



# **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 4 Confidential**

**Margaret Cunneen SC**

30 May 2014



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



# Contents

<b>PART E CONFIDENTIAL VOLUME .....</b>	<b>1</b>
<b>C1 Introduction and principal conclusions .....</b>	<b>3</b>
Introduction .....	4
Principal conclusions.....	5
<b>C2 Archbishop Wilson and his knowledge of Fletcher’s propensity for child sexual abuse.....</b>	<b>17</b>
Introduction .....	18
AM’s allegations.....	20
Mr Gogarty’s allegations.....	31
Archbishop Wilson and matters relating to another Fletcher victim (AB).....	44
<b>C3 Diocesan knowledge and handling of AM’s letter of 29 July 2010 .....</b>	<b>49</b>
Introduction .....	51
AM’s letter of 29 July 2010 .....	51
Bishop Malone’s handling of AM’s complaint .....	53
Defamation correspondence between Archbishop Wilson and Bishop Malone, June to July 2010 .....	56
The Towards Healing Consultative Panel meeting, 19 August 2010 .....	57
Bishop Malone’s meeting with AM, 26 August 2010.....	66
Bishop Malone’s letter of reply to AM, 2 September 2010 .....	69
Bishop Malone’s reporting obligations.....	75
Zimmerman Services’ handling of AM’s letter.....	78
The Strike Force Lantle Search warrant executed on 2 June 2011 .....	95
Bishop Malone’s participation in a police interview, 30 November 2011.....	102
<b>C4 Archbishop Wilson and his knowledge of McAlinden’s propensity for child sexual abuse .....</b>	<b>111</b>
AJ’s disclosure to Father Wilson .....	113
McAlinden’s movement from Merriwa to Adamstown and beyond, 1985 to 1988 .....	121
Archbishop Wilson’s investigation of complaints from Merriwa .....	122
Management of the Merriwa complaints.....	144
<b>C5 Credibility issues: Bishop Malone and Archbishop Wilson .....</b>	<b>173</b>
Bishop Malone .....	173
Archbishop Wilson .....	175
<b>C6 Cooperation and assistance provided to Strike Force Lantle .....</b>	<b>179</b>
Conclusion .....	179

<b>PART F APPENDIXES.....</b>	<b>181</b>
<b>Appendix CA Letter from AM to Malone, 29 July 2010 .....</b>	<b>183</b>
<b>Appendix CB Letter from Malone to AM, 2 September 2010 .....</b>	<b>185</b>
<b>Dramatis Personae .....</b>	<b>187</b>
<b>Abbreviations .....</b>	<b>191</b>
<b>Glossary.....</b>	<b>193</b>

**Part E Confidential  
volume**



# C1 Introduction and principal conclusions

## Contents

<b>Introduction</b> .....	<b>4</b>
The Inquiry's terms of reference .....	4
Section 10(1) of the Special Commissions of Inquiry Act: sufficient evidence warranting prosecution.....	4
The need for confidentiality .....	4
Recommendation regarding deferred publication of confidential volume of report.....	4
<b>Principal conclusions</b> .....	<b>5</b>
Overview .....	5
Archbishop Wilson's knowledge of Fletcher's propensity for child sexual abuse .....	6
AM's allegations .....	6
Disclosure to Father Wilson: 1976.....	6
Failure to report AM's complaint to police.....	7
Mr Gogarty's allegations .....	7
Whether Archbishop Wilson should have known Fletcher was abusing Mr Gogarty.....	7
Knowledge of matters relating to AB .....	8
Advice to Father Walsh: April 2004 .....	8
A visit to AB's family: late 2004 .....	8
Failure to facilitate or assist a police investigation.....	8
AM's letter of complaint to Bishop Malone .....	8
Bishop Malone's handling of AM's complaint .....	9
Media allegations and defamation correspondence .....	9
The Towards Healing Consultative Panel meeting of 19 August 2010 .....	9
Bishop Malone's meeting with AM, 26 August 2010.....	10
Bishop Malone's letter of reply to AM, 2 September 2010.....	10
Bishop Malone's reporting obligations arising from AM's letter.....	10
Zimmerman Services' handling of AM's letter, April 2011 and following .....	11
The search warrant, June 2011.....	12
Bishop Malone's participation in a police interview, 30 November 2011 .....	12
Archbishop Wilson's knowledge of McAlinden's propensity for child sexual abuse .....	13
AJ's disclosure to Father Wilson .....	13
Investigating complaints from Merriwa .....	13
Involvement with Dr Johns .....	14
Archbishop Wilson's reporting obligations.....	14
No discussions between Archbishop Wilson and Bishop Clarke, January 1987 to August 1990 .....	15
Archbishop Wilson's return to the Diocese, June 1993.....	15
Initiation of formal canonical processes against McAlinden, October 1995 .....	15
Sexual abuse complaints in the Diocese of Wollongong, 1996 .....	16
The credibility of certain witnesses .....	16

# Introduction

## The Inquiry's terms of reference

- C1.1 Chapter 2 in the public part of this report sets out the Inquiry's terms of reference and explains the approach the Commission took.
- C1.2 This confidential volume of the report deals only with the second term of reference, which is as follows:

whether, and the extent to which, officials of the Catholic Church facilitated, assisted, or co-operated with, Police investigations of relevant matters, including whether any investigation has been hindered or obstructed by, amongst other things, the failure to report alleged criminal offences, the discouraging of witnesses to come forward, the alerting of alleged offenders to possible police actions, or the destruction of evidence.

