evidence consistent with the prompting of his wife as to events, saying the circumstances in which he first saw the pastoral message were as follows:

It was on the Sunday, 18 May. My wife had been to church. I didn’t attend church with her on that morning. I was with one of my sons at sport and I was presented with that letter by my wife when I got home that afternoon – that evening.⁹⁰

- 15.52 Callinan agreed that his wife had drawn his attention to a particular part of the message after she had received it at Mass that day.⁹¹ He said that, on receiving the pastoral message from his wife, he did not contemplate contacting the bishop about its contents:

... the pastoral letter had already gone out to over 50 parishes within our diocese. I don’t think the bishop was going to retract anything that he had already put in there. There were some untruths in that letter and I thought if he was going to do that, I was concerned about my position as principal of the school.⁹²

- 15.53 Callinan’s recollection about the precise circumstances in which he came to see the letter on 20 March 2003 was confused. The Commission accepts his explanation for the discrepancy in accounts given to Commission personnel and subsequently at the public hearings as to where he was when he first read the pastoral letter. The inconsistency was explained in Callinan’s statutory declaration of 23 November 2013. The fact that his recollection was prompted by a discussion with his wife does not relevantly bear on his credibility: recollections can in some circumstances be validly prompted by interaction with another person. The discrepancy in Callinan’s recollection of the precise circumstances in which he first saw the pastoral letter on 20 March 2003 does not reflect adversely on his general credibility. Further, his evidence about his response to the contents of the letter was consistent and persuasive.

Mr Callinan’s distribution of the pastoral message

- 15.54 On 19 May 2003 Callinan was directed by the acting director of the Catholic Schools Office, Mr Garry Muirhead, to send the pastoral message out to parents.⁹³ He did so. Of this action, Callinan wrote the following in his diary that day:

Sent letter from Bishop given out at Mass on Sunday to the parents with a covering letter. Each family letter put in an envelope and sent to the eldest at both schools. I was told by Gary [sic] Muirhead from CSO to only put this out to the parents. 19/5/03⁹⁴

- 15.55 Callinan arranged to send the pastoral message out despite the fact that, on his evidence, it was inaccurate in stating that Malone had spoken with him about whether it was okay for Fletcher to

⁸⁷ Statutory declaration of Callinan, dated 23 November 2013, ex 242.

⁸⁸ *ibid*, para 5.

⁸⁹ *ibid*, para 6.

⁹⁰ TOR 2, T2103.17–21 (Callinan).

⁹¹ TOR 2, T2103.23–31 (Callinan).

⁹² TOR 2, T2107.37–42 (Callinan).

⁹³ TOR 2, T2105.15–38 (Callinan).

⁹⁴ Extract from diary entry of Callinan, dated 19 March 2003, ex 197, p 3.

stay as the parish priest in the school.⁹⁵ Callinan was adamant that this conversation had not occurred.⁹⁶

- 15.56 He said that, because of the direction from Muirhead, he forwarded the pastoral message, even though it contained inaccuracies.⁹⁷ This was the first time he could recall sending out something that he knew to be inaccurate.⁹⁸ Callinan agreed he made no entry in his diary about the inaccuracy in the message.⁹⁹ He also told the Commission that he did not take up his concerns about the content of the message with Mr Muirhead, although he could have done so or could have sought to put some caveat on the letter when enclosing it.¹⁰⁰
- 15.57 Callinan was cross-examined about the absence of any note in his diary concerning the untruths in the message. He agreed that it was an important matter in his mind and that he did not note it.¹⁰¹

Bishop Malone's evidence

- 15.58 In a statement prepared for the Commission Malone provided the following details of the asserted conversation with Callinan on 20 June 2002:

... 20 June 2002 at about 2.00pm I left the meeting [with Fr Fletcher] and went to the primary school to see Will Callinan, who was the Principal of St Brigid's Primary School, Branxton. The conversation included, inter alia, words to the following:

Bishop Malone: "Did you know that allegations have been made against Jim Fletcher?"

Will Callinan: Yes, he told me. I don't believe it. He wouldn't be capable of such things. Someone's out to get him.

Bishop Malone: The Police are launching an investigation. I have asked Jim to consider standing down, but he would rather stay here where he has the support of parishioners until after the investigation is completed. **You will need to be careful while this is going on. He shouldn't be alone with kids and should stay away from the school.**"

As Will Callinan shared a friendship with Father Fletcher I stressed the need to be vigilant in his supervision of him ...¹⁰² [emphasis added]

- 15.59 In his oral evidence Malone said that after meeting with Fletcher at the presbytery he (Malone) walked down to the school where Callinan was the principal, which was just three minutes away. The purpose of his visit was to 'advise him [Callinan] of what was happening but also to give a heads up as to what might happen from here on in'.¹⁰³
- 15.60 Malone asserted that he told Callinan Fletcher 'shouldn't be alone with kids and should stay away from the school'.¹⁰⁴ As to why he did not stand Fletcher down, given the warning he said he gave Callinan, Malone said:

I wish I had but at this point I was still reeling with the knowledge that Detective Chief Superintendent [sic] Fox had advised me that I should stand him aside. I was still grappling with that. I just mentioned it to Fletcher and he was begging me not to, so I spoke to Will

⁹⁵ TOR 2, T2118.6–16 (Callinan).

⁹⁶ TOR 2, T2128.14–18 (Callinan).

⁹⁷ TOR 2, T2107.44–2108.13 (Callinan).

⁹⁸ TOR 2, T2140.29–32 (Callinan).

⁹⁹ TOR 2, T2141.3–9 (Callinan).

¹⁰⁰ TOR 2, T2113.37–2114.23 (Callinan).

¹⁰¹ TOR 2, T2115.45–2116.38 (Callinan).

¹⁰² Statement of Malone dated 8 July 2013, ex 85, para 6.2(vii).

¹⁰³ TOR 2, T951.18–952.3 (Malone).

¹⁰⁴ TOR 2, T953.1–35 (Malone).

Callinan in order to say, "Well, this is where we're up to. I'm not sure where it's going to go from here."

- 15.61 Under questioning by counsel assisting Malone told the Commission that he appreciated the inconsistency of his position in, on one hand, giving Fletcher the option of leaving the parish while, on the other, telling Callinan (as principal of St Brigid's Primary School at Branxton) that Fletcher should not be alone with children and should stay away from the school.¹⁰⁵
- 15.62 Although aware that Callinan contested the claim that the conversation occurred, Malone said he was absolutely confident that the exchange with Callinan took place on that day.¹⁰⁶ The form of the conversation set out in Malone's statement was put to Callinan, who denied that the conversation occurred.¹⁰⁷ In relation to the assertion that Malone had effectively told him to stand Fletcher down, Callinan told the Commission:
- ... If we then had a conversation on 20 June 2002 and he told me to stand [Fletcher] down, I would have defied the bishop then for nine months and I should have been sacked.¹⁰⁸
- 15.63 Malone said he recalled meeting with Callinan on that day at Branxton in the latter part of the school afternoon and said he could vividly remember parents gathering at the gates of the school to collect their children.¹⁰⁹
- 15.64 When he returned to the presbytery, Malone said, he told Fletcher he had seen Callinan and advised him not to allow him (Fletcher) to enter the school. Malone agreed that it was very likely that Father Saunders was present when he told Fletcher these things.¹¹⁰
- 15.65 Malone said he might have said something to Saunders about the contents of his discussion with Callinan when travelling back to the office in the car after they had seen Fletcher, although did not specifically recall doing so.¹¹¹
- 15.66 For his part, Saunders had no recollection of the matter: he could not recall going to see Callinan (or the bishop doing so); nor could he recall any discussion of the matter.¹¹²
- 15.67 On 20 June 2002 Malone made an entry in his diary about the visit to Fletcher and Callinan (see Figure 15.2).¹¹³

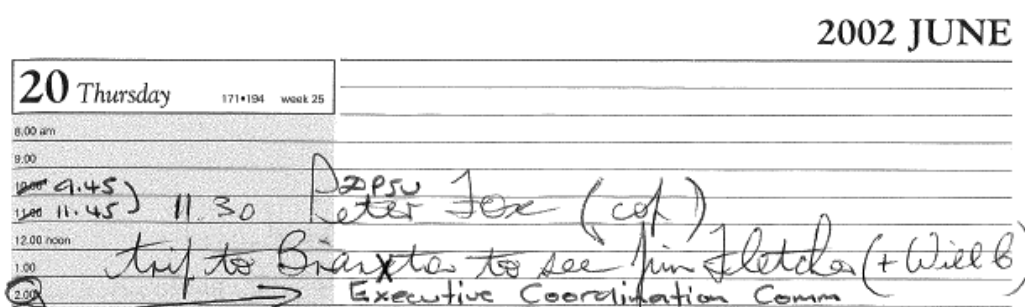


Figure 15.2 Extract from Malone's diary entry of 20 June 2002¹¹⁴

¹⁰⁵ TOR 2, T953.26–31 (Malone).

¹⁰⁶ TOR 2, T954.25–31 (Malone).

¹⁰⁷ TOR 2, T2101.38–2102.24 (Callinan).

¹⁰⁸ TOR 2, T2128.2–7 (Callinan).

¹⁰⁹ TOR 2, T1080.35–44 (Malone).

¹¹⁰ TOR 2, T955.7–22 (Malone).

¹¹¹ TOR 2, T1143.40–1144.3 (Malone).

¹¹² TOR 2, T1181.17–34 (Saunders).

¹¹³ Extract from diary entry of Malone, dated 20 June 2002, ex 106. The relevant part of the extract reads: '11.30 Peter Fox (cop) trip to Branxton to see Jim Fletcher (+Will C)'.

- 15.68 Callinan’s counsel examined Malone about the circumstances in which the words ‘(+Will C)’ were added to the diary entry:
- Q. What I’m suggesting to you is that you jotted down something after the event so that those words in brackets "+ Will C" were added after 20 June; do you agree with that?
- A. I sort of made this little note when I got back to the office on 20 June.
- Q. I’m suggesting it was made later than that, in fact, in September when you were asked about these events by the Ombudsman; would you agree with that?
- A. No, I would not agree with that, no.¹¹⁵
- 15.69 Under questioning by Callinan’s counsel, however, Malone agreed that his police statement of May 2003¹¹⁶ did not make any reference to any conversation with Callinan, and nor did it refer to any visit to Callinan at the school in Branxton on 20 June 2002. Further, the statement did not mention any directive given to Callinan that Fletcher should stay away from the school or a directive to Fletcher that he should himself stay away from the school.¹¹⁷
- 15.70 Malone also agreed that – in addition to his inconsistent approach in his dealings with Fletcher compared with the asserted conversation with Callinan in June 2002 – it was inconsistent to appoint Fletcher parish priest of Lochinvar (see para 15.72) and to fail to give the principal of the primary school at Lochinvar the same warning he claimed he had given to Callinan.¹¹⁸
- 15.71 Additionally, Malone agreed that Fletcher could have had contact with children on weekends when Callinan was unable to supervise. He also agreed that he had not told Callinan he needed to do something about the situation in relation to Fletcher’s conduct on weekends.¹¹⁹
- 15.72 From 1 August 2002 Malone extended Fletcher’s responsibilities to encompass the Lochinvar parish, which contained an infant school and a primary school.¹²⁰ The letter of appointment dated 3 October 2002 formalising this expansion of responsibility included no caveats or restrictions in connection with Fletcher’s conduct near schools or children, noting only that the parishioners of Branxton would need to learn to ‘generously share you with their near neighbour’.¹²¹ As noted, Malone conceded that he gave no instruction to the principal of the school at Lochinvar to limit Fletcher’s contact with children in view of the accusations of sexual abuse.¹²² On this matter, there was the following exchange between counsel assisting and Malone:
- Q. Wouldn’t it have been better to put in a priest at Lochinvar who had not been accused of sexually abusing boys?
- A. Yes, but we had nobody to put in there, that’s what –
- Q. Nobody at all?
- A. Nobody at all. That’s what I’m saying, yes.
- Q. So better to appoint a man accused of paedophilia than have no priest?
- A. Oh, that’s a bit strong, but I take your advice, yes.

¹¹⁴ Extract from diary entry of Malone, 20 June 2002, ex 106.

¹¹⁵ TOR 2, T1082.35–45 (Malone).

¹¹⁶ NSW Police Statement of Malone, dated 21 May 2003, ex 87.

¹¹⁷ TOR 2, T1077.26–1078.13 (Malone).

¹¹⁸ TOR 2, T1079.25–1080.15 (Malone).

¹¹⁹ TOR 2, T954.38–47 (Malone).

¹²⁰ TOR 2, T1027.1–14 (Malone).

¹²¹ Letter from Malone to Fletcher, dated 3 October 2002, ex 219, tab 359, p 953.

¹²² TOR 2, T956.35–957.2 (Malone).

Q. One step that you could have taken to protect children of that parish would have been to do as you did, as you allege with Mr Callinan, and warn the principal of the school or schools associated with the parish, as you did Mr Callinan?

A. Yes, that's correct.

Q. But you didn't do that?

A. That's correct.¹²³

15.73 As to Callinan's account of the conversation with Malone on 19 March 2003, Malone agreed that he telephoned Callinan on that day. He also agreed that it was possible he told Callinan that Fletcher was being stood down as a result of criminal charges and that the New South Wales Ombudsman was conducting an inquiry into the handling of the Fletcher matter in 2002. Malone confirmed that he was aware, as at March 2003, that the Ombudsman was not happy with how the matters relating to Fletcher had been handled and was conducting an inquiry.¹²⁴

15.74 Questioned by Callinan's counsel, Malone conceded that the notion of having 'consulted' with Callinan (as stated in the pastoral message) was inapposite:

Maybe "informed" might have been a better word. I mean, my relationship with Mr Callinan was open and frank. I deal with people, you know, in a way that allows them to disagree with me or whatever. Had I suggested to Mr Callinan that Fletcher be stood aside at that point, he would have had an opportunity to say, "I don't think that's necessary" or, "Yes, I think it should happen".¹²⁵

15.75 Malone disagreed with the proposition that the purpose of his March 2003 telephone conversation with Callinan was to 'try and spread responsibility' for his decision to let Fletcher remain in schools and continue his role as a parish priest. He said, 'It was my call to stand or not stand aside Fletcher. It was not Mr Callinan's call'.¹²⁶

Conclusions

15.76 Callinan's evidence was that an unscheduled visit by Malone (such as that asserted on 20 June 2002) would have been exceptional in nature and something that he would have recorded in his diary, in keeping with his usual practice. In the Commission's view, he would also certainly have recalled such a visit. Given the standing of a bishop in the Catholic education system, it is also accepted that Callinan did not feel able to directly raise the already published pastoral message of May 2003 with Malone at the time, and he instead distributed it – with its known inaccuracies – on the basis there was little he could do to obtain a retraction of the reference in the document to Malone having consulted with him about Fletcher.

15.77 Had the conversation with Callinan been in the terms Malone asserted in relation to the direction that Fletcher ought not 'be alone with kids' and should stay away from the school, Callinan's conduct thereafter (in allowing Father Fletcher to continue as normal and in exercising no greater vigilance) would have been in defiance of the bishop's request. The Commission does not consider that Callinan would have defied the bishop in this manner.

15.78 The Commission formed the view that Callinan was a credible witness; he dealt with extensive cross-examination in an open and truthful way, making concessions when appropriate.

15.79 Malone changed his position about the nature of the asserted conversation with Callinan, saying that rather than 'consulting' with Callinan he instead 'informed' him of matters relating to

¹²³ TOR 2, T958.40–959.13 (Malone).

¹²⁴ TOR 2, T1083.35–1085.6 (Malone).

¹²⁵ TOR 2, T1088.28–46 (Malone).

¹²⁶ TOR 2, T1086.47–1087.5 (Malone).

Fletcher. There is a distinction between being ‘consulted’ about a matter and being ‘informed’ about a matter: the former (that is, consulting) envisages a cooperative, interactive process; the latter (that is, informing) contemplates being notified of an outcome. In his pastoral message, in which he was seeking to respond to media criticism of his handling of the Fletcher case, Malone deliberately used the term ‘consultation’. This terminology was inaccurate in that, on his evidence, Malone informed Callinan of what he (Malone) had determined should be done, rather than consulted him about what might be done. By Malone’s own account, he sought no advice from Callinan about the matter.

- 15.80 Malone’s account ought not be preferred: on his own evidence, the pastoral message was inaccurate in that he did not in fact consult with Callinan but instead merely informed him about certain things that he, as bishop of the Diocese, had already decided.
- 15.81 Further, Malone’s apparent inconsistency of approach in dealing with the different schools in Fletcher’s parish is important. Malone’s concession that in August 2002 he gave no instructions to the Lochinvar principal to restrict Fletcher’s access to children supports the view that no such instructions were issued to the Branxton principal (Callinan) in June 2002, since there is no apparent distinction to be made – and none was suggested by Malone – between the two circumstances. That supports Callinan’s account.
- 15.82 The inconsistencies in Malone’s account of his approach to dealing with Fletcher – in failing to stand him down directly, extending his responsibilities to include Lochinvar, and failing to warn Callinan’s counterpart in Lochinvar of the things Malone contended he said to Callinan – are such that the Commission finds his evidence cannot be reconciled with the asserted discussion with Callinan on 20 June 2002. The Commission accepts Callinan’s evidence to the effect that there was no conversation with Malone on 20 June 2002 in preference to the evidence of Malone.
- 15.83 Malone’s evidence in this regard was dissembling and constituted an attempt to disperse responsibility (in effect) for his decision not to stand Fletcher down in June 2002 after becoming aware that the police were investigating Fletcher for child sexual abuse.
- 15.84 Because it finds there was no meeting between Malone and Callinan on 20 June 2002, the Commission takes the view that Malone added the words ‘+ Will C’ at some later time to the entry in his diary for 20 June 2002, with the intention of creating a false record to support his version of events; that is, that he consulted Callinan about the decision not to stand Fletcher down.

The asserted consultation with Mr Bowman, the Director of Schools

- 15.85 In his pastoral message of 16 May 2003 Malone said that, in addition to having consulted William Callinan, he consulted the Director of Catholic Schools in June 2002 in relation to the Fletcher situation.¹²⁷ Mr Michael Bowman was the Director of Catholic Schools for the Diocese from January 1996 to January 2004.¹²⁸ He took the reference in the pastoral message to be a reference to him.¹²⁹

¹²⁷ Media release – Pastoral message to Diocesan Community from Malone, dated 16 May 2003, ex 104.

¹²⁸ TOR 2, T2077.4–10 (Bowman).

¹²⁹ TOR 2, T2080.6–8 (Bowman).

Mr Bowman's evidence

15.86 Bowman provided to the Commission a statutory declaration dealing with this:

Conversations with Malone in 2002–2004 regarding standing down of Fr James Fletcher

7. I do not recall any conversations between myself and former Bishop Michael Malone in 2002, 2003 and/or 2004 regarding whether Fr James Fletcher should be stood down or remain working as a priest. I do not deny that such a conversation may have taken place, but simply cannot recall it some 10 years later.

Pastoral Message published by Malone in 2003

8. This pastoral message was prepared and released in May 2003 whilst I was on leave. My leave commenced on or about 7 April 2003 and concluded on or about 7 July 2003. I spent a period of this leave overseas and I do not recall having had a conversation with Bishop Malone about it nor any involvement in the preparation for that message prior to me going on leave.¹³⁰

15.87 In his evidence before the Commission Bowman explained how he became aware of the pastoral message:

The pastoral message came to my attention when the person who mentioned it to me said that I had been quoted in it as providing the bishop with certain advice, and since I had not provided him with that advice, I acquired a copy of the document just to satisfy myself that what was said in it was what this person had told me.¹³¹

15.88 To the best of his recollection, Bowman thought he had received the message while on holidays.¹³² He confirmed that in July 2003, when he saw the pastoral message, his position was that he had not given the bishop advice on the question of Fletcher remaining in ministry, as expressed in the message.¹³³ He said he took issue with the proposition that he had been consulted in the manner detailed in the message because he did not believe that had occurred. In evidence Bowman stated, '... to the best of my recollection there was no consultation, in the sense that I would define "consultation", that took place'.¹³⁴

15.89 Bowman did not take up the matter with the bishop: 'he was my employer and I did not address it with him. I wasn't, I guess, that upset about it'.¹³⁵ He later acknowledged, however, that it was actually a cause of concern for him.¹³⁶ He also told the Commission it was not normal practice in the Catholic education system to question the bishop about anything.¹³⁷ The Commission accepts that evidence and notes that it accords with the tenor of the evidence William Callinan gave.

15.90 In his statutory declaration Bowman also noted a general, informal conversation with Malone during the regular monthly meeting in 2002, in which Malone referred to a sexual abuse allegation being made against a priest of the Diocese; he said Malone did not name the priest and provided no further details.¹³⁸ In his oral evidence Bowman denied that the general conversation with Malone in 2002 might have been the one referred to in the pastoral message,

¹³⁰ Statutory declaration of Bowman dated 18 July 2013, ex 192.

¹³¹ TOR 2, T2079.38–43 (Bowman).

¹³² TOR 2, T2090.42–43 (Bowman).

¹³³ TOR 2, T2089.23–37 (Bowman).

¹³⁴ TOR 2, T2090.14–29 (Bowman).

¹³⁵ TOR 2, T2080.10–16 (Bowman).

¹³⁶ TOR 2, T2090.45–2091.1 (Bowman).

¹³⁷ TOR 2, T2092.21–30 (Bowman).

¹³⁸ Statutory declaration of Bowman dated 18 July 2013, ex 192, para 9.

since the bishop was informing him of matters and did not ask for any advice¹³⁹ or provide any other information.¹⁴⁰

- 15.91 Under questioning from Malone’s counsel about the form of paragraph 7 of his statutory declaration (as set out in para 15.86), Bowman acknowledged the possibility that such a conversation with Malone might have taken place but said he could not recall it.¹⁴¹ From that evidence, Bowman accepted the possibility of the conversation with Malone, as asserted.

Bishop Malone’s evidence

- 15.92 At the time Malone gave evidence about matters relating to Bowman, the legal representatives of the Diocese did not have instructions to act for Bowman (who was then unrepresented) and therefore did not cross-examine Malone on Bowman’s behalf. They subsequently received instructions to act for Bowman. The Diocese made no application on Bowman’s behalf for Malone to be recalled.¹⁴²
- 15.93 Malone was, however, questioned by Callinan’s counsel about having consulted Bowman (as referred to in the pastoral message of May 2003). Malone told the Commission that in June 2002 he told Bowman that there had been a sexual abuse allegation against a priest, although he could not recollect whether he mentioned the name of the priest. He said he thought he had detailed the nature of the allegations but could not say whether he referred to them as involving a child.¹⁴³ Asked whether he sought advice from Bowman, Malone said, ‘I don’t know that I did. Perhaps “inform” might be a better word there too’.¹⁴⁴ Malone accordingly stated that the word ‘consulted’, as expressed in the pastoral message, should be changed to ‘informed’.¹⁴⁵

Conclusion

- 15.94 As noted, there is a distinction between being ‘consulted’ and being ‘informed’ in relation to a matter. In view of Malone’s concession that he in fact did not seek advice from Bowman, it is clear from the evidence that this description in the pastoral message was inaccurate.
- 15.95 Despite the fact that Bowman could not unequivocally exclude the possibility that he had a conversation with Malone in the terms suggested in the pastoral message, the primary thrust of his (Bowman’s) evidence was to the effect that there was in fact no consultation or, indeed, conversation with him in the terms Malone asserted. Malone conceded that he had informed, rather than consulted with, Bowman. As noted, the Commission accepts Bowman’s evidence that it was not normal practice in the Catholic education system to question the bishop on anything; Callinan’s evidence was to similar effect. Contrary to Malone’s assertion in his pastoral message, there was no consultation with Bowman in June 2002.

The asserted consultation with Mr Davoren of the Professional Standards Office

Bishop Malone’s evidence

- 15.96 Malone said that after the 20 June 2002 meeting with Detective Chief Inspector Fox he telephoned Mr John Davoren, Director of the Professional Standards Office. In connection with this conversation Malone set out the following in a statement tendered before the Commission:

¹³⁹ TOR 2, T2080.46–2081.6 (Bowman).

¹⁴⁰ TOR 2, T2088.7–10 (Bowman).

¹⁴¹ TOR 2, T2087.15–35 (Bowman).

¹⁴² This was stated to be on the basis that no *Browne v Dunn* point would be taken by Malone.

¹⁴³ TOR 2, T1089.15–23 (Malone).

¹⁴⁴ TOR 2, T1089.25–29 (Malone).

¹⁴⁵ TOR 2, T1089.25–36 (Malone).

20th June, 2002 – I telephoned John Davoren ... and sought his advice as to whether I should stand Father Fletcher down. His reply was, words to this effect: “Father Fletcher does not have to be stood down at this point as there is a presumption of innocence in these matters. This is an allegation only. You don’t have to stand him down at this time”.¹⁴⁶

- 15.97 Malone gave evidence that he made no notes of the asserted conversation with Davoren but said he had a clear recollection of making the call.¹⁴⁷ Asked why he called Davoren, Malone stated:

I called him because he was the head of the New South Wales Professional Standards [Office] and, as one well experienced in these matters, I sought his advice as to what I should do.¹⁴⁸

- 15.98 Malone said Davoren’s advice was ‘certainly an influential factor’ in deciding what he would do about Fletcher – which was, of course, to decline to stand him down, despite the allegations.¹⁴⁹ He was confident that the conversation took place in June 2002.¹⁵⁰

Mr Davoren’s evidence

- 15.99 In contrast with Malone’s account, Davoren told the Commission he could not recall discussing the Fletcher matter with Malone in June 2002. His memory was that he in fact had no knowledge of the Fletcher matter until November 2002,¹⁵¹ and he thought he had spoken to Malone at about that time. This was after a discussion he (Davoren) had had with AH’s mother, BJ, in November 2002, as noted in two emails (dated 18 and 19 March 2003) Davoren sent to Mr Michael McDonald of the Catholic Commission for Employment Relations about the ‘AH matter’.¹⁵²
- 15.100 The emails recorded that Davoren had spoken to BJ on 11 November 2002 about the concerns AH had in relation to Fletcher and that AH was planning to go the police.¹⁵³ In evidence Davoren said that later the same day he also spoke to Fox, who told him AH would probably eventually come in to make a statement. Davoren recalled that it was after the conversation with BJ that he spoke to Malone.¹⁵⁴ Indeed, on a number of occasions Davoren said he was sure the discussion with Malone related to the first conversation he had with BJ, in November 2002,¹⁵⁵ although he did not have a clear recollection of the date.¹⁵⁶ While conceding the possibility that the discussion had occurred before November 2002, Davoren said it was ‘not likely’.¹⁵⁷
- 15.101 Nonetheless, Davoren agreed that when he did discuss with Malone whether Fletcher should be stood down, he (Davoren) had said it was just an allegation, Fletcher was entitled to the presumption of innocence, and ‘there were not sufficient grounds for stepping him down’.¹⁵⁸ As to the form of the conversation asserted by Malone in his statement, Davoren said that, although it was ‘not impossible’ that he had used those words, it did not sound like what he would ‘normally say to the Bishop’.¹⁵⁹ He denied giving Malone any advice, however, saying ‘From the information that I had, I did not judge that I was competent to advise him to take

¹⁴⁶ Statement of Malone dated 8 July 2013, ex 85, para 6.2(v).

¹⁴⁷ TOR 2, T972.25–36; T973.12–14; T975.35–41 (Malone).

¹⁴⁸ TOR 2, T972.39–42 (Malone).

¹⁴⁹ TOR 2, T973.16–18 (Malone).

¹⁵⁰ TOR 2, T973.34–36 (Malone).

¹⁵¹ TOR 2, T2069.47–2070.4 (Davoren).

¹⁵² TOR 2, T2064.28–36 (Davoren); email from Davoren to McDonald ‘Re [AH] matter’, dated 18 March 2003, ex 219, tab 373, p 983; email from Davoren to McDonald ‘FW: Re the [AH] matter’, dated 19 March 2003, ex 219, tab 375, p 985.

¹⁵³ Email from Davoren to McDonald ‘Re [AH] matter’ dated 18 March 2003, ex 219, tab 373.

¹⁵⁴ TOR 2, T2061.8–20 (Davoren).

¹⁵⁵ TOR 2, T2061.8–20; T2064.28–40; T2068.2–21 (Davoren).

¹⁵⁶ TOR 2, T2064.30–31 (Davoren).

¹⁵⁷ TOR 2, T2064.38–40 (Davoren).

¹⁵⁸ TOR 2, T2064.12–26 (Davoren).

¹⁵⁹ TOR 2, T2069.26–30 (Davoren).

disciplinary action against Fletcher at the time in question'.¹⁶⁰ Davoren agreed that in his official capacity he required a formal written complaint in order to advise a bishop about whether a person should be stood down or be the subject of disciplinary action.¹⁶¹

- 15.102 Davoren confirmed that he would have received a copy of Malone's pastoral message of 16 May 2003 in which the bishop referred to seeking advice from the Professional Standards Office; he did not, however, recall reading the message.¹⁶² Although agreeing that Malone had sought his advice, he reiterated that he had not in fact proffered any advice and again took issue with the date of the conversation being June 2002 (rather than November 2002).¹⁶³
- 15.103 In February 2003 Davoren received another telephone call from BJ, who told him that AH was now talking to the police. Davoren again spoke to Fox, who said he lacked sufficient details to lay a charge against Fletcher.¹⁶⁴
- 15.104 In oral evidence Davoren said that after the telephone conversation with Fox in February 2003 he 'took the matter up with the bishop's office'.¹⁶⁵ The bishop was unavailable, so he spoke to Burston who referred to AH's unusual behaviour over the years and the fact that at that time 'no concrete complaint' against Fletcher had been received that would constitute reasonable grounds for standing him (Fletcher) down. Davoren confirmed that the Professional Standards Office had not received a complaint, adding, 'I knew only what I had learned from conversations with BJ and with Mr Fox and I didn't feel I had the confidence then to recommend a disciplinary standing down.'¹⁶⁶

Conclusions

- 15.105 Having had the benefit of observing Davoren giving evidence over two days, the Commission formed the view that he was a candid witness doing his best to recall events in a frank fashion.
- 15.106 The Commission accepts Davoren's account that it was not until November 2002 that he had any involvement with the Fletcher matter. Davoren's evidence was that he became aware of the AH matter because of his conversation with BJ, which plainly occurred in November 2002. His emails to McDonald on 18 and 19 March 2003 make no reference to any knowledge or involvement on his part before November 2002.
- 15.107 Both Malone and Davoren gave evidence that they had had a conversation about Fletcher and that the question of whether Fletcher could be stood down was discussed. Malone said the conversation occurred in June 2002; Davoren placed the conversation as having occurred not before November 2002. Davoren's evidence did not go so far as to suggest that the conversation occurred after Fletcher had in fact been stood down in March 2003. The Commission accepts Davoren's evidence that the conversation did not occur before November 2002 and finds Malone's assertion that he recollected a conversation in June 2002 to be incorrect. The Commission finds that the conversation occurred in or about November 2002.
- 15.108 The Commission accepts that Malone might have thought he was receiving advice from Davoren, despite Davoren's view that he was not advising Malone. What Davoren agreed he said to Malone – that Fletcher was entitled to a presumption of innocence and there were insufficient grounds for him to be stood down – could reasonably be regarded as the giving of advice.

¹⁶⁰ TOR 2, T2067.21–24 (Davoren).

¹⁶¹ TOR 2, T2069.32–45 (Davoren).

¹⁶² TOR 2, T2065.12–2066.–23 (Davoren).

¹⁶³ TOR 2, T2067.42–47; T2065.12–2069.2 (Davoren).

¹⁶⁴ TOR 2, T2020.13–46 (Davoren).

¹⁶⁵ TOR 2, T2021.12–13 (Davoren).

¹⁶⁶ TOR 2, T2021.13–44 (Davoren).

- 15.109 Given the Commission’s finding that Davoren and Malone spoke about Fletcher in or about November 2002, it cannot be the case that decisions Malone took in June 2002 were ‘based on the advice I received’, as he asserted in the pastoral message.
- 15.110 Additionally, the Commission finds that Malone’s drafting of the pastoral message in May 2003, referring as it did to seeking advice from Davoren and to his consultations with Callinan, Bowman and Davoren in June 2002, was designed to provide a credible basis for the decision he made to leave Fletcher in parish service, despite being aware of the serious allegations of child sexual abuse then outstanding against Fletcher.

Fourth notification: 2004

- 15.111 Eleven months after Fletcher had been charged there was a further disclosure of child sexual abuse perpetrated by him. On Friday 23 April 2004 Father Glen Walsh visited the home of two of his parishioners, who told him that their son AB¹⁶⁷ had disclosed that when he was aged less than 18 years he had been sexually abused by Fletcher.¹⁶⁸
- 15.112 Thereafter a number of events took place in connection with the reporting of this disclosure to the relevant authorities, including the police. During the Commission’s public hearings these matters were the subject of an evidentiary contest concerning Malone’s interactions with Walsh in relation to the disclosure and the extent to which Malone facilitated the reporting of these further allegations about Fletcher to the relevant authorities.

Father Walsh’s evidence

- 15.113 In oral evidence Walsh said that on the afternoon following his visit to AB’s parents he telephoned Malone and told him another victim of Fletcher had come forward. Walsh was unable to disclose the victim’s identity because AB’s parents had asked him not to do so at that stage.¹⁶⁹ Malone told Walsh to go and look after the victim, who by that time had returned to Sydney, and to give him (AB) the contact details for Towards Healing. Walsh expressed concern about being away for the weekend and therefore unable to perform his priestly duties; he asked whether he should inform the priest of a neighbouring parish. Walsh told the Commission that Malone’s response was ‘Tell no one. Just go’.¹⁷⁰
- 15.114 On Monday 26 April 2004 Walsh telephoned Maitland police station to report Fletcher’s abuse of AB. The person he spoke to said the detective dealing with sexual abuse matters (Fox) was not there that day; the person did, however, take Walsh’s name and telephone number and said the detective would call him the following day.¹⁷¹
- 15.115 Walsh told the Commission that on the morning of 27 April¹⁷² he telephoned Malone again to tell him he had spoken to AB and that AB was reluctant to take the matter any further.¹⁷³ Walsh’s recollection was that Malone said that was AB’s choice and it was not necessary to take the matter any further, other than Walsh continuing to look after AB.¹⁷⁴ In his evidence Walsh recounted the conversation with Malone:

... I said, “Bishop, this is a second young man who has come forward.” So I said, “It needs to be reported”, and I said, “So if you’re not intending to, I will.” He said, “Well, I don’t want

¹⁶⁷ AB communicated to the Commission that he did not want to give evidence or be interviewed for the purposes of the Commission and, consistent with the Commission’s policy regarding victims, was not compelled to do so.

¹⁶⁸ TOR 2, T6.23–24; T7.36–45 (Walsh in camera, 26 June 2013).

¹⁶⁹ TOR 2, T10.1–11; T11.21–26 (Walsh in camera, 26 June 2013).

¹⁷⁰ TOR 2, T12.3–12 (Walsh in camera, 26 June 2013).

¹⁷¹ TOR 2, T20.16–22 (Walsh in camera, 26 June 2013).

¹⁷² TOR 2, T16.34–36 (Walsh in camera, 26 June 2013).

¹⁷³ TOR 2, T18.3–12 (Walsh in camera, 26 June 2013).

¹⁷⁴ TOR 2, T18.18–21 (Walsh in camera, 26 June 2013).

you to do anything.” He said, “If anyone has to do anything, I will.” He said, “You’ve told me he’s reluctant. We don’t need to report it.” I said to him, “Well, I am going to and I’m going to ring – when I hang up now, I’m going to contact the CCER – the police and the Ombudsman and the CCER.”

...

Bishop said, “If you do that, fuck off out of my diocese and don’t come back.”¹⁷⁵

- 15.116 Walsh said he did not reply and the bishop ended the call by hanging up.¹⁷⁶
- 15.117 Walsh told the Commission that immediately following the conversation with Malone he rang the police ‘with a greater urgency’ and was told to go directly to the station, where Fox would be waiting for him.¹⁷⁷
- 15.118 On 10 June 2004 Walsh gave a statement to Fox in relation to Fletcher’s sexual abuse of AB.¹⁷⁸ He told the Commission he did not include in his statement the fact that Malone had sworn at him because he (Walsh) had asked for it not to be included, thinking it was irrelevant.¹⁷⁹

Bishop Malone’s evidence

- 15.119 Malone told the Commission his recollection of the initial telephone call with Walsh on 23 April 2004 (the Friday before the Anzac Day long weekend) derived from a combination of the file notes he made in relation to the call and his memory.¹⁸⁰ His file note of 23 April 2004 records the following:

Phone call from Fr Glen Walsh relating [to] a pastoral visit to the home of Branxto[n] parishioners that same day. Glen knows the people but they did not want him t[o] reveal their identity to me.

They claim that their son, now aged 30 yrs, was a victim of Jim Fletcher. An[d] alleged assault or assaults (sexual) took place at Bishops House Maitland when lad was young.

...

Glen is going to Sydney this week[end] (24-25-26 April) to interview the man and try to encourage him to go to the Police.

I will find out result of visit on Tuesday 27th April.¹⁸¹

- 15.120 Malone received the phone call while he was at his desk in the office; he said he made the file note after completing the call with Walsh because of the ‘seriousness of another victim coming through’.¹⁸² In oral evidence, he expanded:

I remember receiving a phone call from this particular priest and that he told me that he had encountered another victim of Fletcher’s. I was shocked to receive that information. He then said to me, I think, that he needed to go to the police about that matter. I said to him, you know, the police are all over the Fletcher case with [AH], you know, but go to the police if that’s what you think you need to do.¹⁸³

¹⁷⁵ TOR 2, T19.21–36 (Walsh in camera, 26 June 2013).

¹⁷⁶ TOR 2, T19.42–43 (Walsh in camera, 26 June 2013).

¹⁷⁷ TOR 2, T20.10–13 (Walsh in camera, 26 June 2013).

¹⁷⁸ TOR 2, T21.37–38 (Walsh in camera, 26 June 2013).

¹⁷⁹ TOR 2, T24.24–25.13 (Walsh in camera, 26 June 2013).

¹⁸⁰ TOR 2, T4.12–19 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁸¹ Handwritten file note of Malone, dated 23 April 2004, ex 219, tab 413.

¹⁸² TOR 2, T5.1–28 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁸³ TOR 2, T4.12–19 (Malone in camera, 16 July 2013, at 4.56pm).

- 15.121 Malone thought it 'quite possible' that, on hearing the information from Walsh about a further victim, because he was shocked he said words to the effect of 'Oh shit'.¹⁸⁴ He recalled urging Walsh to maintain contact with the family and offer pastoral support. He did not recall telling Walsh to leave his parish and to go and talk to the victim without telling anyone, but he thought that would have been good advice 'because of the confidential nature of this particular situation'.¹⁸⁵ Malone agreed that he asked Walsh to call him back on the following Tuesday, 27 April 2004.¹⁸⁶
- 15.122 Malone prepared a further file note on what transpired on 27 April 2004. He thought it likely the note was completed later that day.¹⁸⁷ In the note Malone recorded that he had spoken with Walsh at 9.10 am that day and that:

He [Walsh] informed me that the new alleged victim did not speak to him until Monday 26.4.04. He (victim) was very distressed and did not want his name to be revealed. **Glen was able to persuade him to allow Glen to go to Police on his behalf. Glen was to do that after our conversation and at my urging.**

I asked Glen about the state of the alleged victim. Did he want counselling? Did he want to meet me? Etc. Glen replied that it was too early yet to determine these things and that he would continue to relate to [the] alleged victim. Glen told me victim's name and phone number, having eventually been given permission to do so. Glen said he was going to report matter to Ombudsman. I replied that I could do that by phoning C.C.E.R. I then phoned Jim Saunders [Vicar General] and asked him to report allegation to C.C.E.R's Michael McDonald.

I phoned alleged victim at 3.00pm on 27.04.04 on my return from Sydney. Wanted to use a landline rather than mobile. I expressed sorrow to him, thanked him for coming forward and offered to meet with him when ready, giving him my Office phone number. He seemed grateful.

Michael McDonald sent an Ombudsman's information Form to be completed. I filled this out at 4.55pm on 27.04.05 and sent it off immediately.

In a phone conversation at 4.45pm on 27.04.04 Michael McDonald revealed th[at] Glen Walsh had phoned C.C.E.R today and told staff that I was only interested in offering pastoral care and not interested in going to police.

I find Glen's behaviour to me to be bizarre. The above is a complete distortion of our seemingly amicable conversation earlier in the day.¹⁸⁸ [emphasis added]

- 15.123 Malone denied that during the telephone call with Walsh at 9.10 am he tried to dissuade Walsh from reporting the second victim's existence to the police.¹⁸⁹ Malone said the file note words 'at my urging' were included at the time, rather than at any later stage.¹⁹⁰ He also told the Commission he had indeed urged Walsh to report AB's complaint to the police: otherwise, he would not have written it.¹⁹¹ When examined about whether he was in fact sure that he was keen for Walsh to report the matter, however, Malone answered 'yes and no', saying, 'Could I just explain that I found Father Walsh to be a fairly difficult kind of person to deal with and I felt that he was inserting himself into a situation where he may muddy the waters a little'.¹⁹²

¹⁸⁴ TOR 2, T6.1–7 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁸⁵ TOR 2, T6.12–41 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁸⁶ TOR 2, T7.7–9 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁸⁷ TOR 2, T9.1–9 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁸⁸ Handwritten file note of Malone, dated 27 April 2004, ex 116.

¹⁸⁹ TOR 2, T10.29–39 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁹⁰ TOR 2, T10.41–11.7 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁹¹ TOR 2, T18.7–9 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁹² TOR 2, T13.1–4 (Malone in camera, 16 July 2013, at 4.56pm).

Malone agreed he thought it would have been more appropriate for him, as the bishop, to liaise with the police about such things.¹⁹³

- 15.124 Malone said that, like Walsh, he thought reporting the matter was the correct thing to do.¹⁹⁴ This was because he assumed that corroborating evidence in the form of another victim coming forward would have been helpful to the police investigation of Fletcher.¹⁹⁵
- 15.125 In this respect Malone said that as at April 2004 he thought Fletcher could have been either guilty or innocent of the charges laid against him: he was ambivalent about it. In view of the fact that there was only one alleged victim prior to Walsh's revelations, Malone agreed that he believed there was at least some prospect Fletcher would beat the charges.¹⁹⁶ He frankly stated, however, that he was fearful of the negative effects for Fletcher of a further victim coming forward.¹⁹⁷
- 15.126 Although he was happy to 'allow' Walsh to go the police, and indeed, on his evidence, urged him to do so, Malone said, 'That was the limit of what I wanted him to do'.¹⁹⁸ He considered other notifications were for him, as bishop of the Diocese, to make. Malone thought that Walsh's wishing to notify the Ombudsman and Catholic Commission for Employment Relations was 'biting off more than he could chew'.¹⁹⁹ He also said he thought Walsh was 'getting involved to the point where I was suspecting the fact that he'd probably wanted to case manage the whole situation'.²⁰⁰
- 15.127 Malone 'hotly' denied, however, that he swore in response to Walsh saying he was going to contact the Catholic Commission for Employment Relations, the police and the Ombudsman; he told the Commission he did not speak to people that way – and especially not one of his priests.²⁰¹
- 15.128 Malone confirmed that he telephoned AB on 27 April 2004 and thanked him for coming forward.²⁰² He then completed a notification form, reporting AB's allegation of sexual abuse by Fletcher to the Ombudsman,²⁰³ and forwarded the form to the Catholic Commission for Employment Relations by facsimile at 4.55 pm the same day.²⁰⁴

Conclusions

- 15.129 The Commission cannot be comfortably satisfied as to the particulars of what occurred in relation to whether Malone swore at Walsh when Walsh insisted that he report AB's complaint and whether Malone in fact 'urged' Walsh to report the matter to police, as Malone asserted but Walsh firmly denied.
- 15.130 Certain facts are, however, clear. First, Walsh contacted police about AB on Monday 26 April 2004 and told Fox about him the following day. Second, Malone subsequently notified the Ombudsman, via the Catholic Commission for Employment Relations, on Tuesday 27 April 2004 of the further disclosure made against Fletcher.

¹⁹³ TOR 2, T13.6–10 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁹⁴ TOR 2, T9.42–43 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁹⁵ TOR 2, T9.45–10.8 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁹⁶ TOR 2, T3.30–42 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁹⁷ TOR 2, T10.10–16 (Malone in camera, 16 July 2013, at 4.56pm).

¹⁹⁸ TOR 2, T33.43–34.2 (Malone, in camera, 16 July 2013, at 4.56pm).

¹⁹⁹ TOR 2, T34.7–11 (Malone in camera, 16 July 2013, at 4.56pm).

²⁰⁰ TOR 2, T35.2–4 (Malone, in camera, 16 July 2013, at 4.56pm).

²⁰¹ TOR 2, T13.36–43; T16.7–11; T19.10–13; T31.47–32.7 (Malone in camera, 16 July 2013, at 4.56pm).

²⁰² TOR 2, T16.20–46 (Malone in camera, 16 July 2013, at 4.56pm).

²⁰³ TOR 2, T17.1–6 (Malone in camera, 16 July 2013, at 4.56pm).

²⁰⁴ Fax message from Malone to Catholic Commission for Employment Relations enclosing Form 5.1 Child Protection Information Details *Ombudsman Act 1974*, dated 27 April 2004, ex 117.

15.131 The differences between the evidence of Walsh and that of Malone do not, in the final result, detract from the primary steps taken – first by Walsh and later by Malone – to notify the authorities in relation to AB’s accusation that Fletcher had sexually abused him. These were instances of cooperation with an extant police investigation and were appropriate. Ultimately, the steps taken were of assistance to Fox’s investigation of Fletcher in that AB’s evidence was important to the ultimate conviction of Fletcher.

16 The Watters police investigation

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- 16.1 This chapter and the three chapters that follow describe the police investigations the Commission explored during its public hearings for term of reference 2. As noted in Chapter 2, for the purposes of term of reference 2 four police investigations examining ‘relevant matters’ (as defined in the Commission’s terms of reference) were identified:
- the Watters investigation of Father Denis McAlinden from 1999 to 2005 – the subject of this chapter
 - the Flipo investigation of McAlinden from 2001 – the subject of Chapter 17
 - the Fox investigation of Father James Fletcher from 2002 to 2004 – the subject of Chapter 18
 - the Strike Force Lantle investigation – the subject of Chapter 19.
- 16.2 In this and the following two chapters important developments in each investigation are described; the particular ambit of each investigation is also assessed, and any relevant limitations are noted. This is a necessary exercise in view of the evolving nature of each investigation and the fact that the ambit of the investigation forms the context in which questions of cooperation, and so on, are considered. Particular analysis is then directed toward whether, in any communication between each police investigation and church officials (as defined in the terms of reference), there was cooperation, facilitation and assistance or otherwise hindrance or obstruction.
- 16.3 Notably, however, because the Strike Force Lantle investigation is continuing, consideration of the cooperation (or otherwise) of church officials with that investigation is dealt with in the confidential volume of the Commission’s report.

Background and experience of Detective Inspector Watters

- 16.4 Detective Inspector Mark Watters has been a serving officer with the New South Wales Police Force since June 1987.¹ He has lengthy experience in criminal investigations and has worked out of Cessnock, Maitland and Kurri Kurri. Watters told the Commission that his investigative experience included sexual offences. He was promoted to senior sergeant in 2007 and inspector in 2008.²

Investigating the claims of AE

8 October 1999: first contact

- 16.5 In October 1999 Watters held the rank of detective senior constable and was stationed at Maitland police station.³ On 8 October 1999 AE and her husband came to the police station to report sexual assaults perpetrated on her by McAlinden in 1953 and 1954. Watters took a

¹ TOR 2, T25.40–42 (Watters).

² TOR 2, T27.10–12 (Watters); statement of Watters, dated 13 March 2013, ex 47, para 6.

³ Statement of Watters, dated 13 March 2013, ex 47, para 8.

statement from her⁴ and spoke with her and her husband about the allegations.⁵ AE, then aged 57 years, described McAlinden's abuse of her at the age of 11; it included forced sexual intercourse on four occasions. Watters told the Commission he assessed AE's complaint as truthful.⁶

16.6 In her statement AE said:

14. ... [within about 12 months – c 1954] I was able to tell my parents what Father McAlinden had been doing ... I remember mum had an awful shock and she believed me and mum told dad.
15. Later, mum and dad went over to see the Bishop at Newcastle and I remember going to a big house on the hill. I had to sit in the car and mum and dad went in to see the Bishop about what had been happening. The only thing they said was, 'The Bishop doesn't need to talk to you'.
- ...
17. Later, Father Barry O'Hearn,⁷ who was also an assistant priest with Father McAlinden came to our house and talked with mum and dad. I hid but overheard some of the conversation. I remember dad saying something about receiving a letter from the Bishop.⁸

16.7 When attending the police station on 8 October 1999, AE produced to Watters a document entitled 'Statement of complaint' that had been prepared on her behalf by a church representative to whom she had made an official complaint three days earlier, on 5 October.⁹ This document contained details about the complaint, as well as the 'pro forma' statement and checklist show in Figure 16.1.¹⁰

I HAVE BEEN ADVISED THAT IF MY COMPLAINT INVOLVES CRIMINAL BEHAVIOUR I RETAIN THE RIGHT TO MAKE MY COMPLAINT TO THE POLICE AT ANY TIME.			
Q.	Have you notified the police?	A.	<Yes <input checked="" type="checkbox"/> No (please tick appropriately)
Q.	Do you intend to notify the police	A.	<input checked="" type="checkbox"/> Yes <No

Figure 16.1 Extract from AE's 'Statement of complaint', dated 5 October 1999¹¹

16.8 In his evidence Watters agreed that this document – the first of its kind he had seen in his duties as a police officer¹² – was helpful to him because it detailed factual circumstances of the complaint and recorded AE's willingness to go to the police with the complaint.¹³ Watters also considered that the reference in the document to the person's right to make a complaint to the police was a good thing.¹⁴ He added that there was no impediment to police investigating

⁴ TOR 2, T72.17–42 (Watters); statement of Watters, dated 13 March 2013, ex 47, para 8.

⁵ Statement of Watters, dated 13 March 2013, ex 47, para 8.

⁶ TOR 2, T103.37–44; T104.22–24 (Watters).

⁷ Father O'Hearn died on 25 February 2001: statutory declaration of Tynan, dated 4 December 2013, ex 255.

⁸ NSW Police Force Statement of AE, dated 8 October 1999, ex 219, tab 312, p 778; statement of Watters, dated 13 March 2013, ex 47, para 9.

⁹ Statement of Complaint by AE, dated 5 October 1999, ex 172; statement of Watters, dated 13 March 2013, ex 47, para 9.

¹⁰ Statement of complaint by AE, dated 5 October 1999, ex 172, p 767.

¹¹ Statement of complaint by AE, ex 172, p 767.

¹² TOR 2, T28.26–28 (Watters).

¹³ TOR 2, T28.2–16 (Watters).

¹⁴ TOR 2, T28.30–45 (Watters).

something that had occurred 40 years earlier – apart from the obvious difficulties associated with the time that had elapsed in terms of witnesses’ recall, and so on.¹⁵

- 16.9 In his evidence Watters recalled the circumstances in which AE came to the police station and gave her statement; he had a strong recollection that it was the Church that had encouraged her to speak to police.¹⁶ AE had also brought with her a print media advertisement for counselling support services funded by the Maitland–Newcastle Diocese. Watters understood the advertisement was what had prompted her to go to the Church.¹⁷
- 16.10 Watters made some handwritten notes on the advertisement when he made inquiries about AE’s complaint on the day she came into the police station.¹⁸ He made some of the notes while AE was at the police station and others at later times.
- 16.11 Notably, Watters wrote the name of Father Barry O’Hearn and a phone number on the advertisement. This was information AE had provided, thinking O’Hearn, a priest of the Diocese, might be a witness with useful information about the allegations against McAlinden.¹⁹ Watters spoke with O’Hearn on that day but he recalled that he (O’Hearn) had no recollection of the incident AE had spoken of in relation to his (O’Hearn’s) potential involvement (see para 16.31)²⁰
- 16.12 On the same day (8 October 1999)²¹ Watters made an entry in his duty book about the events connected with AE, stating, ‘... Obtain statement from [AE] about sexual assault matter. Create COPS. Make enquiries with Catholic Church & apply for Telstra check’.²² In evidence before the Commission Watters explained the NSW Police COPS system thus:

“COPS” is an abbreviation of the Computer Operated Police System, which is the online system that police use to record matters that have been reported to us in ongoing investigations and that’s accessed throughout the state. All other police can see that.²³

- 16.13 An entry in COPS could be made in the form of an ‘event report’ or a ‘case report’. Watters explained the distinction:

The starting point for all reports to police is a COPS event, an event report. Then, if you’re going to carry out ... further investigations, a case is created within the COPS event. So the case is where you can put a lot more information and it’s a bit of a closed system that other police don’t have access to.²⁴

- 16.14 The particular COPS entry Watters was referring to as entering on 8 October 1999 was an event report, E 8026529, as follows:²⁵

OFFENDER: Father Denis McAlinden (76 years old)
VICTIM: AE

The victim was a member of the St Brigid’s Catholic Church at Raymond Terrace in 1953. Attached to the Church there was also a Primary School. In 1953, when the victim was 11 years old, the assistant priest of the parish, the offender Father Denis McAlinden befriended the girl and two of her friends. He would take the girls for drives while on his parish rounds.

¹⁵ TOR 2, T27.23–33 (Watters).

¹⁶ TOR 2, T27.35–47 (Watters).

¹⁷ TOR 2, T29.11–23, T63.34–39 (Watters); advertisement titled ‘Are you hurt or distressed?’, ex 219, tab 303; statement of Watters, dated 19 June 2013, ex 48, para 9.

¹⁸ TOR 2, T64.13–24 (Watters); statement of Watters, dated 19 June 2013, ex 48, para 7.

¹⁹ *ibid*, para 8.

²⁰ *ibid*, paras 13–15.

²¹ TOR 2, T29.34–30.3 (Watters).

²² Duty book entry of Watters, dated 8 October 1999, annexure D to ex 47.

²³ TOR 2, T30.17–21 (Watters).

²⁴ TOR 2, T43.14–19 (Watters).

²⁵ TOR 2, T30.23–29 (Watters); NSW Police Force COPS Event Report E 8026529, dated 8 October 1999, annexure D to ex 47, p 18; statement of Watters, dated 13 March 2013, ex 47, para 10.

He dropped off the other two girls and then took the victim to a secluded area of Richardson Road Raymond Terrace where he had vaginal/penile intercourse with the girl. This happened on a total of four occasions until the girl stopped getting into the Priest's car. On two other occasions [sic], at activity events in the church hall, the priest [sic] took the girl into the server area of the hall and had her masturbate him until ejaculation. The Catholic Church at Newcastle have been spoken to and the priest is still alive and living in the Newcastle area. He is currently out of the country and due to return in the next few weeks. He is not currently working as a priest due to other alleged incidents such as this, but there has been no formal complaint received by Police.

- 16.15 Watters said he was fairly certain he made the COPS event report – or at least the part of the entry beginning with 'The Catholic Church at Newcastle ...' – on 8 October 1999.²⁶ The report was consistent with his recollection that he made inquiries on the day AE attended and gave her statement.²⁷ It also showed Watters' understanding at the time that McAlinden was still alive and living in the Newcastle area. This caused him concern because, on the basis of his experience with other matters, 'people don't stop at one'.²⁸
- 16.16 Consistent with his duty book entry, Watters said he phoned the Diocese for information about McAlinden. The Diocese, however, wanted a written request for information. Watters duly prepared a letter asking for the information and faxed this to the Diocese the same day (8 October 1999 – see paras 16.29 to 16.35).²⁹

Information about 'other alleged incidents such as this'

- 16.17 Watters' COPS report included reference to information that McAlinden was '... not currently working as a priest due to other alleged incidents such as this'. Watters told the Commission he believed this information was provided to him by a person at the Diocese when he phoned on 8 October 1999 after taking the statement from AE.³⁰
- 16.18 Counsel assisting questioned Watters about whether he made a plan relating to what else he could find out about the reference to 'other alleged incidents such as this'. Watters said, 'I searched the COPS system to see if there was any record on the police system and then I made an inquiry with the Catholic Church'.³¹
- 16.19 There was nothing about McAlinden on the police system, other than his being recorded as holding a drivers licence.³² Watters confirmed in evidence that the reference in the COPS report to 'no formal complaint received by police' reflected his search of the system and was not something he had been told by the Catholic Church.³³ He agreed that the information relating to the existence of other alleged incidents was of relevance to his investigation and that it was of assistance for him to know it.³⁴ He said, however, it was not his usual practice to pursue such leads or follow up information of that nature until he had effected an arrest.³⁵ He was further pressed on this by counsel for the Diocese:

Q. But you knew the church was telling you there was some corroborative evidence or possible corroborative evidence of other similar incidents?

²⁶ TOR 2, T31.16–45 (Watters).

²⁷ TOR 2, T31.47–32.4 (Watters).

²⁸ TOR 2, T37.8–20 (Watters).

²⁹ TOR 2, T30.31–31.3 (Watters).

³⁰ TOR 2, T31.47–32.29 (Watters).

³¹ TOR 2, T32.38–46 (Watters).

³² TOR 2, T33.1–6 (Watters).

³³ TOR 2, T33.8–12 (Watters).

³⁴ TOR 2, T75.40–46; T76.6–8 (Watters).

³⁵ TOR 2, T52.12–14; T76.1–4 (Watters).

A. From my memory, the verbal conversation I had with the person was, 'Oh, okay'. It was like a – 'Oh, okay, yes, there's some other stuff about with that'. It was like almost a type of passing comment that I made a note of to follow up at a later time, yes.

Q. You noted it because it was something that was potentially important?

A. Yes.³⁶

16.20 Watters did not take any further steps to obtain from the Diocese further details of the other alleged incidents involving McAlinden, notwithstanding his (Watters') acknowledgment that information of that nature was potentially important. Watters gave evidence that such leads or information need not be followed up until he had effected an arrest of McAlinden in respect of the offences against AE. A consequence of this approach was that, if an arrest was not effected (as turned out to be the case), such information and leads might never be followed up. The Commission considers that it would have been appropriate to take further investigative steps about the 'other alleged incidents' at the time that information was obtained. Watters' own evidence (see para 16.84) was that the prospects of extraditing an alleged perpetrator would have increased had there been more than one allegation and that information relating to the existence of other alleged incidents was of relevance and assistance to his investigation.

The 'brief envelope'

16.21 Watters made a number of notes on the orange 'brief envelope' (an A4-sized envelope usually containing statements and other documentation relating to the particular investigation being conducted by a police officer) relating to AE's allegations against McAlinden.³⁷ This included a reference to Mr Michael Stanwell, together with a telephone number.³⁸ In his statement Watters stated that he thought he contacted Stanwell at the time he made inquiries of the bishop's house³⁹ (thus placing the contact in 1999). He stated:

[16] ... My reference to Mike Stanwell, was considered by myself as being of some importance at the time, and this can be seen from the fact that next to the name of Mike Stanwell in my notes are two lines.

[17] The placing of these two lines next to his names was an indication to myself at the time that he was an important person, or otherwise could provide important information.⁴⁰

16.22 Although Watters had a telephone conversation with Stanwell, he did not interview him.⁴¹ Nor was any statement taken from Stanwell. Detective Chief Inspector Peter Fox ultimately obtained a witness statement from Stanwell in July 2010,⁴² and Strike Force Lantle investigators also subsequently interviewed Stanwell.

UR6

16.23 In a handwritten note on a copy of the print media advertisement AE brought with her on 8 October 1999 there was also a reference to a woman, UR6.⁴³ In his statement Watters stated that, to the best of his recollection, AE had provided UR6's name 'with an indication' that she might have been another victim of McAlinden.⁴⁴ Watters recalled making further inquiries of

³⁶ TOR 2, T76.29–40 (Watters).

³⁷ TOR 2, T42.24–29 (Watters); statement of Watters, dated 19 June 2013, ex 48, paras 9–12; brief envelope NSW Police Force COPS Event 8026529, dated 1999, ex 296.

³⁸ Brief envelope NSW Police Force COPS Event 8026529, dated 1999, ex 296.

³⁹ Statement of Watters, dated 19 June 2013, ex 48, para 16.

⁴⁰ *ibid*, paras 16–17.

⁴¹ TOR 2, T64.31–33 (Watters).

⁴² *ibid*.

⁴³ Advertisement titled 'Are you hurt or distressed?', undated, annexure A to ex 48; brief envelope NSW Police Force COPS Event 8026529, dated 1999, ex 296.

⁴⁴ Statement of Watters, dated 19 June 2013, ex 48, para 18.

UR6 at that time and said, 'She provided me with information in relation to the matter'.⁴⁵ He said he advised UR6 that he would speak to her at a later stage about the information she had given him. Watters said that, since McAlinden could not be located at the time, he did not proceed to obtain a statement from UR6. He did, however, make an entry in the event report about AE's allegations, noting UR6's contact details under the heading 'Witness' but not including any of the information she had provided.⁴⁶

16.24 Watters said that in 2005 he spoke with UR6 again. He told the Commission he was again intending to obtain a statement from her but explained that this did not eventuate because of the news about McAlinden being ill with cancer, stating that 'on this basis the matter could not be progressed'.⁴⁷

16.25 For her part, UR6 provided to the Commission a statutory declaration dated 29 November 2013.⁴⁸ She is now 72 years old. UR6 stated that she knew McAlinden when she was a parishioner in his parish at Raymond Terrace. She could not recall when she first met him but said it was over 60 years ago. UR6 denied that she was a victim of McAlinden. She said:

3. Fr McAlinden never did anything to me. He never assaulted me or touched me in any way.
4. I don't know if Fr McAlinden did anything to anyone else. I never saw or heard anything about what Fr McAlinden may have done.⁴⁹

16.26 UR6 referred to receiving a telephone call from Watters 'some years ago', although she could not recall when.⁵⁰ He asked her if McAlinden had 'ever done anything' to her when she was a young girl, and she said he had not. She was 'shocked to get the call', having never had anything to do with police before receiving it.⁵¹ UR6 also noted that the call from Watters was a short one and that, although he said he would be back in contact with her, she did not hear from him again.⁵² The statutory declaration of UR6 was tendered as a public exhibit in the Inquiry. No person authorised to appear before the Commission applied for her to be called to give evidence, and her evidence was not subject to any challenge.

16.27 The evidence of Watters and UR6 diverged in relation to her status as a victim (or otherwise) and whether he contacted her again in 2005. The Commission had proposed to explore these matters further in evidence with Watters but, on medical grounds, the Commission excused him from further attendance following an application by NSW Police supported by expert medical evidence.⁵³

16.28 In the circumstances, the Commission is unable to resolve the divergence in the evidence, other than to note that there is no basis on which to reject UR6's evidence that she was not a victim of McAlinden. The unavailability of Watters for further examination on this point did not, however, preclude the Commission from dealing with the substantive matters arising for resolution in this chapter.

⁴⁵ *ibid.*

⁴⁶ NSW Police Force COPS Event Report E 8026529, dated 8 October 1999, ex 219, tab 311, p 773.

⁴⁷ Statement of Watters, dated 19 June 2013, ex 48, para 18.

⁴⁸ Statutory declaration of UR6, dated 29 November 2013, ex 263.

⁴⁹ *ibid.*, paras 3–4.

⁵⁰ *ibid.*, paras 5, 9.

⁵¹ *ibid.*, paras 6–7.

⁵² *ibid.*, para 8.

⁵³ Letter from Dr Selwyn Smith to Maria Panos, Henry Davis York, dated 18 December 2013, conf ex BBBB.

8 October 1999: a letter to the Bishop's Chancery

- 16.29 Having received information from AE and taken her formal police statement on 8 October 1999, Watters began to make inquiries of the Diocese in relation to the allegations. He phoned the chancery, seeking details about McAlinden's current whereabouts and then, upon request, faxed a letter dated 8 October 1999 to the chancery confirming his request.⁵⁴
- 16.30 In that letter Watters also asked the Diocese for a copy of the letter AE said her parents had received from the bishop about the incidents in 1953 and 1954. Watters did not, however, subsequently receive from the Diocese a copy of the letter.
- 16.31 Before Watters sent his letter he had a telephone conversation with Father O'Hearn. Watters found O'Hearn helpful, although the priest had no recollection of any conversation with AE's parents in connection with the allegations relating to McAlinden. O'Hearn told Watters he would have remembered a conversation of that nature.⁵⁵ O'Hearn died in 2001.⁵⁶
- 16.32 Watters agreed that one matter he was not following up at this point was the reference to the 'other alleged incidents': that was something he was 'leaving for another time'.⁵⁷
- 16.33 Watters said his usual practice was to do as much as he could as soon as possible after receiving a complaint – to 'strike while the iron is hot'.⁵⁸ In AE's case he said he made a number of inquiries before sending the letter to try and bring together the information he had obtained by telephone.⁵⁹ He also said it was a serious matter and that he had become personally involved in the investigation: '... I guess you become invested. [AE] was very, very upset and relating something that happened to her as a child and, at a personal level, I particularly wanted to see the matter through'.⁶⁰ Watters provided his personal mobile phone number in the letter; he said this was not his usual practice but he was trying to emphasise the fact that he was keen to get any information he could.⁶¹
- 16.34 As to whether he received a reply from the Diocese before August 2005 in relation to McAlinden's whereabouts, Watters said, '... the information I got verbally was that he was overseas and I didn't get anything written or any further correspondence from that time until 2005'.⁶² Watters told the Commission the Diocesan officials had also said they would ring him if they became aware of McAlinden's whereabouts. He had every expectation that they would contact him if they had information that would help locate McAlinden.⁶³ Watters agreed, however, that the information the Diocese provided was that they thought McAlinden was out of Australia, in Ireland.⁶⁴
- 16.35 In addition to sending the letter to the Bishop's Chancery, Watters pursued a number of other lines of inquiry on 8 October 1999. These included sending a request to Telstra (through the NSW Police Field Services Unit) to see if McAlinden could be located by means of a former or current telephone number and address.⁶⁵ At this time, Watters had details of a telephone

⁵⁴ TOR 2, T32.31–36; T76.10–14 (Watters); statement of Watters, dated 13 March 2013, ex 47, para 11; letter from Watters to Bishops Chancery, dated 8 October 1999, ex 99.

⁵⁵ TOR 2, T36.2–37 (Watters).

⁵⁶ As recorded in statutory declaration of Tynan, 4 December 2013, ex 255 (date of death: 25 February 2001).

⁵⁷ TOR 2, T76.20–27 (Watters).

⁵⁸ TOR 2, T36.32–47 (Watters).

⁵⁹ TOR 2, T36.35–37 (Watters).

⁶⁰ TOR 2, T37.3–6 (Watters).

⁶¹ TOR 2, T37.41–47 (Watters).

⁶² TOR 2, T37.32–35 (Watters). The knowledge of Diocesan Church officials regarding McAlinden's whereabouts at various times is set out at paras 16.172 to 16.180 below.

⁶³ TOR 2, T38.41–45 (Watters).

⁶⁴ TOR 2, T78.12–15 (Watters).

⁶⁵ TOR 2, T39.29–37 (Watters); Telstra request by the NSW Police Service re unknown, dated 8 October 1999, annexure F to ex 47.

service in Bridgetown, Western Australia, but nothing beyond that; he could not recall the source of that number.⁶⁶ A response was received from police in Western Australia, and Watters was given two names for the holder of the phone service at the time (UR44 and UR45). He called the two people, but they had no information to assist the investigation.⁶⁷

Other inquiries made by Detective Inspector Watters

- 16.36 Three days later Watters sent a request for NSW Police Field Services to conduct a check with Centrelink. This was a resource available to police to determine whether a suspect was on some form of government benefit. Watters had deduced that a priest's pension would not be enough to survive on, and in his experience Centrelink had generally been the best source of information in locating people.⁶⁸ His Centrelink request included a last known address from a current drivers licence obtained from the Roads and Traffic Authority.⁶⁹ On the same day Watters also sent a written request direct to Centrelink, outlining the nature of AE's allegations about McAlinden.⁷⁰ In part, the letter said, 'Could Centre Link [sic] please check their records to see if Dennis [sic] McAlinden is in receipt of any pension or other benefit, so as his current address may be located'.⁷¹
- 16.37 Watters could not recall receiving a reply to his Centrelink request and said he did not think one was sent. Had he received one, he said, he would have kept it in the brief envelope, as was his usual practice for keeping together documents relating to a particular investigation.⁷²

The Professional Standards Office provides intelligence to NSW Police: August 1999

- 16.38 As set out in Chapter 12, the Professional Standards Office was established in 1997 to deal with, among other things, complaints of sexual abuse within the Catholic Church. In 1999 Mr John Davoren was director of the PSO. Part of his role was to set up systems by which allegations about priests could be reported to the police.
- 16.39 On or about 24 August 1999 Davoren completed (on behalf of Bishop Michael Malone) a form entitled 'Child sexual abuse information dissemination to NSW Police Service Child Protection Enforcement Agency' (set out in Figure 16.2) in connection with two other victims of McAlinden, AK and AL. (The Child Protection Enforcement Agency was a police unit that was the precursor to the State Sex Crimes Squad of the State Crime Command. The unit collected intelligence about alleged perpetrators of, among other things, sexual abuse of children.)⁷³ Davoren told the Commission he communicated with the CPEA about particular cases and also attended its office in Redfern on occasion to discuss cases. He said it was his practice to pass information on to the police as quickly as possible, depending on the nature of the complaint.⁷⁴

⁶⁶ Statement of Watters, dated 19 June 2013, ex 48, paras 35–36.

⁶⁷ TOR 2, T40.20–44 (Watters); statement of Watters, dated 19 June 2013, ex 48, para 36; Telstra request by the NSW Police Service re UR 44 and UR 45, dated 8 October 1999, ex 219, tab 314.

⁶⁸ TOR 2, T40.46–41.21 (Watters); Centrelink Request by the NSW Police Service re McAlinden, dated 11 October 1999, annexure F to ex 47.

⁶⁹ TOR 2, T41.23–31 (Watters).

⁷⁰ TOR 2, T41.33–42 (Watters); letter from Watters to Centrelink re address of McAlinden, dated 11 October 1999, annexure G to ex 47.

⁷¹ Letter from Watters to Centrelink re address of McAlinden, dated 11 October 1999, annexure G to ex 47.

⁷² TOR 2, T42.19–29 (Watters); statement of Watters, dated 19 June 2013, ex 48, para 34.

⁷³ TOR 2, T59.1–13 (Watters).

⁷⁴ TOR 2, T1982.6–36 (Davoren).

CONFIDENTIAL

CHILD SEXUAL ABUSE INFORMATION
DISSEMINATION TO
NSW POLICE SERVICE CHILD PROTECTION ENFORCEMENT AGENCY

SOURCE OF INFORMATION

Name:
Address:
Phone Home: Work:
Other Information: His *redacted*, who do not wish to be involved in any civil action in this regard.

Is the informant willing to speak to police if necessary? Not at this stage

SUSPECT DETAILS (Additional pages for multiple suspects)

Name: Rev Denis McAlinden D.O.B./Age:
Address: unknown – currently in England but expected to return to Australia shortly and reside “somewhere in the Bunbury Region of WA”. His extended family is unable to give an address at this stage.
Phone Home: Work:
Occupation (if known): non functioning priest since 1993
Does this person currently have access to children? Not as far as is known.

VICTIM DETAILS (Additional pages for multiple victims)

Name: *redacted* .. we have not been identified .. D.O.B./Age: under age apparently
Address:
Phone Home: Work:
Contact Information:

Is the victim willing to speak to police? No

OFFENCE DETAILS

Date/Year Range: Not provided
Location of offence:
Brief Narrative: *AL+AY* have accused him of sexual assault of children and they believe there might be other victims apart from *AL+AK*. They have not indicated at this stage any wish to take the matter to the police. There is reference in one of his letters to a court case in Perth but no details are available.
At present he is in England celebrating his Golden Jubilee despite the fact that his facilities as a priest were withdrawn in 1993.
Suspect that he will come back to Australia and reside somewhere in the Bunbury Region of Western Australia.
Family are unable to give an exact address.

NOTIFYING PERSON

Name: John Davoren, Professional Standards Office, on behalf of Bishop Michael Malone, Bishop of Maitland Newcastle Davoren's Contact Number:
Date: 24 August 1999

RECEIVING OFFICER

Name: Date:

Figure 16.2 Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency form, dated 24 August 1999⁷⁵

16.40 On 18 November 1999 an officer of the State Crime Command Sex Crimes Squad, Lisa Neaves, prepared an 'Information report summary' (I 7885027) entitled 'Suspected child sex offender' for entry on the COPS database.⁷⁶ The information report (see Figure 16.3) stated, 'Information was forwarded to CPEA from [the] Professional Standards Office re POI McAlinden', and also closely correlates with information contained in the CPEA form completed by Davoren.

⁷⁵ Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency form, dated 24 August 1999, ex 171.

⁷⁶ NSW Police Force COPS Information Report Summary I7885027, dated 18 November 1999, ex 303.

information contained in the form Davoren sent. The information Malone provided (via Davoren) was entered into the Police COPS system on 18 November 1999, as noted.

- 16.43 From that time (18 November 1999) it appears that there was further intelligence available on the COPS system that might have been of assistance in relation to the investigation of McAlinden (particularly in terms of his then location, as noted). This information was obtained by police as a direct consequence of the reporting by church officials. The circumstances and timeliness of such reporting and related matters are discussed in Chapter 12.
- 16.44 The information report stated that the information was ‘from an anonymous informant not wishing to make a formal complaint at this stage’, which accords with Davoren’s reference on the form to the victim(s) being unwilling to speak to police.
- 16.45 At the time Watters was carrying out his search of the COPS system to see whether there was any record in relation to McAlinden (on or about 8 October 1999) it seems that the information report was not on the system (it having been entered on 18 November 1999). From Watters’ evidence, the source of the evidence about ‘other alleged incidents such as this’ was information verbally provided by an official of the Diocese as a ‘type of passing comment’ that he made a note to follow up at a later time.⁷⁸ Watters first became aware of the information report at some time about August 2005 (as discussed in para 16.69).

A PASS alert

- 16.46 From October to 1 December 1999 Watters continued to make inquiries about McAlinden’s whereabouts.⁷⁹ As part of this, he arranged for information about McAlinden to be given to the then Passenger Alert System – known as arranging a ‘PASS alert’. The process for instituting a PASS alert involved completing a form and faxing it to the NSW Police Information and Intelligence Centre, Field Services.⁸⁰ Field Services then forwarded the request to the Australian Federal Police, which set up the PASS alert. A fax reply would then be sent, confirming that the PASS alert was in force and that it would remain in force for 90 days or 180 days if a warrant existed. At that time Watters understood that a PASS alert would cause a ‘flag’ to appear on the system if the person who was the subject of the alert entered or left Australia.⁸¹ He explained:

... When you go through immigration, when you’re flying out the country, they run the passport ... [through] the machine, and a PASS alert would alert that the person was wanted on a warrant. What would happen is they would detain the person, contact the Federal Police, and then, perhaps the same day or the next day, contact me with the NSW Police to come and arrest the person.⁸²

- 16.47 Watters said there were different levels of PASS alert, but when it was supported by a warrant for the arrest of a person (as was the case with McAlinden from 1 December 1999)⁸³ it allowed for the person to be detained at an airport.⁸⁴ He confirmed that in 1999 and 2000 a PASS alert would have had the effect of preventing a person from leaving or entering the country.⁸⁵
- 16.48 At the time of taking out the warrant for McAlinden’s arrest and arranging for the PASS alert Watters did not make further inquiries to ensure that the PASS alert was actually in force. He

⁷⁸ TOR 2, T75.16–76.36; T37.29–35 (Watters).

⁷⁹ Statement of Watters, dated 14 May 2013, ex 47, para 15.

⁸⁰ Request for pass entry re Denis McAlinden, dated 12 July 1999, ex 219, tab 303, pp 758–759; the Commission notes that the date of this document 12 July 1999 is not correct as it predates allegations by AE. The NSW Police information and Intelligence Centre is now known as the New South Wales Police Force Operational Information Agency.

⁸¹ Statement of Watters, dated 19 June 2013, ex 48, paras 31–33.

⁸² TOR 2, T47.33–40 (Watters).

⁸³ TOR 2, T48.2–5 (Watters).

⁸⁴ TOR 2, T47.44–47 (Watters).

⁸⁵ TOR 2, T48.7–12 (Watters).

gave evidence that recent inquiries suggested that the PASS alert was not in fact activated.⁸⁶ As to why that occurred, he said:

It appears it may have been an administrative breakdown, perhaps partially my fault, perhaps the system. We used to use fax machines, because it was prior to emails. This was perhaps one of one or two at that time I had ever done, so it was a new process to me. I believe I faxed the form away thinking 'Okay, happy days, it's in place', but [from] more recent inquiries [it] appears that it wasn't in place.⁸⁷

- 16.49 Watters said he thought that a PASS alert operated indefinitely and had only recently found out that such an alert operative in late 1999 would last for six months and then lapse.⁸⁸ The PASS alert request form also shows that McAlinden's birth date was incorrectly specified as 24 January 1933, instead of 24 January 1923.⁸⁹ It is not clear what effect, if any, this would have had on the effectiveness of the PASS alert had it been activated.
- 16.50 Evidence before the Commission shows that McAlinden's international movements from October 1999 until his death in late 2005 involved him leaving Australia on 5 June 2000 for England and returning on 8 September 2000 from Ireland, then leaving again on 24 September 2000 for England and returning on 21 December 2000 from Singapore, and finally leaving for Ireland on 28 May 2002 and returning to Australia on 12 July 2002.⁹⁰
- 16.51 Watters surmised that he would have discussed the PASS alert and how it should be managed with Detective Chief Inspector Fox, who in late 1999 was a detective sergeant and one of his supervisors; this was because he discussed all current matters and matters he was going to suspend if they could not be taken any further.⁹¹ At this time Detective Sergeant Max Mitchell and Detective Senior Sergeant Alex Pollock also supervised Watters, and he agreed it was possible that he discussed the PASS alert with one or both of those officers.⁹²

1 December 1999: a warrant for the arrest of McAlinden

Suspension of the investigation

- 16.52 On 1 December 1999 Watters applied for and obtained a first-instance warrant for the arrest of McAlinden on the basis of AE's allegations.⁹³ McAlinden's last known address (the Garden Suburb, New South Wales, address) was specified. In relation to how warrants of that nature were usually pursued when a last known address was the only information known about the offender's location, Watters explained:

It goes on to the police computer system and any interaction with police, such as stopping for a random breath test perhaps, or coming across the person, or if there's other police investigating the matter, they would see that there's a warrant in existence and would contact me if I was still within the police.⁹⁴

- 16.53 Watters said he would have told Fox (as his then supervisor) that he was applying for the arrest warrant.⁹⁵ He agreed that, as far as issuing the warrant was concerned, the allegations against McAlinden were very serious. He also knew there was some corroborative evidence available if

⁸⁶ TOR 2, T48.14–17 (Watters).

⁸⁷ TOR 2, T48.20–27 (Watters).

⁸⁸ TOR 2, T48.38–41; T48.29–36 (Watters).

⁸⁹ Request for pass entry re McAlinden, dated 12 July 1999, ex 219, tab 303, pp 758–759.

⁹⁰ Statutory declaration of Frearson, dated 23 June 2013, ex 217.

⁹¹ TOR 2, T48.43–49.14 (Watters).

⁹² TOR 2, T48.16–31; T90.17–42 (Watters).

⁹³ TOR 2, T47.4–11 (Watters); statement of Watters, dated 13 March 2013, ex 47, para 16; warrant in the first instance to apprehend a person charged with an offence, dated 1 December 1999, annexure H to ex 47.

⁹⁴ TOR 2, T47.17–22 (Watters).

⁹⁵ TOR 2, T94.24–25 (Watters).

the case was to progress, including possibly the ‘other alleged incidents’ noted in the COPS case report of 8 October 1999.⁹⁶ In a statement tendered before the Commission, Watters stated:

After obtaining the first instance warrant, and largely due to the lack of success of the enquiries made up until that point of time in relation to Father McAlinden’s whereabouts, I suspended the case. The documentation in relation to the investigation was then archived at Maitland Police Station.⁹⁷

- 16.54 At some time in October 1999, at or about the time of taking AE’s formal police statement, Watters created a case report (as distinct from the event report referred to in para 16.14) about AE’s allegations.⁹⁸ On or about 2 February 2000 he added the following entry to the case report: ‘AE contacted me this date and has now made a retraction statement and does not want any further police investigation, as the matter was giving her too much stress’.⁹⁹
- 16.55 Watters gave evidence that the reference to AE making a retraction statement did not mean she was saying the complaint was untrue: it simply meant that she did not wish to continue with the police process, for the reasons referred to above.¹⁰⁰ He thought AE had told him that during a phone call.¹⁰¹ Watters told the Commission that in his experience people dealing with historical sexual offence matters can find it difficult to cope with the criminal justice process and its associated delays.¹⁰² AE also had some other health problems of which Watters was aware that were being exacerbated by the police process relating to McAlinden.¹⁰³
- 16.56 Watters said that, in his view, victims of sexual abuse ‘almost universally’ vacillate on the question of whether or not to go ahead and make a complaint. He saw his role as a police officer as including the provision of support for victims in these instances.¹⁰⁴ He confirmed that an investigation could also be re-activated at a later time and said he had found that victims who had said they did not wish to go ahead at one point sometimes change their minds and ultimately decide to proceed.¹⁰⁵
- 16.57 On 2 February 2000 Watters decided to suspend the McAlinden investigation; he agreed that this was primarily because of his lack of success in determining McAlinden’s whereabouts.¹⁰⁶ Suspension of the case meant the investigation was effectively closed until McAlinden could be found.¹⁰⁷
- 16.58 Watters explained that technically the investigation should have been finalised, rather than suspended, after AE had contacted him to say she did not want to pursue the matter at that point.¹⁰⁸ Watters said, however:

... I had sort of a quiet confidence in my own ability, that if I was to locate him, I might – may be able to suggest to [AE] that she could proceed with the prosecution, so as such, it was –

⁹⁶ TOR 2, T77.28–34 (Watters).

⁹⁷ Statement of Watters, dated 13 March 2013, ex 47, para 17.

⁹⁸ Statement of Watters, dated 13 March 2013, ex 47, para 18.

⁹⁹ NSW Police Force COPS Case Report C 7532960, ex 200. The handwritten notations on the right side were made by Watters because that information did not print from the system, so he transposed what appeared there with the dates and authors of the narratives: TOR 2, T86.24–87.10 (Watters).

¹⁰⁰ TOR 2, T79.36–80.1 (Watters).

¹⁰¹ TOR 2, T45.12–22 (Watters).

¹⁰² TOR 2, T45.24–28 (Watters).

¹⁰³ TOR 2, T45.30–34 (Watters).

¹⁰⁴ TOR 2, T103.21–35 (Watters).

¹⁰⁵ TOR 2, T103.32–35; T105.17–21 (Watters). Fox gave evidence to similar effect: see TOR 2, T481.31–42 (Fox).

¹⁰⁶ TOR 2, T79.18–22 (Watters).

¹⁰⁷ TOR 2, T78.17–25; T79.5–8 (Watters).

¹⁰⁸ TOR 2, T71.42–47 (Watters).

the case was suspended, but, in my mind, I had a belief that I may be able to persuade her to go ahead with the prosecution.¹⁰⁹

- 16.59 As to whether the suspended status of the investigation would have any significance for other police processes, Watters said other police could see that the investigation had been suspended (as opposed to finalised, which means nothing more is to be done) and could contact him to discuss the matter. Suspension was a temporary state.¹¹⁰ In other words, the investigation could be readily pursued again, should further lines of inquiry or additional material come to light.¹¹¹ If a complainant later said they wanted to proceed with a matter, Watters said there would be a 'resurrection' of the previous investigation, as opposed to a new investigation.¹¹²
- 16.60 After the case was suspended, Watters transferred to a number of different local area commands in New South Wales, performing different roles. When he transferred out of Lower Hunter Local Area Command, the McAlinden investigation (in its suspended state) remained in that command.¹¹³ No further inquiries were carried out in connection with the matter until 2005.¹¹⁴

Operation Peregrine II

- 16.61 In mid-2005 NSW Police began Operation Peregrine, a police operation focusing on outstanding warrants. The second phase of that operation, Peregrine II, which began on 19 June 2005, targeted outstanding warrants associated with sexual offences, among other things.¹¹⁵ Watters explained his understanding of Operation Peregrine thus:

Peregrine was instigated to have dedicated police search all the warrant holdings in different commands to try and locate people to take further action against them. They were the more serious matters of indictable offences, armed robberies, sexual assault, break, enter and steals.¹¹⁶

- 16.62 When asked how the officers associated with Operation Peregrine came to contact him about AE's complaint, Watters explained:

When Operation Peregrine was instigated in June–July 2005, they were able to do a Centrelink check and located McAlinden living in Western Australia. They generated a report and would have searched the police computer system and [seen] that I was the officer in charge of the matter from 1999 and had taken out a warrant for his arrest. They contacted me in the form of a report suggesting that I would make further investigation[s] with that further information as to his location.¹¹⁷

- 16.63 On 27 June 2005 police attached to Operation Peregrine obtained from Centrelink information that McAlinden was then living at an address in Wonnerup, Western Australia.¹¹⁸ This was the address at which McAlinden was ultimately located (as described further in paras 16.85 and following).¹¹⁹ Two days later, on 29 June 2005, an officer involved with Operation Peregrine,

¹⁰⁹ TOR 2, T65.34–40 (Watters).

¹¹⁰ TOR 2, T67.27–34 (Watters).

¹¹¹ TOR 2, T67.36–38 (Watters).

¹¹² TOR 2, T72.2–8 (Watters).

¹¹³ TOR 2, T26.39–44 (Watters).

¹¹⁴ Statement of Watters, dated 13 March 2013, ex 47, paras 18–19.

¹¹⁵ NSW Police Force memorandum prepared by Nicholas re outstanding warrant for McAlinden for the offence of aggravated sexual assault, dated 29 June 2005, annexure K to ex 47.

¹¹⁶ TOR 2, T35.3–14 (Watters).

¹¹⁷ TOR 2, T46.31–39 (Watters).

¹¹⁸ Centrelink release of information form re McAlinden dated 27 June 2005, annexure J to ex 47.

¹¹⁹ TOR 2, T50.47–51.9 (Watters).

Detective Senior Constable Tristan Nicholas, sent a memorandum to Watters, notifying him of McAlinden's current address details.¹²⁰

- 16.64 On receiving the memorandum Watters took steps to retrieve the McAlinden investigation file from police archives.¹²¹ On 28 July 2005 he made the following entry in the case report:

During Operation Peregrine II the offender was located living in Western Australia. Further enquiries were made with the victim in this matter regarding prosecution, or not. She said she would like to discuss it with her husband over the weekend and would discuss further with Sgt Watters on Monday. If the victim decides to go ahead, then further discussion will be held with Crime Manager Humphrey.¹²²

- 16.65 At this time Fox was no longer Watters' supervisor.¹²³ Rather, Watters' supervisor was now Inspector Peter Matthews; Detective Chief Inspector Wayne Humphrey was the crime manager and thus had supervisory responsibility for all investigations in Lower Hunter Local Area Command.¹²⁴

- 16.66 Watters began to make further inquiries about McAlinden's whereabouts. As noted, the case report shows that on 28 July 2005 he spoke with AE, telling her that McAlinden's whereabouts had been ascertained. After considering the situation during the weekend, AE advised him that she wished to proceed with the complaint.¹²⁵ On that basis Watters made further inquiries in relation to her allegations against McAlinden.¹²⁶

Inquiries of the Professional Standards Office

- 16.67 By email dated 1 August 2005 Watters contacted an employee of NSW Police, Ms Pat Brown, who was then in the Child Protection and Special Crimes Services team.¹²⁷ In an email exchange with Watters Brown indicated that it might be 'worthwhile' contacting Mr Michael Salmon at the Professional Standards Office of the Catholic Church and gave him contact details to this end. She also noted, 'He [Salmon] frequently sends us info on ex priests that have a shady history'.¹²⁸ Before obtaining this information, Watters said he was unaware of the existence of the PSO or how it worked and had therefore directed his previous inquiries to the chancery of the Diocese.¹²⁹ Nor had he previously investigated sexual abuse allegations relating to any official of the Catholic Church.¹³⁰

- 16.68 That same day Watters sent an email to Salmon, introducing himself, noting the warrant for the arrest of McAlinden, and stating:

... On our police intelligence system, it says there were some other complainants that the Catholic Church were aware of and had files if required.

What I was looking at doing was to speak to any victims and let them know I was going to travel to Western Australia and interview Denis.

¹²⁰ NSW Police Force memorandum prepared by Nicholas re outstanding warrant for McAlinden for the offence of aggravated sexual assault, dated 29 June 2005, annexure K to ex 47.

¹²¹ TOR 2, T46.41–47.2 (Watters).

¹²² COPS Report C 7532960, ex 200, p 1381.

¹²³ TOR 2, T50.1–8 (Watters).

¹²⁴ TOR 2, T50.10–14 (Watters).

¹²⁵ Statement of Watters, dated 13 March 2013, ex 47, para 21.

¹²⁶ Statement of Watters, dated 13 March 2013, ex 47, para 21. Note that Watters' evidence to the effect that Brown was an employee of PSO (as set out in para 22 of ex 47 and re-stated at TOR 2, T51.28–39 (Watters)) was subsequently corrected at TOR 2, T53.37–47 and TOR 2, T63.7–19 (Watters).

¹²⁷ TOR 2, T59.15–23 (Watters).

¹²⁸ Email from Brown to Watters, dated 1 August 2005, ex 191, p 1236.

¹²⁹ TOR 2, T54.35–41; T57.26–29 (Watters).

¹³⁰ TOR 2, T55.1–9 (Watters).

Do you have any records relating to complaints about Denis McAlinden?¹³¹

16.69 This email suggests that by 1 August 2005 Watters was aware of the information report on the COPS system submitted by Neaves on 18 November 1999, following the notification by Davoren (on Malone's behalf) with respect to AK and AL (as set out in Figure 16.2).

16.70 Salmon responded some hours later, confirming that the PSO held files relating to McAlinden – files dealing with AK and AL, AE and AC.¹³² By reply email Watters asked Ms Rosanna Harris, an officer of the PSO, whether AC had ever reported her matter to the police or required any police investigation since he could see nothing on the police computer system to suggest she had reported.¹³³ Harris responded:

Under Towards Healing, complainants are routinely advised of their right to take their complaint to the police and they only enter the process if it is clear that this not their present intention. They are free, of course, to change their mind at any point in the process ...

In the [AC] case, she indicated that she had not reported to the matter to the police and did not intend to do so. **However, she also specifically stated that her experience could be used in corroboration should other complaints of criminal behaviour be made against McAlinden.**¹³⁴ [emphasis added]

16.71 That was the first time Watters had become aware of AC and her offer to provide corroborative evidence for any other complainant. He told the Commission this was 'absolutely' information that was helpful in his investigation and/or arrest of McAlinden; he said it would have been helpful to have had that information earlier in his investigation.¹³⁵ Had the information from AC been volunteered to Watters in 2002, he said, he would have taken a more active role in looking for McAlinden at that time:

As I'd taken out the warrant and it was lying in waiting, as such, if something had prompted, like further information coming through, I would have taken a bit more of a vigorous look to try to locate the person McAlinden.¹³⁶

16.72 Watters was further examined on this by counsel for the Diocese, who noted that the Diocese had in 1999 told Watters there were other possible leads available. Watters stated:¹³⁷

... it was almost in passing in 1999, when I heard about the other people, but I had a concrete – well, like, a statement from [AE]. When I became aware in 2005 of the statement that was made in 2002, it would raise the expectation for police to have put some more resources in, when there's people who have made statements, to push a bit harder to try to locate McAlinden, if that assists ...¹³⁸

16.73 In response to the assertion by counsel for the Diocese that the information 'wouldn't have been of incredible significance to [Watters] in circumstances where this was the sort information he probably thought he would get anyway', Watters replied:

Yes, I don't get that. I don't quite – sorry. I think from my reaction in 2005, where he was identified, was the effort I put in then would be an indication of what I would have done if I'd had that information in 2002 perhaps.¹³⁹

¹³¹ Email from Watters to Salmon, dated 1 August 2005, ex 191, p 1235.

¹³² *ibid*, p 1234.

¹³³ TOR 2, T55.29–34 (Watters).

¹³⁴ Email from Harris to Watters, dated 1 August 2005, ex 191, p 1234.

¹³⁵ TOR 2, T56.20–33 (Watters).

¹³⁶ TOR 2, T56.38–41 (Watters).

¹³⁷ TOR 2, T84.8–12 (Watters).

¹³⁸ TOR 2, T84.41–47 (Watters).

¹³⁹ TOR 2, T85.19–23 (Watters).

16.74 Watters also gave evidence that:

... when we've got more than one victim coming forward, it certainly would have alerted me and I would have informed my supervisor or someone, 'Look, there's another victim come forward. I think we need to have a good hard look at this to work out if we can locate the person, to put some more resources into it to try to work out where he is or if there's any other people involved'.¹⁴⁰

16.75 Evidence in the nature of hypothetical counter-factual analysis typically needs to be approached with caution. This applies to Watters' evidence in relation to the steps he says he would have taken had the information relating to AC been provided in 2002. It is particularly the case because at that time he was already aware of 'other alleged incidents' concerning McAlinden but had taken no steps to investigate those matters.

16.76 There was further email communication between Watters and Harris on 1 and 2 August 2005. The information from Harris included reference to AL and AK (although they were not expressly named in the email), who, Harris noted, were unwilling to speak to police. Watters therefore did not try to contact them,¹⁴¹ forming the view on the basis of the email that they would not be prepared to speak to him about the matter.¹⁴² In the final email exchange between Harris and Watters on 2 August 2005, Harris noted that minimal information was held in relation to AK and AL but said (in relation to their complaints), 'A copy of the information provided by the then Professional Standards Office Director to CPEA on 24 August 1999 is attached'.¹⁴³ Watters could not recall what was attached.¹⁴⁴ It appears clear to the Commission, however, that the attachment was the form completed by Davoren on behalf of Malone (as shown in Figure 16.2).¹⁴⁵

16.77 Watters confirmed that he considered CPEA could be a source of information on victims of sexual abuse.¹⁴⁶ As noted, it is apparent that by the time of his email of 1 August 2005 to the PSO, Watters had already accessed the information report (I 7885027) dated 18 November 1999 drawn from the notification form sent by Davoren on or around 24 August 1999.

Contact with AC

16.78 On the day of his contact with the PSO, 1 August 2005, Watters also contacted AC, as confirmed by his email to Harris later that day:

I've been in touch with [AC] and spoken with her and I'm letting her have a couple of days to digest that Denis McAlinden has been located and to work out what she wants to do, but thought she may supply a statement.¹⁴⁷

16.79 Watters recalled his telephone conversation with AC. She told him of the process she had been through with the Diocese.¹⁴⁸ Watters arranged to meet her, at which time she indicated her willingness to provide a statement in support of AE but said she did not want to proceed with her own allegations against McAlinden; rather, she wanted to be a corroborative witness only.¹⁴⁹ At a meeting on or about 29 August 2005 at Kurri Kurri police station, AC gave Watters her statement of complaint dated 12 June 2002, as provided to the Catholic Church at about that

¹⁴⁰ TOR 2, T85.25–41 (Watters).

¹⁴¹ TOR 2, T57.46–58.13 (Watters); email from Harris to Watters, dated 2 August 2005, ex 191, p 1233.

¹⁴² TOR 2, T58.37–40 (Watters).

¹⁴³ Email from Harris to Watters, dated 2 August 2005, ex 191, p 1233.

¹⁴⁴ TOR 2, T58.30–35 (Watters).

¹⁴⁵ Child Sexual Abuse Information Dissemination form, ex 171.

¹⁴⁶ TOR 2, T59.1–29 (Watters).

¹⁴⁷ Email from Watters to Harris, dated 1 August 2005, ex 191, p 1233.

¹⁴⁸ TOR 2, T56.43–57.12 (Watters).

¹⁴⁹ Statement of Watters, dated 13 March 2013, ex 47, para 23.

time in the context of a complaint lodged with the Towards Healing program,¹⁵⁰ together with some other documentation.¹⁵¹ Watters learnt from AC that she had had some communication with Malone at the Diocese.¹⁵² AC also supplied a letter from McAlinden dated 24 August 1960, which Watters considered was suggestive of grooming-type behaviour.¹⁵³ On the same date Watters took a formal police statement from AC, annexing to it the statement of complaint.¹⁵⁴

- 16.80 Watters said that the information AC had provided could have been helpful in a prosecution against McAlinden:¹⁵⁵

It just goes to investigative practices that you would show what police call as grooming and, like similar fact evidence, whereas it corroborates [AE] in that the offence happened to her on her own, but the offence with [AC] was a similar thing, so it goes in support of each other.¹⁵⁶

The application for extradition of McAlinden

- 16.81 After making these further inquiries, at some time in mid-September 2005 Watters prepared an application for the extradition of McAlinden from Western Australia. The application included reference to AF and noted that she had made a statement to police in 2001 in connection with a sexual assault on her by McAlinden in 1977, when she was 4 years old. This information had been extracted from the COPS event report relating to AF (E 11302712), which Watters had become aware of when he made further inquiries about McAlinden on the police system.¹⁵⁷ Watters did not contact AF, but he did speak with Detective Senior Constable Jacqueline Flipo, who was the officer in charge of AF's complaint (see Chapter 17).¹⁵⁸ The application also made reference to AC and her police statement dated 29 August 2005, which Watters noted revealed grooming-type behaviour towards an 8-year-old girl.¹⁵⁹

- 16.82 Detective Chief Inspector Wayne Humphrey, as Crime Manager of Lower Hunter Local Area Command, signed the application on 16 September 2005.¹⁶⁰ He noted:

Supported. The public interest in matters of this kind is significant. The brief is consistent with many briefs of this type & it would ultimately be a matter for the jury in a subsequent trial. The advanced age of the POI should not be a consideration.¹⁶¹

- 16.83 Humphrey gave evidence to the Commission about his role in the extradition application. He confirmed that the application had been forwarded to Superintendent Charles Haggett, whose annotation on 19 September 2005 recorded that he also supported the application. The application was returned to Humphrey on 20 September 2005.¹⁶² After that it made its way back to Watters, who ultimately ascertained that McAlinden was too ill to be extradited (as detailed

¹⁵⁰ TOR 2, T99.28–34 (Watters); statement of Complaint by AC, dated 12 June 2002, ex 179, pp 906–907.

¹⁵¹ Statement of Watters, dated 13 March 2013, ex 47, para 24; handwritten statement of complaint by AC, dated 12 June 2002, ex 179.

¹⁵² TOR 2, T99.40–42 (Watters).

¹⁵³ TOR 2, T60.45–61.7 (Watters); letter from McAlinden to AC, dated 24 August 1960, ex 71.

¹⁵⁴ NSW Police Force Statement of AC, dated 29 August 2005, annexure O to ex 47.

¹⁵⁵ TOR 2, T60.9–28 (Watters).

¹⁵⁶ TOR 2, T60.39–43 (Watters).

¹⁵⁷ Statement of Watters, dated 19 June 2013, ex 48, para 29; application for the extradition of McAlinden, dated 16 September 2005, ex 34.

¹⁵⁸ TOR 2, T53.7–15 (Watters).

¹⁵⁹ Application for the extradition of McAlinden, dated 16 September 2005, ex 34.

¹⁶⁰ Statement of Watters, dated 13 March 2013, ex 47; excerpts from TOR 1 public hearing transcript of evidence of Humphrey, dated 25 June 2013, ex 297, T1314.47–1315.6.

¹⁶¹ Application for the extradition of McAlinden, dated 16 September 2005, ex 34.

¹⁶² Excerpts from TOR 1 public hearing transcript of evidence of Humphrey, dated 25 June 2013, ex 297, T1315.8–29.

below).¹⁶³ Watters did not think he had told Fox about the extradition application in 2005 because his line of supervision was then through Humphrey.¹⁶⁴

- 16.84 Watters also gave evidence that, having located McAlinden, he telephoned the Diocese again to see if there was any further information that might be used to support an extradition application to bring McAlinden back from Western Australia. This was because in 1999 Watters had information that the Diocese might have known of similar offences by McAlinden.¹⁶⁵ With an interstate extradition application, Watters agreed it was 'helpful' to have more than just one offence: it would increase the likelihood of being able to extradite the alleged perpetrator.¹⁶⁶

Inquiries of Western Australia Police

- 16.85 Watters next made inquiries of Western Australian police about McAlinden's precise whereabouts with a view to extraditing him to New South Wales. He spoke with Detective Senior Constable Andrew Grono, who was then attached to Western Australia Police. Watters provided background information, and Grono said he would attend the premises where it was believed McAlinden was living for the purpose of arresting him.¹⁶⁷
- 16.86 Shortly afterwards, Grono telephoned Watters and told him he had attended the premises where McAlinden was residing and discovered that he (McAlinden) was suffering from terminal cancer and had only a short time to live. Grono also told Watters that McAlinden had said, 'I beat a charge in Western Australia and I'll beat this one too'. Watters clearly recalled that statement: it made him angry.¹⁶⁸ Grono told Watters he had made inquiries of hospital authorities in order to confirm the state of McAlinden's health.¹⁶⁹
- 16.87 A statutory declaration from Grono, tendered during the hearings in relation to term of reference 2, confirmed Watters' recollection of events.¹⁷⁰ Grono recalled receiving a telephone call from Watters in September 2005, after which he did some computer searches using the Western Australia Police database.¹⁷¹ He eventually found an address for a 'bed and breakfast' in Wonnerup and after making telephone inquiries established that McAlinden was living there. Shortly afterwards, Grono went to the premises and introduced himself to McAlinden,¹⁷² advising him that he had a warrant for his arrest. He said McAlinden did not appear surprised at this and 'if anything, appeared amused'.¹⁷³
- 16.88 Grono told McAlinden the warrant related to child sexual abuse charges, to which McAlinden replied, 'I was previously charged with child abuse matters and I beat those charges so if I am around long enough, I will beat these charges too'.¹⁷⁴ Grono found McAlinden's attitude defiant and dismissive.¹⁷⁵ He contacted McAlinden's treating practitioner, who confirmed that McAlinden was suffering from advanced cancer and did not have long to live.¹⁷⁶ Grono

¹⁶³ *ibid*, T1315.47–1316.8.

¹⁶⁴ TOR 2, T94.29–31 (Watters).

¹⁶⁵ TOR 2, T51.41–52.5 (Watters).

¹⁶⁶ TOR 2, T52.16–23 (Watters).

¹⁶⁷ Statement of Watters, dated 13 March 2013, ex 47, para 28.

¹⁶⁸ TOR 2, T61.9–40 (Watters); statement of Watters, dated 13 March 2013, ex 47, para 29.

¹⁶⁹ Statement of Watters, dated 13 March 2013, ex 47, para 29.

¹⁷⁰ Statutory declaration of Grono dated 2 May 2013, ex 5.

¹⁷¹ *ibid*, para 6–8.

¹⁷² *ibid*, para 8; 13–20.

¹⁷³ *ibid*, para 25.

¹⁷⁴ *ibid*, para 26.

¹⁷⁵ *ibid*.

¹⁷⁶ *ibid*, para 39.

telephoned Watters to tell him of this. In the circumstances, Watters told Grono not to execute the warrant.¹⁷⁷

- 16.89 Watters later had a conversation with AE about what had happened in Western Australia. She said that if McAlinden was dying of cancer 'he could be dealt with by a higher authority' and she did not wish her complaint to continue.¹⁷⁸ Watters prepared a case report confirming these things.¹⁷⁹ AE died in 2007.¹⁸⁰
- 16.90 Watters' information predated that provided in August 2005 to Fox by Ms Helen Keevers, then Manager of the Diocesan Child Protection and Professional Conduct Unit (now known as Zimmerman Services) (discussed below).¹⁸¹ Watters considered that the information associated with the further pursuit of McAlinden had come from Operation Peregrine, not the Diocese.¹⁸² He said the information Keevers provided was not relevant to him since he already knew it and had sent Grono to McAlinden's address in Wonnerup.¹⁸³ Watters did agree, however, that if he had not known the address before that time he would certainly have been interested to know it.¹⁸⁴

Detective Chief Inspector Fox's role in the McAlinden investigation

1999 to 2000

Detective Inspector Watters' evidence

- 16.91 In 1999 Fox, then a detective sergeant, was Watters' direct supervisor at Maitland police station. At that time Watters discussed the progress of the AE investigation with Fox, and he gave evidence that 'it would have been in terms of, as my supervisor, telling him everything that I was doing'¹⁸⁵ and that he was 'certainly discussing with him [the McAlinden matter] and all current cases'.¹⁸⁶ Watters later expanded on the nature of the discussions he had with Fox:

I think my answer was that we would discuss all my cases and he would suggest things, if needed. It was my – my common practice in those days, we would have, like, a case conference over a coffee with all my current matters and I would say, 'Look, this matter, I can't get it to go any further and I'm going to take a warrant out' or he may have suggested, 'Take a warrant out and take a passenger alert' or I suggested it, I can't really remember, but that was, I guess, a consensus or the line of where the investigation went.¹⁸⁷

- 16.92 Watters agreed that this situation of Fox providing such advice must have been helpful to him in the investigation into McAlinden since Watters did take out the warrant and suspend the matter.¹⁸⁸ These were steps taken with the approval and on the recommendation of Fox.¹⁸⁹

¹⁷⁷ *ibid*, para 40.

¹⁷⁸ TOR 2, T61.42–62.11 (Watters); statement of Watters, dated 13 March 2013, ex 47, para 29.

¹⁷⁹ Statement of Watters, dated 13 March 2013, ex 47, para 29; the entry made by Watters appears to be the first one which appears in COPS Report C 7532960, ex 200, p 1381.

¹⁸⁰ COPS Report C 7532960, ex 200, p 1380.

¹⁸¹ TOR 2, T50.47–51.3 (Watters); statement of Keevers, dated 15 February 2013, ex 199, para 18.

¹⁸² TOR 2, T51.11–15 (Watters).

¹⁸³ TOR 2, T81.3–11 (Watters).

¹⁸⁴ TOR 2, T81.13–16 (Watters).

¹⁸⁵ TOR 2, T44.26–29 (Watters); statement of Watters, dated 19 June 2013, ex 48, para 19.

¹⁸⁶ TOR 2, T71.21–26 (Watters).

¹⁸⁷ TOR 2, T89.23–32 (Watters).

¹⁸⁸ TOR 2, T89.42–45 (Watters).

¹⁸⁹ TOR 2, T89.47–90.3 (Watters).

- 16.93 Watters said that at that time Fox did not have any direct role in the investigation, such as taking statements or making entries in the COPS database.¹⁹⁰ He also did not think Fox met with AE on any formal basis for the purpose of taking a statement or obtaining information from her at the time: Watters would probably have seen this if it occurred, he thought, because the detectives worked in an open-plan office.¹⁹¹ Watters said that, to his knowledge, it was he alone who dealt with AE in connection with her allegations: no other detectives were in the office.¹⁹²
- 16.94 In short, Watters' evidence was to the effect that he might have discussed the McAlinden case with Fox on occasion, as opposed to Fox having any particular investigative role.¹⁹³ While Fox gave Watters advice about the case, he did not conduct any investigation as such.¹⁹⁴

Detective Chief Inspector Fox's evidence

- 16.95 Fox confirmed that in late 1999 he had had conversations with Watters in relation to AE. Watters told him AE had come to the station with her husband and that she was prepared to provide a statement (which Fox played no role in obtaining).¹⁹⁵ Fox also recalled discussing with Watters the issuing of the warrant for McAlinden's arrest, noting that this particular investigation was unusual in that era: '... There weren't many briefs ... in respect to clergy, and for that reason I suppose that the nature of this complaint aroused interest through the general office'.¹⁹⁶ Fox agreed he had no role in the supervision or drafting of the warrant;¹⁹⁷ nor could he recall seeing the warrant once it had been prepared or executed.¹⁹⁸ Fox was also unable to recall any discussion of other McAlinden victims with Watters before the swearing of the warrant on 1 December 1999.¹⁹⁹
- 16.96 Fox agreed that he would have seen the COPS case report relating to the AE investigation from about the time it was first created since that was his normal practice.²⁰⁰ He also told the Commission it was part of his supervising role to open Watters' cases periodically, so he would have seen it at some stage.²⁰¹ In relation to the entry on 8 October 1999 – which referred to McAlinden 'not working as a priest due to other alleged incidents such as this' – Fox could not recall discussing that with Watters at about that time.²⁰² Although extensively questioned by counsel for the Diocese about this entry – to the effect that it in fact showed that the Church had disclosed the existence of other victims to Watters at the beginning of the investigation in 1999 – Fox said he felt the entry was ambiguous and that the reference to other incidents might have been in relation to other incidents concerning AE.²⁰³ Ultimately, however, Fox conceded that he might have been reading the entry incorrectly; he imagined, though, that Watters would have included the victims' names in the narrative had he received that information.²⁰⁴
- 16.97 Fox was referred to the 1 August 2005 email inquiry from Watters to the Professional Standards Office. The email noted that, by checking the police intelligence system, Watters had ascertained that there were other McAlinden 'complainants that the Church was aware of and had files if

¹⁹⁰ Statement of Watters, dated 19 June 2013, ex 48, paras 19–20.

¹⁹¹ *ibid*, para 20.

¹⁹² *ibid*, para 21.

¹⁹³ TOR 2, T68.25–32 (Watters).

¹⁹⁴ TOR 2, T71.28–33 (Watters).

¹⁹⁵ TOR 2, T112.47–113.3 (Fox).

¹⁹⁶ TOR 2, T113.5–11 (Fox).

¹⁹⁷ TOR 2, T113.5–23 (Fox).

¹⁹⁸ TOR 2, T113.33–35 (Fox).

¹⁹⁹ TOR 2, T113.5–47 (Fox).

²⁰⁰ TOR 2, T114.39–115.20 (Fox).

²⁰¹ TOR 2, T115.9–14 (Fox).

²⁰² TOR 2, T115.22–116.1 (Fox).

²⁰³ TOR 2, T486.30–487.9 (Fox).

²⁰⁴ TOR 2, T489.14–44 (Fox).

required'.²⁰⁵ As noted, this is a reference to the information report entered by Neaves on 18 November 1999, following Davoren's notification on about 24 August 1999. Fox agreed that that suggested the information about those complainants had come to the police intelligence system from the Church and that the email showed that the Church had said if information about those other complainants was required the Church was happy to provide it.²⁰⁶

- 16.98 In relation to the PASS alert, Fox recalled discussing with Watters the possibility of obtaining one in relation to McAlinden: 'The only role I had was just a general discussion with him that we needed to put something like that in place to grab him if he came back into the country'.²⁰⁷ Fox said he had no role in preparing any documentation for such an alert.²⁰⁸
- 16.99 Fox said he recalled a discussion with Watters about suspension of the AE investigation and said Watters told him the 'victim was quite distraught and was having second thoughts' about going through the legal process. Fox could not be precise about when this discussion occurred but thought it was 'some time down the track'.²⁰⁹ On the question of suspension of the investigation, Fox told the Commission he disagreed with Watters' evidence to the effect that the investigation should have been finalised; rather, it should have been suspended: '... that was the correct status when a victim is undecided whether or not they wish to pursue a matter at that time'.²¹⁰
- 16.100 Fox also told the Commission he believed, on the basis of what Watters had said, the Diocese had given an assurance that the police would be informed when McAlinden returned from overseas.²¹¹
- 16.101 Under questioning by counsel for the New South Wales Police Force, Fox agreed that his assertion that he had been investigating McAlinden for 10 years included the period when he was Watters' supervising sergeant and the period when Watters had carriage of the investigation.²¹² Fox said he did not wish to create the presumption that he was 'the leading officer at all stages of [the] investigation' but said he had had 'involvement, to varying degrees, with it over that period'.²¹³
- 16.102 Fox otherwise confirmed that between 1999 and the time he spoke to former Bishop Leo Clarke in 2003 (discussed in the following paragraphs), he had no contact with any church official in relation to the AE investigation.²¹⁴

2002 to 2003: Detective Chief Inspector Fox's 'interview' with former Bishop Clarke

A conversation with AE

- 16.103 Although agreeing that in 1999 Watters conducted the investigation relating to AE, Fox told the Commission he (Fox) was responsible for it from the time Watters left Lower Hunter Local Area Command in early 2003 until late 2005.²¹⁵ As to the status of the investigation in 2003, Fox

²⁰⁵ TOR 2, T493.4–10 (Fox).

²⁰⁶ TOR 2, T493.19–23 (Fox).

²⁰⁷ TOR 2, T123.4–9 (Fox).

²⁰⁸ TOR 2, T122.44–123.9 (Fox).

²⁰⁹ TOR 2, T114.2–20 (Fox).

²¹⁰ TOR 2, T118.10–12 (Fox).

²¹¹ TOR 2, T209.31–40 (Fox).

²¹² TOR 2, T519.8–28 (Fox).

²¹³ TOR 2, T519.34–37 (Fox).

²¹⁴ TOR 2, T116.21–40 (Fox).

²¹⁵ TOR 2, T209.3–15 (Fox).

agreed there were two particular difficulties – first, that AE had retracted her complaint and, second, that McAlinden could not be found.²¹⁶

- 16.104 Fox recalled that, because Watters transferred to another position, he (Fox) rang AE to introduce himself: he wanted her to have a contact point in case she tried to call Watters.²¹⁷ Fox gave evidence that AE told him she had heard rumours that the Church was aware of two other victims (although that was the extent of the information she volunteered).²¹⁸
- 16.105 Fox said the information from AE was important because it alerted him to the potential existence of other McAlinden victims who could be used to provide corroborative evidence for AE's complaint.²¹⁹ Fox said this was something he had been unaware of at the time of his visit to Clarke in relation to other matters²²⁰ and that, when AE told him about the rumour that the Church had knowledge of other victims, he did not ask Watters what he knew about that.²²¹
- 16.106 For his part, Watters did not recall having any discussions with Fox in 2002²²² to the effect that he (Fox) had been in contact with AE.²²³ At this time Watters was still working in Lower Hunter LAC and had access to the investigation brief; indeed, he still considered that he had carriage of the investigation.²²⁴

A visit to former Bishop Clarke

- 16.107 At some time in 2003 – probably in the first half of the year²²⁵ – Fox and Detective Inspector Ann Joy (at that time a detective senior constable) visited Clarke in a care facility at Valentine, south of Newcastle. Clarke had retired as bishop of the Diocese seven years earlier.²²⁶ Fox estimated that the former bishop would have been in his eighties but observed that he was still bright and mentally able.²²⁷ Joy was present at the interview, although she had no recollection of an attendance on Clarke and made no entry in her duty book in relation to it.²²⁸ Fox said the 'interview was a very informal one and it was really just to see whether Bishop Clarke could assist them'. No caution was given to Clarke, and the interview was not recorded.²²⁹
- 16.108 Fox did not believe that he read (or reread) the COPS event report at about the time he went to see Clarke.²³⁰ Nor could he recall making inquiries on the police system about whether other McAlinden investigations were taking place in 2003.²³¹ He agreed that had he done so he would probably have come across the AF investigation relating to McAlinden, of which Flipo had carriage.²³² Fox accepted that the COPS report relating to AF appeared to contain information that was highly relevant to the AE investigation because it seemed to refer to another possible

²¹⁶ TOR 2, T482.24–35 (Fox).

²¹⁷ TOR 2, T481.44–482.6 (Fox).

²¹⁸ TOR 2, T117.27–38 (Fox).

²¹⁹ TOR 2, T484.39–46 (Fox).

²²⁰ TOR 2, T485.6–9; T485.19–28 (Fox).

²²¹ TOR 2, T484.5–9 (Fox).

²²² TOR 2, T65.13–16 (Watters).

²²³ TOR 2, T65.13–16 (Watters).

²²⁴ TOR 2, T65.18–25 (Watters).

²²⁵ TOR 2, T121.4–17 (Fox).

²²⁶ TOR 2, T119.44–47; T432.14–16 (Fox).

²²⁷ TOR 2, T119.39–120.11 (Fox).

²²⁸ Statutory declaration of Joy, dated 4 July 2013, ex 183, para 7; statement of Joy, dated 15 March 2013, annexure A to ex 183, para 16.

²²⁹ TOR 2, T120.13–121.2 (Fox).

²³⁰ TOR 2, T483.47–484.3 (Fox).

²³¹ TOR 2, T484.11–14 (Fox).

²³² TOR 2, T497.21–46 (Fox).

complainant.²³³ As to whether it would have been a difficult search to make, in view of the fact that McAlinden was known as a person of interest in relation to the investigation, Fox replied:

It would have. I think just looking at it – and it is absolutely no fault of the Church; it is only a fault of the police officer – where the person’s name has been recounted as Father Denis McAlinden, on a search for Denis McAlinden, unfortunately, because she has placed it as Father Denis McAlinden, the system would have recorded ‘Father’ as a Christian name, which would have thrown that off. But that’s not the Church’s fault and I want to make that very clear.²³⁴

- 16.109 Fox agreed, however, that he did not recall searching the police system in 2003 for the term ‘Denis McAlinden’ rather than ‘Father McAlinden’.²³⁵
- 16.110 Had Fox conducted a search of the COPS database for intelligence relating to McAlinden, he might also have seen the information report dated 18 November 1999 (referred to in paras 16.40 to 16.45), which alluded to other information that would have been of potential assistance to him at the time.
- 16.111 Although Fox told the Commission the visit to Clarke was in relation to other matters – the Ryan and Fletcher investigations – he asserted that there was discussion about ‘rumours’ AE conveyed to him in connection with McAlinden and, specifically, the potential for other victims being known to the Church. Fox advanced a number of versions of precisely what occurred during the visit to Clarke.
- 16.112 In his report for senior police dated 25 November 2010 Fox wrote the following of the encounter:

Detective Ann Joy and I also spoke to Leo Clarke during my investigation. We predominately [sic] discussed Fletcher and Ryan and his possible knowledge of their activities. I then asked about McAlinden who I still believed to be overseas ... I asked Clark, ‘An alleged victim of Denis McAlinden has told us that she believes the church is aware of at least two other alleged sexual assault victims of this priest. Do you have any knowledge of that?’ He said, ‘No. You would have to ask Michael Malone about that’.²³⁶

- 16.113 In relation to his question and Clarke’s response, Fox agreed in evidence that he had not set out the context in which he had asked the question of Clarke²³⁷ and could not now recall it.²³⁸
- 16.114 During the *Lateline* program aired on ABC Television on 8 November 2012 Fox told the presenter, Mr Tony Jones:

... Well I worked on it [the investigation] since I started investigating Denis McAlinden in 1999. I had contact with various witnesses over the years. I actually even interviewed Bishop Leo Clarke, who in 2003 told me when I asked if he had knowledge of any other victims other than the one that I already [knew of], and very clearly said to me no.

I later [saw] documentation, after he passed away, that clearly indicated that he had full knowledge of other victims.

Boiling it down to just simple words, he lied. I was standing there with a colleague and he just straight out lied to me about his knowledge of other victims. Hence the reason I say that

²³³ TOR 2, T498.26–31 (Fox).

²³⁴ TOR 2, T498.4–12 (Fox).

²³⁵ TOR 2, T498.14–24 (Fox).

²³⁶ NSW Police Report prepared by Fox, ‘Issue: allegations of child sexual abuse and cover-up within the Maitland Newcastle Diocese of the Catholic Church’, dated 25 November 2010, ex 69, p 1375.

²³⁷ TOR 2, T532.10–27 (Fox).

²³⁸ TOR 2, T533.41–534.6 (Fox).

some in the Church have no reservation about lying when it comes to it to conceal the fact that they had knowledge of these crimes.²³⁹

- 16.115 In evidence before the Commission, a slightly different account was proffered. Fox said that after discussing the other two matters he put to Clarke the rumour that AE had passed on:

... I said, 'I've been told that you may have some information relating to two other victims of the priest Father Denis McAlinden'.

...

He said, effectively – I can't remember the exact words, but effectively, he said, 'I'm sorry, I don't know anything about that'. I did ask him another question, I think, along the lines of 'Are you aware if anyone in the Church would be aware of allegations of that nature' and his words were along the lines, 'I can't help you. You'll have to ask Bishop Malone'.²⁴⁰

- 16.116 Fox disagreed with the proposition put by counsel for the Diocese that Clarke's answer in relation to his knowledge of other sexual assault victims – 'No. You would have to ask Michael Malone about that' – could be construed as Clarke not disputing that the Church had such knowledge but instead suggesting that Fox speak to Malone.²⁴¹

- 16.117 Under questioning by counsel assisting, Fox agreed, however, that his oral evidence differed from that set out in the relevant part of a statement dated 7 February 2013 prepared for the Commission²⁴² in that he had not given oral evidence of a second question he had asked Clarke (as referred to in the statement) – that being whether Clarke knew why McAlinden had left Australia and where he might be now. In the statement Fox referred to the conversation in the following terms:

We spoke for some time about Father Ryan and Father Fletcher before I asked 'An alleged victim of Denis McAlinden has told us that she believes the church is aware of at least two other women who are alleged sexual assault victims of this priest. Do you have any knowledge of that? He said 'No'. Retired Bishop Clarke then suggested I speak to current Bishop Michael Malone. I said, 'Do you know why Father McAlinden left Australia or where he might be now'. He said, 'You'd have to speak to Bishop Malone I afraid [sic]. I cannot help you'.²⁴³

Fox explained that the reason the second question was not included in the evidence before the Commission and in his 25 November 2010 report was that he did not intend the report to be comprehensive.²⁴⁴ The different accounts given by Fox cast doubt on the reliability of his evidence about the terms of his conversation with Clarke.

McAlinden's whereabouts

- 16.118 Fox also gave oral evidence that Clarke had twice told him he would need to speak to Malone – in relation to previous complaints about other women, as well as about McAlinden's current location.²⁴⁵ In this regard Fox's report of 25 November 2010 stated, 'Worse still is the fact that Clarke knew McAlinden was still at large and had returned to Australia ...'²⁴⁶ Fox confirmed that this statement referred to his belief about Clarke's knowledge in 2003 when Fox went to see him.²⁴⁷ The basis on which Fox said that in 2003 Clarke knew McAlinden had returned to

²³⁹ ABC *Lateline* transcript, 'Studio interview with Senior NSW Detective Peter Fox', dated 8 November 2012, ex 12.

²⁴⁰ TOR 2, T118.36–117.4 (Fox).

²⁴¹ TOR 2, T465.2–29 (Fox).

²⁴² Statement of Fox, dated 7 February 2013, ex 81, paras 28, 82, 84, 85.

²⁴³ *ibid*, para 28.

²⁴⁴ TOR 2, T672.41–T676.26 (Fox).

²⁴⁵ TOR 2, T677.25–T678.2 (Fox).

²⁴⁶ TOR 2, T431.31–33 (Fox); Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1377.

²⁴⁷ TOR 2, T431.28–47 (Fox).

Australia was that he (Fox) had received information that on 1 July 2002 the then bishop, Malone, knew that Clarke and others were aware that McAlinden was back in Australia.²⁴⁸

16.119 Fox also stated in his 25 November 2010 report, 'Despite the Church knowing McAlinden's whereabouts for some time I was not informed until his death was imminent'.²⁴⁹ In his oral evidence before the Commission Fox clarified this, saying he had not in fact seen any documentary evidence to suggest that the Church knew McAlinden's whereabouts between 8 October 1999 and October 2005. Rather, Fox had based his comment in the report about the Church's knowledge of McAlinden's whereabouts on a letter dated 10 August 1999 from the Diocese to McAlinden in England. He confirmed that that was the document of which he was thinking.²⁵⁰

16.120 Fox considered he had authority to ask questions of Clarke about the rumours AE had spoken of.²⁵¹ Asked whether he regarded this as a re-opening or re-igniting of the investigation, Fox responded:

I think, had he given a different answer, I would absolutely agree with that. Of course it would have reopened it in so many ways and probably expanded it, depending upon what had been forthcoming from Bishop Clarke.²⁵²

16.121 The counter-factual investigative scenario, which Fox said would have been explored, is discussed in paragraphs 16.141 to 16.147.

16.122 Fox said that at the time of his meeting with Clarke he thought Clarke was telling the truth and had no reason to suppose he was not.²⁵³ Because of the way Clarke answered the question, Fox took him to mean he had no knowledge of other McAlinden victims.²⁵⁴ Subsequently, however, he described Clarke's answer variously as a 'deliberate lie', a 'blatant lie', a concealment of the name of a victim and a 'straight-out lie'.²⁵⁵

16.123 As to Fox's growing realisation of the importance of the comments, he told the Commission:

In 2003, when the comments were made by Bishop Clarke, I did not attribute any importance to those comments virtually at all. It was not until many, many years later that the significance of what he said I applied my mind to and the importance of that denial was then significant; but we're talking about 2003. In 2003, it amounted to no more, from the – [AE] herself, that it was nothing more than a rumour and, as a consequence of that, when I raised the subject in a very cordial conversation with Bishop Clarke, I didn't place any more concern about his response at that time ... It amounted to no more than two sentences because the nature of the information that was initially relayed to me was that it was a rumour.²⁵⁶

16.124 Fox did not take a statement from Clarke at the time and variously said he either did not know whether he made a record of the conversation²⁵⁷ or he did not take any contemporaneous notes

²⁴⁸ TOR 2, T432.2–12 (Fox).

²⁴⁹ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, 1376.

²⁵⁰ TOR 2, T219.6–36 (Fox). The issue of the knowledge of Church officials regarding McAlinden's whereabouts is set out at paras 16.172 to 16.180.

²⁵¹ TOR 2, T483.2–6 (Fox).

²⁵² TOR 2, T483.11–15 (Fox).

²⁵³ TOR 2, T128.10–26 (Fox).

²⁵⁴ TOR 2, T485.30–36 (Fox).

²⁵⁵ TOR 2, T453.16–454.2 (Fox).

²⁵⁶ TOR 2, T532.39–533.10 (Fox).

²⁵⁷ TOR 2, T455.25–32 (Fox).

of it, even though it was an important conversation.²⁵⁸ Joy, who was present in the capacity of corroborating officer, made no record of the conversation with Clarke.²⁵⁹

- 16.125 Fox told the Commission the importance of the conversation with Clarke did not occur to him until after he saw the documents obtained by Ms Joanne McCarthy, a journalist with the *Newcastle Herald*, a number of years later.²⁶⁰
- 16.126 Fox did not make an entry recording his conversation with Clarke in the COPS case report Watters checked for the AE investigation. Nor, it seems, did he instruct Joy to make such a record. In the Commission's view, a conversation with a very senior church official, a retired bishop, about knowledge of child sexual offences is something that should have been properly and contemporaneously documented in the COPS system, whether by Fox or by Joy, regardless of the nature of the information provided.

Bishop Clarke's mental acuity

- 16.127 During the Commission's public hearings, counsel for the Diocese suggested that at the time of the meeting with Fox Clarke might have been suffering from the early stages of dementia or might have had some cognitive impairment that affected his recall of events.²⁶¹
- 16.128 Evidence tendered before the Commission shows that in March 2006 Clarke's general practitioner noted a deterioration in memory 'starting last year and ... since then his short term memory has continued to be very poor whilst his longer term memory seems preserved'.²⁶² An incident of confusion in March 2006 was investigated and the possibility of the early stages of dementia was raised. A report by a geriatrician identified a problem with progressive cognitive change apparently consistent with emerging senile dementia of the Alzheimer's type.²⁶³ Clarke's condition deteriorated in the final weeks of his life.²⁶⁴ Until early 2006, however, he was living independently in self-care accommodation²⁶⁵ in a retirement village.²⁶⁶ In February 2006 he was assessed as having only occasional long-term memory problems and occasional confusion – but never any disorientation as to time, place or people. There is no medical evidence to suggest dementia or cognitive problems before 2005.
- 16.129 Fox told the Commission that when he spoke to Clarke about Ryan and Fletcher there was a lengthy discussion about what those clergy had done over many years and where they had been moved. Fox described Clarke's recollection of events in this regard as 'quite extensive'.²⁶⁷ Fox formed the view that Clarke seemed to have fairly good 'cognitive ability' in dealing with what he was being asked;²⁶⁸ Fox considered him 'quite bright and right of mind'.²⁶⁹
- 16.130 Additionally, on his visit to Clarke's residence Fox saw that his room was covered in documents and papers in 'neat piles',²⁷⁰ the majority of them bearing the Maitland–Newcastle Diocese logo.

²⁵⁸ The Commission was unable to view Fox's duty books for this period (2002/2003) because a number of duty books could not be located either by NSW Police Force or Fox; TOR 1/2, T1681.4–43; T1686.15–40 (Fox); memo from GASO Henderson to Local Area Manager Jordan attaching accountable forms register for duty books and archiving spread sheet for duty books from Central Hunter LAC, dated 5 March 2012, ex 237.

²⁵⁹ TOR 2, T119.6–18; T530.6–34 (Fox).

²⁶⁰ TOR 2, T533.12–26 (Fox).

²⁶¹ TOR 2, T455.34–35 (Fox).

²⁶² Letter from Dr Fried to Dr Walsh, dated 16 March 2013, bundle of documents re medical records of Clarke, ex 223, p 1.

²⁶³ *ibid*, pp 6–7.

²⁶⁴ *ibid*, pp 8–9.

²⁶⁵ Emergency Department Triage Notes in relation to Clarke in bundle of documents re medical records of Clarke, dated 22 April 2006, ex 223, p 23.

²⁶⁶ Aged care client record assessment in bundle of documents re medical records of Clarke, ex 223, p 29.

²⁶⁷ TOR 2, T455.12–19 (Fox).

²⁶⁸ TOR 2, T454.45–455.19 (Fox).

²⁶⁹ TOR 2, T120.10–11 (Fox).

²⁷⁰ TOR 2, T120.4–7 (Fox).

Fox formed the impression that Clarke, although officially retired, was still actively involved with the Diocese.²⁷¹

- 16.131 Fox acknowledged that he did not ask Clarke why he had retired and whether it was on medical grounds²⁷² or what his recollection of events when he was bishop was like.²⁷³ Fox said that if Clarke could not recall whether there were other victims of McAlinden he would have expected a response to that effect. He said that instead of saying 'I cannot recall' Clarke answered 'No'.²⁷⁴
- 16.132 Malone also gave evidence on the question of Clarke's mental acuity. After Clarke retired Malone stayed in touch with him, including when he (Clarke) was in the retirement village. Malone told the Commission Clarke was 'pretty sharp'²⁷⁵ and that, although he began to become a little vague a year or two before he died, in May 2006, it was not to the point where he would forget who he was.²⁷⁶
- 16.133 The Commission is satisfied that Clarke had sufficient mental acuity at the time of his meeting with Fox (whether in 2002 or 2003) to understand the nature of Fox's inquiries about whether other victims of McAlinden were known to the Church. In addition to accepting Fox's evidence about his perceptions of Clarke's good recall of events relating to Ryan and Fletcher, the Commission accepts Malone's evidence that Clarke was sharp at this time. The medical records in evidence show the early signs of dementia emerging in 2005; there is no evidence of dementia before that time.
- 16.134 As to the particulars of the discussion between Fox and Clarke, the evidence does not permit the Commission to say more beyond accepting, as it does, Fox's account that he asked Clarke whether he had knowledge of further victims of McAlinden and that Clarke told him he did not and said he (Fox) should speak with Malone.
- 16.135 Documentary evidence available to the Commission and discussed in Chapter 12 indicates that by early 2003 Clarke knew about past allegations and incidents from at least 1976 and, in relation to a number of them, had a specific role as bishop. On any view, therefore, Clarke had information that would be of material interest to police and did not provide it to Fox in 2003.

Follow-up with Bishop Malone

- 16.136 Fox told the Commission he did not speak to Malone about AE's information regarding other victims of McAlinden, despite Clarke's suggestion that he do so. He said this was because the information related specifically to Clarke. Fox explained:

... [Bishop Malone] would not have been able to have the information that I was seeking in the terms that it was relayed to me by [AE]. The only person in the date period and the individual concerned that had the possibility of having that knowledge was retired Bishop Leo Clarke. I'm aware of the relationship between retired Bishop Clarke and Bishop Malone, and I was aware of that at that time through another means, and if I can quote somebody else, I took that as a brush-off. I did not take his comment as having any genuine knowledge about anything other than 'Go ask someone else. My answer is no. End of story'.²⁷⁷

- 16.137 Notwithstanding that evidence, Fox told the Commission he had in fact made an effort to contact Malone after the conversation with Clarke:

²⁷¹ TOR 2, T432.18–31 (Fox).

²⁷² TOR 2, T454.22–33 (Fox).

²⁷³ TOR 2, T454.35–43 (Fox).

²⁷⁴ TOR 2, T472.24–31 (Fox).

²⁷⁵ TOR 2, T796.13 (Malone).

²⁷⁶ TOR 2, T795.42–796.26 (Malone).

²⁷⁷ TOR 2, T420.39–421.2 (Fox).

I remember making a phone call after I spoke to retired Bishop Clarke to the diocese, I do apologise. I did ask for Bishop Malone. He wasn't there. Whoever it was a person who had some degree of authority there and I just said, 'Does anyone, to your knowledge, have any knowledge about any other victims of McAlinden?' The response was – sorry.²⁷⁸

- 16.138 Fox said the person he spoke to when he called the Diocese and discovered Malone was not there was another member of the clergy whom Fox perceived to be in a position of authority. Fox could not recall whether he made a note of this telephone conversation.²⁷⁹ If he did, that note was not produced by any party and was not in evidence before the Commission.

Updating AE

- 16.139 After his visit to Clarke Fox telephoned AE that week or the following one to tell her the outcome of the discussion.²⁸⁰ Fox told the Commission he wanted to let AE know he had spoken to Clarke about the 'rumour she had picked up third hand'²⁸¹ and he told her, 'He doesn't know anything about it either'.²⁸²

No other investigative steps until October 2005

- 16.140 Fox said that after the conversation with AE he took no further investigative steps and made no entries in the case report before the one dated 28 October 2005 (see para 16.152).²⁸³ He also confirmed that he took no active steps to determine McAlinden's whereabouts at any time between 2002 and 2005, and he did not recall any other officer being allocated to the case because it had been suspended.²⁸⁴

Exploring the counter-factual scenarios put forward by Detective Chief Inspector Fox

- 16.141 Fox gave evidence about the inquiries he said would have been made had Clarke answered 'yes' to his questions and had he ultimately had access to some of the documents in the Diocesan holdings. Fox said a 'substantive' investigation would have been initiated if there had been disclosure of documents and of the additional victims known to the Diocese.²⁸⁵ Indeed, he said, it 'would have opened up [a] Pandora's box for a whole array of other investigations to be pursued'²⁸⁶ – particularly in relation to the possibility of concealment offences.²⁸⁷
- 16.142 By way of example, Fox was taken through the following material the Commission obtained, and he described the investigations he considered would have flowed from information on the face on the document:
- In the case of the 3 December 1959 letter from McAlinden to Bishop John Toohey, Fox said he would have pursued what McAlinden was referring to in relation to 'previous misconduct' and the reason why Toohey did not feel able to appoint him to do missionary work in Africa.²⁸⁸

²⁷⁸ TOR 2, T421.19–25 (Fox).

²⁷⁹ TOR 2, T422.39–423.6 (Fox).

²⁸⁰ TOR 2, T121.23–31 (Fox).

²⁸¹ TOR 2, T122.26 (Fox).

²⁸² TOR 2, T122.29 (Fox).

²⁸³ TOR 2, T121.33–122.12 (Fox).

²⁸⁴ TOR 2, T122.32–42 (Fox).

²⁸⁵ TOR 2, T479.31–480.37 (Fox).

²⁸⁶ TOR 2, T241.11–44 (Fox).

²⁸⁷ TOR 2, T242.15–244.09 (Fox).

²⁸⁸ TOR 2, T340.36–341.31 (Fox); letter from McAlinden to Toohey, dated 3 December 1959, ex 70.

- Fox said he would have been able to use the August 1960 typewritten letter from McAlinden to AC to investigate the nature of the relationship McAlinden had with AC. He would also have tried to locate AC.²⁸⁹
- In relation to the minutes of the May 1976 meeting of the consultors of the Diocese, Fox said these would have assisted him in his investigation because he would have interviewed each of the individuals named, including Monsignor Patrick Cotter.²⁹⁰
- In the case of the May 1976 letter from Cotter to Clarke, Fox confirmed that a number of leads would have been pursued, among them the various references to the ‘young solicitor’, Monsignor Frank Coolahan and the other parents.²⁹¹ Fox said he would also have made inquiries of the people who attended the Saturday evening meeting referred to in the letter and would have endeavoured to obtain statements from each one. He also agreed that the information in the letter about the ‘de sexto’ business and McAlinden’s inclination to interfere with young girls would have been useful as tendency evidence, explaining:

The fact that [AE]’s abuse occurred some 20 years prior to this, the similarities and the nature and the age groups of the victims and the fact that they were female all become relevant in any further investigation and could have been used very much in [AE]’s matter.²⁹²

- Fox said knowledge of the reference in the letter to McAlinden’s admission of some indiscretions and the fact that it was a condition said to have been with him for many years would also have been ‘a huge plus for any police officer investigating’.²⁹³
- The information in the 5 November 1987 report of Dr Derek Johns would also have assisted Fox in investigating McAlinden – particularly given the possibility that the report might have referred to AE.²⁹⁴
- In relation to the 5 March 1993 letter to Reverend T Brennan from Clarke, which contained two addresses (one in Newcastle and one in the United Kingdom), Fox said he would have:
 - made inquiries through Interpol with the Scotland Yard police to attend that address to find out if McAlinden was there, and, if that was the case, to organise for a provisional warrant and potential extradition proceedings to commence.²⁹⁵
- Fox said he would have made a number of inquiries about correspondence relating to McAlinden’s time in the Philippines.²⁹⁶
- In relation to the 19 October 1995 letter from Clarke to McAlinden, Fox said he would have taken steps to obtain the correspondence between the Diocese and the Vatican referred to with respect to Clarke’s request that McAlinden petition the Holy See for laicisation.²⁹⁷

²⁸⁹ TOR 2, T342.4–29 (Fox); letter from McAlinden to AC, dated 24 August 1960, ex 71.

²⁹⁰ TOR 2, T342.46–342.30 (Fox); minutes of meeting of Diocesan Consultors, dated 15–16 May 1976, ex 72.

²⁹¹ TOR 2, T244.40–T246.31 (Fox); handwritten letter from Cotter to Clarke and typescript by an officer of the NSW Crown Solicitor, dated 17 May 1976, ex 57.

²⁹² TOR 2, T247.40–45 (Fox).

²⁹³ TOR 2, T249.14–16 (Fox).

²⁹⁴ TOR 2, T252.17–19 (Fox); report by Dr Johns to Clarke, dated 5 November 1987, ex 59.

²⁹⁵ TOR 2, T258.6–34 (Fox); letter from Clarke to Brennan, attaching retired clergy present entitlements per annum, dated 5 March 1993, ex 62.

²⁹⁶ TOR 2, T260.13–263.39 (Fox); letter from Clarke to Bantigue, dated 10 May 1995, ex 65; letter from Clarke to Bantigue, dated 8 November 1994, ex 64.

²⁹⁷ TOR 2, T270.09–T271.02 (Fox); letter from Clarke to McAlinden, dated 19 October 1995, ex 67.

- As to the 2 November 1995 letter from Malone to McAlinden, Fox said he would have wanted to speak with Malone about what he knew and why canonical procedures had been initiated against McAlinden.²⁹⁸
- 16.143 Having been taken through the Diocesan documents, Fox told the Commission he would have considered offences such as aggravated assault and child sexual assault in relation to McAlinden and misprision of felony or concealing a serious offence (s. 316 of the *Crimes Act 1900* (NSW)) for members of the church hierarchy, given their knowledge of and dealings with McAlinden and their failure to pass that information on to the police. The material in the letters would have provided leads for further lines of investigation and, had all of this been available in 2003, Fox said a team of investigators would have been needed.²⁹⁹
- 16.144 Under questioning by counsel for the Diocese Fox conceded that, if Clarke had in fact answered his question in the affirmative, before embarking on any of the inquiries Fox said he would have made he would have been quite likely to have read the COPS entry relating to AE³⁰⁰ and certainly would have spoken with Watters.³⁰¹ Assuming that Watters had said to Fox ‘At the time of my initial inquiries with the Church, they told me that [there were] other victims’, Fox would have followed up with the Diocese to obtain the names of those victims, to see whether they were prepared to corroborate AE’s complaint.³⁰² In all likelihood, Fox said, he would also have searched the police investigation system to see whether there was another means by which a supporting victim could be identified.³⁰³ This would probably have caused him to contact Flipo about the AF complaint so as to ascertain whether AF might provide corroborative evidence.³⁰⁴
- 16.145 Ultimately, then, Fox agreed that speaking to Watters and Flipo would have given him what he needed – that is, the possibility of other victims to corroborate AE’s complaint by giving evidence at any prosecution of McAlinden.³⁰⁵ Fox disagreed, however, that identifying further victims would have obviated the need to make the other inquiries (such as going to Interpol, the Philippines and the Holy See) since those things related to completely different areas of investigation.³⁰⁶ Fox agreed that many of the inquiries he had identified were not truly connected to the AE investigation but instead concerned information about possible concealment by the Church.³⁰⁷
- 16.146 In the Commission’s view Fox’s counter-factual evidence about the many investigative leads he said would have been pursued had he had access to some of the documents in the Diocesan holdings about McAlinden must be approached with caution – particularly since Fox failed to follow up with Malone in the first instance (other than making a perfunctory inquiry of a church official at the Diocese, about which no notes were taken) after being advised to do so by Clarke.
- 16.147 Ultimately, however, the Commission accepts Fox’s evidence that, for an investigator, the conduct of the Diocese and Clarke in ostensibly failing to disclose certain information known to them about McAlinden’s offending would have been of major interest and if pursued at that time might have taken the investigation on the path Strike Force Lantle is currently pursuing. This is likely to have occurred at an earlier time – conceivably when important witnesses, such as Clarke, were alive to provide information.

²⁹⁸ TOR 2, T345.11–42 (Fox); letter from Malone to McAlinden, dated 2 November 1995, ex 74.

²⁹⁹ TOR 2, T275.20–276.12 (Fox).

³⁰⁰ TOR 2, T485.38–45 (Fox).

³⁰¹ TOR 2, T485.47–486.3; T498.47–499.13 (Fox).

³⁰² TOR 2, T499.32–500.1 (Fox).

³⁰³ TOR 2, T499.27–30 (Fox).

³⁰⁴ TOR 2, T500.20–40 (Fox).

³⁰⁵ TOR 2, T500.33–40 (Fox).

³⁰⁶ TOR 2, T504.10–16 (Fox).

³⁰⁷ TOR 2, T504.31–36 (Fox).

2005

- 16.148 In 2005 Watters was, as noted, working as a detective sergeant at Kurri Kurri and making further inquiries about McAlinden as a result of the intelligence provided through Operation Peregrine. Watters was not then aware that anyone else (including Fox) was conducting investigations into McAlinden.³⁰⁸ In particular, Watters was unaware of Fox contacting police in Western Australia with a view to ascertaining where McAlinden was (such inquiries having been instigated as a result of the information provided by Keevers).
- 16.149 Watters' statutory declaration, in evidence before the Commission, stated:
- ... I was the officer in charge of the investigations being carried out in 2005, and to my knowledge Detective Chief Inspector Fox was not involved in my investigation. My only dealings in 2005 were with Detective Chief Inspector Humphrey ... who supported my application for extradition.³⁰⁹
- 16.150 Watters recalled that from 2005 until the date of giving evidence before the Commission he did not engage in any discussions with Fox about the continuing investigations relating to the McAlinden file and that Fox did not play a part in the investigation at that time.³¹⁰ After Watters became aware that McAlinden had died in 2005, as far as he (Watters) was concerned the file was closed.³¹¹
- 16.151 Watters agreed, however, that a COPS entry Fox made on 28 October 2005 (about information from Keevers) suggested that Fox had learnt that McAlinden was in Western Australia independently of and within about a month of Watters becoming aware of that. This appeared to be a coincidence.³¹² Watters said it was possible he discussed with Fox the fact that they had the same information from different sources, but Watters did not remember that.³¹³

Information provided by Ms Keevers to Detective Chief Inspector Fox

- 16.152 On 28 October 2005 Fox made the following entry in the COPS event report relating to AE:
- Information from Helen Keevers is that the priest sought in this matter is suffering from Cancer – possible terminal. He can now be found at St John of God Villa, McCourt Street, Subiaco Western Australia.
- Keevens [sic] can be contacted on ... at the Catholic Churt [sic] child abuse unit.³¹⁴
- 16.153 Fox could not recall whether at the time of making that entry he saw the entry dated 28 July 2005 relating to Operation Peregrine, but he thought he would have.³¹⁵
- 16.154 Keevers, Manager of the Diocesan Child Protection and Professional Conduct Unit, could not recall the exact date she had received the information she provided to Fox but said it would have been close to the date on which she told him.³¹⁶ She explained how she came into possession of the information:
- I had been aware from fairly early on that there was an active police warrant out for Father McAlinden, but we didn't know where he was. I think it was Maree Lawrie, one of the Diocesan secretaries, who answered the phone from a member of the faith community who

³⁰⁸ Statement of Watters, dated 19 June 2013, ex 48, para 22.

³⁰⁹ Statement of Watters, dated 19 June 2013, ex 48, para 22.

³¹⁰ TOR 2, T71.11–19; T95.4–7 (Watters).

³¹¹ Statement of Watters, dated 19 June 2013, ex 48, para 23.

³¹² TOR 2, T87.24–36 (Watters).

³¹³ TOR 2, T87.38–42 (Watters).

³¹⁴ COPS Report C 7532960, ex 200, p 1381.

³¹⁵ TOR 2, T124.1–10 (Fox).

³¹⁶ TOR 2, T2173.24–29 (Keevers).

was asking that a message be passed on to the bishop that prayers be offered for Father McAlinden, who was dying in a nursing home. Ms Lawrie put the phone call through to me. I spoke to the person and thanked them and took the address. I hung up and then I picked up the phone and I rang [Detective Fox] ...³¹⁷

- 16.155 During the period Keevers was working for the Diocese she had not become aware of any investigations aimed at locating McAlinden before this information came to her attention. On this, she said, '... I guess even I accepted the belief that he was somewhere that we didn't know ...'³¹⁸ She had never been asked to try to find McAlinden.³¹⁹
- 16.156 Fox was the 'most relevant police officer' Keevers could think of:³²⁰ she said she did not want to ring just any police station and have the message lost.³²¹ Keevers told the Commission she knew, as a result of having met Fox at Fletcher's sentencing hearings, that 'he would know about where these matters could be dealt with in the police force'. So she rang him for advice.³²² Fox told her he was aware of the matter and would pass her information on appropriately.³²³ Keevers was not aware that Fox had had any previous involvement with the investigation of AE's complaint.³²⁴
- 16.157 Keevers did not obtain Malone's permission to contact the police, but she did tell him afterwards.³²⁵ Keevers said Malone's reaction to her advice that she had been in contact with the police was 'Good'.³²⁶
- 16.158 In relation to the provision of this information to him in 2005, Fox subsequently wrote the following in a 25 November 2010 document prepared for senior police:

In late 2005 I was advised by the Catholic Church that Denis McAlinden was critically ill at a Catholic Retirement Home in Subiaco, Perth. I made inquiries regarding his possible extradition but learnt he was not able to travel and died two weeks later. Despite the church knowing McAlinden's whereabouts for some time I was not informed until his death was imminent.³²⁷

- 16.159 In oral evidence before the Commission Fox confirmed that he had received a telephone call from Keevers in October 2005, telling him of McAlinden's location. Fox was stationed at Cessnock at the time and subsequently spoke to Watters (then a uniformed sergeant at Kurri Kurri).³²⁸ In his narrative on this subject almost two years later (on 26 September 2007)³²⁹ Fox noted:

After inquiries this date [ie 26 September 2007] by Joanne McCarthy of the Herald Newspaper who contacted this office inquiring regarding POI ... Asked if POI was wanted as she was doing articles on paedophile priests. Police have indicated they cannot provide that information. On viewing the POI he has an outstanding warrant sworn by Det Watters. Watters contacted & indicated he had not withdrawn the matter but intended to. He by [sic] advised by myself the POI was suffering terminal [sic] cancer in 2005 & confirmed this via

³¹⁷ TOR 2, T2171.42–2172.4 (Keevers).

³¹⁸ TOR 2, T2172.26–32 (Keevers).

³¹⁹ TOR 2, T2172.34–38 (Keevers).

³²⁰ TOR 2, T2172.10–12 (Keevers).

³²¹ TOR 2, T2172.19–20 (Keevers).

³²² TOR 2, T2172.19–24 (Keevers).

³²³ TOR 2, T2712.23–24 (Keevers).

³²⁴ TOR 2, T2172.40–45 (Keevers).

³²⁵ TOR 2, T2172.14–16 (Keevers).

³²⁶ TOR 2, T2173.20–22 (Keevers).

³²⁷ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1376.

³²⁸ TOR 2, T123.19–27 (Fox).

³²⁹ TOR 2, T123.15–46 (Fox); COPS Report C 7532960, ex 200, p 1381.

WA police. He also spoke to the victim & informed her of this & she confirmed she did not swish [sic] to pursue the matter.³³⁰

- 16.160 As to the discussion between Fox and Watters, Fox explained that when he telephoned Watters about McAlinden's location Watters told him he was already aware of it and had already arranged for Western Australian police to attend the location.³³¹
- 16.161 Fox said he had contacted Western Australia Police at Subiaco police station before he rang Watters.³³² Despite Watters already having located McAlinden, Fox agreed that the efforts of Keevers in providing the information were helpful.³³³ When he spoke to her she had also expressed some disappointment at the realisation there was little police could do in view of McAlinden's ailing health. Fox had no doubt that as soon as Keevers became aware of the information relating to McAlinden she had passed it on to him.³³⁴
- 16.162 Fox confirmed that he did not have contact with any other official of the Catholic Church in 2005 in relation to seeking information about McAlinden and the AE investigation; nor did he have cause to ask any official of the Catholic Church for documents about McAlinden or the AE investigation in 2005.³³⁵

2006 to 2007

- 16.163 Watters recollected speaking with Fox in passing when Fox said he was looking at things to do with the Catholic Church; he thought this was in 2006 to 2007.³³⁶ Watters said the conversation was about McAlinden because he (Watters) had not withdrawn the warrant after McAlinden's death, and Fox had said he was 'going to fix that up'.³³⁷ Fox also asked about the location of the brief envelope containing the original statements and documents because it could not be located in archives or at Maitland.³³⁸
- 16.164 Watters was asked whether he recalled the circumstances relating to the case report entry of 26 September 2007 made by Fox (as cited in para 16.159).³³⁹ Watters agreed that he and Fox might have spoken about the matters noted, but he did not have any independent recollection of it.³⁴⁰
- 16.165 The case history for the COPS case report on AE also included a chronology of actions, which showed that Fox had had some involvement in the AE investigation, at least in terms of having accessed the COPS case report, from 2007 to 2010 (see Figure 16.3).³⁴¹
- 16.166 In relation to Fox's entries in the case report, Watters explained that the report needed to be re-opened, as occurred on 26 September 2007, to allow comments to be entered and that it was common practice for another officer to comment on a case report begun by someone else.³⁴² As

³³⁰ COPS Report C 7532960, ex 200, p 1381.

³³¹ TOR 2, T124.12–47 (Fox).

³³² TOR 2, T126.23–30 (Fox).

³³³ TOR 2, T126.40–127.3 (Fox).

³³⁴ TOR 2, T127.41–128.8 (Fox).

³³⁵ TOR 2, T126.47–127.24 (Fox).

³³⁶ TOR 2, T68.46–69.4 (Watters).

³³⁷ TOR 2, T68.46–69.17 (Watters).

³³⁸ TOR 2, T69.10–17; T94.1–4 (Watters).

³³⁹ COPS Report C 7532960, ex 200, p 1381.

³⁴⁰ TOR 2, T67.9–12 (Watters).

³⁴¹ COPS Report C 7532960, ex 200.

³⁴² TOR 2, T66.2–31 (Watters).

to the meaning of the entry on 26 September 2007, 'Finalise case – Refused, Insp Peter Fox', Watters said, '... some further narratives might have been added to the case'.³⁴³

No records found for specified search criteria.

Case History

Date	Administrative Action	Status	By Person
08/02/2013	REOPEN CASE	AUTHORISED	SGT MATTHEW MORON
08/02/2013	TRANSFER IN CASE	UNALLOCATED	SGT MATTHEW MORON
08/02/2013	TRANSFER OUT CASE	AUTHORISED	SGT MATTHEW MORON
23/11/2010	FINALISE CASE	AUTHORISED	INSP PETER FOX
23/11/2010	ADD POLICE EMPLOYEE ROLE	AUTHORISED	INSP PETER FOX
23/11/2010	ADD POLICE EMPLOYEE ROLE	AUTHORISED	INSP PETER FOX
23/11/2010	REOPEN CASE	AUTHORISED	INSP PETER FOX
23/11/2010	TRANSFER ACCEPTED CASE	AUTHORISED	INSP PETER FOX
23/11/2010	TRANSFER OUT CASE	AUTHORISED	INSP PETER FOX
23/11/2010	REOPEN CASE	AUTHORISED	INSP PETER FOX
23/11/2010	TRANSFER ACCEPTED CASE	AUTHORISED	INSP PETER FOX
23/11/2010	TRANSFER OUT CASE	AUTHORISED	INSP PETER FOX
27/12/2007	FINALISE CASE	AUTHORISED	INSP PETER FOX
10/12/2007	COMMENT CASE	AUTHORISED	SGT CRAIG OLIVER
27/09/2007	COMMENT CASE	AUTHORISED	SGT CRAIG OLIVER
26/09/2007	FINALISE CASE	REFUSED	INSP PETER FOX
26/09/2007	INVESTIGATION COMPLETE CASE	AUTHORISED	INSP PETER FOX
26/09/2007	REOPEN CASE	AUTHORISED	INSP PETER FOX
26/09/2007	ADD POLICE EMPLOYEE ROLE	AUTHORISED	INSP PETER FOX
02/02/2000	SUSPEND CASE	AUTHORISED	INSP MARK WATTERS
13/10/1999	ADD POLICE EMPLOYEE ROLE	AUTHORISED	SENCON GRANT GARS
13/10/1999	LINK INITIATE EVENT	AUTHORISED	SENCON GRANT GARS

Figure 16.3 Extract from COPS case report C 7532960³⁴⁴

16.167 From the case report it would seem that, in addition to responding to McCarthy's queries and contacting Watters to discuss the outstanding warrant, Fox made an entry the same day (26 September 2007) about his conversation with AE's husband, BD. In the conversation Fox told BD that McAlinden had died; BD told him his wife was nearly deaf and suffered from Huntington's disease. He then said he was pleased to hear that McAlinden was dead and he would tell his wife, and it would be a form of closure to her.³⁴⁵ Fox went on to state in the case report:

Indicated that any mention of this matter still upset her as they had felt betrayed by the church & Bishop Malone over the years for not doing something about McAlinden earlier as they had now become aware of other persons close to them that had also been victim's [sic] of this priest. Declined to disclose who they were. Case now considered closed.³⁴⁶

2010

16.168 It is also apparent from the case report relating to AE that on 23 November 2010 Fox had a discussion with BD to the following effect:

This date spoke to BD who stated that his wife had originally taken her allegation to Bishop Leo Clarke [sic] when he was the Maitland Bishop (which would have been prior to late 1995) but for unknown reasons he had never referred her to police, but did refer to her to counselling with Sister Evelyn Woodward at Newcastle. BD indicated that they knew of other victims of Denis McAlinden and mentioned a family friend UR20 but declined to give her surname unless she wished to report the matters to police. He also wished to pass on that

³⁴³ TOR 2, T67.45–46 (Watters). Watters also explained that it was usual police practice to 'Add Police Employee Role' in the COPS system: this was necessary before an officer could add to the narrative, and it was quite proper to do so, TOR 2, T68.8–23.

³⁴⁴ COPS Report C 7532960, ex 200.

³⁴⁵ *ibid.*

³⁴⁶ *ibid.*

his wife had also spoken to other clergy at the time but none did anything regarding her allegations other than [sic] counselling.

BD stated he would be prepared to assist if police wished to inquire further regarding this aspect as the whole matter had caused considerable trauma and stress to his wife until she died in 2007. He did indicate that she appreciated being [sic] notified that McAlinden had died before her own death.³⁴⁷

- 16.169 At this time Fox was carrying out his own clandestine investigations (overlapping with those of Strike Force Lantle) in relation to possible concealment offences in the Diocese, something he had deliberately sought to keep secret from senior police in the New South Wales Police Force, for the reasons set out in Chapter 10.

Conclusions

- 16.170 Fox had a very limited role in the investigation of McAlinden from 1999 to 2000. His function was that of a supervising police officer who gave guidance to Watters about the general conduct and direction of the investigation – as he did in relation to all the matters Watters was then investigating. Fox's assertions that he was 'one of two original investigators into the McAlinden allegations in 1999' and that 'with Det Watters, I took out the warrant for his arrest in 1999 and spoke to the church to notify me upon his return',³⁴⁸ significantly overstate his involvement in the investigation.
- 16.171 Although there was some overlap in the information Watters and Fox received in late 2005 about McAlinden's whereabouts, it is clear that Watters was pursuing leads in relation to McAlinden as a function of Operation Peregrine, in his capacity as officer in charge of that investigation and subsequently reporting to his supervisor, Humphrey, in relation to the potential extradition of McAlinden. In contrast, on the basis of the COPS entries Fox made, although he (Fox) appears to have maintained an interest in the progress and status of the investigation, it could not be said that he had an investigative role.

Diocesan knowledge in relation to whereabouts of McAlinden

- 16.172 Davoren's notification of 24 August 1999 to the police included information relating to the whereabouts of McAlinden as then known – specifically, that he was 'in England, but expected to return to Australia shortly and reside 'somewhere in the Bunbury Region of WA'. His extended family is unable to give an address at this stage'.³⁴⁹
- 16.173 No explanation was offered by either the Diocese or NSW Police as to the apparent divergence between the reports made by the Diocese to police – Watters being told in October 1999 that McAlinden was in Ireland (see para 16.34), and Neaves recording a report by the Diocese in August 1999 that McAlinden was in England (see para 16.41).
- 16.174 There is otherwise no evidence before the Commission that the Diocese had actual knowledge of McAlinden's whereabouts between October 1999 and May 2002.
- 16.175 On 20 June 2002 Malone noted in a letter to AC, responding to her 'Statement of complaint' against McAlinden, that 'Fr McAlinden is no longer in the Diocese of Maitland-Newcastle, however, he is still alive and living in Western Australia'.³⁵⁰

³⁴⁷ *ibid.*

³⁴⁸ Email from Fox to McCarthy, dated 9 December 2013, ex 219, tab 500.

³⁴⁹ Child Sexual Abuse Information Dissemination form, ex 171.

³⁵⁰ Letter from Malone to AC, dated 20 June 2002, ex 219, tab 346.

- 16.176 In oral evidence Malone recalled having a conversation with Archbishop Hickey of Perth about the whereabouts of McAlinden at the Bishops' Conference in May 2002.³⁵¹ Malone said Hickey told him he would try to find out where McAlinden was and would consult with Bishop Quinn in Bunbury but that ultimately this was not successful.³⁵² Malone told the Commission the Diocese was trying to track McAlinden down so they could continue the process of laicisation against him, stating that 'by 2002, we had arrived at an awful level of frustration about trying to find the man'.³⁵³
- 16.177 By letter to Malone dated 28 June 2002, Hickey stated '... I regret that I have lost all trace of [McAlinden]'; Hickey concluded by stating 'If you want to find him, the police might help. I don't even know if he is still in Western Australia'.³⁵⁴ Malone told the Commission he could not recall having contacted the police and asking for assistance to try and locate McAlinden.³⁵⁵ He agreed there was nothing in the letter that provided any information about McAlinden being in Western Australia in a known location.³⁵⁶ In addition, Malone said he had 'no recollection at all of receiving any additional information' in relation to McAlinden's whereabouts between June and September 2002³⁵⁷ and, as to whether he knew things about where McAlinden was in September 2002, he said, 'I don't know that I knew'.³⁵⁸
- 16.178 Malone recalled that his personal assistant, Ms Elizabeth Doyle, told him in about July 2002 that a female police officer from Charlestown was seeking information about McAlinden's contact details (see para 17.28 for further details). Counsel assisting referred Malone to an email from Doyle to Davoren of the Professional Standards Office, dated 5 July 2002 and containing known contact details for McAlinden in the form of a relative's address in New South Wales and an alternative address in England, on which handwritten notes recorded that the information had been provided to Detective Senior Constable Flipo on 26 September 2002.³⁵⁹ Malone said he could not recall instructing Doyle to tell Flipo anything about McAlinden being thought to be living in Western Australia in June 2002.³⁶⁰
- 16.179 As noted in paragraph 17.37, on 28 October 2002 Flipo contacted UR18, a relative of McAlinden, who was unable to provide further information as to McAlinden's current whereabouts.
- 16.180 Documents in evidence otherwise suggest that the Diocese was unaware of McAlinden's whereabouts in March 2003 and September 2004 and remained unaware of his location until October 2005,³⁶¹ when Keevers advised NSW Police that McAlinden was suffering from terminal cancer and could be found at an address in Subiaco, Western Australia. As noted in para 16.63, NSW Police were already aware of McAlinden's whereabouts at that time as a result of Operation Peregrine.

³⁵¹ TOR 2, T987.23–32 (Malone).

³⁵² TOR 2, T987.35–38 (Malone).

³⁵³ TOR 2, T992.32–37 (Malone).

³⁵⁴ Letter from Hickey to Malone, dated 28 June 2002, ex 219, tab 352.

³⁵⁵ TOR 2, T988.40–989.43 (Malone).

³⁵⁶ TOR 2, T4.29–33 (Malone in camera, 31 January 2014).

³⁵⁷ TOR 2, T4.35–40 (Malone in camera, 31 January 2014).

³⁵⁸ TOR 2, T5.6–10 (Malone in camera, 31 January 2014).

³⁵⁹ TOR 2, T982.22–93.18 (Malone).

³⁶⁰ TOR 2, T988.14–27 (Malone).

³⁶¹ Child Sexual Abuse Information Dissemination form, ex 171; working with children check form 8, dated 30 September 2004, ex 219, tab 444; entry created on 28 October 2005 by Fox on NSW Police Force COPS report E 8026529.

Detective Inspector Watters' view about the cooperation of church officials

The Diocese

16.181 Watters' evidence in relation to the cooperation (or otherwise) afforded him by officials of the Catholic Church included the following account of his interactions with the Diocese in 1999:

Well, during my telephone calls in 1999, yes, they offered information and it wasn't like I [they] said, 'No, I'm sorry, we can't give you any information' and that's – as a result I sent that – the letter through and faxed things through.

In those early days, though, it was fairly cursory, sort of – like, at a lower level, my inquiries. I wasn't actually going to the chancery knocking on the doors asking for documents; it was more I was focused on McAlinden at that stage. But any conversation I had with them, I found them helpful and it wasn't like a wall put up saying, 'Oh, no, we can't tell you anything' or 'It's not our protocol', they spoke to me quite freely.³⁶²

16.182 Watters told the Commission that during his inquiries with O'Hearn and others from the Church he found the assistance provided to be open and helpful.³⁶³

16.183 As a serving police officer, he also agreed that advertisements of the kind that led AE to report McAlinden to the Church in 1999 were a good thing in terms of encouraging people to report sexual abuse to the police. He considered it was very helpful.³⁶⁴

16.184 Notwithstanding this, Watters gave evidence that he never received information from the Diocese telling him when McAlinden was expected back in the country and nor did he receive any updated address for McAlinden (excluding the matter reported by Keevers to Fox in 2005).³⁶⁵ Watters said that from the date his investigation began in late 1999 there were no records on the police computer system of anyone at the Diocese communicating a concern about McAlinden to the police.³⁶⁶ The Commission notes, however, its finding in paragraph 16.42 in relation to the notification Davoren sent to NSW Police on or around 24 August 1999 in connection with McAlinden; this information was then entered on to the COPS database as an information report containing certain intelligence about McAlinden (including that he was in England and believed likely to return to Western Australia) on 18 November 1999.

The Professional Standards Office

16.185 Watters spoke in complimentary terms about his interaction with the Professional Standards Office, describing his dealings with the office as 'great' and noting the quantum leap with police technology and the email system by 2005, whereby documents could be obtained instantaneously compared with 1999, when this was not the case.³⁶⁷ Watters said the PSO was helpful and forthcoming, providing documents and contact details.³⁶⁸ This was how he had found out about AC, AK and AL.³⁶⁹ Watters said, however, that had the PSO advised him of the

³⁶² TOR 2, T69.19–39 (Watters).

³⁶³ TOR 2, T77.3–11 (Watters).

³⁶⁴ TOR 2, T29.25–32 (Watters).

³⁶⁵ TOR 2, T70.16–26; T98.34–35 (Watters).

³⁶⁶ TOR 2, T96.27–34 (Watters).

³⁶⁷ TOR 2, T70.1–5 (Watters).

³⁶⁸ TOR 2, T53.27–35; T55.11–14 (Watters).

³⁶⁹ TOR 2, T82.29–39 (Watters).

additional victims earlier than 2005 he would have been able to use that information earlier in his investigations.³⁷⁰

- 16.186 The Commission places no weight on this latter evidence: it is clear the PSO did in fact report to NSW Police in relation to McAlinden in August 1999, as described earlier.

Limitations of the police investigation

- 16.187 In determining the precise ambit of the evolving Watters investigation, it is necessary to note certain limitations of the investigation. In doing so, the Commission is conscious that its second term of reference focuses attention more squarely on the conduct of church officials (as defined) rather than that of police. It is, however, a required step in the process of determining what comprised the relevant police investigation (including at any particular time) to note the parameters of the investigation (including any relevant limitations) because, among other things, this affects the manner in which cooperation, at any specific time, is to be properly assessed.
- 16.188 The Watters investigation was subject to a number of limitations that warrant note. It appears it was not until 2005 that Watters took steps to follow up the information the Diocese provided in 1999 about ‘other alleged incidents’ associated with McAlinden. In this regard, Watters’ evidence was to the effect that there is a nexus between the number of victims of a perpetrator and the efforts and resources directed to determining the perpetrator’s location.³⁷¹ Statements from any other victims (such as could be obtained) relating to the ‘other alleged incidents’ would have been of assistance in obtaining the resources necessary to locate McAlinden. Assuming they were potentially available, such statements could also have provided important material for initiating a criminal process against McAlinden at a time (in 2000) when AE had retracted her statement. It is also conceivable that AE might have taken a more positive approach to the criminal process had there been further supporting evidence from other victims. If obtained, such statements also had the potential to assist with the interstate extradition application that Watters prepared in 2005 (as referred to in his evidence – see para 16.84).
- 16.189 Given his approach to deferring investigation of the ‘other alleged incidents’ relating to McAlinden, the Commission does not accept Watters’ evidence that he would have taken a different course with the investigation in 2002 if he had been apprised of the information relating to AC at that time.
- 16.190 Neither Watters nor any other officer took comprehensive steps to set in train the procedure for enacting a PASS alert in 1999 and to follow up whether or not it had in fact been activated. In addition, the PASS alert request Watters lodged contained erroneous information: it incorrectly stated McAlinden’s date of birth. In circumstances where the PASS alert had not been activated, McAlinden entered and left the country on three occasions between 1999 and 2005.
- 16.191 Police did not take steps to follow up the Centrelink request for an address for McAlinden in 1999, notwithstanding Watters’ evidence that Centrelink was the best source of such information. It was in fact through Centrelink that Operation Peregrine obtained the information about McAlinden’s address that ultimately led to him being located in 2005.
- 16.192 It is not possible to say whether there would have been a different outcome had these matters been pursued. Perhaps all that can be said is that there might have been an increased prospect of McAlinden’s whereabouts having been determined earlier by police if matters had been pursued differently.

³⁷⁰ TOR 2, T70.7–14 (Watters).

³⁷¹ TOR 2, T84.40–47 (Watters).

The cooperation of church officials

Bishop Malone's evidence

16.193 In connection with his policy on cooperation with the police and the provision of information to them, Bishop Malone told the Commission:

... my practice with the police has been, you know, open house really. They didn't really have to bring a warrant to look at files, and so on, after we'd got into the swing of handling these things a lot better. I would not have wanted to have thwarted any police investigation at all, either in the days when I was wrestling with the scandal situation touching the church or subsequently.³⁷²

16.194 Malone agreed with counsel assisting that there is a difference between thwarting a police investigation and assisting it but said that 'in latter years'³⁷³ he had always assisted police investigations, adding 'I would not have deliberately denied access by the police to documents' or 'deliberately stymied any investigation'.³⁷⁴

Conclusions

16.195 On or about 24 August 1999 Davoren of the Professional Standards Office caused a notification to be made (on behalf of Malone) to the New South Wales Police Force regarding intelligence relating to McAlinden. It included reference to McAlinden then being located in England and stated that he was expected to return to Australia shortly and reside in Bunbury, Western Australia. This notification formed the basis of an information report on the NSW Police COPS database system on 18 November 1999. This was a form of cooperation with police, and would have been likely to facilitate or assist the police investigation of McAlinden conducted by Watters – had he been aware of it. In fact, it was not until 2005 that Watters accessed this particular information report and thus became aware of that potentially significant information.

16.196 There is no evidence showing that the Diocese or any official associated with it knew of McAlinden's specific whereabouts from 8 October 1999 until shortly before his death in Western Australia in November 2005.

16.197 When Keevers received information about McAlinden's location in 2005, she promptly contacted the police (Fox). Malone was reportedly pleased that the information had been conveyed. That was an instance of cooperation with police, even though Watters had already established McAlinden's location independently of the information from Keevers.

16.198 The Commission accepts Watters' evidence that in late 1999 the Diocese was forthcoming in relation to his requests for information. In fact, he was given an indication about the prospect of more complainants – something that was not followed up until he communicated with the Professional Standards Office in 2005. The notification Davoren sent on 24 August 1999 to NSW Police detailing intelligence on McAlinden also provided information that might have been of assistance to Watters in 1999 had he found the information report dated 18 November 1999 on the COPS database.

16.199 The Commission is also satisfied that the Professional Standards Office was forthcoming and cooperative in providing the notification to NSW Police in August 1999 (on behalf of Malone) and also in its dealings with Watters: it sought to provide to him as much information as was available when contact was ultimately made in 2005.

³⁷² TOR 2, T1010.12–18 (Malone).

³⁷³ TOR 2, T1010.27 (Malone).

³⁷⁴ TOR 2, T1010.37–38; T1010.41 (Malone).

- 16.200 With the exception of the intelligence provided in Davoren's notification of 24 August 1999, however, the Diocese at no time volunteered to provide the biographical or documentary material that was available in the holdings of the Bishop's Chancery, despite being aware from Watters' October 1999 letter that police were pursuing McAlinden for sexual abuse offences.
- 16.201 As to Bishop Clarke's conversation with Fox in 2003, the Commission finds that Clarke misled police (Fox) by stating that he did not know of further victims of McAlinden. By 2003 Clarke had direct knowledge of allegations and incidents from at least 1976. He had information that would have been of material interest to police, and his failure to provide that information was a failure to facilitate or assist the police investigation of McAlinden.

17 The Flipo police investigation

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Background and experience of Detective Senior Constable Flipo

- 17.1 Detective Senior Constable Jacqueline Flipo has been an officer in the New South Wales Police Force since 1991.¹ She performed general duties for two years and then spent 18 months in the Special Operations Group. After that she moved to general and plain-clothes duties, during which time she investigated sexual assaults, among other things.²
- 17.2 Flipo was designated a detective in 2001 and transferred to Lake Macquarie Local Area Command. While in that command she carried out various investigations into sexual assaults of a historical nature – that is, involving adult complainants who report offences that occurred when they were children.³

Investigating the claims of AF

- 17.3 In about July 2001 Flipo received the complaint of a victim of Father Denis McAlinden allocated the pseudonym AF. The matter came to Lake Macquarie Local Area Command by way of hard-copy documentation, being the victim statement of AF,⁴ which was forwarded by an officer at Paddington police station.⁵ In addition to making allegations against another offender, UR3, AF reported that McAlinden, who was a friend of her mother, sexually abused her from 1978 on multiple occasions, when she was aged 8 or 9 years until she was 11.

¹ TOR 2, T716.40–44 (Flipo); statement of Flipo, dated 16 May 2013, ex 83, para 3.

² TOR 2, T716.47–717.15 (Flipo); statement of Flipo, dated 16 May 2013, ex 83, para 3.

³ TOR 2, T717.17–27 (Flipo).

⁴ NSW Police statement of AF, dated 13 July 2001, ex 219, tab 334. In addition to allegations of sexual abuse against McAlinden, AF also made allegations against UR3, which are not relevant for the purposes of this Commission.

⁵ TOR 2, T718.31–36; T719.2–11; T719.33–47; T718.44–47 (Flipo); statement of Flipo, dated 16 May 2013, ex 83, para 5.

- 17.4 Having received the documentation, Flipo was responsible for investigating AF's complaints.⁶ This included contacting AF and making inquiries about McAlinden's whereabouts once Flipo was satisfied there was a sufficient basis for doing so.⁷
- 17.5 In her efforts to determine McAlinden's location Flipo looked into the police computerised system, the COPS system,⁸ but her inquiries were fruitless because of the dearth of information recorded as to his current whereabouts.⁹
- 17.6 Officers from Surry Hills had entered a COPS event report (E 11302712)¹⁰ in the COPS database in relation to AF's complaint before Flipo became involved. Flipo made no entries in that event report.¹¹
- 17.7 Apart from this COPS event report, Flipo was unaware of previous complaints or case reports about McAlinden.¹² It appears she was also unaware of an information report (I 7885027) entered on 18 November 1999 by officer Belinda Neaves (based on a notification by Mr John Davoren of the Professional Standards Office on 24 August 1999) with respect to certain intelligence relating to McAlinden.
- 17.8 Flipo gave evidence that she would have searched the COPS system for the name 'Denis McAlinden'.¹³ Asked whether previous reports of McAlinden sexually abusing a child (AE) in 1999 – as per Detective Inspector Mark Watters' COPS entry¹⁴ (see para 16.14) – would have been revealed by the searches she conducted in 2001, Flipo agreed that an official report or event report would have been revealed.¹⁵ Notwithstanding this, it appears that Flipo did not see Watters' COPS entry for AE at that time or, indeed, at any time during her investigation of McAlinden.¹⁶ Flipo could not provide a reason for the information on AE's matter failing to come to her attention when she searched the police system shortly after receiving the AF file – unless there was an incorrect spelling of McAlinden's name, which did not appear to be the case on the evidence before the Commission.¹⁷ Flipo agreed that using the offender's name should have allowed her to find the information she was seeking on the police system.¹⁸
- 17.9 In her initial evidence before the Commission Flipo did not accept the relevance to her investigation of a case report on another complainant (such as AE) in relation to the same suspect.¹⁹ She ultimately accepted, however, that the information in such a case report would be helpful in terms of looking at the alleged offender's modus operandi and for corroboration or for tendency and coincidence-type evidence.²⁰

⁶ Statement of Flipo, dated 16 May 2013, ex 83, para 5.

⁷ *ibid.*

⁸ TOR 2, T720.14–26 (Flipo).

⁹ TOR 2, T720.2–6; T720.14–18 (Flipo); statement of Flipo, dated 16 May 2013, ex 83, para 6.

¹⁰ As explained by Watters, the 'starting point for all reports to police is a COPS event, an event report ... if you're going to carry out ... further investigations, a case is created within the COPS event. So the case is where you can put a lot more information and it's a bit of a closed system that other police don't have access to': TOR 2, T43.14–19 (Watters).

¹¹ TOR 2, T718.4–29 (Flipo); NSW Police COPS Event Report E 11302712, dated 17 January 2001, annexure A to ex 83. Note: Flipo's name appears on the final page of the report because she accessed and printed it.

¹² TOR 2, T721.21–27 (Flipo).

¹³ TOR 2, T720.20–28 (Flipo).

¹⁴ NSW Police COPS Event Report E 8026529, dated 8 October 1999, annexure D to ex 47.

¹⁵ TOR 2, T720.36–44; T720.46–721.12 (Flipo).

¹⁶ TOR 2, T722.16–17; T728.11–15 (Flipo).

¹⁷ TOR 2, T722.24–30 (Flipo).

¹⁸ TOR 2, T723.2–3 (Flipo).

¹⁹ TOR 2, T726.16–47 (Flipo).

²⁰ TOR 2, T727.42–728.3 (Flipo).

- 17.10 Officers in the Rose Bay Local Area Command created a case report in the COPS system apparently in about July 2001 (C 12089827).²¹ Flipo did not make any notations in the case report until 28 October 2002.²²

August to September 2002: inquiries about McAlinden's whereabouts

- 17.11 In about late August 2002 Flipo searched the COPS database in an effort to determine McAlinden's current whereabouts.²³ She did this by means of an automatically generated police inquiry known as a 'person enquiry'.²⁴ Although a 'person enquiry' would not usually provide details of any other active police investigations into the person in question, Flipo explained, '... looking at that, if you went into what events were on their intelligence, you had access to that information'.²⁵
- 17.12 She also explained the concept of a CNI number:
- That's essentially the criminal index number. That's basically every person. Going back in time it was the number given to you when you were arrested, whatever; but these days even victims have a CNI number, so just persons of interest, basically.²⁶
- 17.13 In August 2002 the CNI number for McAlinden related to the AF investigation.²⁷ Asked whether there was anything that could alert a police officer to the fact that the CNI number related to another investigation, Flipo said, 'Yes ... if they've been recorded as a suspect or a person of interest under another investigation under that same CNI number, that will come up'.²⁸ She explained that putting the CNI number in for the particular person (in this instance, McAlinden, who was allocated the CNI number 698137577²⁹) should have thrown up other investigations, including historical ones that were closed or suspended – such as Watters' investigation of 1999 (see Chapter 16).³⁰ Flipo also confirmed that the 1999 investigation would have been on the COPS system at that time, regardless of whether the investigation had been suspended.³¹
- 17.14 The COPS document generated by Flipo's 'Enquire Person' search on 29 August 2002 in fact made reference at items, D and E respectively, to Watters' case report (C 7532960) and event report (E 8026529) relating to AE's allegations against McAlinden (see Figure 17.1).
- 17.15 Flipo agreed that if she had looked at the references brought up by this Enquire Person search she would have become aware of the various materials noted there such as Watters' 1999 event report.³² She also agreed that the police system appeared to have worked in that it directed her to that event report.³³ Flipo could not recall whether she 'went through' the event report, but the normal procedure would be to do so.³⁴ The evidence suggests that Flipo did not review the entry relating to Watters' event report about AE (E 8026529) or indeed the case report (C 7532960), which would probably opened up a range of further lines of inquiry for her investigation of McAlinden.

²¹ NSW Police COPS Case Report C 12089827, dated 31 October 2002, annexure B to ex 83.

²² TOR 2, T720.2–6 (Flipo); TOR 2, T728.17–29 (Flipo); statement of Flipo, dated 16 May 2013, ex 83, para 7. Flipo's notations appear on the left-hand side of the document in annexure B to ex 83.

²³ TOR 2, T728.36–44 (Flipo); statement of Flipo, dated 16 May 2013, ex 83, para 8.

²⁴ TOR 2, T728.46–729.1 (Flipo); NSW Police COPS enquiries by Flipo re McAlinden and UR3, dated 29 August 2002, annexure C to ex 83.

²⁵ TOR 2, T729.7–9 (Flipo).

²⁶ TOR 2, T729.14–18 (Flipo).

²⁷ TOR 2, T729.20–23 (Flipo).

²⁸ TOR 2, T729.36–38 (Flipo).

²⁹ COPS enquiries by Flipo re McAlinden and UR 3, annexure C to ex 83.

³⁰ TOR 2, T729.40–730.5 (Flipo).

³¹ TOR 2, T730.11–22 (Flipo).

³² TOR 2, T769.27–34; T770.24–39 (Flipo).

³³ TOR 2, T769.36–43 (Flipo).

³⁴ TOR 2, T769.36–43; T770.37–39 (Flipo).

```

NSW POLICE      PRD      COPS      29/08/2002 11:34
NSWP:FLIPO_JACQUELINE      List Contact Addresses      M94CAT09:OAAA
-----
CNI Number : 698137577
Name       : MCALINDEN, DENIS

Sel Location      Loc. Date      Reference No.
-----
A WHEREABOUTS UNKNOWN, AUSTRALIA, GARDEN SUBURB 12/03/2001 I- 25303696
B GARDEN SUBURB, NSW, 2289 02/04/2000 WARRANTS
C REDACTED GARDEN SUBURB, NSW, 2289 18/11/1999 I 7885027
D REDACTED GARDEN SUBURB, NSW, 2289 24/10/1999 C 7532960
E REDACTED GARDEN SUBURB, NSW, 2289 08/10/1999 E 8026529
***** End of List *****

```

Figure 17.1 Extract from COPS Enquire Person search conducted by Flipo on 29 August 2002³⁵

17.16 It is also notable that the COPS Enquire Person search referred to the information report (I 7885027) dated 18 November 1999 (as further detailed in Chapter 16), which was based on information provided by the Professional Standards Office on 24 August 1999. The evidence does not disclose that Flipo sought access to this particular information report, or acted on its contents.

Interaction with the bishop's secretary

17.17 At some time after 29 August 2002 Flipo had a telephone conversation with a person from Maitland–Newcastle Diocese, 'Elizabeth', in relation to McAlinden's whereabouts. Flipo's handwritten notations on the printout of the COPS Enquire Person document are shown in Figure 17.2.³⁶

17.18 Flipo could not recall the surname of the 'Elizabeth' she spoke to, but it is evident that she spoke to Ms Elizabeth Doyle, and she recalled that 'she was the secretary of Bishop Malone at the time'.³⁷ The reference in her note to 'O/S Address of relative' apparently indicated that Flipo had in fact been given an overseas address for a relative (as confirmed by her entry in the COPS case report).³⁸

17.19 The notation 'Field Services' was a reference to Flipo seeking the assistance of that police unit in trying to locate McAlinden because he was overseas (as further discussed in paras 17.31 to 17.40).³⁹

17.20 In view of the information the bishop's secretary had provided, Flipo thought there was a possibility that McAlinden might have been overseas recently.⁴⁰ From what she could recall, she believed Doyle was trying to assist her with her inquiries because of Doyle's tone and her forthcoming nature in relation to the information she provided.⁴¹ Flipo expected that the bishop's secretary would contact her if the Diocese had further information to offer.⁴²

17.21 Flipo made a note about her interaction with Doyle in the case report on 24 September 2002 (see Figure 17.3).⁴³

³⁵ COPS enquiries by Flipo re McAlinden and UR 3, annexure C to ex 83.

³⁶ *ibid.*

³⁷ TOR 2, T730.47–731.10 (Flipo); TOR 2, T1944.33–46 (Doyle); statement of Doyle, dated 2 July 2013, ex 167, paras 9–16.

³⁸ TOR 2, T731.17–25 (Flipo).

³⁹ TOR 2, T731.27–34 (Flipo).

⁴⁰ TOR 2, T732.37–41 (Flipo).

⁴¹ TOR 2, T735.43–736.2 (Flipo).

⁴² TOR 2, T736.4–9 (Flipo).

⁴³ COPS report C 12089827, annexure B to ex 83.

~~Don't know~~
 Hasn't been N'cle / Maitland for 10 yrs
 Diocese for some time
 Not sure where he is

 Elizabeth - Maitland Diocese.

 o/s. Address of relative.

 Field Services

THIS IS THE ANNEXURE MARKED " C " ANNEXED TO STATEMENT OF JACQUELINE LEONIE FLIPO SIGNED THIS DAY OF

Figure 17.2 Handwritten note on printout of COPS Enquire Person search conducted by Flipo on 29 August 2002⁴⁴

Action Title	: CONTACT CATHOLIC DIOCESE RE LOCATION OF MCLINDEN
Action Type	: POI ACTION
Action Description	: SPOKE TO BISHOP'S SECRETARY, ELIZABETH. POI HASN'T BEEN IN THE DIOCESE FOR A NUMBER OF YEARS (10). LAST ADDRESS KNOWN TO THEM WAS THROUGH C/-A RELATIVE'S ADDRESS IN LONDON. WILL SPEAK TO THE BISHOP TO CLARIFY IF ANY FURTHER RECORDS KEPT.
Created By	: DET JACQUELINE FLIPO - LAKE MACQUARIE
Date/Time Created	: 24/09/2002 15:30 COMPLETE

Figure 17.3 Extract from case report C 12089827, dated 24 September 2002⁴⁵

17.22 Flipo initially told the Commission she did not think the Diocese made any further phone calls to her,⁴⁶ and that had the bishop's secretary called her back offering more information or assistance in relation to McAlinden's location she would have made a record of it.⁴⁷ She was also unable to remember whether she made other inquiries of Doyle in connection with McAlinden's whereabouts.⁴⁸ After further examination, however, and having been shown handwritten notations from Doyle dated 26 September 2002 – which refer to the addresses of UR18 and UR48 being 'info adv[ised] to Jacki Flipo, Charlestown Detectives (494209915) 26/9/02'⁴⁹ – she agreed it appeared that Doyle had contacted her two days after the telephone call referred to in the case report entry of 24 September 2002 and provided the two addresses (those of UR18 and

⁴⁴ *ibid.* The text of the note is as follows: '~~don't know~~ Hasn't been N'cle/Maitland for 10 yrs / Diocese for some time / Not sure where he is / Elizabeth – Maitland Diocese / o/s address of relative / Field Services'.

⁴⁵ *ibid.*

⁴⁶ TOR 2, T733.35–44 (Flipo).

⁴⁷ TOR 2, T733.46–734.2 (Flipo).

⁴⁸ Statement of Flipo, dated 16 May 2013, ex 83, para 8.

⁴⁹ Email from Doyle to Davoren (with handwritten notations), dated 5 July 2002, ex 170.

UR48), ostensibly with a view to helping her with the investigation into McAlinden.⁵⁰ Flipo agreed that this information was in fact of assistance in her inquiries about McAlinden's whereabouts.⁵¹

- 17.23 Flipo said that at that time she was putting 'a fair bit of effort' into trying to find McAlinden.⁵² Unaware of the Professional Standards Office as a potential resource at the time of her investigations, she went straight to the Diocese, expecting Diocesan personnel would provide the assistance she required.⁵³ She was also unaware of the existence of a joint memorandum of understanding between the New South Wales Police Force and the Catholic Church in relation to the investigation of child sexual assault. She gave evidence that, had she been aware of these other 'internal processes', she would have made follow-up inquiries.⁵⁴

Ms Doyle's evidence

- 17.24 Doyle confirmed that, although she had not received any instructions about cooperation with police during Bishop Leo Clarke's episcopate, Bishop Michael Malone told her she was to assist police with whatever they asked for.⁵⁵ She was 'pretty sure' Malone said this some time after the arrest of Father Vincent Ryan in 1995.⁵⁶
- 17.25 In connection with Flipo's annotations on the COPS Enquire Person printout,⁵⁷ Doyle did not have an independent recollection of speaking with Flipo but accepted that the 'Elizabeth' referred to in the note was likely to be her. Although Doyle recalled speaking to different police over time, she said most of them would ask to speak to the bishop or, in the bishop's absence, the vicar general.⁵⁸ If neither the bishop nor the vicar general was available, Doyle said she would offer to have the church official call the person back, and so she told the Commission she was 'kind of surprised' by Flipo's note.⁵⁹
- 17.26 Doyle accepted, however, that a handwritten notation of hers on a contemporaneous email of 5 July 2002 showed she provided to Flipo two addresses relating to McAlinden. That email, to Mr John Davoren, (then the director of the Professional Standards Office), provided information about McAlinden, including his date of birth and a couple of addresses.⁶⁰ Doyle agreed that the notation 'This info adv to Jackie Flipo, Charlestown Detectives' made sense of the earlier note Flipo had made on the COPS document.⁶¹ Doyle said she would not have made the annotation had she not provided the two addresses to Flipo.⁶²
- 17.27 Doyle initially gave evidence that she probably would not have considered herself to be under a continuing obligation to contact the police if she had uncovered more information about McAlinden's whereabouts, and she did not have a system for keeping track of Flipo's details or those of any other police in the chancery records – other than in McAlinden's own file.⁶³ Doyle

⁵⁰ TOR 2, T759.15–28; T761.41–46; T762.1–3 (Flipo).

⁵¹ TOR 2, T759.30–34; T762.1–3 (Flipo).

⁵² TOR 2, T734.4–9 (Flipo).

⁵³ TOR 2, T742.30–743.2 (Flipo).

⁵⁴ TOR 2, T764.44–765.9 (Flipo).

⁵⁵ TOR 2, T1956.1–29 (Doyle).

⁵⁶ TOR 2, T1957.21–32 (Doyle).

⁵⁷ COPS enquiries by Flipo re McAlinden and UR 3, annexure C to ex 83.

⁵⁸ TOR 2, T1958.19–47 (Doyle).

⁵⁹ TOR 2, T1959.1–4 (Doyle).

⁶⁰ Email from Davoren to Malone, dated 4 March 2003, ex 216, tab 27 p 98.

⁶¹ TOR 2, T1965.18–31 (Doyle) in relation to COPS enquiries by Flipo re McAlinden and UR 3, annexure C to ex 83.

⁶² TOR 2, T1965.33–38 (Doyle).

⁶³ TOR 2, T1966.3–16 (Doyle).

later clarified, however, that if police had asked her to provide information about McAlinden's current whereabouts she would have done so.⁶⁴

Bishop Malone's knowledge of McAlinden's whereabouts: 2002

- 17.28 As discussed in Chapter 16, in August 1999 Malone (through the Professional Standards Office) notified police of McAlinden's whereabouts as then known to the Diocese, advising that McAlinden was in England but was expected to return to Western Australia and reside in Bunbury.⁶⁵ There is otherwise no evidence before the Commission that the Diocese had actual knowledge of McAlinden's precise whereabouts between October 1999 and May 2002.
- 17.29 Correspondence in June 2002 suggested that Malone understood McAlinden was in Western Australia but was subsequently advised by Archbishop Hickey of Perth that 'all trace' of McAlinden had been lost and it was not known whether he was still in Western Australia.⁶⁶ Malone gave evidence that he had 'no recollection at all of receiving any additional information' in relation to McAlinden's whereabouts between June and September 2002.⁶⁷
- 17.30 As noted in Chapter 16, the evidence otherwise indicates that the Diocese was unaware of McAlinden's whereabouts until October 2005,⁶⁸ when Ms Helen Keevers of the Diocesan Child Protection Unit advised NSW Police that McAlinden was suffering from terminal cancer and could be found at an address in Subiaco, Western Australia.

Investigations through Field Services

- 17.31 Flipo explained the role of Field Services in the NSW Police Force, particularly in terms of locating alleged offenders:
- In that time basically Field Services were used to obtain information from external agencies, so numerous things, whether it's, you know, Department of Birth, Deaths and Marriages registry, things like passport checks or – you had access to a whole range of things, whether it was – what are they called? Like, electricity, all that sort of thing. You had access to a lot of different information services.⁶⁹
- 17.32 Through Field Services it was also possible to gain access to information from Centrelink, the Australian Taxation Office and Medicare and to obtain from the Department of Immigration information about whether a person was in Australia or had recently left.⁷⁰
- 17.33 On 26 September 2002 Flipo sent a request to Field Services⁷¹ for inquiries to be made with the Registry of Birth, Deaths and Marriages about the possible death of McAlinden (in view of his birth date, 1923). She received confirmation that he was not recorded as having died.⁷²
- 17.34 On 8 October 2002 Flipo also made inquiries through Field Services to the Department of Immigration, seeking information about McAlinden's arrivals in and departures from Australia.⁷³

⁶⁴ TOR 2, T1969.35–40 (Doyle).

⁶⁵ Child Sexual Abuse Information Dissemination to NSW Police Service Child Protection Enforcement Agency form, dated 24 August 1999, ex 171.

⁶⁶ Letter from Hickey to Malone, dated 28 June 2002, ex 219, tab 352.

⁶⁷ TOR 2, T4.35–40 (Malone in camera, 31 January 2014).

⁶⁸ Child Sexual Abuse Information Dissemination to NSW Police Child Protection Enforcement Agency form, dated 4 March 2003, ex 100, tab 444; working with children relevant employment proceedings notification form, dated 30 September 2004, ex 219, pp 1171–1172; COPS report E 8026529, annexure D to ex 47.

⁶⁹ TOR 2, T732.10–17 (Flipo).

⁷⁰ TOR 2, T732.19–35 (Flipo).

⁷¹ Fax message from Flipo to Commander of Field Services re inquiries to be made with the Registry of Births, Deaths and Marriages regarding the possible death of McAlinden, dated 26 September 2002, annexure D to ex 83.

⁷² TOR 2, T734.11–36; T734.38–735.9 (Flipo).

The response revealed that McAlinden had most recently arrived in Australia on 13 July 2002.⁷⁴ As the 31 December 2002 entry in her case report shows (extracted at Figure 17.5 below), Flipo also learnt that he was living between Western Australia and Ireland.⁷⁵

17.35 In October 2002, having received confirmation that McAlinden was currently in Australia,⁷⁶ Flipo did not ask Field Services to conduct further searches of Medicare, Centrelink or the Australian Taxation Office to see if they had an address for him.⁷⁷ She agreed that inquiries could also have been made of Telstra in order to obtain a current address for a person in Australia, but that was not something she recalled considering at the time.⁷⁸

17.36 On 28 October 2002, almost a month after the conversation with Doyle, Flipo made an entry in the COPS case report:

... numerous enquiries have been made to contact the POI McAlinden including the attendance of police at [UR18]'s address. [UR18] is unaware of his whereabouts and believed that ... McAlinden was still residing in Ireland. He has no fixed place of abode in either Australia or Ireland. He tends to rent homes in Western Australia and stays with friends or at B & B's in South Ireland.⁷⁹

17.37 Handwritten notes that Flipo made in her police notebook about the visit to McAlinden's relative (known to the Commission as UR18) on 28 October 2002 state:⁸⁰

Last spoke to Denis in May/June 2002.
Stays in bed/[breakfast] – mainly Sth of Ireland
Retired 10 years ago
Lives in WA – Has done for the past 7 years.
PO 7039
Safety Bay – WA, 6169
Last place he was before going to Ireland
1st went to Albany.⁸¹

17.38 A further entry in the COPS case report noted that during that visit police left contact details so that the relative could advise them if contacted by McAlinden.⁸²

17.39 Flipo initially did not believe that she contacted police in Safety Bay or made any inquiries in Western Australia after 28 October 2002 to see what she could find out about McAlinden's whereabouts.⁸³ She gave evidence that NSW Police had access to other states' criminal histories 'through the intelligence section in other police'.⁸⁴ She could not recall whether she conducted searches for information through the channels available between NSW Police and police in other

⁷³ Department of Immigration and Multicultural and Indigenous Affairs response by Armstrong to request for information in relation to McAlinden by Commander of Field Services, dated 8 October 2002, annexure E to ex 83.

⁷⁴ TOR 2, T735.16–19 (Flipo).

⁷⁵ TOR 2, T735.25–33 (Flipo).

⁷⁶ COPS report C 12089827, annexure B to ex 83.

⁷⁷ TOR 2, T736.21–26 (Flipo).

⁷⁸ TOR 2, T737.45–738.4 (Flipo).

⁷⁹ COPS report C 12089827, annexure B to ex 83.

⁸⁰ TOR 2, T738.6–16 (Flipo).

⁸¹ NSW Police notebook entry by Flipo re McAlinden, dated 28 October 2002, annexure G to ex 83; see also TOR 2, T738.20–739.25 (Flipo) as to Flipo's interpretation of her notes.

⁸² COPS report C 12089827, annexure B to ex 83.

⁸³ TOR 2, T739.1–4 (Flipo).

⁸⁴ TOR 2, T723.5–12 (Flipo).

jurisdictions in Australia⁸⁵ but agreed that if she had done so and if it had been relevant to the investigation she would probably have recorded it.⁸⁶

- 17.40 Flipo later gave evidence that she thought she had in fact made calls to Western Australia in order to ascertain McAlinden's whereabouts, but she could not remember how many calls. She also said this had been done through the NSW Police Intelligence Section.⁸⁷ An entry in the COPS case report on 31 October 2002 confirms that such inquiries were in fact made (see Figure 17.4).

```
Action Title      : ENOS. INTELL RE WA POLICE RECORDS RE POI LOCATON
Action Type       : POI ACTION
Action Description : DONE BY SGT MCSPADDEN, NO CURRENT RECORDS.
Created By        : DET JACQUELINE FLIPO - LAKE MACQUARIE
Date/Time Created : 31/10/2002 12:09
Completed By      : DET JACQUELINE FLIPO - 31/10/2002          COMPLETE
```

Figure 17.4 Extract from COPS case report C 12089827, dated 31 October 2002⁸⁸

- 17.41 On 31 December 2002 Flipo summarised in the case report further inquiries she had been making in her efforts to find McAlinden (see Figure 17.5).⁸⁹

```
Case Narr : Enquiries have been made with the family of POI 1 C 12089827
Disk J. Flipo at UR3 which confirmed he is deceased as
31.10.2002 and the victim was informed.
aged 90. There is no further action.
```

```
In regards to POI 2, Father Dennis McAlinden his
whereabouts are unknown. He is a retired priest
and lives between Western Australia and his home
country of Ireland. does has not had
contact with him since May, 2002 and only had
postal addresses for him. Passport checks revealed
that he is currently in Australia.
```

```
The victim's statement indicates that the
offences relating to McAlinden occurred in the
Hornsby area therefore this matter should now be
investigated by police in that Local Area
Command. Hard copy of victim, witness statements
and inquiries to follow. Victim informed.
```

Figure 17.5 Extract from COPS case report C 12089827, dated 31 December 2002⁹⁰

- 17.42 Flipo also wrote a number of notes on 'Post-it Notes', adding more information about the investigation.⁹¹ She agreed it might have been the case that she planned to make inquiries about the things written in the notes – for example, 'address on passport', which she thought referred to any sort of Australian address that might have appeared on McAlinden's passport records. The extract in Figure 17.5 noting 'Passport checks revealed that he is currently in Australia' suggests that Flipo took certain steps in this regard to ascertain McAlinden's address from his passport.

Other investigative steps

- 17.43 By request dated 29 October 2002 and directed to Kings Cross Local Area Command, Flipo sought to obtain a corroborating statement from AF's partner in the nature of 'first complaint'

⁸⁵ TOR 2, T723.14–26 (Flipo).

⁸⁶ TOR 2, T725.43–726.6 (Flipo).

⁸⁷ TOR 2, T762.31–47 (Flipo).

⁸⁸ COPS report C 12089827, annexure B to ex 83.

⁸⁹ *ibid.*

⁹⁰ *ibid.*

⁹¹ Handwritten notes by Flipo, undated, annexure F to ex 83.

evidence.⁹² She also sought to obtain evidence from AF's mother.⁹³ Additionally, on 31 October 2002 Flipo prepared a report for the purpose of AF's compensation claim with the Victims Compensation Tribunal. This report states, 'The last known address [of McAlinden] was PO Box 7039, in Safety Bay WA 6169 ... There was no current information available for McAlinden from Western Australia police records'.⁹⁴ A further report, dated 7 January 2003 and prepared by Flipo in relation to AF's Victims Compensation claim, states, 'Further to the report submitted to the Victims Compensation Tribunal on 31 October, 2002, Denis McAlinden could not be located'.⁹⁵

Listing McAlinden as wanted

- 17.44 Flipo said she believed that during her investigation of AF's allegations she 'caused to be placed on the police computerised information system [COPS] the fact that Father McAlinden was wanted for the purposes of questioning' in connection with the AF matter.⁹⁶ She gave evidence that she was 'pretty sure' she listed McAlinden as wanted.⁹⁷ As to the particular annotation that would appear if McAlinden had been listed as wanted, she said, '... just that it would be ... in relation to that event or that case, where his status in that case would have him as suspect or wanted'.⁹⁸ That information would then be contained in the event report that another officer would have 'to look up'.⁹⁹ To the best of her recollection, there was no response from any other officer suggesting that there had been any contact with McAlinden.¹⁰⁰
- 17.45 Flipo gave evidence that she had made an entry on the police computerised system about McAlinden being wanted.¹⁰¹ The documentation produced to the Commission did not, however, record such an entry. It is expected that, had Flipo made such an entry, it would have been noted in the COPS documentation produced and would in all likelihood have been referred to in case report C 12089827, which was the primary COPS record Flipo was maintaining and updating in connection with her investigations relating to AF's allegations against McAlinden.

Transfer of the AF investigation to Hornsby Local Area Command

- 17.46 Flipo gave evidence that in December 2002 it was decided the AF matter should be re-allocated to Hornsby Local Area Command because the offences had occurred in that area.¹⁰² She said, however, she did not think there was anything in the case report to suggest which officer succeeded her in managing the investigation.¹⁰³ A further memo, dated 7 January 2003 and relating to AF's Victims Compensation claim, appeared to confirm that the matter had been forwarded to Hornsby:

⁹² TOR 2, T752.29–41 (Flipo).

⁹³ TOR 2, T753.2–10 (Flipo).

⁹⁴ Recommendation by Flipo for information regarding AF investigation to be forwarded to Victims Compensation Tribunal, dated 31 October 2002, ex 219, tab 364.

⁹⁵ Recommendation by Flipo for information regarding AF investigation (Case No. C 12089827) to be forwarded to Victims Compensation Tribunal, dated 7 January 2003, ex 219, tab 370.

⁹⁶ Statement of Flipo, dated 16 May 2013, ex 83, para 14.

⁹⁷ TOR 2, T750.30–43 (Flipo).

⁹⁸ TOR 2, T750.47–751.2 (Flipo).

⁹⁹ TOR 2, T751.4–11 (Flipo).

¹⁰⁰ Statement of Flipo, dated 16 May 2013, ex 83, para 14.

¹⁰¹ TOR 2, T749.47–750.4 (Flipo).

¹⁰² TOR 2, T740.5–16; T740.43–46 (Flipo).

¹⁰³ TOR 2, T741.1–5 (Flipo).

COMMENT:

As the offences regarding Denis McAlinden occurred in the Hornsby area this investigation has now been forwarded to Criminal Investigation, Kuring-Gai Local Area Command, Hornsby and any inquiries should be directed to that office ...¹⁰⁴

17.47 Counsel assisting then showed Flipo a case report entry dated 21 January 2003 (see Figure 17.6).

```
Actions
Action Title      : BRIEF FILE 2003/011
Action Type       : ADMINISTRATION
Action Description : CHARLESTOWN POLICE STATION
Created By        : INSP MURRAY LUNDBERG - LAKE MACQUARIE
Date/Time Created : 21/01/2003 14:37
Completed By      : INSP MURRAY LUNDBERG - 21/01/2003      COMPLETE
```

Figure 17.6 Extract from COPS case report C 12089827, dated 21 January 2003¹⁰⁵

Flipo said the word ‘Complete’ appearing next to the entry meant that the actual investigation material (the statements, and so on) had been filed or physically stored at Charlestown police station.¹⁰⁶ She agreed that this entry suggested the investigation file did not in fact go to Hornsby Local Area Command. There was also nothing in the case report to suggest it had been so transferred¹⁰⁷ and, if Hornsby LAC had taken any action on the matter, including confirmation of receipt of the brief, Flipo would have expected this to have been entered in the case report.¹⁰⁸

17.48 The Commission finds that the McAlinden investigation relating to AF’s complaint was not transferred to Hornsby LAC but was instead filed at Charlestown police station, no further action being taken until 2005, when Watters sought to use AF’s complaint as part of the basis for an extradition application in relation to McAlinden (see para 16.81).

The cooperation of church officials: Detective Senior Constable Flipo’s opinion

17.49 Flipo told the Commission that in her interactions with the Catholic Church – which in the context of the AF investigation appear limited to discussions with the bishop’s secretary, Doyle – she considered there was cooperation.¹⁰⁹ Similarly, in relation to the provision of information, she thought Doyle had been forthcoming.¹¹⁰ At no time did she form any view that information was being deliberately withheld from her.¹¹¹

Conclusions

17.50 In paragraph 16.2 the Commission notes that consideration of the extent of church officials’ cooperation or otherwise with police investigations necessarily requires that regard be had to the ambit and scope of such investigations – including any limitations of those investigations affecting, as they do, the manner in which cooperation with a particular investigation is to be assessed.

¹⁰⁴ Recommendation by Flipo for information regarding AF investigation (Case No. C 12089827) to be forwarded to Victims Compensation Tribunal, dated 7 January 2003, ex 219, tab 370.

¹⁰⁵ TOR 2, T741.7–14; COPS report C 12089827, annexure B to ex 83.

¹⁰⁶ TOR 2, T741.7–30; T741.41–45 (Flipo).

¹⁰⁷ TOR 2, T741.32–39 (Flipo).

¹⁰⁸ TOR 2, T742.21–28 (Flipo).

¹⁰⁹ TOR 2, T763.17–20 (Flipo).

¹¹⁰ TOR 2, T763.22–27 (Flipo).

¹¹¹ TOR 2, T763.29–33 (Flipo).

- 17.51 The evidence before the Commission indicates that the Flipo investigation was subject to several limitations. It seems there was no examination and follow-up of information contained in the police computerised system relating to previous complaints about McAlinden – in particular, the AE case and event report in connection with the Watters investigation in 1999, which was expressly referred to in one of Flipo’s searches in August 2002. Additional lines of inquiry could have been pursued through the NSW Police Field Services Unit in relation to Telstra and government agencies such as Centrelink, Medicare and the Australian Taxation Office. Such inquiries might have yielded details about McAlinden’s whereabouts. Further, the AF file was not transferred from Charlestown to Hornsby Local Area Command in 2003 so that further investigations could be carried out.
- 17.52 As noted in connection with the Watters investigation, it is not possible to say whether a different result would have been achieved in the absence of these limitations. There might, however, have been an increased prospect of police determining McAlinden’s whereabouts earlier if matters had proceeded differently.
- 17.53 As to the contact between the Flipo investigation and Doyle, secretary to Bishop Malone in September 2002, the Commission finds that Doyle cooperated with the investigation by providing assistance to Flipo in the form of information about the Diocese’s knowledge of McAlinden’s whereabouts at that time. Doyle also provided to Flipo two addresses during a subsequent telephone conversation. There is no evidence that the Diocese had any other or better information about McAlinden’s whereabouts that should have been conveyed to police at any time during the Flipo investigation.

18 The Fletcher police investigation

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- 18.1 From June 2002 until about December 2004 Detective Chief Inspector Peter Fox had primary carriage of the police investigation into allegations of child sexual abuse committed by Father James Fletcher. Fox was the officer in charge from the time AH, a victim of Fletcher, lodged a complaint with police on 3 June 2002.
- 18.2 On 14 May 2003 Fletcher was charged with eight offences of homosexual intercourse with a male under 18 years and one offence of indecent assault. He was tried before a jury at East Maitland District Court and on 6 December 2004 was convicted on all counts.¹
- 18.3 In oral and documentary evidence before the Commission and in previous public statements² Fox asserted that church officials hindered, obstructed and/or failed to assist his investigation into Fletcher. This chapter examines the extent to which church officials facilitated, assisted or cooperated with the Fletcher investigation and, in this context, the assertions Fox made about hindrance, obstruction and/or failure to assist.

The beginnings of the investigation

- 18.4 On 2 June 2002 AH watched a *60 Minutes* television program about child sexual abuse in Australia. He then told his parents he had suffered similar abuse. On the same evening he made an abusive telephone call to Fletcher.³
- 18.5 On 3 June 2002 Fox received a telephone call from a senior crown prosecutor who asked him to investigate a complaint from AH.⁴ Later that day AH attended Maitland police station and met with Fox. AH reported having been sexually abused by Fletcher on multiple occasions, including anal and oral intercourse, between 1991 and 1995, when he was an altar boy.⁵ This marked the beginning of the police investigation into Fletcher.

AH's statement

- 18.6 As part of the police investigation Fox took a lengthy typed statement from AH. The statement taking process was difficult for AH, and the statement was not finalised until 31 March 2003.⁶
- 18.7 During the course of the investigation Fox took statements from other witnesses, including various church officials who had relevant dealings with Fletcher.⁷ In June 2004 he also executed a search warrant on the Diocese in order to obtain documents relating to Fletcher.⁸

¹ Further details about the prosecution of Fletcher are provided in Chapter 14.

² ABC *Lateline* transcript, 'Studio interview with Senior NSW Detective Peter Fox', dated 8 November 2012, ex 12.

³ NSW Police Force Document by Peter Fox re Ombudsman notification involving Father James Fletcher, dated 21 May 2003, ex 55.

⁴ TOR 2, T128.28–41 (Fox); Fox report re Ombudsman notification involving Fletcher, dated 21 May 2003, ex 55.

⁵ NSW Police Force COPS report E 14348559, dated 3 June 2002, ex 219, tab 341.

⁶ Excerpts of NSW Police statement of AH, dated 31 March 2003, ex 219, tab 377.

⁷ NSW Police statement of Hancock, dated 12 May 2003, ex 219, tab 378; NSW Police statement of Searle, dated 19 May 2003, ex 219, tab 385; NSW Police statement of Burston, dated 20 May 2003, ex 219, tab 386; NSW Police statement of Harrigan, dated 20 May 2003, ex 219, tab 387; NSW Police statement of Malone, dated 21 May 2003, ex 219, tab 390; NSW Police statement of Saunders, dated 21 May 2003, ex 219, tab 391; NSW Police statement of Ingold, dated 29 May 2003, ex 219, tab 397; NSW Police statement of Timoshenko, dated 2 June 2003, ex 219, tab 400; NSW Police Statement of Callinan, dated 12 June 2003, ex 219, tab 402; NSW Police statement of Larkey, dated 30 June 2003, ex 219, tab 406; NSW Police statement of Walsh, dated 10 June 2004, ex 278.

⁸ Search warrant for Catholic Diocese Office of Newcastle–Maitland prepared by Fox, dated 16 June 2004, ex 219, tab 427.

Allegations of hindrance or obstruction during the investigation

- 18.8 In summary, Fox asserted that church officials hindered, obstructed and/or failed to assist his police investigation of Fletcher in seven ways:
1. Shortly after the investigation began Bishop Michael Malone and Father James Saunders alerted Fletcher to the police investigation of him and disclosed the identity of the complainant, which negatively affected the investigation.⁹ Fox suggested that the ‘tip off’ by Malone was of such seriousness that he prepared a brief against Malone for the Office of the Director of Public Prosecutions for consideration of charges for hindering a police investigation, but it was ‘elected not to proceed’ against Malone.¹⁰
 2. During the investigation, Malone refused Fox’s request to remove Fletcher from his parish or restrain him from visiting schools; Fletcher’s parish was instead extended.¹¹
 3. Five priests of the Diocese – Malone, Saunders, and Fathers Desmond Harrigan and William Burston (all of whom had met with Fletcher following the allegations) and Robert Searle – colluded when providing statements to police.¹²
 4. Harrigan destroyed pornographic material that could otherwise have been used in evidence received from Fletcher.¹³
 5. A nun, former Sister Janice Larkey, was ostracised by the Church for the assistance she provided to police in the Fletcher investigation and was ‘forced to leave’ her Order.¹⁴
 6. A ‘good priest’ who was pivotal in having another Fletcher victim come forward, which helped secure Fletcher’s conviction, clashed with senior clergy, including Malone, and had since elected to leave the priesthood.¹⁵
 7. Like other similar investigations, the police investigation of Fletcher was adversely affected by ostracism, shunning and/or reprisals arising from reporting sexual child sexual abuse.¹⁶

18.9 Each of these matters is explored below.

The Malone ‘tip off’

18.10 Central to Fox’s concerns about hindrance by church officials in connection with the Fletcher investigation was a visit by Malone and Saunders to Fletcher on 4 June 2002. As a result of this visit Fletcher became aware that AH had complained to the police about him and that a police investigation was on foot.¹⁷

⁹ NSW Police Force report by Fox re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese of the Catholic Church, dated 25 November 2010, ex 69.

¹⁰ *ibid*, p 1374.

¹¹ *ibid*.

¹² Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69; NSW Police report by Fox re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56, p 1051.

¹³ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1374.

¹⁴ *ibid*, p 1375.

¹⁵ *ibid*.

¹⁶ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69.

¹⁷ TOR 2, T437.39–438.10 (Fox).

- 18.11 Malone knew of the police investigation because earlier that day BI (AH's father, who had a role at the Diocese) informed him that AH had reported to police that Fletcher had sexually abused him.¹⁸

A visit to Fletcher by Bishop Malone and Father Saunders: 4 June 2002

- 18.12 Immediately after the conversation with BI on 4 June 2002 Malone spoke to Saunders, then vicar general, and they travelled to Branxton together to see Fletcher. Malone told the Commission he believed Fletcher should be informed that an allegation had been made against him.¹⁹ Saunders recalled that on the way to Branxton Malone said to him, 'If I was under investigation, I would like to know'.²⁰
- 18.13 Having arrived at Branxton presbytery, Malone told Fletcher that an allegation of sexual abuse had been made against him and that the person making the allegation was AH.²¹ In his police statement of 21 May 2003 Malone described the exchange with Fletcher:

Jim Saunders & I spoke to Jim Fletcher over a cup of coffee in the kitchen of the Branxton Presbytery. It was there that I said, 'Jim I have got some bad news for you & that news is that following the 60 minutes programme of the other night someone has come forward & has made an allegation of sexual abuse against you.' Jim Fletcher immediately looked unwell. He sagged & looked confused. He was obviously shocked & said, 'Who would do such a thing?' I said, 'It was AH who made the allegation against you'.²²

- 18.14 Fox became aware of the fact of the tip off from BJ (AH's mother). Malone had phoned BJ on 5 June 2002 and told her he had travelled to Branxton and told Fletcher about the allegations AH had made against him.²³ Shortly thereafter BJ, who was unhappy about Malone's conduct, contacted Fox to tell him what had happened.²⁴

A meeting between Detective Chief Inspector Fox, Bishop Malone and Father Saunders

- 18.15 After receiving the telephone call from AH's mother, Fox attended a meeting with Malone and Saunders at the Bishop's Chancery in Hamilton on 20 June 2002. He was accompanied by Detective Senior Constable Ann Joy.²⁵ Neither Fox nor Joy took notes at the meeting; nor did Malone or Saunders.²⁶
- 18.16 Fox did not formally caution Malone because, he told the Commission, he was 'still making up [his] mind' and wanted to 'find out exactly what had happened and why'.²⁷ He agreed that Malone did not show any reluctance to answer his (Fox's) questions at the meeting and had said, 'You must do your job of course'.²⁸
- 18.17 After the meeting Fox typed up a written record in the form of a transcript purporting to record the exchanges between Fox and Malone and Saunders at the meeting. This document, which was referred to in the Commission's public hearings as the 'I said – he said' document, consisted of four pages of questions and answers attributed to Fox and Malone respectively, with some

¹⁸ TOR 2, T931.15–25 (Malone).

¹⁹ TOR 2, T932.5–17 (Malone); NSW Police statement of Malone, dated 21 May 2003, ex 87, para 11.

²⁰ TOR 2, T1176.20–25 (Saunders); statutory declaration of Saunders, dated 26 June 2013, ex 111, para 9.

²¹ TOR 2, T933.21–43 (Malone); NSW Police statement of Malone, dated 21 May 2003, ex 87, para 11.

²² *ibid.*

²³ Handwritten note by BJ re telephone conversation with Malone, dated 8 June 2002, ex 159; see also TOR 2, T1835.44–46 (BJ).

²⁴ TOR 2, T1835.35–1836.22 (BJ).

²⁵ NSW Police statement of Malone, dated 21 May 2003, ex 87, para 13.

²⁶ TOR 2, T133.22–23 (Fox).

²⁷ TOR 2, T130.13–17 (Fox).

²⁸ TOR 2, T331.15–19 (Fox).

additional comments attributed to Saunders.²⁹ Fox said he did not rely on any earlier written record, such as might be contained in a duty book, when preparing the document.³⁰

- 18.18 During the public hearings, a question arose as to when Fox prepared the typed exchanges incorporated in the 'I said – he said' document. Fox gave unsatisfactory and inconsistent evidence on this.
- 18.19 As to the accuracy of the 'I said – he said' document, Fox said, 'There may be a word or two that I've got that isn't absolutely spot on, but, generally speaking, that would be almost identical to the conversation'.³¹ In view of the detailed, transcript-like nature of the document, prepared in the absence of notes taken during the meeting (or, it seems, immediately after it), one might ordinarily have reservations about the document's accuracy, depending on when it was in fact prepared (as to which see para 18.42). Nonetheless, Malone and Saunders accepted, in the main, the accuracy of the document.³² On this basis, the Commission accepts that the 'I said – he said' document broadly reflects the discussion that occurred at the meeting on 20 June 2002.
- 18.20 The document included the following exchange between Fox and Malone, with an additional comment by Saunders:

I said,	'Did you tell him [Fletcher] that the matter had been reported to the police & there was an investigation?'
He said,	'Yes. This was only done because of our concern for his welfare.'
I said,	'That may be so, but you have by your actions alerted Father Fletcher to what is going on. The element of surprise is a legitimate investigative tool & your visit has effectively negated any advantage we had in that regard.'
He said,	'I am sorry but that was not our intention.'
Saunders said,	'We were concerned about the police arriving on his doorstep & taking him without anyone knowing. He is not very well & this would have a very bad effect on his health. You have to understand he has been a very ill man.' ³³

Detective Chief Inspector Fox's views on the potential impact of the tip off on the investigation

- 18.21 Fox acknowledged that Malone made no attempt to hide the fact of his visit to Fletcher.³⁴ He told the Commission, however, that Malone's visit caused a major disruption to the investigation of Fletcher on the basis that 'It forewarned Father Fletcher that police were looking at his matter, Fletcher became aware of who the complainant was, and it gave him [Fletcher] the opportunity to destroy potential evidence'.³⁵ Fox elaborated:

... it allowed, in my view, Father Fletcher to be aware that he was now subject of a police investigation; number two, it told him who, amongst all of his victims, was the one that had made complaints; number three, it then allowed him to start ostracising that victim and that

²⁹ Four page conversation typescript between Fox and Malone, prepared by Fox, ex 49; NSW Police statement of Fox, dated 28 May 2003, ex 51.

³⁰ TOR 2, T137.40–47 (Fox).

³¹ TOR 2, T138.2–9 (Fox).

³² TOR 2, T1190.1–25 (Saunders); TOR 2, T1136.47–1137.27 (Malone). Malone disputed part of the document that purported to record him as indicating he did not have concerns about Fletcher before BI approached him: TOR 2, T1137.28–1139.23 (Fox).

³³ Four page conversation typescript between Fox and Malone, prepared by Fox, ex 49; NSW Police statement of Fox, dated 28 May 2003, ex 51, p 141.

³⁴ TOR 2, T304.18–22 (Fox).

³⁵ TOR 2, T131.6–15 (Fox).

victim's family way before the police even went there. Their treatment from that point of time and the rumour and innuendo that sprung from that parish placed that victim's family under a lot of pressure, to the degree where the victim was later on admitted to a psychiatric facility and nearly committed suicide. I still feel that it negatively impacted ...³⁶

- 18.22 Fox said that at that stage Fletcher did not know who the victim was. When Fox interviewed him in 2002 Fletcher said he could not identify the abusive caller (which was in fact AH, as noted in para 18.4). A number of other witnesses had also told Fox Fletcher had said to them at the time that he did not know who the victim was.³⁷ This was, however, a matter of some contention in evidence before the Commission, as the following section shows.
- 18.23 In reports to the Ombudsman dated 21 and 29 May 2003, Fox stated, 'This action [the Malone tip off] seriously impacted on the police investigation & denied investigators a number of options in relation to Father Fletcher'.³⁸
- 18.24 Joy recalled that Fox was 'concerned and annoyed' about Malone's 'tip off', telling her he believed an opportunity to obtain information from Fletcher had been lost and the ability to investigate the allegations had been compromised by Malone's warning.³⁹
- 18.25 As it transpired, Fletcher was, of course, successfully prosecuted and convicted. In evidence Fox acknowledged this, saying of the tip off, 'In view that ultimately he was convicted, it may have affected it, but to not such a degree that the prosecution was unsuccessful'.⁴⁰

Bishop Malone's motivation

- 18.26 The Commission examined Malone's motivation for telling Fletcher about the police investigation and giving him the name of the complainant.
- 18.27 Malone told the Commission that, in revealing the name of the complainant, he hoped he 'may have been able to trigger some kind of response in [Fletcher] that might circumvent a police investigation, and then, perhaps an investigation only for the purposes of sentencing'.⁴¹ Since Fletcher was a friend of AH's family, he thought that revealing the name of the complainant might trigger an admission, but '[t]he response was an immediate denial of any wrongdoing'.⁴² In oral evidence to the Commission Saunders confirmed that when Malone put AH's allegations to Fletcher he (Fletcher) strongly denied them.⁴³
- 18.28 Malone also said it was not his intention to interfere with or thwart a potential police investigation.⁴⁴ He said the visit was not malicious but 'spontaneous' and motivated by pastoral concern for Fletcher, who had suffered a stroke some years earlier.⁴⁵ Malone described the bond of the 'shared sacrament of holy orders' between a bishop and his priest.⁴⁶
- 18.29 Malone said it never occurred to him that he might in fact be hindering a police investigation.⁴⁷ He added that he now understood that, as a result of the tip off, it was possible that Fletcher

³⁶ TOR 2, T297.33–46 (Fox).

³⁷ TOR 2, T131.17.46 (Fox).

³⁸ Fox report re Ombudsman notification involving Fletcher, dated 21 May 2003, ex 55; Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56, p 1051.

³⁹ Statement of Joy, dated 15 March 2013, annexure A to ex 183, para 14.

⁴⁰ TOR 2, T201.42–44 (Fox).

⁴¹ TOR 2, T934.36–40 (Malone).

⁴² NSW Police statement of Malone, dated 21 May 2003, ex 87.

⁴³ TOR 2, T1177.16–22 (Saunders); statutory declaration of Saunders, dated 26 June 2013, ex 111, para 10.

⁴⁴ TOR 2, T934.42–47 (Malone).

⁴⁵ TOR 2, T960.10–19 (Malone).

⁴⁶ TOR 2, T960.21–28 (Malone).

⁴⁷ TOR 2, T960.36–39 (Malone); see also further supplementary statement of Malone, undated, ex 86, para 1.8.

could have destroyed potential evidence: 'It was [BI] who first pointed that out to me and I must admit I was a bit shocked to hear that, but it's true, yes'.⁴⁸

- 18.30 In his statement to the Commission, Malone openly acknowledged that, in approaching Fletcher on 4 June 2002, he had made a mistake.⁴⁹ In oral evidence he confirmed that in 2002 he was defensive about the Church's reputation and that that attitude was wrong: 'I have a lot of regrets about this whole matter'.⁵⁰
- 18.31 For his part, Saunders told the Commission he formed no impression that Malone was trying to hinder the police investigation. He said Malone had shown concern for Fletcher and the victim and his family.⁵¹

Fletcher's knowledge of the caller's identity

- 18.32 As noted, AH made an abusive telephone call to Fletcher on 2 June 2002 following the airing of the *60 Minutes* program that day.
- 18.33 Burston told the Commission that before Malone and Saunders visited Fletcher on 4 June 2002 he and Harrigan had travelled to see Fletcher at Branxton the previous day. This was because he (Burston) had received a call from Harrigan following the *60 Minutes* program on 2 June. Burston could not recall what Harrigan said, but it was 'probably something to the effect that Jim was upset'.⁵² Burston said he went to speak with Fletcher in order to provide pastoral support.⁵³ He said Fletcher then told him and Harrigan he had received an abusive phone call from a young person following the *60 Minutes* program and that it sounded like AH.⁵⁴ Burston asked Fletcher why AH might say something like this, to which Fletcher replied, 'I don't know'.⁵⁵ In his evidence, Harrigan did not recall Fletcher mentioning AH's name on that night, although he otherwise recalled aspects of the discussion with Fletcher about the phone call on 2 June 2002.⁵⁶
- 18.34 When questioned by counsel for the Diocese, Fox agreed that Ms Hancock, Fletcher's house cleaner, had provided statements saying the caller had told Fletcher the abuse took place '70 kilometres away as the crow flies from Branxton'.⁵⁷ Similarly, Ms Ingold, a nurse and friend of Fletcher who was with him on the night of 2 June 2002, recalled that Fletcher had stated a distance.⁵⁸ Despite this, Fox did not accept that this was the means by which Fletcher might have been able to identify the caller.⁵⁹ Ultimately, though, he agreed it was possible (but not likely) that Burston and the other witnesses were telling the truth about what Fletcher had told them and, further, that following the abusive phone call, Fletcher had the opportunity to dispose of any incriminating evidence.⁶⁰
- 18.35 In response to the proposition that, since there had only been a handful of Fletcher victims, he (Fletcher) could have narrowed it down to those, Fox said, 'I don't think any of us really know

⁴⁸ TOR 2, T961.21–26 (Malone).

⁴⁹ Further supplementary statement of Malone, undated, ex 86, para 1.19.

⁵⁰ TOR 2, T962.7–19 (Malone).

⁵¹ TOR 2, T1204.32–47 (Saunders).

⁵² TOR 2, T1295.41–45 (Burston).

⁵³ TOR 2, T1297.1–3 (Burston).

⁵⁴ TOR 2, T1294.38–1295.4 (Burston).

⁵⁵ TOR 2, T1295.6–17 (Burston); NSW Police statement of Burston, dated 20 May 2003, ex 54. Other aspects of the differing accounts about whether Burston knew it was AH who had made the abusive telephone call on the evening of 2 June 2002 are dealt with in paragraphs 18.78 to 18.82, in the context of Fox's allegations of collusion by members of the clergy.

⁵⁶ NSW Police statement of Harrigan, dated 20 May 2003, ex 53, para 6.

⁵⁷ NSW Police statement of Hancock, dated 12 May 2003, ex 219, tab 378, para 7.

⁵⁸ However, in her police statement of 29 May 2003, Ingold was unable to recall the stated distance: NSW Police statement of Ingold, dated 12 May 2003, ex 219, tab 397, para 6.

⁵⁹ TOR 2, T440.34–441.25 (Fox).

⁶⁰ TOR 2, T449.33–451.11 (Fox).

the scale of the number of victims ... I have very good reason to believe that there are a number of others'.⁶¹

Conclusions

- 18.36 The Commission finds that Malone acted inappropriately (as he himself accepts) in alerting Fletcher to the existence of the police investigation and the identity of the complainant. The Commission accepts that the concerns Fox expressed in relation to Malone's tip off of Fletcher were genuinely held and, further, that the tip off had the potential to cause 'significant disruption' to the police investigation. It meant that at least some potential investigative measures – to the extent that they relied on Fletcher being then unaware of existence of the investigation – became unavailable to police. The Commission regards such conduct by Malone, in tipping off Fletcher, as constituting an interference (being a hindrance or obstruction) with the police investigation.
- 18.37 The Commission accepts Malone's evidence that by his conduct he did not intend to hinder or obstruct the police investigation. Rather, he was primarily motivated by a desire to offer pastoral care to Fletcher. He also thought that Fletcher might admit to the offences. A layperson such as Malone might not immediately appreciate the importance of a police investigation retaining its confidentiality. The Commission is of the opinion that Malone's shock on becoming aware of the potential adverse consequences of his actions and his acknowledgment of error were genuine.
- 18.38 The extent to which Malone's conduct adversely affected the Fletcher investigation is difficult to quantify. Malone's conduct certainly had the potential to cause disruption to the investigation. The Commission recognises, however, that before Malone's visit to him, Fletcher might already have been aware of, or at least suspected, the identity of the person who made the abusive telephone call to him on 2 June 2002. Nonetheless, Malone's conduct went further and alerted Fletcher to the fact of police involvement and effectively confirmed the identity of the complainant.
- 18.39 Ultimately, Fletcher was successfully prosecuted. Obviously then, notwithstanding Malone's inappropriate conduct, the impact was not such as to affect the outcome of the investigation.

Date of preparation of the 'I said – he said' document

- 18.40 As noted, during the public hearings a question arose as to when Fox prepared the typed exchanges incorporated in the 'I said – he said' document following his meeting with Malone and Saunders on 20 June 2002. Fox initially said that the meeting with Malone was 'of such a nature' that he typed up the exchange on the day of the meeting, shortly after returning to his office.⁶² Later in his evidence, however, he said, '... If it wasn't that day, it would have been the next, but it would have been very close to it'.⁶³
- 18.41 Fox gave a further differing account in a private hearing before the Commission on 27 March 2013. The transcript of that evidence was tendered at the public hearings.⁶⁴ In his private hearing Fox told the Commission he prepared the transcript of the conversation with Malone some time later – maybe a month or two after their meeting. Fox added, 'I remember I typed it up in reaction to learning that Fletcher wasn't going to be stood down and his parish was going to be expanded'.⁶⁵ He later gave evidence that he became aware of this expansion of Fletcher's

⁶¹ TOR 2, T443.29–39 (Fox).

⁶² TOR 2, T130.27–31 (Fox).

⁶³ TOR 2, T133.32–34 (Fox).

⁶⁴ Excerpt of private hearing transcript of Fox, dated 27 March 2013, ex 50, T64.1–67.47.

⁶⁵ *ibid*, T66.45–47.

responsibilities to include neighbouring Lochinvar parish in the months following his conversation with Malone on 20 June 2002.⁶⁶

18.42 Under questioning from counsel assisting about the discrepancies in his evidence on this matter, Fox was unable to provide a satisfactory explanation for having proffered two different answers to the Commission in his sworn evidence. Having regard to the inconsistencies in accounts, and the specificity of Fox's explanation as to timing given in the private hearing, the Commission is of the opinion that the document was likely to have been prepared at least a month or two after the meeting with Malone on 20 June 2002. In normal circumstances this would cast doubt upon the extent to which reliance could be placed upon the document. As noted, however, Malone and Saunders accepted, for the main part, the broad accuracy of the 'I said – he said' document.

The Malone 'brief' prepared for the Office of the DPP

18.43 As described below, Fox did the following:

- told senior police in 2010 that he reported Malone's conduct in the tip off of Fletcher to the Office of the Director of Public Prosecutions for consideration of charges against Malone
- told Detective Sergeant Jeffrey Little, the officer in charge of the Strike Force Lantle investigation, that he prepared a brief against Malone for the DPP
- told the Commission (and, previously, senior police and Little) that he consulted with the Office of the DPP about whether Malone should be charged, and it was decided to keep Malone on side (for the purposes of the Fletcher prosecution) and not to charge him with obstruction.

Detective Chief Inspector Fox's evidence

18.44 Thus, in a report to senior police dated 25 November 2010 Fox stated that he had reported Malone's involvement in the Fletcher tip off to the Office of the DPP for consideration of charges against Malone, but that the decision was made not to proceed. Specifically, Fox wrote:

Soon after commencing investigations I learned that Bishop Michael Malone and Vicar General James Saunders had alerted Fletcher to the police investigation and disclosed the identity of the alleged victim. This negatively impacted on the investigation and **was reported to the ODPP for consideration of charges for hindering a police investigation; however it was elected not to proceed.**⁶⁷ [emphasis added]

18.45 Since December 2010 Detective Sergeant Little has been the officer in charge of the Strike Force Lantle investigation into allegations of concealment by church officials of child sexual abuse committed by clergy. In April 2012 Little sought from Fox information that could assist the Lantle investigation. In an email of 12 April 2012 Fox told Little:

I did prepare a brief against Bishop Malone and spoke to the ODPP but we decided against charging him on the basis of keeping him & others on-side to give evidence against Fletcher ...'⁶⁸ [emphasis added]

⁶⁶ TOR 1/2, T1719.8–34 (Fox).

⁶⁷ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1374.

⁶⁸ e@gle.I HELP entry, dated 12 April 2012 re response from Fox to questions by Little re email from Fox to Parker, dated 5 April 2012, ex 219, tab 508.

18.46 On 18 March 2013 the Commission issued a summons to the Office of the DPP for production of the brief against Malone. By letter dated 20 March 2013 the Office of the DPP advised that it had nothing to produce.⁶⁹

18.47 Fox told the Commission he consulted Mr Hamish Fitzhardinge from the Office of the DPP in relation to whether charges should be laid against Malone:

I did consider it as mentioned, particularly in relation to the conduct of Bishop Malone, but ultimately, at the end of the day, I elected to, for want of a better term, give him the benefit of the doubt, and for that reason, you know, in consultation with the DPP, I spoke to Hamish Fitzhardinge from the DPP in that regard. We both went through a number of statements that could have been used for a dual purpose, I suppose, for that basis, and we both came to the agreement that we wouldn't be pressing charges in that regard.⁷⁰

18.48 In connection with the assertion about Malone's conduct having been 'reported' to the Office of the DPP (as referred to in the 25 November 2010 report), Fox told the Commission he 'spoke to an officer at the DPP, with him having read through that material, and in the office down here at Newcastle, we had a discussion as to whether we should take it further'.⁷¹ Fox agreed that it was an informal discussion with the officer from the Office of the DPP who was dealing with the Fletcher matter,⁷² and that no formal written report had been prepared.⁷³ As to whether it had been an overstatement to say that he had prepared a report for the Office of the DPP for consideration of charges, Fox said:

It probably may be an understatement. I actually felt that actually sitting there and going through the evidence would have been more comprehensive than preparing a report, but I agree. I've said in there 'a report'. I suppose it was a verbal report, but it wasn't a paper one. It wasn't designed to mislead, but simply my terminology. I felt that it was more comprehensive to sit down with an officer, to actually physically go through the statements and share my thoughts and, at the end of the day, we came to the consensus that we wouldn't be pursuing that matter.⁷⁴ [emphasis added]

The Office of the DPP's evidence

18.49 The Commission obtained evidence from personnel of the Office of the DPP involved with the Fletcher investigation.

18.50 Ms Jillian Kelton was employed at the Office of the DPP as a senior solicitor when the matter first came to her for the purpose of a mention (that is, a brief listing of the matter in court) on 23 May 2003. She conferred with Fox in advance of the mention. She made detailed notes, which were in evidence before the Commission.⁷⁵ From 1 July 2003 the Fletcher matter was formally added to her practice.⁷⁶ In her statutory declaration provided to the Commission, Kelton said that at no time while she had carriage of the matter did Fox discuss with her a desire to charge Malone; nor did Fox ever 'file an Advising with the Office or me seeking advice as to whether or not criminal charges should be laid against Bishop Malone'.⁷⁷ Kelton added:

13. At no time did I speak with Detective Fox, or did he speak with me, about making a decision not to charge Bishop Malone for the reason of keeping the Bishop on side as a witness.

⁶⁹ Letter from Pheils of the NSW Office of the Director of Public Prosecutions to the NSW Crown Solicitor in response to summons 5(b), dated 20 March 2013, ex 258.

⁷⁰ TOR 2, T203.4–13 (Fox).

⁷¹ TOR 2, T210.27–30 (Fox).

⁷² TOR 2, T210.44–211.1 (Fox).

⁷³ TOR 2, T211.17–19 (Fox).

⁷⁴ TOR 2, T211.6–15 (Fox).

⁷⁵ Statutory declaration of Kelton, dated 22 July 2013, ex 187, paras 1–6.

⁷⁶ *ibid*, para 10.

⁷⁷ *ibid*, paras 11–12.

14. Such a determination suggests immunity was considered, which would have involved a file being created for Bishop Malone, detailed reports being prepared within this Office, and a referral of that report to the Director of Public Prosecutions, and from there to the Attorney General.
15. Any mention of such a consideration to me would have been clearly noted in my file notes, and considered in accordance with the Office protocols. At no time while I had carriage of the matter did this occur.⁷⁸

18.51 Mr Hamish Fitzhardinge, also a solicitor in the employ of the Office of the DPP, had carriage of the Fletcher matter from 24 November 2003.⁷⁹ In his statutory declaration he stated:

4. ... At no time did I have carriage of a file relating to advice being sought from the NSW Police as to whether Bishop Malone or others from the church should be charged with any offence ...
- ...
9. I have no recollection of being a party to discussions as to whether Bishop Malone and or others were better kept as witnesses than being charged. I never provided advice as to whether Bishop Malone or others from the Church should be charged, or not, with any offence.⁸⁰

18.52 No person authorised to appear before the Commission, including Fox, applied to have Fitzhardinge or Kelton called to give oral evidence, and their evidence was not subject to challenge.⁸¹

Conclusions

18.53 The Commission finds that Fox exaggerated the extent of any action he took in reporting to the Office of the DPP or preparing a brief against Malone, or both, in connection with alleged hindering of the police investigation by the tip off of Fletcher. Fox might have given consideration to those matters himself. The Commission is satisfied, however, that no further steps were otherwise taken, and it accepts the accounts of Fitzhardinge and Kelton in this regard. Had such a matter arisen, Fitzhardinge or Kelton, or both, would have recalled it in view of its unusual nature – namely, the possible prosecution of a bishop – and it would have been the subject of written records at the Office of the DPP, which it was not. Fox conceded that he did not prepare a formal report to the Office of the DPP in relation to Malone. That there was some formality about the asserted report to the Office of the DPP would be reasonably inferred from Fox’s written report of 25 November 2010, which stated that Malone was ‘reported to the Office of the DPP for the consideration of charges for hindering a police investigation’. Contrary to Fox’s statement in his email to Little, Fox did not prepare a brief against Malone. The Commission finds that such an assertion by Fox was false and, further, was designed to create the impression that he had a greater involvement in matters relating to Malone’s conduct than he in fact had.

⁷⁸ *ibid*, paras 13–15.

⁷⁹ Statutory declaration of Fitzhardinge, dated 17 July 2013, ex 186, para 4.

⁸⁰ *ibid*, paras 4, 9.

⁸¹ A course contemplated in the Commission’s Practice Note no 2, para 7.

Bishop Malone's failure to stand Fletcher down

18.54 In his 25 November 2010 report to senior police Fox asserted that Malone refused to stand Fletcher down after he (Fox) and Malone met on 20 June 2002:

Bishop Malone then refused a request by me to remove Fletcher from his parish or restrain him from visiting schools. In defiance of my request Malone extended Fletcher's parish to include both the Catholic High School and Catholic Primary School in Lochinvar.⁸²

18.55 There was very little contest between Fox and Malone in relation to this before the Commission. Malone confirmed that at the meeting on 20 June 2002 Fox tried to 'strongly' persuade him that Fletcher should be stood down from his parish. Although Malone said he 'took his words to heart and certainly considered them very seriously', he ultimately decided 'it wasn't his [Fox's] call; it was my decision'.⁸³ For his part, Fox acknowledged during his oral evidence that he did not have the authority to demand Fletcher's removal from the parish.⁸⁴

18.56 It was after the meeting with Fox that Malone and Saunders went to see Fletcher to discuss the question of his standing down. Malone agreed, however, with counsel assisting that when he spoke to Fletcher it was in fact in terms of offering him the *option* of standing down. He observed, 'I wasn't really strong enough, I have to agree'.⁸⁵

Expansion of Fletcher's parish

18.57 On 3 October 2002 Malone wrote to Fletcher to confirm his appointment as parish priest of Lochinvar from 1 August 2002.⁸⁶ In his oral evidence Malone explained that he allocated another parish to Fletcher because, as part of a re-allocation, the Diocese had added Lochinvar, one of its smallest parishes, to the parish of Branxton. There was, Malone said, 'no-one to put into Lochinvar', so Malone appointed Fletcher as parish priest there.⁸⁷

18.58 On 18 March 2003, however, after learning from Mr Michael McDonald of the Catholic Commission for Employment Relations that Fletcher was soon to be charged, Malone informed Fletcher that charges were about to be laid in relation to the sexual abuse of AH and stood him down as parish priest.⁸⁸

The Ombudsman's April 2004 report

18.59 Malone's decision making in relation to Fletcher was the subject of an investigation and ultimately a written report in April 2004 by the New South Wales Ombudsman's Office. Relevant excerpts and findings from that report were received as evidence before the Commission.⁸⁹ In connection with the standing down of Fletcher, the Ombudsman found that Malone had:

... failed to adequately assess or address the risks to children as evidenced by his failure to give due consideration to the advice of police to remove Father Fletcher from his contact with children; by permitting Father Fletcher to continue in his parish duties as Parish Priest of Branxton during the course of the police investigation; and by failing to document the

⁸² Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1374.

⁸³ TOR 2, T939.10–42 (Malone).

⁸⁴ TOR 2, T377.7–18 (Fox).

⁸⁵ TOR 2, T940.15–26 (Malone).

⁸⁶ Letter from Malone to Fletcher, dated 3 October 2002, ex 97; TOR 2, T956.31–42 (Malone).

⁸⁷ TOR 2, T957.27–958.46 (Malone).

⁸⁸ TOR 2, T965.14–33 (Malone); handwritten note by Malone re phone call from McDonald, undated, ex 219, tab 374.

⁸⁹ Excerpts from report of Ombudsman, 'An investigation into the Catholic Commission for Employment Relations' systems for reporting and responding to child abuse allegations against employees', dated April 2004, ex 125.

inquiries he made and advice he received, including any information he claims to have received from Mr Callinan, Mr Davoren and Mr Bowman.⁹⁰

In his evidence before the Commission, Malone accepted these findings of the Ombudsman.⁹¹

Collusion and concealment

18.60 In his 29 May 2003 report prepared for the Ombudsman Fox made a number of allegations of collusion, concealment or lack of assistance in relation to the statements provided by Malone, Saunders, Searle, Harrigan and Burston in connection with the Fletcher investigation.⁹²

18.61 Fox reiterated such concerns in his 25 November 2010 report to senior police, commenting:

All those statements were remarkable for their author's poor recollection of critical conversations and smacked strongly of collusion and concealment.⁹³

18.62 The particular assertions set out in the report to the Ombudsman, which were the foundation of concerns Fox repeated in subsequent documentation and maintained in evidence before the Commission, are examined in the following paragraphs.

Collusion

18.63 The first assertion Fox made was that on the basis of the police statements provided by Malone, Saunders, Harrigan, Burston and Searle both he and former Detective Senior Constable Donald Brown shared the view that there had been collusion on the part of those members of the clergy. Specifically, Fox wrote the following in his report to the Ombudsman:

In the week following the charging of Father Fletcher statements were taken from five members of the Catholic Church. Both Detective Brown & myself were left with a very strong impression that there had been collusion between these persons & although each could assert they 'cooperated with police' little beyond this was volunteered.⁹⁴

18.64 Fox gave oral evidence about this before the Commission. His assertions are examined here in relation to each of the clergymen concerned.

Bishop Malone

18.65 Fox agreed that Malone attended an interview with him on 20 May 2003 for the purpose of providing a statement and that he was cooperative, answered all questions and did not 'balk at [answering] anything'.⁹⁵ Fox considered, however, that Malone had not in fact offered assistance during the interview.⁹⁶ Fox told the Commission his criticism of other clergy for their poor recollection of critical conversations extended to Malone.⁹⁷ Asked what precisely the 'critical conversations' were, he referred to a conversation between Saunders and Malone. Fox gave evidence that Malone told him he did not recall Saunders telling him that Fletcher had received a telephone call on the night of 2 June 2002 from a person alleging that Fletcher had sexually abused him. His evidence suggested that this contrasted with Saunders' account in his police statement:

⁹⁰ *ibid*, p 45.

⁹¹ TOR 2, T946.29–46 (Malone).

⁹² Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56.

⁹³ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1374.

⁹⁴ Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56, p 1051.

⁹⁵ TOR 2, T389.17–36 (Fox).

⁹⁶ TOR 2, T389.42–390.2 (Fox).

⁹⁷ TOR 2, T390.42–46 (Fox).

He [Malone] was saying that Father Saunders didn't tell him about that. He couldn't recall it. He doesn't have any knowledge of it. Father Saunders, in his statement, says the opposite. Father Saunders said that, 'During the drive to Braxton that day I told him of the phone call that Father Fletcher had received' – from, at that stage, an unnamed person.⁹⁸

- 18.66 Fox was, however, incorrect about the contents of Saunders' police statement. In his statement Saunders referred to meeting Malone after he (Malone) had spoken with BI. Saunders stated, 'I cannot recall if I told him about the call I had received from Father Des Harrigan'.⁹⁹ Contrary to Fox's evidence, Saunders did not state that during the drive to Braxton he told Malone of the phone call Fletcher had received; rather, almost a year after the event he (Saunders) could not recall whether he did or not.

Conclusion

- 18.67 This was the extent of Fox's evidence about his concern with Malone's police statement. The Commission finds there is no basis for Fox's assertions of collusion or concealment on the part of Malone. In any event, even if Saunders had said he had a conversation with Malone of the type suggested but Malone did not recall the conversation, this would not, of itself, be evidence of collusion, concealment or lack of assistance. Indeed, the existence of differences in recollection in the statements of the various witnesses points strongly against any suggestion of collusion.

Father Saunders

- 18.68 In relation to Saunders' police statement,¹⁰⁰ Fox agreed that he (Saunders) cooperated in attending to provide the statement,¹⁰¹ which mainly related to the events surrounding the Malone tip off of Fletcher. Fox explained the concerns he held about Saunders' veracity, as arising from his statement, in this way:

And for the most part, I've got to say that it was a very good and cooperative statement and again, I suppose, talking from a detective's perspective, the only reservation I had is that – and I accept that given that this statement is taken some 11 months after the meeting at Braxton with Father Fletcher, he had a fairly – sorry, not a very good recollection whatsoever of the conversation that was had with Father Fletcher and Bishop Malone and I – you know, there maybe explanations for that but, as a policeman, I suppose I felt that that would have been a conversation that a vicar general would have really committed to memory or had some recollection of.¹⁰²

- 18.69 Fox conceded, however, that in the statement Saunders clearly said Malone had told Fletcher the identity of AH, and noted '... I do remember that Jim was very upset & immediately denied the allegation'.¹⁰³ Fox said that as a police officer he felt Saunders 'would have recalled a lot more detail about that conversation or made some records of it' in view of the nature of the meeting and the allegations, which would not have been an 'everyday occurrence'.¹⁰⁴ He also said he imagined that Saunders would have been more forthcoming with exactly what was said: 'I'm not being overly critical, but I did apply some degree of reservation about his clarity of memory for the events'.¹⁰⁵
- 18.70 Fox said he did not know whether other important things were discussed that were not included in the statement. He 'could only speculate', adding:

⁹⁸ TOR 2, T394.17–23 (Fox).

⁹⁹ NSW Police statement of Saunders, dated 21 May 2003, ex 52, para 6.

¹⁰⁰ NSW Police statement of Saunders, dated 21 May 2003, ex 52.

¹⁰¹ TOR 2, T179.20–38 (Fox).

¹⁰² TOR 2, T179.41–180.5 (Fox).

¹⁰³ NSW Police statement of Saunders, dated 21 May 2003, ex 52, para 7.

¹⁰⁴ TOR 2, T180.39–43 (Fox).

¹⁰⁵ TOR 2, T180.44–47 (Fox).

I would have thought it would be something that – you know, with something of such a serious nature, there would be a fairly good recollection of what transpired and I'm only basing it on that. I have nothing further than – to make that observation.¹⁰⁶

Conclusion

18.71 Fox's allegation in connection with Saunders was in effect a complaint that Saunders should have proffered a better recollection of the words Malone used when speaking to Fletcher. The Commission finds that such criticism of Saunders is not justified. The conversation Saunders was being asked to recount in his police statement had taken place almost a year earlier. Saunders had, quite properly, said he could not recount the conversation in first-person terms. This is not surprising. Saunders had mentioned, however, the primary aspects of the conversation in his police statement – including saying that Malone had told Fletcher the identity of the complainant. No credible evidence of collusion, concealment or lack of cooperation on the part of Saunders emerged. Further, and to the extent that it is relevant here, in evidence before the Commission Saunders conceded that his recall of past events was often poor.¹⁰⁷

Father Harrigan

Detective Chief Inspector Fox's evidence

18.72 Fox told the Commission he had no difficulty securing Harrigan's attendance for an interview on 20 May 2003 and that Harrigan was cooperative, adding, 'From my personal perspective, I've got to say that Father Harrigan was probably the most forthcoming and helpful of the clergy that I took statements from'.¹⁰⁸

18.73 In what was described by Fox as an 'anomaly',¹⁰⁹ he recalled, however, that when he spoke to Harrigan he was surprised that neither he nor Fletcher had called the police about the 'quite heated, very vocal' and profanity-laden anonymous phone call Fletcher had received on 2 June 2002.¹¹⁰ Fox said the question just arose – 'Why would you not call the police straight away when something like that happens?'¹¹¹

18.74 Fox agreed that the fact that neither Fletcher nor Harrigan made any complaint about the phone call did not in any way impede his investigation of Fletcher, although it did seem 'out of place'.¹¹² When referred to the particular paragraph of Harrigan's statement that noted, 'We did not discuss whether the Police should be notified; we thought that was probably best left to Jim Saunders',¹¹³ Fox said he did not assess that to be 'untrue' but instead considered it to be 'a little bit unusual' and that 'perhaps there might be a bit more to the story'.¹¹⁴

18.75 Generally, however, Fox agreed that he formed the view that Harrigan was doing his best to tell the truth in his police statement.¹¹⁵ This was a major concession on Fox's part in view of the written assertions about Harrigan in his 29 May 2003 report to the Ombudsman, in which he stated that Harrigan had colluded with other clerics and had cooperated little with police (see para 18.63).

¹⁰⁶ TOR 2, T181.13–18 (Fox).

¹⁰⁷ TOR 2, T1211.44–1212.10 (Saunders). There was also documentary evidence placed before the Commission indicating that Saunders experienced memory difficulties because of a psychological condition for which he had been receiving treatment since 1991: Letter from Boyle to Makinson & d'Apice, dated 26 June 2013, conf ex JJ.

¹⁰⁸ TOR 2, T182.16–18; T1759.30–1760.2 (Fox).

¹⁰⁹ TOR 2, T182.44 (Fox).

¹¹⁰ TOR 2, T183.1–2 (Fox).

¹¹¹ TOR 2, T184.9–11 (Fox).

¹¹² TOR 2, T183.22–38 (Fox).

¹¹³ NSW Police statement of Harrigan, dated 20 May 2003, ex 53, para 8.

¹¹⁴ TOR 2, T183.46–184.27 (Fox).

¹¹⁵ TOR 2, T184.29–32 (Fox).

Father Harrigan's evidence

18.76 Harrigan confirmed that he willingly attended the police station on 20 May 2003 to provide a statement.¹¹⁶ He gave evidence that he had not knowingly or intentionally hindered or obstructed any police investigation, including the investigation into Fletcher. He also confirmed that he had never knowingly or intentionally colluded with others to hinder or obstruct any police investigation.¹¹⁷

Conclusion

18.77 The Commission notes Fox's evidence that he believed Harrigan was doing his best to tell the truth in his police statement. It also accepts the evidence of Harrigan. Further, having regard to the totality of the evidence, the Commission finds no evidence of any collusion, concealment or lack of cooperation on the part of Harrigan.

Father Burston

Detective Chief Inspector Fox's evidence

18.78 Fox agreed that Burston had willingly attended the police station to provide a statement. He said that he nonetheless had reason to doubt Burston was telling the truth in his statement.¹¹⁸ Fox's particular concern was the part of Burston's statement about a discussion with Fletcher on the evening of 2 June 2002, after the abusive phone call had been received, in which Burston recounted, 'I said, "Do you have any idea who the caller was Jim?" He said, "It sounds like [AH]"'. I said, "Why would he say something like this?" He said, "I don't know ..."¹¹⁹

18.79 Fox explained that Malone, Saunders and Harrigan had all made it clear (although some could not recall the exact conversations) that Fletcher 'had no idea whatsoever of the identity of the caller on the night of 2 June'.¹²⁰ He agreed, however, that it appeared Saunders and Malone were not present for the conversation to which Burston was referring, and it was unclear whether Harrigan was.¹²¹ Fox also conceded that more detailed and lucid accounts might have been provided by those clergy who gave statements had the statements been taken shortly after the events in question, rather than almost a year later.¹²²

18.80 Fox saw the tension between those two different versions of the conversations with Fletcher as reason to doubt the veracity of what Burston was saying and added that AH had told him (Fox) that at no stage had he identified himself. Moreover, when Fox interviewed Fletcher, he (Fletcher) had said he did not know the identity of the caller.¹²³ Fox explained the basis for doubting Burston's truthfulness:

It is inconsistent with the information provided by everything else. I suppose, in fairness, and I take your point, I can't say, sitting here, emphatically that it is untrue, but I cannot understand if Father Fletcher did know the identity of the caller why he would only confide in that to this one priest and tell everyone else, including civilians – and there were a number of those I spoke to as well – that he had no idea of who the caller was.¹²⁴

18.81 Under questioning from counsel assisting, Fox said that, while he could not say Burston's evidence was untrue, there was 'a bit of a question mark over it', and he viewed it with suspicion

¹¹⁶ TOR 2, T1880.3–21 (Harrigan).

¹¹⁷ TOR 2, T1883.3–14 (Harrigan).

¹¹⁸ TOR 2, T184.34–44 (Fox).

¹¹⁹ TOR 2, T184.41–185.37 (Fox); NSW Police statement of Burston, dated 20 May 2003, ex 54, para 6.

¹²⁰ TOR 2, T185.31–37 (Fox).

¹²¹ TOR 2, T186.5–36 (Fox).

¹²² TOR 2, T189.5–10 (Fox).

¹²³ TOR 2, T186.38–47 (Fox).

¹²⁴ TOR 2, T187.9–16 (Fox).

because it was inconsistent with what other people had told him (Fox) (although he agreed that the inconsistency related to different conversations they had with Fletcher).¹²⁵

- 18.82 As to whether the conversation recorded in Burston's police statement could be seen as consciousness of guilt on the part of Fletcher, Fox told the Commission he felt that it was 'totally inconsistent' with everyone else's accounts and he felt – 'maybe wrongly so' – that it was attempting to be exculpatory of the fact that Malone had told Fletcher who the victim was.¹²⁶ He also disagreed with the proposition that Fletcher might well have told Burston he thought it was AH on the phone and then later, having come to appreciate that might not have been best for him as a potential defendant, told others he did not know the identity of the caller.¹²⁷

Father Burston's evidence

- 18.83 Burston told the Commission he had never knowingly or intentionally hindered or failed to assist or cooperate with any police investigation of matters involving the sexual abuse of children – including those relating to McAlinden and Fletcher – nor had he colluded with others in order to do so.¹²⁸

Conclusion

- 18.84 The fact that there is a difference between Burston's statement about what Fletcher told him and what Fletcher reportedly told others is not, of itself, evidence of concealment or lack of cooperation on the part of Burston. It is explicable on a number of bases, including that Fletcher had later told Malone and others a version that differed from the one he initially told Burston – perhaps on account of an emerging awareness by Fletcher of the seriousness of his predicament.
- 18.85 In addition, Burston's statement does not reveal collusion with Malone and others for the very reason that there are other differences in his statement. The Commission finds no credible evidence of collusion, concealment or lack of cooperation on the part of Burston in the statement taking process in the Fletcher investigation. Fox's criticism of Burston's account also fails to take account of the potentially damning nature for Fletcher of Burston's evidence.

Discussions with Detective Senior Constable Brown

Detective Chief Inspector Fox's evidence

- 18.86 As noted, an important aspect of the 29 May 2003 report to the Ombudsman was Fox's assertion that both he *and* Brown had been left with a very strong impression that there had been collusion between the five clergy from whom statements had been taken and that, although those clergy could assert that they cooperated with police, little else was volunteered.¹²⁹
- 18.87 Fox told the Commission he adhered to the statement contained in the report to the Ombudsman and it was correct and accurate.¹³⁰ According to Fox, the circumstances of Brown telling him he (Brown) had been left with a very strong impression of collusion were as follows:

When I sat down and I was discussing with him before the interview with Father Fletcher a number of aspects and when we were going through the statements and what I would ask, I pointed out those discrepancies and I told him, I think the words were, 'You'd nearly think

¹²⁵ TOR 2, T188.34–189.3 (Fox).

¹²⁶ TOR 2, T189.44–190.8 (Fox).

¹²⁷ TOR 2, T447.44–448.9 (Fox).

¹²⁸ TOR 2, T1941.2–9 (Burston).

¹²⁹ Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56, p 1051.

¹³⁰ TOR 2, T548.8–13 (Fox).

that these blokes sat down and had a discussion before they came in,' something along those lines, and my recollection is we both agreed with that consensus, yes.¹³¹

In this context, Fox said that when he (Fox) had suggested that the five clergy witnesses might have 'got their heads together before they came in' Brown had said, "Well, you know, that's hard to disagree with" or something like that.¹³²

- 18.88 Fox agreed that he wrote to the Ombudsman in forceful terms, saying that both he and Brown held a similarly strong view on the matter. Fox also agreed he was using those comments, and including reference to Brown in order to support the position he was advancing to the Ombudsman.¹³³
- 18.89 Fox disagreed that Brown never suggested or said words to the effect of being left with a strong impression of collusion.¹³⁴ He recalled that Brown 'was in agreement with [him] as to the general tone and nature of what was contained in those statements'.¹³⁵

Mr Brown's evidence

- 18.90 From 1990 to 2010 Brown was a police officer with the New South Wales Police Force; he was designated a detective in 2004.¹³⁶ He told the Commission his role in the Fletcher investigation was as the corroborative officer (assisting the officer in charge) for the arrest, interview and charging phases.¹³⁷ Before Fletcher's arrest on 14 May 2003 Brown had little involvement with the investigation: his knowledge was based solely on his reading of the victim's statement.¹³⁸
- 18.91 In a statement prepared for the Commission Brown said the following in relation to Fox's assertions in the 29 May 2003 report to the Ombudsman:
- To the best of my recollection, I did not take any statements from any other member of the Catholic Church, and I did not have access to any other statements taken. For that reason, I was not in a position to form any impression that there was collusion between Father Searle and any other person who may have provided a statement to the investigating police officer.¹³⁹
- 18.92 In evidence before the Commission Brown was referred to the police statements of Malone, Harrigan, Burston and Saunders. He confirmed that the only statement he had been involved in taking or had seen was that of Searle (the circumstances of this are discussed in paras 18.96 to 18.97).¹⁴⁰ Having regard to this, and when referred to the assertion in Fox's report to the Ombudsman about collusion, Brown told the Commission, 'I couldn't form that view. I didn't have the information to form that view. My role in this investigation was quite limited'.¹⁴¹ He also said Fox did not consult him in relation to his views being included in the report, and he thought there ought to have been such consultation.¹⁴²
- 18.93 In short, Brown told the Commission he did not tell Fox he had the impression or believed there might have been collusion between those clergy who had provided statements to police in connection with the Fletcher investigation.¹⁴³ On the contrary, Brown thought that, in terms of

¹³¹ TOR 2, T548.15–25 (Fox).

¹³² TOR 2, T549.29–32 (Fox).

¹³³ TOR 2, T549.46–550.18 (Fox).

¹³⁴ TOR 2, T550.55–551.3 (Fox).

¹³⁵ TOR 2, T550.32–38 (Fox).

¹³⁶ Statement of Brown, dated 13 May 2013, ex 82, paras 4–6.

¹³⁷ TOR 2, T698.14–41 (Brown).

¹³⁸ TOR 2, T698.43–46 (Brown).

¹³⁹ Statement of Brown, dated 13 May 2013, ex 82, para 11.

¹⁴⁰ TOR 2, T705.16–706.39 (Brown).

¹⁴¹ TOR 2, T707.23–25 (Brown).

¹⁴² TOR 2, T707.37–708.2 (Brown).

¹⁴³ TOR 2, T709.30–36 (Brown).

his involvement in obtaining a statement from Searle, the clergyman had been cooperative, and he had no basis to think Searle had concealed information.¹⁴⁴

Father Searle

- 18.94 Fox's 29 May 2003 report to the Ombudsman referred to Searle as being one of the clergy whose statement gave him (and Brown) cause for concern about collusion.¹⁴⁵
- 18.95 Searle's statement dealt with a discrete incident at Nelson Bay presbytery – unrelated to the matters on which Malone, Burston, Saunders and Harrigan gave evidence.
- 18.96 Searle voluntarily attended the police station to provide a statement, as requested by Fox. Searle told the Commission he was happy to provide the statement and that he was cooperative and honest in describing events associated with the Nelson Bay presbytery incident.¹⁴⁶ He denied withholding information from the police.¹⁴⁷ He also gave evidence that he had never knowingly or intentionally hindered or failed to assist or cooperate with any police investigation of matters involving the sexual abuse of children – including those relating to McAlinden and Fletcher – or colluded with others to do so.¹⁴⁸ Brown said Searle arrived on time for the scheduled interview, which took about an hour, and appeared to be cooperative during the interview process.¹⁴⁹
- 18.97 In his 29 May 2003 report to the Ombudsman Fox asserted that in his police statement of 19 May 2003 Searle 'backed away from his former statements' made to Fox in a telephone call on 16 May 2003 concerning the incident involving AH at the Nelson Bay presbytery. Fox's assertions are effectively an allegation of concealment. The Nelson Bay presbytery incident is dealt with in paragraphs 18.116 to 18.145.

'Remarkably poor recollection' on the part of Fathers Harrigan, Saunders and Burston

- 18.98 Related to Fox's assertion of collusion on the part of Malone, Harrigan, Saunders and Burston was Fox's complaint, noted in his 29 May 2003 report to the Ombudsman, about the 'remarkably poor recollection' evidenced in the statements he had obtained from these four clergymen. Fox stated:

On Tuesday the 17th of May 2003 I obtained statements from Fathers Harrigan & Burston. Both statements were remarkable for their poor recollection of important conversations & events surrounding Father Fletcher in the weeks following the 2nd of June 2002. The little conversation that was eventually recorded was anything but free flowing. Father Harrigan recalled telephoning the Vicar General (Father Sanders) [sic] soon after AH's abusive call. (Stated but declined to place in statement 'possibly the Monday afternoon or Tuesday morning'.)

Father Saunders [sic] in his statement remembers the phone call from Father Harrigan but was again unable to recall the exact conversation other than being told the original call was abusive and alleged Father Fletcher was a child molester. Despite being the second highest-ranking official in the diocese & working closely with the Bishop he was unsure if he conveyed this important information about Father Fletcher's call to Bishop Malone. This did not alter even after Bishop Malone informed him of BI's conversation concerning Fletcher.

Bishop Malone stated that at no time does he recall Father Saunders or any other person telling him of Father Harrigan's phone call (regarding Fletcher's abusive call). In view of BI's

¹⁴⁴ Statement of Brown, dated 13 May 2013, ex 82, paras 12–14; Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56.

¹⁴⁵ Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56, p 1052.

¹⁴⁶ TOR 2, T1927.35–1928.1 (Searle).

¹⁴⁷ TOR 2, T1928.3–5 (Searle).

¹⁴⁸ TOR 2, T1928.7–12 (Searle).

¹⁴⁹ TOR 2, T702.38–703.2 (Brown).

conversation with the Bishop on the 3rd of June 2002 this seems incredible to say the least.¹⁵⁰

- 18.99 Almost nine years later, on 12 April 2012, Fox advanced concerns to similar effect in an email to Detective Sergeant Jeffrey Little in the context of the Strike Force Lantle investigation. Fox contended that the asserted poor memory was evidence of collusion:

When I got statements from Saunders and Burston they had an incredible lapse of memory that was identical in respect to the same conversations with Fletcher about the allegations. There is no doubt in my mind these two and a third held a 'scrum down' before coming in to see me with identical memory lapses.¹⁵¹

- 18.100 Under questioning from counsel assisting, however, Fox agreed that in terms of collusion, the statement of Burston was not consistent with the statements of Malone and Saunders in relation to a key conversation and that, at least to that extent, there could have been no collusion.¹⁵²

Conclusions

- 18.101 An assertion of collusion – particularly in the context of a police investigation – is a serious matter and involves, in effect, an assertion that there exists a secret understanding between individuals for an illegal or improper purpose. Such an assertion ought not be made against another person without a proper basis.
- 18.102 There is before the Commission no credible evidence to lead it to find that Malone, Burston, Saunders and/or Harrigan colluded in relation to their respective police statements provided to Fox in May 2003 for the Fletcher investigation. Nor is there any evidence of concealment in relation to such statements.
- 18.103 Moreover, under questioning Fox made important concessions – or otherwise revealed a misapprehension on his part, or both – in his evidence concerning his assertions of collusion and concealment. First, the Commission finds that Fox's assertions in relation to Malone were unjustified given Fox's confusion about the content of Saunders' statement (as noted in para 18.69). Second, the assertions relating to Saunders were ostensibly based on Fox's expectations and speculation that Saunders should have had a more detailed recollection of a conversation – nothing more. Third, Fox largely resiled from the assertions so far as Harrigan was concerned, conceding that he in fact formed the view that Harrigan was doing his best to tell the truth in his statement. Fourth, Fox agreed that Burston's statement was inconsistent with that of Saunders and that of Malone in relation to the central question of whether Fletcher knew the identity of the abusive caller on 2 June 2002. Fox agreed that – to the extent that the statements of Malone and Saunders were not consistent with the statement of Burston in that regard – there could not have been collusion.
- 18.104 Quite apart from Fox's evidence, having closely considered the relevant statements the Commission does not find them to be 'consistently lacking' in relation to details of important conversations or other matters; nor is there any other aspect suggestive of collusion on the part of those who gave the statements. Moreover, in so far as any criticism as to recollection was raised by Fox, it is noteworthy that Fox sought the statements almost a year after the events in question. Any failure to recall or provide information about precise details of particular conversations that occurred a year before could reasonably be attributed to gaps in memory resulting from the passage of time.

¹⁵⁰ Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56.

¹⁵¹ e@gle.I HELP entry, dated 12 April 2012, ex 219, tab 508, p 1495.

¹⁵² TOR 2, T211.44–212.12 (Fox).

- 18.105 The Commission is also satisfied that Brown did not hold the view that there had been collusion among the five clergy in relation to their police statements. It is clear from his evidence that he was not in a position to hold such a view. On the contrary, in terms of his limited involvement in obtaining a statement from Searle, Brown formed the view that Searle was cooperative and willing in his efforts to recall events that had occurred five years before. It was inappropriate for Fox to claim in a formal report to the Ombudsman that Brown held the same view of collusion as he did. This was a statement Fox made in order to add weight to the views he advanced in that regard, and it should not have been made.
- 18.106 As to Fox's assertions of collusion and a lack of assistance on the part of Searle, there is no evidence before the Commission in support of the assertion that Searle engaged in collusion with any of the four other clergymen interviewed. Moreover, Searle's attendance at the police station to be interviewed and provide a statement for the Fletcher investigation is an instance of cooperation with and rendering of assistance to, the investigators.
- 18.107 Having regard to the serious nature of the assertions Fox made against the clergy (as referred to) and the absence of supporting evidence, the Commission finds that Fox was wholly unjustified in making such assertions.
- 18.108 Further, the Commission finds that Malone, Saunders, Burston, Harrigan and Searle provided assistance to police in connection with the Fletcher investigation by each voluntarily providing a police statement.

Father Burston's failure to volunteer relevant and incriminatory information

Detective Chief Inspector Fox's evidence

- 18.109 Fox further asserted in his 29 May 2003 report to the Ombudsman that Burston had, in essence, failed to mention relevant information in his first statement, provided on 20 May 2003, in relation to a conversation with Fletcher about AH staying at Branxton presbytery. In the report, Fox stated:

BI has contacted myself & asked if Father Burston had mentioned to myself a conversation had between them shortly after the 5th of June 2002 in which Burston told him that Father Fletcher had denied the allegations of abusing AH. More importantly Father BURSTON told him that Father Fletcher had denied that AH had ever stayed at the Branxton Presbytery (Allegation of the last assault). BI told him that was a lie as he had personally driven AH to the Presbytery that night & spoke to Father Fletcher himself. He had returned the following morning & [taken] AH home. Father Burton [sic] allegedly recalled Father Fletcher having mentioned something about this some time ago & agreed with BI.

Father Burston made no mention of this to myself in his statement, however Father Fletcher readily recalled in his interview with myself that AH did stay at the Presbytery. In view of this it would appear that Father Fletcher thought about the matter & changed his mind or was possibly told by Burston that BI could substantiate his son's assertion. I am to obtain a further statement from BI next week & will again speak to Father Burston regarding this issue.¹⁵³

- 18.110 Burston did, however, provide a further statement to police on 8 September 2003 in which he recounted the conversation he had with BI in June 2002. This statement is considered below. Fox agreed that Burston had willingly provided the second statement and that it was of use and importance to his investigation.¹⁵⁴

¹⁵³ Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56, p 1052.

¹⁵⁴ TOR 2, T349.26-43 (Fox).

Father Burston's evidence

18.111 Burston agreed that on 8 September 2003 he had voluntarily provided a further statement to Fox. This statement concerned, among other things, a conversation Burston had had with Fletcher on or about 3 June 2002, in which the subject of AH having allegedly been sexually assaulted when he stayed at Branxton presbytery was raised. In the statement, Burston stated:

It was at some point during that day [3 June 2002] when Jim [Fletcher] & I were alone that the subject of [AH] having allegedly been sexually assault [sic] when he stayed at Branxton Presbytery was raised. Jim said to me, "[AH] has never stayed overnight at the presbytery". I said, "I don't think that is true Jim. I remember you telling me that he had stayed after his attempted suicide". Jim replied something to the effect, "I don't remember that". Nothing much beyond [that] was said, but this is the conversation that I later relayed to BI.¹⁵⁵

18.112 At the time Burston gave the second statement to Fox, Fletcher was denying that AH had stayed overnight at the presbytery.¹⁵⁶

18.113 As noted, Burston's evidence was that he had not knowingly or intentionally withheld information from Fox in connection with the Fletcher investigation and nor had he knowingly or intentionally hindered or obstructed the Fletcher investigation.¹⁵⁷

Conclusions

18.114 The Commission is satisfied that there is no evidence that Burston concealed or deliberately withheld information about Fletcher from police. On the contrary, the evidence shows that, when approached by Fox to provide evidence that might have implicated Fletcher, Burston was willing to do so and provided a statement that was useful in the investigation.

18.115 The Commission finds that Burston cooperated and offered assistance to the police investigation of Fletcher. Fox's assertion to the contrary is without foundation.

The incident at the Nelson Bay presbytery

18.116 As noted, in his 29 May 2003 report to the Ombudsman, Fox asserted that in the process of providing a statement to police on 19 May 2003 Searle had failed to cooperate with the police investigation by not including relevant information that he had previously given to Fox in a telephone conversation three days earlier. Fox wrote:

I spoke to Father Robert Searle by phone on the 16th of May 2003. I discussed briefly with him an incident some years ago when AH had yelled abuse at him outside the Nelson Bay presbytery. He commented to me, 'He seemed to be angry with the world that night & in light of what has now come out that may be understandable'. At the time he was sympathetic & seemed more than happy to speak to investigators & assist. When interviewed by Detective Brown on Monday the 19th of May 2003 he backed away from his former statements recalling only that AH had made comments of, 'Nobody loves me'. This resulted in him threatening to call the police & telephoning AH's father BI. This might be considered extreme for a drunken young man yelling that he was unloved.¹⁵⁸

18.117 Fox maintained this assertion in his evidence at the public hearings.¹⁵⁹ The Commission received evidence relating to both the presbytery incident and the subsequent police statement that Brown, at the direction of Fox, obtained from Searle.

¹⁵⁵ Statement of Burston, dated 8 September 2003, ex 54, para 4.

¹⁵⁶ TOR 2, T15.24–33 (Burston in camera, 2 September 2013 at 12.49pm).

¹⁵⁷ TOR 2, T1373.40–1374.31 (Burston).

¹⁵⁸ Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56, p 1052.

¹⁵⁹ TOR 2, T229.13–230.37 (Fox).

Father Searle's evidence

- 18.118 Searle is currently the parish priest at MacKillop parish in Charlestown, within Maitland–Newcastle Diocese.¹⁶⁰ He was the parish priest at Nelson Bay from December 1997 until February 2004.¹⁶¹
- 18.119 Searle told the Commission he knew AH's family in the late 1990s and, in particular, knew BI, AH's father, 'very well' as a result of BI's professional association with the Diocese.¹⁶²

AH yelling from outside the presbytery

- 18.120 Searle recalled an incident outside the Nelson Bay presbytery one night in about 1998 or 1999.¹⁶³ Searle told the Commission that he was in his lounge room watching television and heard yelling outside.¹⁶⁴ Searle said the glass doors leading to the balcony were closed and he was unable to identify particular words.¹⁶⁵ He said when he opened the doors and went out onto the balcony, on the second floor of the presbytery,¹⁶⁶ he saw AH about 40 to 50 metres away, on the other side of the double-lane road directly opposite the presbytery.¹⁶⁷ Searle said he could clearly see who it was and identified AH immediately.¹⁶⁸ AH was yelling towards the presbytery building, but Searle said he could not make out what he was saying.¹⁶⁹
- 18.121 Searle said that AH was clearly intoxicated¹⁷⁰ and had a beer bottle in his hand. When he asked AH what was wrong, AH responded, 'Nobody loves me, nobody loves me',¹⁷¹ which were the only words Searle could distinctly hear.
- 18.122 In relation to his police statement provided on 19 May 2003, Searle said his reference to AH continuing to yell out 'the same kind of things' was a reference to AH calling out 'Nobody loves me, nobody loves me'.¹⁷² Searle said he told AH that his parents loved him and that he would go and ring BI, AH's father.¹⁷³
- 18.123 Searle told the Commission he did not think it odd that AH was yelling out 'Nobody loves me' at the presbytery because AH was inebriated. Searle said he had no idea what was behind AH's behaviour.¹⁷⁴
- 18.124 Searle distinctly recalled that AH had a beer bottle in his hand at all times but said he had no recollection of AH throwing anything at the presbytery.¹⁷⁵
- 18.125 In his police statement Searle additionally recounted that he told AH that if he did not leave he would have to call the police and his parents because he just wanted AH to move on.¹⁷⁶

¹⁶⁰ TOR 2, T1893.44–T1894.2 (Searle).

¹⁶¹ TOR 2, T1894.32–42 (Searle).

¹⁶² TOR 2, T1897.29–1898.1 (Searle).

¹⁶³ TOR 2, T1898.44–47 (Searle).

¹⁶⁴ TOR 2, T1898.21–23 (Searle).

¹⁶⁵ TOR 2, T1899.9–16 (Searle).

¹⁶⁶ TOR 2, T1899.22–25; T1899.46–1900.1 (Searle).

¹⁶⁷ TOR 2, T1899.28–44; T1900.23 (Searle).

¹⁶⁸ TOR 2, T1900.38–43 (Searle).

¹⁶⁹ TOR 2, T1901.6–14 (Searle).

¹⁷⁰ AH was not called to give evidence. The Commission does not regard this as significant in the circumstances. On any view, AH was intoxicated at the time of the incident outside the presbytery, which occurred some 15 years ago. In such circumstances, the Commission formed the view that any evidence given by him would be unreliable. He was therefore not compelled to give evidence; nor was his attendance sought by any person authorised to appear at the Inquiry, including the Diocese.

¹⁷¹ TOR 2, T1901.17–26 (Searle).

¹⁷² TOR 2, T1917.2–6 (Searle); NSW Police statement of Searle, dated 19 May 2003, ex 162, para 7.

¹⁷³ TOR 2, T1902.9–15 (Searle).

¹⁷⁴ TOR 2, T1920.11–19; T1922.2–4 (Searle).

¹⁷⁵ TOR 2, T1903.33–41; T1926.21–22 (Searle).

18.126 Searle denied counsel assisting's suggestion that AH had yelled out about the 'filthy things that priests do to boys'. Although accepting the possibility that AH had used those words and he was unable either to hear or to discern them, he told the Commission he believed he 'would have heard that clearly if that had been said'.¹⁷⁷ The Commission has doubts about the basis on which Searle could make such an assertion in circumstances where his earlier evidence was that, other than 'Nobody loves me etc', he could not discern what AH was saying.

Father Searle telephoning BI

18.127 Searle told the Commission that when he went back inside he rang BI, by which time it was about 8.00 pm.¹⁷⁸ He said he told BI his son had been outside the presbytery and that he was concerned for his safety because he thought he was inebriated.¹⁷⁹ Searle said he did not say anything to BI about what AH had been saying apart from 'Nobody loves me'. Searle said he also told BI that he (Searle) had told AH that BI loved him.¹⁸⁰ As described in paragraph 18.133, BI was unable to recall whether Searle told him any specific words AH had used.

18.128 Searle gave evidence that BI said he would arrange for someone to drive him to the presbytery since he had had a few glasses of red wine and that BI arrived between 45 and 60 minutes later.¹⁸¹ AH had gone by the time BI arrived, and Searle told the Commission he had not heard him outside since seeing him walk off before he (Searle) came back inside the presbytery.¹⁸² Searle told BI what he had seen and heard from AH. BI had a cup of coffee and then went to find AH.¹⁸³

Further matters

18.129 Searle denied having had conversations about the incident with anyone other than BI that evening. He specifically denied speaking with AH's mother, BJ, about it.¹⁸⁴ He also denied telling either BI or BJ that AH had said 'really weird stuff about priests and sex' and again asserted that he had never heard AH say such things.¹⁸⁵

18.130 Searle also agreed that he would have spoken with Sister Paula Redgrove, as his pastoral associate, about the event the day after it happened.¹⁸⁶

18.131 In keeping with arrangements made by Fox on 16 May 2003, Searle attended Maitland police station on 19 May 2003 and gave a statement to Brown. The circumstances in which the statement was obtained are discussed in paragraphs 18.146 to 18.154. Notably, Searle denied ever telling the officer who called him to arrange the statement taking that AH had been talking about 'filthy things that priests do to children'.¹⁸⁷

BI's evidence

18.132 In a statement BI, AH's father, gave evidence to the Commission that he received a telephone call from Searle in either 1997 or 1998 whilst at home. Searle told him AH was on the footpath opposite the presbytery in Nelson Bay and that he appeared to be 'very drunk ... screaming out

¹⁷⁶ TOR 2, T1925.43–1926.1 (Searle).

¹⁷⁷ TOR 2, T1906.20–1907.32 (Searle).

¹⁷⁸ TOR 2, T1902.40–41; T1905.31–32 (Searle).

¹⁷⁹ TOR 2, T1905.15–18 (Searle).

¹⁸⁰ TOR 2, T1920.42–46 (Searle).

¹⁸¹ TOR 2, T1905.22–40 (Searle).

¹⁸² TOR 2, T1921.5–10; T1921.20–30 (Searle).

¹⁸³ TOR 2, T1905.45–1906.3 (Searle).

¹⁸⁴ TOR 2, T1909.25–32 (Searle).

¹⁸⁵ TOR 2, T1909.32; T1910.6–11; T1910.28–33; T1921.36–47 (Searle).

¹⁸⁶ TOR 2, T1918.17–30 (Searle).

¹⁸⁷ TOR 2, T1923.8–12 (Searle).

at the presbytery and ... upsetting the neighbours'.¹⁸⁸ BI said he believed Searle also said AH had thrown a beer bottle at the presbytery.¹⁸⁹ Additionally, BI recalled telling Searle that if there was a concern about safety or disturbing the neighbours he should call the police to have AH removed. He also suggested that Searle call his wife, BJ, who was in Dungog attending a parish meeting.¹⁹⁰

- 18.133 BI travelled to the Nelson Bay presbytery by car with his neighbour, by which time AH had gone.¹⁹¹ BI spoke to Searle but could not recall whether Searle told him any specific words AH had used.¹⁹² BI and his neighbour then drove around Nelson Bay looking for AH without success.¹⁹³
- 18.134 BI was not called to give oral evidence in relation to this matter, including on application by the Diocese, and his evidence was thus not the subject of any challenge. The Commission accepts his account of events so far as they relate to his involvement.

BJ's evidence

- 18.135 AH's mother, BJ, also gave evidence to the Commission about the Nelson Bay presbytery incident.¹⁹⁴ BJ recalled receiving a telephone call from BI while she was at a parish meeting in Dungog. BI told her their son was in Nelson Bay and very upset, and he knew this because Searle had called to tell him. He said AH was yelling out and was drunk.¹⁹⁵ BJ said the incident was in late 1997 or early 1998.¹⁹⁶
- 18.136 BJ said that after the conversation with BI she had a telephone conversation with Searle. Although she could not recall whether she rang Searle or he rang her, BJ said BI had told her Searle wanted to speak with her as well. She could not remember the exact words used but could remember the gist of the conversation with Searle and recalled that Searle had told her AH was very drunk and was saying 'really weird stuff about priests and sex'. BJ said that she told Searle that she was an hour and a half away and suggested that he ring the police.¹⁹⁷
- 18.137 Under examination by counsel for the Diocese, BJ confirmed that Searle had telephoned her and said words to the effect of 'AH was yelling weird stuff about priests and sex', those being words she would not forget.¹⁹⁸ BJ emphatically rejected the suggestion that Searle did not say to her AH was yelling anything weird at all about priests and sex: 'No, I can't agree with that, because he did say that'.¹⁹⁹

Sister Redgrove's evidence

- 18.138 Sister Paula Redgrove prepared a statutory declaration dated 28 August 2013 in which she stated that she recalled having a conversation with Searle about the incident involving AH

¹⁸⁸ Statement of BI, dated 13 August 2013, ex 222, paras 1–3.

¹⁸⁹ *ibid*, para 4.

¹⁹⁰ *ibid*, para 5.

¹⁹¹ *ibid*, paras 7–9.

¹⁹² *ibid*, paras 10–11.

¹⁹³ *ibid*, para 12.

¹⁹⁴ TOR 2, T1849.20–21 (BJ).

¹⁹⁵ TOR 2, T1834.6–13 (BJ).

¹⁹⁶ TOR 2, T1834.47–1835.7 (BJ).

¹⁹⁷ TOR 2, T1834.31–45 (BJ).

¹⁹⁸ TOR 2, T1850.21–38 (BJ).

¹⁹⁹ TOR 2, T1851.44–1852.1 (BJ).

outside the presbytery and that Searle recounted that AH was ‘calling out obscene things about the Catholic Church’.²⁰⁰

- 18.139 When giving oral evidence Redgrove said she came to know Searle as the parish priest of Nelson Bay when she worked with him for six years;²⁰¹ this was from about 1996 or 1997 to 2002.²⁰²
- 18.140 Redgrove was unable to pinpoint the date of the conversation with Searle, as referred to in her statutory declaration, other than to say it was in the late 1990s.²⁰³ In terms of the context of the conversation, Redgrove said Searle just raised the matter when she met him at church the next morning, and he told her about the events of the night before. She said it was a chance meeting at the back of the church in an office or meeting room²⁰⁴ and only the two of them were present.²⁰⁵
- 18.141 As to the content of the conversation with Searle, Redgrove said Searle had told her he had been disturbed by AH the night before and that AH had been throwing bottles at the presbytery and ‘calling out obscene things about priests and the church, but it was mumbled’.²⁰⁶ Redgrove also said Searle told her AH had thrown bottles at the presbytery and that she heard that on that day (which accords with BI’s account – see para 18.132).²⁰⁷ She said Searle was upset and angry as a result of the incident; she told the Commission Searle was an emotional priest who could ‘flare up’.²⁰⁸ Redgrove also said Searle told her AH was intoxicated and he ‘felt that he had [taken] drugs’.²⁰⁹

Conclusions

- 18.142 BJ gave evidence in a forthright manner. The Commission found her to be a credible witness. It accepts her account of receiving a telephone call from Searle at the time of the incident and that Searle said to her, ‘[BJ], he’s saying really weird stuff about priests and sex’. It is also inherently likely that Searle would have contacted BJ in circumstances where BI told Searle he had been drinking and would need to see if he could find someone to drive him to Nelson Bay. Further, an incident of this nature is something that would be striking and memorable, particularly for a parent receiving a call about a distressed child. BJ was also able to recall the circumstances in which she received the telephone call – at the parish meeting in Dungog. Her account is also supported by the evidence of Sister Redgrove.
- 18.143 Redgrove presented as a reliable and credible witness with respect to her recollection of events associated with the conversation she had with Searle. She had a clear recollection that Searle told her AH called out obscene things about priests and the Church and that Searle could only understand ‘bits and pieces’ of what was said. The Commission also notes that her evidence is supported by BI’s account of what he was told by Searle (in relation to AH having thrown bottles at the presbytery) and by Searle’s own police statement (in relation to having discussed the matter with Redgrove and AH being under the influence of drugs and alcohol). The Commission accepts her evidence as to the content of the conversation with Searle.

²⁰⁰ Statutory declaration of Redgrove, dated 28 August 2013 and letter from the NSW Crown Solicitor to Leder, dated 7 August 2013, ex 285.

²⁰¹ TOR 2, T3.41–4.5 (Redgrove in camera, 10 October 2013).

²⁰² TOR 2, T4.24–42; T11.38–45 (Redgrove in camera, 10 October 2013).

²⁰³ TOR 2, T5.9–13 (Redgrove in camera, 10 October 2013).

²⁰⁴ TOR 2, T6.2–4; T7.5–30 (Redgrove in camera, 10 October 2013).

²⁰⁵ TOR 2, T5.19–47 (Redgrove in camera, 10 October 2013).

²⁰⁶ TOR 2, T7.43–47 (Redgrove in camera, 10 October 2013).

²⁰⁷ TOR 2, T21.18–33 (Redgrove in camera, 10 October 2013).

²⁰⁸ TOR 2, T9.43–10.12 (Redgrove in camera, 10 October 2013).

²⁰⁹ This detail is also supported by Searle’s police statement of 19 May 2003: NSW Police statement of Searle, dated 19 May 2003, ex 162, para 6.

- 18.144 Having observed Searle's demeanour in the witness box and having heard his account, the Commission found aspects of his evidence unsatisfactory. For example, Searle said AH had yelled out about the 'filthy things that priests do to boys' and he believed he 'would have heard that clearly', yet he also gave evidence that he was unable to discern much of what AH was yelling other than the words 'Nobody loves me'.²¹⁰
- 18.145 Given the totality of the evidence, the Commission is satisfied that there was an incident in early 1998 or 1999 in which AH went to the Nelson Bay presbytery and yelled out certain things to Searle, including making obscene remarks about priests and sex, although the evidence does not permit a finding to be made as to the precise words said. The Commission rejects Searle's account that AH only yelled 'Nobody loves me'. It finds that Searle heard AH's 'obscene' remarks about priests and sex and made reference to that fact in both his telephone conversation with BJ on the night in question and to Redgrove the following day.

Obtaining Father Searle's 19 May 2003 statement

- 18.146 Fox asserted, including in evidence before the Commission, that in the process of providing his police statement on 19 May 2003, Searle had 'backed away' from his verbal recollection relayed to Fox in a telephone conversation on 16 May 2003 and, in doing so, had in essence failed to cooperate with the Fletcher police investigation.

A telephone conversation with Father Searle: 16 May 2003

- 18.147 Fox told the Commission he contacted Searle by telephone on Friday 16 May 2003 with a view to obtaining a statement about what AH had yelled outside the presbytery. Fox believed such a statement might assist the Fletcher investigation because AH's behaviour that night was 'indicative of the behaviour of an individual that had been sexually abused'.²¹¹
- 18.148 On Monday 19 May 2003 Searle provided a police statement to (then) Detective Senior Constable Brown.
- 18.149 The content of the telephone conversation between Searle and Fox on 16 May 2003 was a cause for dispute before the Commission.

Varying accounts given by Detective Chief Inspector Fox

- 18.150 Fox gave varying accounts about the content of his telephone conversation with Searle.
- 18.151 Initially he gave an account that did not suggest any conflict between what Searle told him in the telephone conversation and what appeared in Searle's police statement of 19 May 2003. Fox said that when he spoke to Searle on the telephone on 16 May 2003 Searle had told him AH was drunk and upset and that the only thing Searle could recall saying was telling AH to leave and that he would call the police if he did not. Fox told the Commission the content of the telephone conversation and Searle's police statement 'differed markedly from what the conversation was that was relayed to me by AH's parents'.²¹²
- 18.152 From this evidence, Fox was conveying the notion that there was consistency in the accounts Searle provided in the telephone call with Fox and his police statement; the point of difference arose in relation to the conversation AH's parents recounted to Fox.
- 18.153 In a subsequent exchange with counsel assisting, however, Fox gave an account that raised an inconsistency between the information Searle provided to Fox on the phone and that which

²¹⁰ TOR 2, T1906.20–24; T1907.27–32; T1906.34.37; T1906.17–18 (Searle).

²¹¹ TOR 2, T590.26–34 (Fox); see also: TOR 2, T237.14–21 (Fox).

²¹² TOR 2, T226.28–32 (Fox).

appeared in his police statement. Fox said Searle had told him during the telephone conversation that AH ‘... was saying filthy things – and I remember that was the term he used, “filthy things” – about what priests do to young boys’.²¹³ When asked why he had not provided this information in his earlier oral evidence about the telephone conversation, Fox said that he believed that information was already in evidence from his previous answers to the Commission²¹⁴ and, later, in an affidavit previously provided to the Commission (although not tendered in evidence).²¹⁵

- 18.154 Under further examination Fox agreed that his evidence that Searle told him of the ‘filthy priests matter’ in the conversation on 16 May 2003 was inconsistent with the answer given in paragraph 18.151. Fox described the way he had expressed it as ‘probably poor wording’.²¹⁶

Notification to the Ombudsman

- 18.155 Ten days after Searle’s 19 May 2003 statement was obtained Fox made his second notification to the Ombudsman. As noted in paragraph 18.116, in that report, dated 29 May 2003, Fox stated that Searle had told him during their telephone call of 16 May 2003 that AH ‘... seemed to be angry with the world that night & in light of what has now come out that may be understandable’.²¹⁷
- 18.156 When asked why in his report to the Ombudsman he had omitted the very information he claimed he was frustrated about Searle not including in his police statement, Fox said in essence that that aspect was not within the purview of the Ombudsman’s investigation and he had already given them more information than they needed.²¹⁸

Father Searle’s evidence

- 18.157 For his part, Searle denied that he told the officer who telephoned him AH had been talking about the ‘filthy things that priests do to children’.²¹⁹ Searle told the Commission that in the telephone call with the police officer he had no substantive conversation about the contents of the statement to be provided, although enough was said for him to know generally what police wanted to talk to him about.²²⁰

Detective Chief Inspector Fox’s asserted discussion with Detective Senior Constable Brown and Father Searle

Detective Chief Inspector Fox’s evidence

- 18.158 Fox told the Commission he had originally intended to take a statement from Searle himself but, because ‘something significant’ came up that prevented him from doing so, he instructed Brown to obtain the statement. Fox said he spoke to both Brown and Searle together ‘for the reason that Detective Brown had very minimal knowledge of the matter and I wanted to ensure that he included in it [the statement] what I felt was important and relevant to the investigation’.²²¹
- 18.159 Fox could not recall at which police station the events occurred or where they occurred within the police station.²²² On being shown Searle’s 19 May 2003 statement and agreeing that it had been taken at Nelson Bay, Fox was asked whether he was at Nelson Bay on that day. He told the

²¹³ TOR 2, T232.1–6 (Fox).

²¹⁴ TOR 2, T583.2–10 (Fox).

²¹⁵ TOR 2, T582.28–33 (Fox).

²¹⁶ TOR 2, T588.7–20 (Fox).

²¹⁷ Fox report re Ombudsman notification involving Fletcher and AH, dated 29 May 2003, ex 56, p 1052.

²¹⁸ TOR 2, T236.25–41; T591.12–26 (Fox).

²¹⁹ TOR 2, T1923.8–12 (Searle).

²²⁰ TOR 2, T1923.1–6 (Searle).

²²¹ TOR 2, T227.43–228.16 (Fox); see also TOR 2, T536.2–4 (Fox).

²²² TOR 2, T536.6–12 (Fox).

Commission, 'I must have travelled up there at some stage, yes'.²²³ Fox then tried to recall what it was that had prevented his taking the statement and said that he 'must have had other things on' but noted that he did 'remember meeting Father Searle at one stage and speaking to him a little about what was required in that statement'.²²⁴

- 18.160 Counsel for NSW Police put to Fox that, although he met with Detective Brown that day and asked him to take Searle's statement, he never met with Searle during the day and Brown had travelled to Nelson Bay on his own. Fox said he did not have a clear recollection of where the statement had been taken but confirmed that he spoke to Searle briefly²²⁵ and had a definite recollection of giving detailed instructions or directions to Brown about taking the statement.²²⁶

Mr Brown's evidence

- 18.161 As noted in paragraphs 18.90 and following, Brown had a limited role in the Fletcher investigation.²²⁷ He said that a week after the arrest of Fletcher Fox approached him to obtain a statement from Searle, who was located at Nelson Bay at the time. Brown said that before he travelled to Nelson Bay to obtain the statement he was 'made aware by Detective Sergeant Fox of the matters that were to be covered in any statement ...'²²⁸ As to the detail Fox had said he wanted included in the statement, Brown said it was indicated in 'very general terms' only.²²⁹ He later said the specific instructions from Fox were to capture the conversation or the yelling of AH toward the presbytery.²³⁰ Under specific questioning about the matter Brown gave evidence that Fox had not said anything to him about the need for him (Brown) to explore with Searle whether AH had made any remarks about priests (including the 'filthy things that priests do to children') when he was yelling outside the presbytery. Brown said he believed he would recall such an instruction from Fox had it been issued.²³¹
- 18.162 Brown confirmed that the statement was taken at the Nelson Bay police station and that only he and Searle were present. Brown said there was no occasion on which he, Searle and Fox were physically present at the same time.²³²
- 18.163 Brown recalled that when he returned to Maitland police station with Searle's signed statement Fox read the statement and said he had been expecting more information from Searle than had been provided.²³³
- 18.164 Brown formed the impression that, in attending for the police interview and providing the statement, Searle had been cooperative and 'did not appear to be holding back any information that I was asking of him.'²³⁴

Father Searle's evidence

- 18.165 Searle recalled receiving a telephone phone call from an officer whom he believed was Fox, although he could not recall if the caller identified himself as such.²³⁵ He denied that he told the

²²³ TOR 2, T538.9–41 (Fox).

²²⁴ TOR 2, T539.13–42 (Fox).

²²⁵ TOR 2, T541.38–542.9 (Fox).

²²⁶ TOR 2, T542.11–24 (Fox).

²²⁷ TOR 2, T698.43–46 (Brown).

²²⁸ Statement of Brown, dated 31 May 2013, ex 82, para 9.

²²⁹ TOR 2, T701.14–702.7 (Brown).

²³⁰ TOR 2, T713.18–22 (Brown).

²³¹ TOR 2 T704.26–38 (Brown).

²³² TOR 2, T699.18–700.24 (Brown).

²³³ Statement of Brown, dated 31 May 2013, ex 82, para 13.

²³⁴ *ibid*, paras 12, 14.

²³⁵ TOR 2, T1911.45–1912.8 (Searle).

officer who telephoned him that AH had been talking about the ‘filthy things that priests do to children’.²³⁶ The officer arranged a time for Searle to come in and give the statement.²³⁷

- 18.166 Searle confirmed that he went to Nelson Bay police station for an interview on 19 May 2003, about three days after receiving the phone call from the person he believed to be Fox.²³⁸ He did not recall any cancellation or postponement of the interview.²³⁹ He had thought that the detective at the police station who took his statement was in fact Fox, but he subsequently learnt from a media report during the Inquiry that it was Brown.²⁴⁰ Searle also gave evidence that there was never any occasion while he was at the police station when he spoke with more than one police officer at the same time – only with the officer he later identified as Brown.²⁴¹
- 18.167 In relation to the substance of the interview Searle stated, ‘He asked me my recollections and he asked me questions. He asked me did I see a bottle being thrown, which I didn’t, and he just asked me generally what happened’.²⁴² The detective also asked him what he heard being called out and Searle told him. He denied that the detective asked him whether AH had made any reference to the ‘filthy things that priests do to boys’.²⁴³
- 18.168 Searle denied deliberately holding back information in his statement because he thought the information might be either distasteful or potentially damaging to the Church.²⁴⁴ He agreed he was happy to provide the statement when asked to do so and said he cooperated fully with Brown in the process of giving the statement and was honest and open in describing what took place outside the presbytery on the night in question.²⁴⁵

Detective Chief Inspector Fox’s alleged confrontation with Father Searle

- 18.169 Fox gave evidence that after Searle’s police statement of 19 May 2003 had been taken he (Fox) was surprised that it contained ‘nothing along the line of ... our conversation only days earlier’.²⁴⁶ Fox told the Commission he confronted Searle about it:
- ... I spoke – well, I didn’t interview him in the sense that I obtained a formal interview or a statement from him, **but I spoke to him after it**, obviously raising concern that what we had spoken about on the phone wasn’t what was put in his statement ...²⁴⁷
- 18.170 Fox later gave evidence, under questioning by counsel for the Diocese, acknowledging that ‘I don’t think I took it up with him again after his statement was given’.²⁴⁸

²³⁶ TOR 2, T1923.8–12 (Searle).

²³⁷ TOR 2, T1912.44–47 (Searle).

²³⁸ TOR 2, T1913.4–10 (Searle).

²³⁹ TOR 2, T1924.38–40 (Searle).

²⁴⁰ TOR 2, T1913.4–1915.6 (Searle).

²⁴¹ TOR 2, T1913.36–43 (Searle).

²⁴² TOR 2, T1915.15–20 (Searle).

²⁴³ TOR 2, 1915.26–34 (Searle).

²⁴⁴ TOR 2, T1927.1–5 (Searle). Notwithstanding the Commission’s finding that in 1998 or 1999 Searle heard AH yelling obscene remarks about priests and sex at the Nelson Bay presbytery, no finding can be made about Searle’s assistance (or otherwise) to the police in relation to the omission of this information from Searle’s police statement of 19 May 2003. Brown’s evidence was that he was not aware of that matter: it follows that he would not have asked questions of Searle in relation to it. It is also the case that the statement was taken some four or five years after the events in question, and it is conceivable that Searle would have either forgotten that information or failed to appreciate its significance for the purposes of the investigation into Fletcher.

²⁴⁵ TOR 2, T1927.35–1928.5 (Searle).

²⁴⁶ TOR 2, T232.21–22 (Fox).

²⁴⁷ TOR 2, T232.28–32 (Fox). It should be noted that neither the New South Wales Police Force nor Fox produced any contemporaneous note that recorded any such conversation between Fox and Searle. Fox’s duty books for the relevant period are otherwise missing.

²⁴⁸ TOR 2, T592.26–27 (Fox).

Conclusions

Detective Chief Inspector Fox's telephone conversation with Father Searle: 16 May 2003

- 18.171 Notwithstanding the Commission's findings that AH did yell at the presbytery about the 'filthy things that priests do to children' and that Searle conveyed that information to both BJ and Redgrove, there are stark inconsistencies in the versions of events Fox advanced in his evidence. In this regard the divergence between Fox's initial evidence on the marked differences between Searle's telephone call with him on 16 May 2003 and his (Searle's) police statement of 19 May 2003 on one hand and the position of AH's parents on the other was not satisfactorily explained by Fox.
- 18.172 Further, Fox's 29 May 2003 report to the Ombudsman omitted the central information relating to AH shouting out things about priests and sex. Fox provided no convincing explanation for such an omission. In addition, to the extent that Searle's evidence can be accorded weight (having regard to the Commission's findings about the incident at the presbytery), he denied talking about the 'filthy things that priests do to children'.
- 18.173 The Commission rejects Fox's evidence and finds that in the phone call of 16 May 2003 Searle did not refer to the 'filthy things' that priests do to young boys. The Commission finds therefore that there was no 'backing away' by Searle in his police statement from information he provided during the earlier telephone conversation with Fox and that, by such conduct, Searle did not fail to cooperate with the Fletcher investigation.

Detective Chief Inspector Fox's instructions to Mr Brown

- 18.174 Brown was an impressive witness who gave evidence in a careful manner. The Commission accepts his evidence that Fox told him only in very general terms what was to be covered in the statement to be taken from Searle and that Fox did not specifically raise with him the fact that AH might have made statements relating to priests (including the 'filthy things' priests do to children) when he was yelling outside the presbytery.

Detective Chief Inspector Fox's discussion with Mr Brown and Father Searle

- 18.175 As to Fox's assertion of a discussion that took place at which he, Brown and Searle were all present, Brown's evidence was to the contrary and was largely unchallenged by counsel for Fox.²⁴⁹ Searle also gave evidence that no such three-way discussion took place. The Commission accepts Brown's evidence about the role he played in the statement taking process and his conversations with Fox. The Commission finds that, contrary to the evidence of Fox, there was no occasion on which Fox, Searle and Brown were physically present at the same time.

Detective Chief Inspector Fox's alleged confrontation with Father Searle

- 18.176 In evidence before the Commission Fox gave conflicting versions of the circumstances of his alleged confrontation with Searle. No satisfactory explanation was provided for these conflicting versions. In the later version given in evidence Fox acknowledged that he did not take the matter up with Searle after the statement had been taken. In these circumstances the Commission finds that no such 'confrontation' with Searle in fact occurred. It rejects Fox's initial evidence that he confronted Searle in relation to things that had been omitted from his police statement relative to information provided in the telephone conversation on 16 May 2003.

²⁴⁹ TOR 2, T712.8–714.6 (Brown).

Pornographic material found at Lochinvar presbytery

18.177 In his report of 25 November 2010 Fox asserted that Harrigan destroyed pornographic material received from Fletcher that could otherwise have been evidence against Fletcher. Fox maintained this assertion in evidence before the Commission. In his report of 25 November 2010 he stated:

It was intended to execute a search warrant for pornographic images on Fletcher's presbytery; however, I learnt Fletcher removed a quantity of homosexual pornographic videos and magazines before this could happen. I suspected this material contained some images of young boys as mentioned by a victim. Undoubtedly²⁵⁰ this happened directly as a result of Malone AND Saunders' forewarning.

I was told by a source that Fletcher passed the mentioned pornography to priest Des Harrigan. Harrigan was heavily intoxicated when I confronted him in the presbytery at Raymond Terrace. He admitted being given homosexual pornographic magazines and videos by Fletcher, but denied it contained illegal images of children. He claimed he owned the items and had inadvertently left them in Fletcher's presbytery. He also said he had destroyed all these items but could give no plausible explanation as to why he decided to do so.²⁵¹

18.178 Fox confirmed in his oral evidence that the public references he had made on 8 November 2012, in his letter to Premier O'Farrell and during the ABC *Lateline* program, were to this alleged instance of Harrigan having destroying pornography. He further confirmed this was the only instance of destruction of evidence by the Catholic Church he had encountered.²⁵²

18.179 Fox also referred to Harrigan's ownership and alleged subsequent destruction of pornography in emails exchanged with Detective Sergeant Jeffrey Little that were in evidence before the Commission:

Burston & Saunders went with Malone when all three met with Fletcher, not only forewarning Fletcher that he was under investigation by NSW Police but also disclosed to him which of his victim's [sic] had complained. This allowed Fletcher to dispose of images and other material in his possession before police could execute a search warrant. Harrigan later admitted taking possession of homosexual pornographic material and videos from Fletcher ... Harrigan admitted to me they were homosexual ... He had destroyed them all by the time I spoke to him, claiming they were his property. He was drunk off his face when he spoke to me and never tried to hide the bottle of vodka ...²⁵³

A conversation between Detective Chief Inspector Fox and Mr Hanley

18.180 Fox's duty book entries for 29 and 30 December 2003 provide background to his assertions about Harrigan destroying pornography.²⁵⁴ The duty book entry for 29 December 2003 records that Fox spoke with Mr Ray Hanley, the then supervisor of schools (staffing) in the Catholic Education Office.²⁵⁵

²⁵⁰ 'Undoubtedly' is underlined in the original report.

²⁵¹ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1374.

²⁵² TOR 2, T285.34–286.7 (Fox).

²⁵³ e@gle.I HELP entry, dated 12 April 2012, ex 219, tab 508, p 1494. The matter of the ownership and destruction of this pornography also featured in two information reports prepared by Fox in August 2004 and March 2006 (referred to in Chapter 10): NSW Police Force COPS information report I 21949203, dated 30 August 2004, ex 216, tab 16; NSW Police Force COPS information report I 107133494, dated 6 March 2006, ex 219, tab 411.

²⁵⁴ These pages were among a small number produced to the Commission in response to an initial summons (1)(b) to Fox dated 25 January 2013. Fox was otherwise unable to assist with the location of his original duty books, and had only photocopied select pages (including those concerning the events on 29 and 30 December 2003).

²⁵⁵ Excerpt of private hearing transcript of Hanley, dated 26 February 2013, ex 257, pp 3–4.

Speak to Ray Hanley ... re Fletcher and he was called to Lochinvar Presbytery shortly after Fletcher took over and was shown pornographic homosexual videos and magazines and told by Fletcher that these items must have belonged to previous priests – Hanley concerned these items may have belonged to Fletcher and could have been somehow involved in the brief ...²⁵⁶

- 18.181 Fox told counsel assisting that Hanley reported having been helping Fletcher move items about in the presbytery at Lochinvar and having come across pornographic homosexual videos and magazines;²⁵⁷ Hanley became concerned that the items might have belonged to Fletcher.²⁵⁸ After some time Hanley reported this to Fox because it had been ‘disturbing him and on his conscience for some time that he should have done more about it at the time’.²⁵⁹
- 18.182 In evidence before the Commission Fox contended that the material was relevant to the Fletcher investigation because it was ‘highly unusual’ for a member of the clergy to have material of that nature, and, in view of its homosexual nature, it showed that Fletcher had a possible interest in activity of that kind.²⁶⁰ Fox claimed that evidence as to the existence of the pornography and that Fletcher owned it could have been led in evidence in the prosecution of Fletcher in connection with another victim.²⁶¹ He did, however, accept that ownership of pornography was not illegal.²⁶²
- 18.183 Fox said he had asked Hanley whether any of the material contained images of under-age boys and Hanley had been unable to confirm this, having had no desire to ‘look that hard’ after having already seen the front covers of the magazines.²⁶³ An excerpt from Fox’s statement that was tendered before the Commission records, ‘He [Hanley] was concerned some of the images may have shown males in their teens’.²⁶⁴ Fox did not, however, record these things in his duty book and agreed that it would have been helpful if he had done so.²⁶⁵ Further, Fox did not take any steps to obtain a statement from Hanley.²⁶⁶

A visit to Father Harrigan

- 18.184 The following day, 30 December 2003, Fox visited Harrigan at the Raymond Terrace presbytery; he was accompanied by Senior Constable Jason Robbs.²⁶⁷ Fox, Robbs and Harrigan each gave evidence before the Commission about what occurred during the visit.

Detective Chief Inspector Fox’s evidence

- 18.185 Fox told the Commission he wanted to interview Harrigan because he knew he had lived at the Lochinvar presbytery before Fletcher’s appointment and because Hanley had told him Fletcher said the pornographic material belonged to the previous priest, Harrigan.²⁶⁸ Fox said he had wanted to confirm ownership of the material.²⁶⁹ In this regard, he agreed that he had ‘a strong suspicion’ that the material had been owned by Fletcher²⁷⁰ but conceded he did not have

²⁵⁶ Duty book entry of Fox, dated 29 December 2003, ex 80.

²⁵⁷ TOR 2, T192.47–193.5 (Fox).

²⁵⁸ TOR 2, T597.8–27 (Fox).

²⁵⁹ TOR 2, T194.35–46 (Fox).

²⁶⁰ TOR 2, T193.14–194.34 (Fox).

²⁶¹ TOR 2, T601.1–4 (Fox).

²⁶² TOR 2, T193.45–46 (Fox). The evidence does not permit a finding that the pornography featured persons under-age.

²⁶³ TOR 2, T598.31–39 (Fox).

²⁶⁴ Excerpts of statement of Fox, dated 7 February 2013, ex 81, para 82.

²⁶⁵ TOR 2, T597.34–599.38 (Fox).

²⁶⁶ TOR 2, T598.24–25; T599.10–11 (Fox).

²⁶⁷ TOR 2, T602.30–45 (Fox).

²⁶⁸ TOR 2, T599.40–600.9 (Fox).

²⁶⁹ TOR 2, T601.6–9 (Fox).

²⁷⁰ TOR 2, T601.13–14 (Fox).

evidence to confirm this.²⁷¹ As to whether he had an ‘open mind’ when he went to visit Harrigan, given the nature of the allegations, Fox said, ‘... Not completely open. I was undecided, but I had suspicions, yes ...’²⁷²

- 18.186 In his oral evidence Fox confirmed that, as recorded in his duty book entry for 30 December 2003,²⁷³ he told Harrigan pornographic material had been found at Lochinvar presbytery and asked him whether it belonged to him or to Fletcher. Harrigan stated, ‘They were mine’.²⁷⁴ Asked by Harrigan’s solicitor whether he took any examples of magazines or pornography with him to show Harrigan, Fox said he had not.²⁷⁵
- 18.187 Fox said he asked Harrigan whether he still had the magazines and whether Fletcher had handed them back to him. Harrigan responded, ‘Yes, he did and I have destroyed them’.²⁷⁶ Fox told the Commission he ‘wasn’t convinced’²⁷⁷ by Harrigan’s answer but was not prepared to say that Harrigan had been lying to him.²⁷⁸
- 18.188 One aspect on which the evidence of Fox and Harrigan concurs is that Fox then asked Harrigan whether he had seen any similar material in Fletcher’s possession, to which Harrigan replied, ‘I suspect he had some but I never saw him with it’.²⁷⁹
- 18.189 Fox agreed that a Catholic priest admitting that he had owned pornography and subsequently destroyed it was extraordinary but that that would not necessarily mean he would be more inclined to accept that the admission was a truthful one.²⁸⁰ Fox ultimately conceded he did not know whether Harrigan’s alleged destruction of pornographic material in fact had anything to do with the Fletcher investigation.²⁸¹
- 18.190 Fox initially told the Commission that during his meeting with Harrigan he did not ask him why he had destroyed the material; he later said he could not recall whether he had asked Harrigan that question.²⁸² He did agree, though, that it was actually a ‘very, very important question’.²⁸³ In any event, Fox conceded that he did not have an answer to the question of why Harrigan had destroyed the pornographic material.²⁸⁴
- 18.191 Under examination by Harrigan’s solicitor Fox agreed that his oral evidence on whether he had asked Harrigan why he destroyed the pornography was different from evidence provided in certain paragraphs of a statement he prepared in February 2013 and tendered in evidence.²⁸⁵ In this 2013 account Fox said the following exchange had taken place with Harrigan during the 30 December 2003 meeting:

I then asked, ‘Why did you destroy the magazines and videos?’ He said, ‘I don’t know’. I said, ‘Did anyone have images of men under the age of 18?’ He said, ‘No they never.’ I said, ‘Did

²⁷¹ TOR 2, T601.40–45 (Fox).

²⁷² TOR 2, T602.16–24 (Fox).

²⁷³ Duty book entry of Fox, dated 29 December 2003, ex 80.

²⁷⁴ TOR 2, T606.17–22 (Fox).

²⁷⁵ TOR 2, T621.5–11 (Fox).

²⁷⁶ TOR 2, T607.43–608.7 (Fox).

²⁷⁷ TOR 2, T608.22–24 (Fox).

²⁷⁸ TOR 2, T608.44–46 (Fox).

²⁷⁹ TOR 2, T610.19–21 (Fox); T1874.45–1875.9 (Harrigan).

²⁸⁰ TOR 2, T610.23–31 (Fox).

²⁸¹ TOR 2, T612.13–17 (Fox).

²⁸² TOR 2, T613.42–614.5 (Fox).

²⁸³ TOR 2, T613.15–17 (Fox).

²⁸⁴ TOR 2, T613.25–614.20 (Fox).

²⁸⁵ TOR 2, T627.29–32; statement of Fox, dated 7 February 2013, ex 81, para 85.

you loan them to Jim Fletcher or forget to take them with you?' He said, 'I am not sure. I think I just left them there'.²⁸⁶

- 18.192 In two documents tendered to the Commission Fox also asserted that Harrigan was intoxicated at the time of the visit (see paras 18.177 and 18.179).
- 18.193 Fox confirmed that he did not obtain from Harrigan a statement about the 30 December 2003 meeting because he 'could not see any way that just taking a statement from him would have been able to be utilised for any criminal purpose'.²⁸⁷

Mr Robbs' evidence

- 18.194 Robbs could not recall the circumstances in which he was asked to attend the meeting with Harrigan. He did, however, remember going to the presbytery with Fox, who was his supervisor when he was based at Maitland Detectives Office.²⁸⁸ This attendance constituted Robbs' only involvement in the Fletcher investigation.²⁸⁹
- 18.195 In his oral evidence Robbs said that on arrival at the presbytery he and Fox were met at the door by a person he assumed to be Harrigan.²⁹⁰ Robbs had no recollection of Harrigan being at all intoxicated at the time of the interview and said that would be something he would probably remember if it had been the case.²⁹¹ Robbs recalled that Fox 'did the talking' and he (Robbs) was 'mainly an observer'.²⁹²
- 18.196 Robbs said he did not remember taking any pornographic material with them to the meeting with Harrigan and that if pornographic material had been brought from the police station in a police vehicle this would be something he would probably recall.²⁹³ He also said he did not think any pornographic material was shown to Harrigan during the meeting.²⁹⁴ As discussed below, Harrigan gave evidence to the contrary on this.
- 18.197 Robbs said Fox had asked Harrigan who owned the material and Harrigan had said it was his and not Fletcher's.²⁹⁵ Robbs told the Commission Fox said to Harrigan, 'Where is that material now?' but he could not remember Harrigan's answer.²⁹⁶ As to whether disposal of the material had come up in discussion, Robbs said he could not recall whether the words 'destroy' or 'destruction' were used.²⁹⁷
- 18.198 The Commission heard from Robbs that he did not recall Fox giving Harrigan 'a lecture of sorts',²⁹⁸ nor did he recall Harrigan becoming visibly upset during the meeting – 'It would be something I think I would remember if it happened'.²⁹⁹

Father Harrigan's evidence

- 18.199 Harrigan confirmed that he had served as the parish priest at Lochinvar from 28 January 1995 until 6 August 2002, when he moved to act as the relieving parish priest at Raymond Terrace.

²⁸⁶ TOR 2, T627.18–25 (Fox); statement of Fox, dated 7 February 2013, ex 81, para 85.

²⁸⁷ TOR 2, T621.30–42 (Fox).

²⁸⁸ TOR 2, T2277.23–28; T2279.9–42 (Robbs).

²⁸⁹ TOR 2, T2288.3–10; T2290.22–27 (Robbs).

²⁹⁰ TOR 2, T2279.44–47 (Robbs).

²⁹¹ TOR 2, T2285.35–46 (Robbs).

²⁹² TOR 2, T2281.41–44 (Robbs).

²⁹³ TOR 2, T2282.15–43 (Robbs).

²⁹⁴ TOR 2, T2300.45–2301.3 (Robbs).

²⁹⁵ TOR 2, T2283.42–2284.1 (Robbs).

²⁹⁶ TOR 2, T2287.3–30 (Robbs).

²⁹⁷ TOR 2, T2291.14–28 (Robbs).

²⁹⁸ TOR 2, T2291.42–2292.1 (Robbs).

²⁹⁹ TOR 2, T2296.7–11 (Robbs).

While serving at Lochinvar, Harrigan said, he had resided at the presbytery.³⁰⁰ Fletcher became parish priest at Lochinvar on 1 August 2002.³⁰¹

- 18.200 Harrigan told the Commission he knew in advance about Fox's visit to the presbytery because Fox had telephoned him on the morning of the visit to tell him he was coming. He said Fox had not told him of the purpose of the visit³⁰² and had not suggested that he might seek to conduct a search of the presbytery. He said he had not needed to make arrangements to hide or get rid of anything before Fox's visit.³⁰³ He also confirmed that he did not see Fox or any other police officer making notes during the meeting at the presbytery.³⁰⁴ Harrigan denied that there was a bottle of alcohol on the floor next to his chair and that he was intoxicated at the time of the interview with Fox.³⁰⁵
- 18.201 Notably, Harrigan told the Commission that when Fox asked him about pornographic material he (Fox) physically showed him two pornographic magazines that contained images of adult homosexuals. Fox then said, 'This has been found at Lochinvar presbytery'.³⁰⁶ Harrigan said he had obtained the magazines in London while on sabbatical leave in 2000 and that, as far as he knew, they were the only pornographic items he had left at the presbytery.³⁰⁷ He also confirmed that he told Fox the magazines belonged to him.³⁰⁸
- 18.202 Harrigan firmly denied that he destroyed or removed the pornography. He also stated, 'I believe that I must have left it at the Lochinvar Presbytery when moving to Raymond Terrace'.³⁰⁹ According to Harrigan, there was no discussion about the destruction of the material; Fox had the material in his possession throughout the interview and took it away with him afterwards.³¹⁰
- 18.203 Harrigan told the Commission he had never had a conversation with Fletcher or anyone else about the pornographic material at the presbytery.³¹¹ He added that before Fox left he (Fox) gave him 'a bit of a lecture about priests and pornography';³¹² on re-examination by counsel assisting, however, Harrigan clarified that the lecture was about 'the paedophilia', which he thought was 'dreadful'.³¹³
- 18.204 Harrigan told the Commission that he did not lie to the police on Fletcher's behalf in order to protect him and said that acknowledging ownership of the material had led to his feeling 'totally ashamed and very guilty': it was below the standard he expected of himself.³¹⁴

Conclusions

- 18.205 There were a number of important differences between the accounts of Fox, Robbs and Harrigan. Where the evidence differs, the Commission prefers the evidence of Robbs. He was an impressive witness. He gave careful evidence, which the Commission considers reliable.
- 18.206 In documents in evidence before the Commission Fox asserted that Harrigan was intoxicated at the time of the visit to Raymond Terrace presbytery. The Commission accepts Robbs' evidence

³⁰⁰ TOR 2, T1864.10–25 (Harrigan).

³⁰¹ Letter from Malone to Fletcher dated 3 October 2002, ex 97, p 953.

³⁰² TOR 2, T1881.8–11 (Harrigan).

³⁰³ TOR 2, T1866.38–47 (Harrigan).

³⁰⁴ TOR 2, T1880.39–1881.1 (Harrigan).

³⁰⁵ TOR 2, T1871.41–1872.7 (Harrigan).

³⁰⁶ TOR 2, T1867.11–37 (Harrigan); statutory declaration of Harrigan, dated 12 July 2013, ex 161, para 4.

³⁰⁷ TOR 2, T1867.42–1868.7 (Harrigan).

³⁰⁸ TOR 2, T1867.22–40 (Harrigan).

³⁰⁹ Statutory declaration of Harrigan, dated 12 July 2013, ex 161, para 8.

³¹⁰ *ibid*, para 7.

³¹¹ TOR 2, T1868.30–37 (Harrigan).

³¹² TOR 2, T1877.27–34 (Harrigan).

³¹³ TOR 2, T1883.41–1884.5 (Harrigan).

³¹⁴ TOR 2, T1868.39–1869.17 (Harrigan).

and does not regard this assertion to be established. For his part, Harrigan said that the attending police officers brought with them pornographic material that he was shown and acknowledged to be his. The Commission accepts Robbs' evidence and finds that the police took no such pornographic material on the visit to Harrigan.

18.207 In view of the variations in accounts, it is apt to focus on the primary question at issue – that is, whether Harrigan in fact destroyed pornographic material that belonged to Fletcher, as Fox asserted. Having regard to the totality of the evidence, the Commission finds no credible evidence to suggest that the pornographic material Fletcher was alleged to have shown to Hanley in the Lochinvar presbytery belonged to Fletcher. The Commission accepts Harrigan's evidence that the pornography was in fact his. The Commission also recognises that, for a practising member of the clergy, acknowledging ownership of pornographic material would cause shame and embarrassment. It is unlikely that Harrigan would have been willing to make such an admission in order to protect Fletcher. For completeness, it should be noted that no evidence emerged that the pornography, which Harrigan acknowledged to be his, related to individuals who were under age. Further, whether or not Harrigan disposed of pornography that he himself owned was, properly viewed, not relevant to the Fletcher investigation.

18.208 The Commission finds that the evidence does not support Fox's assertion in his 25 November 2010 report (and in other documentation) that Fletcher removed pornographic material from the Lochinvar presbytery and passed that material on to Harrigan.

Alleged ostracising of a nun

Sister Larkey's police statement

18.209 In the course of the Fletcher investigation, on 30 June 2003 Fox obtained a three-page statement from Sister Janice Larkey, then a sister of the Order of St Joseph. In her police statement Larkey described her involvement with Fletcher since his arrival in Dungog parish in the late 1980s. She also stated that in time Fletcher started to have boys take over the altar roles and discouraged girls from performing this duty. Fletcher also introduced a practice of having altar boy picnics, which caused her concern. Additionally, she observed that Fletcher encouraged factions within the parish and favoured certain families, including the family of AH. Fletcher and Larkey fell out when she expressed her concerns. Larkey also noted that Fletcher's relationship with children – particularly young boys – was different from anything she had observed with other priests.³¹⁵

Detective Chief Inspector Fox's assertion

18.210 In his report of 25 November 2010 Fox made the following assertion in relation to the assistance former Sister Larkey provided to police:

As the investigation progressed a priest and nun approach [sic] me separately to provide statements and information. That nun was later ostracised by her Order of St Joseph at Lochinvar for assisting police and forced to leave. She has not returned to the church.³¹⁶

18.211 In oral evidence before the Commission Fox said he did not know whether he had included in the police statement taken from Larkey the assertions he made in his report about her ostracism by the Church as a result of assisting police. It is clear, however, that this was not included.³¹⁷

³¹⁵ Statement of Larkey, dated 30 June 2003, ex 219, tab 406, pp 1088–1089.

³¹⁶ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1375.

³¹⁷ Statutory declaration of Larkey, dated 14 August 2013, ex 218.

Fox also told the Commission he did not investigate the allegation any further by taking statements from other members of her religious Order.³¹⁸

Former Sister Larkey's statutory declaration

18.212 Larkey (now Mrs Janice Wilson) provided to the Commission a statutory declaration that was tendered into evidence. In it, Larkey sought to clarify certain matters in view of Fox's contentions that had been reported in the media:

I wish to clarify a statement I read in the Maitland Mercury on 4/7/13. My name was not mentioned, but by inference I understand it to be me.

The article was reporting on the Royal Commission hearings of sexual abuse in the Maitland Diocese. Inspector Peter Fox was reported saying that a Sr of St. Joseph who was assisting police, was ostracised and later dismissed by the Order.

At that time, 2003, I was Sr Jan Larkey RSJ. I did speak to Insp. Fox in support of the family involved with the allegations re Fr. James Fletcher – my former parish priest.

However, it was the end of 2002, early 2003 that I had made known to my bosses that I was considering leaving the Order (Srs of St Joseph). It was only during 2003 that I became aware of allegations concerning Fr. Fletcher. My application to leave the sisters was granted end of 2003. It was my request, and I was not dismissed. The statement I made to police, and my leaving the order were not a cause and effect, but a coincidence in the one year.

I admire Ins. Fox greatly for his work in bringing justice to this investigation. I just wish to clarify what I read ie. I was not dismissed. I freely chose to leave the Srs. Of St. Joseph.³¹⁹

18.213 No representative for any person authorised to appear, including Fox, applied to have Larkey called to give oral evidence, and her evidence was not challenged.

Conclusions

18.214 The Commission accepts Larkey's evidence to the effect that, before providing a statement to police in connection with the Fletcher investigation, she was already contemplating leaving her religious Order and, further, that she was not required to leave the Order because of the assistance she had provided to police.

18.215 The Commission rejects Fox's assertion that Larkey was ostracised by the Order of St Joseph and forced to leave because of her involvement in the Fletcher investigation.

A 'good priest' leaving the priesthood

Detective Chief Inspector Fox's evidence

18.216 In his 25 November 2010 report Fox wrote:

As the investigation progressed a priest ... approach [sic] me separately to provide statements and information ... The priest disclosed to me details of inner workings of the diocese and what he referred to as 'the old boys club' of Hunter priests and his suspicions. He was pivotal in having another victim come forward with critical evidence that was later instrumental in Fletcher's ultimate conviction.

The assistance rendered by this 'good priest' led to a series of clashes between him and senior clergy including Bishop Malone. This priest suffered considerable stress from his

³¹⁸ TOR 2, T278.16–35 (Fox).

³¹⁹ Statutory declaration of Larkey, dated 14 August 2013, ex 218.

treatment and was moved to Sydney. He has since elected to leave the priesthood and return to another profession ...³²⁰

- 18.217 The 'good priest' Fox referred to was Father Glen Walsh, who in April 2004 informed police of another victim of Fletcher, AB. In evidence before the Commission, Fox said Walsh was 'a very good priest and a wonderful man'³²¹ and that the information Walsh provided was of enormous assistance to him in his investigation of Fletcher because of the corroboration AB was able to provide for AH. Fox also said Walsh's police statement of 10 June 2004 was very helpful for the Fletcher investigation generally, and he described Walsh as a 'breath of fresh air'.³²²
- 18.218 Fox agreed that Walsh had told him about some clashes between him (Walsh) and his bishop (Malone) and, although he included some of that information in Walsh's statement, he did not interview Malone about it.³²³

Father Walsh's evidence

- 18.219 Walsh was ordained as a priest in 1995³²⁴ and remains incardinated into the Catholic Diocese of Maitland–Newcastle.³²⁵ In 2004 he was attached to the parish of Singleton; he was subsequently attached to the parishes of Branxton, Greta and Lochinvar.³²⁶
- 18.220 A qualified teacher, Walsh completed his teaching qualifications before 1983 and taught for six years before joining the seminary in 1989.³²⁷ At the time of his hearing before the Commission he was teaching in the public education system.³²⁸
- 18.221 As described in Chapter 15, in April 2004 AB told Walsh that Fletcher had sexually abused him as a young boy. Walsh reported the matter to NSW Police on 27 April 2004 on behalf of AB. On 3 May 2004 AB complained directly to NSW Police.³²⁹ After speaking to Walsh about AB's disclosure on 27 April 2004, Malone caused the Ombudsman to be notified later that day.
- 18.222 In his police statement of June 2004 Walsh stated:
19. Since I reported this matter I have had no response from anyone within the church hierarchy. This surprised me. Since this matter was brought to light I have felt very cut off & have now decided to take leave of my priestly duties ...
20. I have now moved out of this Diocese & am living in Sydney ...
- 18.223 Walsh's role in notifying police of a further victim of Fletcher in April 2004 and his interactions with Malone in this regard are described in Chapter 15.
- 18.224 Walsh told the Commission that after he had been informed about the further victim of Fletcher in April 2004 he telephoned Malone and said he was going to contact the Catholic Commission for Employment Relations, the police and the Ombudsman. According to Walsh, Malone said, 'If you do that, fuck off out of my diocese and don't come back'. Walsh said Malone then terminated the call.³³⁰

³²⁰ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1375.

³²¹ TOR 2, T277.11–14 (Fox).

³²² TOR 2, T196.34–35 (Fox).

³²³ TOR 2, T277.16–278.1 (Fox).

³²⁴ TOR 2, T4.42–43 (Walsh in camera, 26 June 2013 at 5.00pm).

³²⁵ TOR 2, T5.44–46 (Walsh in camera, 26 June 2013 at 5.00pm).

³²⁶ TOR 2, T2.47–3.11 (Walsh in camera, 26 June 2013 at 6.43pm).

³²⁷ TOR 2, T4.45–5.9 (Walsh in camera, 26 June 2013 at 5.00pm).

³²⁸ TOR 2, T6.1–4 (Walsh in camera, 26 June 2013 at 5.00pm).

³²⁹ NSW Police Force COPS report E 20846269, dated 3 May 2004, ex 219, tab 419, p 1129.

³³⁰ TOR 2, T19.20–43 (Walsh in camera, 26 June 2013 at 6.43pm).

- 18.225 Walsh said he expected further contact from the church hierarchy after making the notifications about AB.³³¹ He told the Commission, however, that he did not speak to Malone about AB again; nor did he discuss the matter with Saunders or Burston, who each held the position of vicar general at relevant times.³³²
- 18.226 Walsh said the lack of contact from Malone or his vicars general left him feeling he was no longer a priest of the Diocese.³³³ He thought the lack of contact was a result of him speaking out to the bishop in relation to AB's complaint of sexual abuse.³³⁴
- 18.227 After April 2004, when Walsh gained some teaching employment in Sydney, he became anxious at the possibility of Malone taking action detrimental to his standing as a priest. He told the Commission:
- ... the bishop who ordained me does have a process whereby he can laicise me or make application to laicise me ... I was petrified that in fact I had by disobeying the bishop at the time, that that would be grounds enough for him to move against me, as it were, canonically, and I still live in that fear.³³⁵
- 18.228 To Walsh's knowledge, however, as at the time of giving evidence no action had been taken to remove him as a priest of the Diocese.³³⁶

Bishop Malone's evidence

- 18.229 Malone gave evidence about the circumstances surrounding Walsh's notification of AB to the police, the Ombudsman and the Catholic Commission for Employment Relations. He told the Commission he agreed with Walsh's view that it was the correct thing to advise police about AB as a second victim of Fletcher. He said he 'would have assumed that another victim coming forward would have been helpful to the investigation'.³³⁷
- 18.230 Malone said that at some time after the events of 27 April 2004 Walsh left the Diocese.³³⁸ He agreed that in 2007 there was a suggestion that Walsh return to the Diocese to be appointed as an assistant priest in Muswellbrook parish; Malone had, however, taken a 'step' in 2007 to prevent Walsh returning to the Diocese. He explained:
- ... I found him a very difficult priest to deal with, frankly. Most of the difficulties were around the fact that he found it very hard to stay in one place for long. On average, I'd say about once every 18 months he'd want to move to another parish or he'd want to leave from the priesthood so he could go teaching and then he was wanting to come back to priesthood. I mentioned in one of my letters to him that there was a rather strange restlessness in him and, whilst he did good work as a priest, I just found that inability to settle down and be part of the diocesan clergy, and so on, rather difficult.³³⁹
- 18.231 Malone told the Commission, however, that, while he was happy to 'allow' Walsh to go to the police and urged him to do so, 'that was the limit of what I wanted him to do': Malone considered the other notifications were for him to make as bishop of the Diocese.³⁴⁰

³³¹ TOR 2, T25.47–26.2 (Walsh in camera, 26 June 2013 at 6.43pm).

³³² TOR 2, T26.22–40 (Walsh in camera, 26 June 2013 at 6.43pm).

³³³ TOR 2, T28.3–8 (Walsh in camera, 26 June 2013 at 6.43pm).

³³⁴ TOR 2, T28.10–13 (Walsh in camera, 26 June 2013 at 6.43pm).

³³⁵ TOR 2, T70.41–71.2 (Walsh in camera, 16 July 2013).

³³⁶ TOR 2, T71.4–7 (Walsh in camera, 16 July 2013).

³³⁷ TOR 2, T9.31–10.8 (Malone in camera, 16 July 2013 at 4.56pm).

³³⁸ TOR 2, T32.9–13 (Malone in camera, 16 July 2013 at 4.56pm).

³³⁹ TOR 2, T32.19–33.6 (Malone in camera, 16 July 2013 at 4.56pm).

³⁴⁰ TOR 2, T33.46–34.2 (Malone in camera, 16 July 2013 at 4.56pm).

- 18.232 Under examination by Walsh’s solicitor, Malone agreed that to send Walsh into Branxton, Greta and Lochinvar parishes after Fletcher had been stood aside was to send him into a very difficult situation and that it was at that time a very divided community.³⁴¹ He also agreed, however, that the fears he had about Walsh did not prevent him forming the opinion that he was an appropriate person to perform the task.³⁴²
- 18.233 Malone also told the Commission that when Walsh wanted to go back to teaching and have some time out from the priesthood he was happy for him to pursue employment opportunities. He referred to correspondence between Walsh and himself, including a note from Walsh thanking him for his part in helping Walsh obtain a teaching position and a 2 July 2004 note from Malone relating to the provision of references for Walsh.³⁴³ That correspondence followed shortly after the events that occurred at the end of April 2004.³⁴⁴

Conclusions

- 18.234 The Commission accepts that Walsh’s action in notifying police of AB’s complaint about Fletcher assisted the Fletcher investigation. It also accepts that Walsh might well have perceived a sense of isolation from the Diocese following the steps he took to report AB’s complaint. It would be overly simplistic, however, to attribute that isolation to perceived conduct on behalf of Malone or other officials in the Diocese, and the Commission therefore makes no finding in this respect. Contrary to the assertions of Fox, it should also be noted that Walsh did not leave the priesthood following his disclosure to police: he remains incardinated into the Diocese.

Reprisals, shunning and ostracism

Detective Chief Inspector Fox’s evidence

- 18.235 In various documents before the Commission and in oral evidence Fox asserted that police investigations were adversely affected by reprisals on victims and their families as a result of reporting sexual child sexual abuse.

- 18.236 In this regard, in his report of 25 November 2010 to senior police he stated:

Reprisals are another distasteful aspect of sexual abuse within the church. Some have reported to me having had their cars damaged and eggs thrown at their homes following guilty verdicts after a family member disclosed abuse. Most victims’ families are devout Catholics who are surrounded by friends until someone comes forward with allegations of abuse. The family is ostracised within their community and particularly at church. They are no longer spoken to and [are] made to feel unwelcome. They have backs blatantly turned on them until they no longer attend. Most believe this is silently condoned by priests and perpetuates the silence of abuse in fear of speaking out.³⁴⁵

- 18.237 Fox expanded on his concerns during his oral evidence, describing the impact on police investigations as a result of reprisals:

People that come forward to report child sexual abuse and their families, in my experience, have – it is a huge step both emotionally and very much spiritually when it relates to the Catholic Church. The atmosphere surrounding that and the attitude of clergy and parishioners exert a huge – and I cannot underline that enough – a huge influence upon those people and their families. It creates an environment and a feeling that intimidates

³⁴¹ TOR 2, T37.21–31 (Malone in camera, 16 July 2013 at 4.56pm).

³⁴² TOR 2, T37.33–37 (Malone in camera, 16 July 2013 at 4.56pm).

³⁴³ TOR 2, T43.24–45.31 (Malone in camera, 16 July 2013 at 4.56pm).

³⁴⁴ TOR 2, T45.33–36 (Malone in camera, 16 July 2013 at 4.56pm).

³⁴⁵ Fox report re allegations of child sexual abuse and cover-up within the Maitland–Newcastle Diocese, dated 25 November 2010, ex 69, p 1378.

many from coming forward when they see and hear of the way victims and their families have been treated and their ostracism and, in my experience, it places a great deal of fear, apprehension and caution in any other persons that might be prepared to come forward and make similar complaints.³⁴⁶

18.238 Fox said he believed potential ostracism prevented many people coming forward. Speaking particularly of the Fletcher trial, he said:

... there was a continual procession of clergy from the Newcastle–Maitland diocese who visited Fletcher and his supporters in another room, kneeled on the floor, prayed with him. Not one, not a single one, of those clergy spoke a word or consoled or even attempted to come near any of the victims or their families.³⁴⁷

18.239 In Fox's view, the silencing of victims happened because after a disclosure of abuse the family in question would be cut off from the pastoral care of the Church. He confirmed that families of victims had told him this was their impression and that 'most have felt so intimidated that they no longer attend Mass, they no longer attend the Church'.³⁴⁸

Bishop Malone's evidence

18.240 Consistent with Fox's concerns, Malone explained that in April 2005 he issued a media release because he was anxious to ensure that victims of sexual abuse and their families were supported by their parish and community and not subjected to victimisation or ostracism for coming forward. As to why the media release was issued at that particular time, Malone told the Commission:

It was apparent around about the time of the investigation into Fletcher that people were ostracising the family of [AH] and of another family ... I understand that a number of parishioners, after Mass, would ignore or shun the families concerned. One family even had eggs pelted at the house, as I did myself a little bit later on – my house was pelted by eggs as well, in Hamilton.³⁴⁹

18.241 Under further questioning from Mr Peter Gogarty (a victim of Fletcher authorised to appear before the Commission) Malone agreed that he had also been the subject of subtle ostracism from his colleagues in connection with the stance he had taken on child sexual abuse towards the end of his episcopacy, describing it as 'more an indifference towards me and the things I was saying'.³⁵⁰ This attitude was also observed by Ms Helen Keevers, the former Manager of Zimmerman House, who said Malone's transparency and open reporting to authorities in relation to child sexual abuse from 2005 until 2009, while she was employed in that role, was opposed by others in the Diocese.³⁵¹

BJ's evidence

18.242 Chapter 7 sets out BJ's account of her treatment and that of AH after his disclosure of the abuse perpetrated by Fletcher. BJ described subtle changes in her involvement in parish activities, anonymous phone calls and instances of violence, including a 'ramming' during a supermarket visit and an assault in the toilets at East Maitland courthouse during Fletcher's trial (as described in paras 7.33 and following) after AH's disclosure. She also told the Commission that the ostracism became more overt with time: it began in early 2001 and then escalated until

³⁴⁶ TOR 2, T279.45–280.11 (Fox).

³⁴⁷ TOR 2, T282.28–283.27 (Fox).

³⁴⁸ TOR 2, T283.29–284.11 (Fox).

³⁴⁹ TOR 2, T1027.45–1028.26 (Malone).

³⁵⁰ TOR 2, T1029.1–10 (Malone).

³⁵¹ Statement of Keevers, dated 15 February 2013, ex 199, paras 74–76.

Fletcher’s trial. After the trial was over it continued; she said that even today there were ‘pockets of people who are still character-assassinating our family’.³⁵²

- 18.243 BJ told the Commission it was extremely hurtful.³⁵³ She also gave evidence that her house and garage door had been pelted with eggs.³⁵⁴ She said:

It became clear that it would have been easier for my son not to do anything. It was long and hard, and we had a lot of resistance and we had a lot of ostracisation, and the easiest thing would have been to just let it go. But he, and then us, chose not to do that.³⁵⁵

- 18.244 Mr John Davoren, the former director of the Professional Standards Office, offered the following evidence arising from BJ’s account of ostracism:

Well, as the press coverage said in the last couple of days, [BJ] had experience of people attacking her in a deplorable way. I think that’s a very good example, that the paedophile had an ability to have a public image that was most attractive and people would say, “He couldn’t have done anything of the kind”; whereas the victim was seen as being very confused. So they unfairly, unaware really of what paedophilia was, saw the poor victim as being just a troublemaker attacking this beautifully innocent priest.³⁵⁶

Conclusions

- 18.245 On the basis of the evidence before it – including the accounts of Malone and BJ – the Commission accepts that after the disclosure of AH’s abuse AH and BJ were subjected to ostracism and shunning by some parts of the parish community. The Commission also accepts Fox’s evidence that, speaking generally, such conduct might ultimately affect the willingness of victims of child sexual abuse perpetrated by clergy to report the abuse. There is, however, no evidence to suggest that this ostracism was directly encouraged or condoned by the Diocese. Indeed, Malone was himself concerned enough by the treatment of victims and their families to issue in April 2005 a media release stressing the importance of supporting complainants and their families.

³⁵² TOR 2, T1840.15–33; T1841.18–37; T1844.38–1845.4 (BJ).

³⁵³ TOR 2, T1846.15 (BJ).

³⁵⁴ TOR 2, T1847.45 (BJ).

³⁵⁵ TOR 2, T1842.4–8 (BJ).

³⁵⁶ TOR 2, T2028.18–36 (Davoren).

19 An ongoing police investigation: Strike Force Lantle

- 19.1 As set out in Chapter 2, Strike Force Lantle ('Lantle') is one of the four police investigations of 'relevant matters', as defined in the second term of reference, identified by the Commission.
- 19.2 Lantle is the name given to the formal police investigation established in September 2010 and conducted by the Newcastle City Local Area Command into alleged concealment by officials currently and formerly attached to the Catholic Diocese of Maitland–Newcastle, of offences of child sexual abuse committed by clerics.
- 19.3 The original terms of reference for Lantle, assigning Detective Sergeant Kirren Steel and Detective Senior Constable Jason Freney to the investigation, were issued in about September 2010.¹ Amended terms of reference assigning Detective Sergeant Jeffrey Little as the principal investigating officer were issued in about late December 2010 or early January 2011.²
- 19.4 The evolution of the Lantle investigation is detailed in Chapter 8.
- 19.5 In October 2012 Lantle investigators submitted a brief of evidence to the Office of the Director of Public Prosecutions for consideration as to whether charges should be brought against any person or persons. The Lantle investigation remains ongoing.
- 19.6 Although the Lantle investigation constitutes one of the police investigations of relevant matters that the Commission was required to examine as to the extent to which Church officials facilitated, assisted or cooperated with (or otherwise) that investigation, given that the investigation is ongoing, aspects of that cooperation or otherwise are necessarily dealt with in the confidential volume of the report (see also paragraphs 1.70 and 3.59 to 3.63).

¹ Strike Force Lantle terms of reference assigning Steel and Freney, ex 18.

² Strike Force Lantle terms of reference assigning Little, ex 11.

20 Credibility issues: Detective Chief Inspector Fox, Father Burston and Monsignor Hart

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20.1 This chapter sets out the Commission’s views in relation to the credibility of Detective Chief Inspector Peter Fox (in connection with the first and second terms of reference) and Father William Burston and Monsignor Allan Hart (both in connection with term of reference 2). The Commission formed adverse views about the credibility of these witnesses for the reasons that follow. The confidential volume of this report also details adverse credibility findings in relation to senior church officials.

Detective Chief Inspector Fox

20.2 The Commission formed the view that, in relation to each term of reference, Detective Chief Inspector Peter Fox was an unsatisfactory witness in a number of respects.

Term of reference 1

20.3 In evidence before the Commission Fox made claims for which there was no proper basis. He maintained that Strike Force Lantle was a ‘sham’ and had been ‘set up to fail’. He based this assertion in part on his view that certain officers – particularly Detective Sergeant Kirren Steel and Detective Senior Sergeant Justin Quinn – who had been appointed to the strike force did not have the competency or experience for the task. He said he had conducted ‘research’ into Steel and Quinn before making his claim, which he first made in an email to journalist Ms Joanne McCarthy on 10 December 2010. He described his research as relying on ‘the general rumour mill in the police force’ and discussions he had with Inspector David Matthews and two other, unnamed officers. Matthews gave evidence, which was compelling, of a conversation with Fox in 2012 (not 2010) and denied having told Fox that Quinn had never been a detective or an investigator. Before the Commission Fox conceded that he in fact did not know whether Quinn had ever been an investigator or a detective. He also offered no basis on which to impugn the qualifications and experience of Steel. The claims Fox made about the competency and experience of Steel and Quinn were unwarranted. Further, they were not based on any ‘research’ with other police officers.

20.4 Fox maintained that there was a group of senior police – in effect, a ‘Catholic mafia’ – in Northern Region Command, and particularly in the Maitland–Newcastle region, who were determined that there be no investigation, or no proper investigation, of child sexual assault offences associated with the Catholic Church, including alleged concealment of such offences by

senior officials of the Catholic Church. No evidence emerged to support that claim. Fox took no steps to bring such a serious claim to the attention of independent oversight bodies such as the Police Integrity Commission. This Commission regards Fox's claims as wholly unfounded. It was to Fox's discredit that he sought to maintain such claims in evidence before the Commission.

- 20.5 The Commission formed the view that Fox had developed what amounted to an obsession about both the Catholic Church and alleged conspiracies involving senior police. His email communications with McCarthy revealed a degree of paranoia and self-aggrandisement and contained advice about destroying emails so that they could not be uncovered by monitoring police, references to '007 stuff', and exhortations such as 'the die is cast – let the games begin'. He equated the appointment of Steel and Quinn to Strike Force Lantle with the movie *A Few Good Men*. He also warned McCarthy to be 'very careful of any traps' and took steps to send emails from his home computer and in his wife's name.
- 20.6 Additionally, Fox conducted a clandestine investigation into the Catholic Church during a number of months in 2010, interviewing witnesses without advising any senior officer (including his commander) about his investigation and without creating any entry in the COPS computer database system. These steps were extraordinary and contrary to standard police procedures.
- 20.7 The Commission considers that by at least 2010 Fox had lost the objectivity required of an investigating officer regarding such matters. While he remained passionate about things involving the Catholic Church, he no longer possessed the detachment necessary for properly investigating such matters. In short, he had become a zealot.
- 20.8 Fox's lack of objectivity in connection with matters involving the Diocese and related police investigations was such that the Commission took the view that, on matters of controversy, Fox's evidence should be approached with caution.
- 20.9 Fox gave evidence to the Commission that was implausible. On 18 October 2010 his commander, Superintendent Charles Haggett, asked him to hand over 'all documentation [he] had gathered on any Church conspiracy matter'. He was also handed an email requiring production of his file and any associated documentation regarding alleged cover-up by members of the Catholic clergy. He produced to his commander only the ministerial request and did not hand over other documents among them a number of witness statements he had by then obtained. He told the Commission he did not regard Haggett's instruction as extending beyond the ministerial file. That evidence was implausible given the broadly stated terms of Haggett's request, which Fox detailed in an email to McCarthy on the same day.
- 20.10 Fox gave evidence that was untruthful. On 1 December 2010 Haggett told Fox there was to be a meeting at Waratah police station the next day and Fox was to bring all his church-related documents to the meeting. Fox gave sworn evidence that he had not deliberately failed to take his church-related documents to the meeting on 2 December 2010. He also told police at the meeting that he had 'mistakenly' left the documents behind in his office. When further examined on the topic, Fox changed his evidence to state that he had intentionally left the documents in his office. The Commission formed the view that Fox's initial evidence was deliberately untruthful.
- 20.11 Fox was also prone to exaggerate aspects of his evidence. On 13 October 2010, while Fox was on four weeks' leave, Superintendent Haggett and Acting Commander Wayne Humphrey entered Fox's office to try to find documents relating to the church concealment allegations. Fox gave evidence that the search by Haggett and Humphrey had involved 'turning [his office] upside down'. In subsequent evidence Fox retreated from this description, saying he noticed that certain things in his office had been moved but not to the extent of his office having been turned 'upside down'. The evidence of Ms Miriam White, an administrative officer who witnessed part of the search, was that the search was 'conducted in an orderly manner'.

20.12 The Commission formed the view that Fox had engaged in conduct that was inconsistent with the integrity required of a police officer. He provided sensitive information about police investigations (including an internal police report and a victim's statement) to a journalist, McCarthy. From 2 December 2010 he continued to provide such information to McCarthy, in flagrant breach of a direction or instruction by a senior officer that there be no contact with the media about such matters. The calculated nature of Fox's conduct was evidenced by a lengthy email he sent to McCarthy shortly after that direction or instruction was issued. His conduct in arranging for emails of which he was effectively the author to be sent to McCarthy in his wife's name demonstrated the lengths to which he was prepared to go in order to continue communicating with the journalist in breach of the direction or instruction about matters relating to the church concealment investigation. Fox also lied to a police complaints investigator about not having contacted McCarthy and in stating that he believed he had complied with the direction not to contact the media when he knew this to be false.

Term of reference 2

- 20.13 In connection with term of reference 2, Fox again made claims in evidence before the Commission for which there was no proper basis. He maintained that statements taken by five clergy – Bishop Michael Malone and Fathers James Saunders, Desmond Harrigan, William Burston and Robert Searle – during the investigation of Father James Fletcher left a very strong impression of collusion. He further maintained that both he and former officer Donald Brown (who in 2003 was a trainee detective) shared that view. Fox also advanced such claims in a report dated 29 May 2003 that he prepared for the New South Wales Ombudsman.
- 20.14 The Commission formed the view that there was no basis for Fox's assertions of collusion, concealment and lack of assistance on the part of the aforementioned clergy. Indeed, evident differences in recollection in the police statements provided by those witnesses pointed strongly against any suggestion of collusion. Additionally, Brown gave evidence to the Commission that he did not take a statement from any clergyman other than Searle, that he was not in any position to form an opinion that the five clergy had colluded, and that he did not hold the view Fox ascribed to him.
- 20.15 Fox further claimed that a nun, former Sister Janice Larkey, had been ostracised by the Church because of the assistance she provided to police in the Fletcher investigation and had been 'forced to leave' her religious Order. That claim was shown to be false. The former nun, now Mrs Janice Wilson, gave evidence to the Commission in the form of a statutory declaration to the effect that, before providing a statement to police in connection with the Fletcher investigation, she was already contemplating leaving her Order and that she was not required to leave because of any assistance she provided to police.
- 20.16 Fox gave unsatisfactory and internally inconsistent evidence. On 20 June 2002 he visited Malone and expressed concern about Malone having 'tipped off' Fletcher in relation to the complaint made against him by AH and the fact that police were investigating it. Sometime after, Fox prepared a typed account of what was purportedly said at the meeting: the 'I said – he said' document. A question arose before the Commission as to when Fox prepared the document, that being something that could affect its reliability. Fox initially said the meeting with Malone was of 'such a nature' that he typed up the exchange on the day of the meeting, 20 June 2002, when he returned to his office. Later, however, he altered his evidence to say that the document might have been prepared the following day. Later still, he was taken to evidence that he gave in a private hearing before the Commission, when yet another version was given, Fox testifying that he prepared the document some time later – maybe a month or two after the meeting with Malone – and that he did this because he had then learnt that Malone had expanded Fletcher's parish to include neighbouring Lochinvar. Fox was unable to provide a satisfactory explanation for having proffered different versions in sworn evidence before the Commission.

- 20.17 Fox also gave unsatisfactory evidence about a telephone conversation he had with Searle. He told the Commission he contacted Searle by telephone on 16 May 2003 to obtain a statement about what AH had shouted out outside the Nelson Bay presbytery. A few days later, on 19 May 2003, Brown took a statement from Searle. Fox initially gave evidence to the effect that there was no inconsistency between what Searle told him on the telephone and what appeared in Searle's police statement three days later – the only inconsistency being between, on one hand, Searle's account (from the phone call and in his statement) and, on the other, the account provided by AH's parents. Fox subsequently altered his evidence, however, to give an account that raised an inconsistency between what Searle told him in the phone conversation and what Searle included in his police statement.
- 20.18 Additionally, Fox gave inconsistent evidence in relation to an alleged confrontation with Searle about the contents of his police statement. He initially told the Commission he spoke with Searle after he (Searle) had provided his police statement of 19 May 2003 and raised with him concerns that he had not included in the statement information he had provided to Fox in his phone conversation three days earlier. Later, Fox gave evidence that he did not have any conversation with Searle at any time after Searle had provided his police statement on 19 May 2003.
- 20.19 In each instance, when the differences in accounts were drawn to Fox's attention he was unable to satisfactorily explain the inconsistencies and changes of position in his evidence.
- 20.20 Furthermore, Fox exaggerated aspects of his evidence before the Commission. He gave sworn evidence that he consulted the Office of the Director of Public Prosecutions about whether Malone should be charged with interfering with the Fletcher investigation as a result of the 'tip-off'. This was found to be untrue. Fox said he consulted Mr Hamish Fitzhardinge of the Office of the DPP, and it was agreed not to charge Malone. In his email communications with the officer in charge of the Lantle investigation, Detective Sergeant Jeffrey Little, Fox went even further by advising that he had prepared 'a brief against Bishop Malone' for the Office of the DPP. The Commission issued to the Office of the DPP a summons for production of the brief against Malone; the office advised it had nothing to produce. In addition, the Commission obtained statutory declarations (that were tendered in evidence) from two solicitors at the Office of the DPP, Fitzhardinge and Ms Jillian Skelton, who initially had carriage of the Fletcher prosecution; neither solicitor provided support for Fox's account, Fitzhardinge stating that he had never provided advice on whether Malone should be charged with any offence. The Commission regarded Fox's evidence in this regard as involving a significant exaggeration of the true state of events and as being designed to create the impression that he had a more important role in investigating the conduct of a senior church official, Malone, than was actually the case.

Monsignor Hart

- 20.21 The Commission formed the view that in some respects Monsignor Allan Hart was an unsatisfactory and unimpressive witness.
- 20.22 Hart gave inconsistent evidence on the question of whether he had had discussions with Bishop Leo Clarke about the allegations that Father Denis McAlinden had sexually abused children. Initially saying there had not been 'one word' of discussion on that matter, he subsequently varied his evidence to concede there had been at least one discussion and later said there were probably two or three. The Commission formed the view that Hart was in fact reluctant to disclose the true extent of his discussions with Clarke in relation to this.
- 20.23 From his evidence the Commission formed the opinion that, contrary to the real state of affairs, Hart tried to present himself as having had, at relevant times in 1993, little or no knowledge of McAlinden's sexual abuse of children and little or no awareness of steps taken to deal with the problem. For example, Hart told the Commission he did not know where McAlinden was at the

time of AJ's complaint; nor, he said, was he aware of McAlinden being recalled from Western Australia by Bishop Clarke in 1993. An answer subsequently volunteered by Hart, however, to the effect that he understood from discussions with Clarke that McAlinden was to be arrested by police after returning from Western Australia in 1993, led the Commission to form the view that Hart was unprepared to give a full and candid account of his knowledge. In addition, Hart at first gave evidence that he could not say 'yes or no' in connection with whether McAlinden had made admissions about his offending to Lucas; he also said Clarke did not tell him anything about McAlinden's meeting with Lucas. In subsequent evidence Hart conceded he was in fact aware in 1993 that McAlinden had made admissions to Lucas about his offending.

- 20.24 The Commission also ultimately formed the view that Hart's evidence was misleading in relation to the true extent of his involvement in managing the allegations against McAlinden. In this respect, Hart sought to downplay his participation in the arrangements made to deal with McAlinden after he (Hart) reported AJ's complaint to Clarke in 1993. Hart's evidence emphasised his pastoral role in trying to support AJ, rather than placing any emphasis on any senior Diocesan role he held, either as vicar general or, in Clarke's absence, as Diocesan administrator. Hart said it was Clarke who contacted Lucas after AJ's complaint was reported and that he (Hart) did not have any role to play in speaking to McAlinden about AJ's allegations or in managing the situation. He told the Commission he was not part of the 'inner circle' dealing with the matter. AJ's evidence was, however, to the effect that Hart reported back to her detailed information about the management of McAlinden and that he also referred to his own need to meet with McAlinden and Clarke to discuss AJ's allegations. The Commission finds that Hart in fact played a central role in the Diocesan management of the McAlinden problem in 1993.
- 20.25 Similarly, in relation to the proposal to relocate McAlinden to the United Kingdom in 1993, Hart told the Commission he had no role in arranging where McAlinden would be posted, and he denied any knowledge of McAlinden receiving a one-way ticket to the United Kingdom. Indeed, Hart said he was 'mystified' as to how McAlinden had travelled to the United Kingdom. In contrast, however, AJ, who in the Commission's view, was an impressive and reliable witness, said Hart had told her about the arrangement. The Commission finds that Hart did know of the arrangements to relocate McAlinden to the United Kingdom and had spoken to AJ about them. Correspondence from March to May 1993 also confirmed Hart's central role in arranging accommodation for McAlinden in the United Kingdom. This was another instance of Hart trying to present himself as having little or no knowledge of or any involvement in the plans to relocate McAlinden to the United Kingdom and little or no role in affairs on McAlinden's arrival there.

Father Burston

- 20.26 The Commission also found Father William Burston to be an unimpressive witness in certain respects.
- 20.27 In oral evidence Burston professed a complete absence of recollection in relation to many matters concerning McAlinden – in particular, those that might have tended to suggest that he had pre-existing knowledge by at least 1993 of allegations that McAlinden had sexually abused children. This was in stark contrast with his sharp and specific recollection of things that might be perceived as tending to explain his past conduct or exculpate him. For example, Burston proffered a clear memory that, in the case of AL's complaint, there was a 'very strong refusal [by AL] to take it to the police'; this evidence was given in the context of a conversation he initially told the Commission he could not be 'terribly precise' about. Regular responses of 'I don't recollect' were a feature of his testimony, such that the Commission formed the view there was a reluctance on his part to fully consider questions put to him or to explore his memory for information that might assist the Commission.

Abbreviations

ABC	Australian Broadcasting Corporation
ACBC	Australian Catholic Bishops Conference
BOE	brief of evidence
case narr	case narrative
CCER	Catholic Commission for Employment Relations
CCI	Catholic Church Insurances Limited
CDF	Congregation for the Doctrine of the Faith
CEO	Catholic Education Office (formerly Catholic Schools Office, or CSO)
CET	Commissioner's Executive Team, New South Wales Police Force
Church	Catholic Church
CNI number	Central Names Index number
COPS	Computerised Operational Policing System
CPEA	New South Wales Police Force Child Protection Enforcement Agency
CSA	child sexual abuse
DCPU	Diocesan Child Protection Unit
Diocese	Catholic Diocese of Maitland-Newcastle
enqs	enquiries
ERISP	Electronically Recorded Interview of Suspected Person
Georgiana	Strike Force Georgiana
info report	information report
intel report	intelligence report
JIRT	Joint Investigative Response Team
LAC	local area command
Lantle	Strike Force Lantle
Lozano	Strike Force Lozano
MCCF	Maitland Clergy Central Fund
ODPP, Office of the DPP	New South Wales Office of the Director of Public Prosecutions
OIC	officer in charge
Ombudsman	The New South Wales Ombudsman

PIC	Police Integrity Commission
POI	person of interest
PSO	Professional Standards Office
RA	request for assistance
SC	Senior Counsel
SCC	State Crime Command
SIRG	Special Issues Resource Group
TOR 1	term of reference 1
TOR 2	term of reference 2
VCT	Victims Compensation Tribunal

Glossary

Apostolic nunciature	A top-level diplomatic mission (equivalent to an embassy) representing the Holy See in a foreign state such as Australia
Apostolic nuncio	A bishop or archbishop appointed by the Pope as his representative to the particular churches (archdioceses and dioceses) in Australia and the head of the apostolic nunciature; he also acts as ambassador of the Holy See to Australia according to international law
Assistant priest	A priest who is appointed to a parish by the diocesan bishop to assist the parish priest in the pastoral care of the parish community
Australian Catholic Bishops Conference	The assembly of the bishops in Australia established by the Holy See to provide a structure in which bishops jointly exercise certain pastoral functions for the good of the church
Bishop (diocesan)	A priest who has been appointed by the Pope to lead a specific diocese
Canon law	The basic law of the Church, promulgated by legislative authorities within the Church, by which members of the Church are internally regulated
Case narrative	Record of the description of the circumstances that give rise to any actions taken regarding an incident involving police action, proposed action or a decision not to take action
Celebret	A document given to a priest intending to work in or visit another diocese, signed by the priest's bishop and attesting to the fact that the priest is in good standing in his diocese
Central Names Index number	A unique numeral identifier generated by police and assigned to a person relevant to an incident or investigation
Coadjutor bishop	A bishop appointed by the Pope to a specific diocese to assist the incumbent bishop with pastoral governance of the diocese and who has immediate right of succession on the death, resignation or transfer of the incumbent bishop
College of Consultors	The permanent college of priests chosen from the Council of Priests, numbering between six and 12, whose purpose is to assist the bishop in the governance of the diocese in accordance with canon law
Congregation for the Doctrine of the Faith	A dicastery of the Roman Curia whose role is to promote and safeguard the Catholic doctrine on faith and morals
Consultor	A priest who is a member of the College of Consultors
Computerised Operational Policing System	A criminal intelligence database used by the New South Wales Police Force in which information relating to all aspects of crime is recorded, including criminal incidents and criminal histories
Council of Priests	A group of priests who represent priests incardinated into a diocese and priests who are exercising priestly ministry in the diocese; assists the bishop in the governance of the diocese in accordance with canon law
Deacon	A person who has been ordained and who exercises ministry especially in respect of worship and works of charity; in the third grade of ordained clerics below bishop and priest
Dicastery	A department of the Roman Curia

Diocese	A defined community of Catholics determined on the basis of territory whose pastoral care is entrusted to a bishop appointed by the Pope
E@gle.i	The New South Wales Police Force investigation management system
Episcopacy	The position or office of bishop; the period during which a bishop holds office
Excardinate	To transfer a cleric from the diocese into which he is incardinated to another diocese into which he then becomes incardinated
Faculties	The empowerment by the diocesan bishop of a priest to exercise his priestly ministry in a diocese
Holy See	The Pope and the various departments of the Roman Curia (the bureaucracy of the Holy See); commonly referred to as 'the Vatican'
In camera hearing	See Public in camera hearing
Incardinate	To attach a priest or a deacon to a diocese or religious institute, establishing a commitment and permanent link to that diocese or institute. Incardination in a diocese entails obligations and rights on the part of both the priest and the diocese. Under canon law a priest is bound to obey the bishop and faithfully accept and fulfil the ministry to which the bishop appoints him; the priest must also reside in the diocese unless his absence is authorised by the bishop
Inquiry Information Centre	The information centre the Commission established; located at the Justice Access Centre Wallsend
Local area command	A geographical division of the New South Wales Police Force responsible for providing a police service to that specific area, including general duties officers, detectives, highway patrol officers and traffic duty officers. There are over 80 local area commands in New South Wales
Laicisation	A voluntary process regulated by canon law in which a priest requests from the Pope a dispensation from his clerical obligations. From the time laicisation is granted, the person ceases to be a priest, and he can no longer wear priestly garb (or vestments) or refer to himself as a priest. The process of laicisation is dependent on cooperation from the priest concerned: in the absence of such cooperation the process cannot be completed
Monsignor	The title of those priests who have received an honour from the Pope for their service to the Church
New South Wales Police Force ranks	In descending order of seniority: Commissioner, Deputy Commissioner, Assistant Commissioner, Chief Superintendent, Superintendent, Chief Inspector, Inspector, Senior Sergeant, Sergeant, Leading Senior Constable, Senior Constable, Constable. Note that if an officer is designated 'Detective', that word may appear before his or her rank.
Officer in charge	An officer of the New South Wales Police Force who has been given authority over a specific investigation
Ordination	The means by which a man becomes a deacon, a priest or a bishop in the Catholic Church
Parish	A community of the faithful, generally in a territorial area, whose pastoral care is entrusted to a parish priest
Parish priest	The priest in charge of a parish; the proper pastor of the parish entrusted to him, exercising a duty to provide pastoral care for the community entrusted to him under the authority of the diocesan bishop

Private hearing	A hearing of the Commission, used as part of its investigations, at which only the subpoenaed person (and his or her legal representative) is present with Commission personnel
Public hearing	A hearing of the Commission that is held in public
Public in camera hearing	That part of a hearing of the Commission that the Commissioner has directed should take part in camera and at which two or more persons authorised to appear are typically present
Roman Curia	The centralised bureaucracy of the Holy See
Sex Crimes Squad	Specialised squad of the State Crime Command established to ensure provision of a specialist sexual assault response to support local area commands across New South Wales
State Crime Command	A division of the New South Wales Police Force consisting of 12 squads specialising in particular types of crime
Vicar general	A priest appointed by the diocesan bishop to assist in the governance of the diocese and with the same executive power of governance throughout the whole diocese as belongs by law to the diocesan bishop, with the exception of matters reserved to the bishop
Vicar capitular	A priest appointed to govern a diocese after the death, resignation, transfer or deprivation of the bishop and until a new bishop is appointed and has taken up office. The position is now known as 'diocesan administrator', under the 1983 Code of Canon Law
Zimmerman House	Established on 4 September 2007 to provide child protection and healing services within the Catholic Diocese of Maitland–Newcastle; now known as Zimmerman Services
Zimmerman Services	The centralised team established following a restructure to provide child protection and healing services for the Catholic Diocese of Maitland–Newcastle, replacing Zimmerman House on 27 June 2011



Hope

*I go darkly through life
Hard wired and bare in despair
Then emptiness fills with hope.*

– artist Lina Basile, survivor
of abuse by McAlinden