## Section 10(1) of the Special Commissions of Inquiry Act: sufficient evidence warranting prosecution

- C1.3 Section 10(1) of the *Special Commissions of Inquiry Act 1983* (NSW) requires the Commissioner to report to the Governor in connection with the subject matter of the Commission and, in particular, to report 'as to whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence'. Matters relating to s. 10(1) are discussed in Part G of this confidential volume; Chapter 5 in the public part of the report provides an overview of the applicable legal principles relating to s. 10 of the Act.

## The need for confidentiality

- C1.4 Certain of the Commission's processes and hearings were necessarily undertaken on a confidential, in camera basis, as noted in paragraph 3.66.
- C1.5 The Commission was established against the background of Strike Force Lantle, an ongoing police investigation of alleged concealment by certain officials currently or formerly attached to the Catholic Diocese of Maitland–Newcastle. Chapter 8 in the public part of the report provides an overview of the Strike Force Lantle investigation. As noted in paragraph 3.65, in October 2012, before the announcement of this Special Commission of Inquiry, the Strike Force Lantle brief of evidence prepared by the New South Wales Police Force was submitted to the Office of the Director of Public Prosecutions for the purpose of receiving advice on the sufficiency of evidence to prosecute specific individuals.

## Recommendation regarding deferred publication of confidential volume of report

- C1.6 As set out in paragraphs 3.72 to 3.74 in the public part of the report, s. 10(3) of the *Special Commissions of Inquiry Act (1983)* allows for a recommendation to be made in relation to publication of the whole or any part of a report, as the Commissioner thinks proper. Consistent with this, the Commission's report consists of four volumes, the first three being the public volumes. The Commissioner recommends that these three volumes be published. Volume 4 of the report – being this confidential volume – contains material dealt with on a confidential basis (including evidence taken in camera). Publication of such material at this time could prejudice future criminal proceedings by pre-trial publicity and by influencing the evidence of witnesses. The Commissioner recommends that publication of Volume 4 be deferred until such time as there has been a determination on any relevant criminal proceedings or a decision has been made not to commence such proceedings. In view of the legitimate public interest in the matters considered by this Inquiry, the Commissioner recommends that after that time Volume 4 be published.

## Principal conclusions

### Overview

- C1.7 This confidential volume focuses primarily on the conduct of two senior church officials – Archbishop Philip Wilson and Bishop Michael Malone – in the context of whether they facilitated, assisted or cooperated with police investigations of the relevant matters in question.
- C1.8 Although having held the position of Archbishop of Adelaide since 2001, Wilson was previously incardinated into the Diocese of Maitland–Newcastle, where he was a priest from 1975 to 1996. Malone was bishop of the Diocese from 1995 to 2011.
- C1.9 In brief, the Commission’s principal findings in connection with Wilson are as follows:
- (a) In 1976 Wilson received from a 15-year-old boy, AM, a direct complaint that he (AM) had been sexually abused by Father James Fletcher in 1971. Wilson failed to notify the police about AM’s reported abuse in 1976 or at any later time. AM’s complaint was information that would have facilitated a police investigation of Fletcher in or after 1976 or would have facilitated and/or assisted the police investigation of Fletcher that began in 2002 (relating to the complaint of AH, another victim).
  - (b) In 2004 Wilson separately made to another priest, Father Glen Walsh, and the parents of a Fletcher victim, AB, remarks that were designed to mislead them as to his true state of knowledge concerning Fletcher.
  - (c) From 1986 Wilson had information indicating that McAlinden had sexually abused children. This included a direct report from AJ, a close friend and victim of McAlinden when she was a child. In 1987 Wilson investigated complaints about McAlinden’s conduct with young girls in Merriwa and obtained a statement from a victim’s mother. During the same year Wilson had a central role in communicating with high-profile John Hatton MP in relation to the Diocese’s management of the McAlinden problem, in addition to making arrangements for McAlinden’s psychiatric evaluation. In 1995 Wilson obtained further information – including statements from two further victims, AK and AL – about McAlinden’s propensity to sexually abuse children.
  - (d) Thus, from 1986 onwards Wilson possessed information that would have facilitated and/or assisted a police investigation of McAlinden. Further, by at least 1995, if not earlier, Wilson should have been, and was, aware that Bishop Leo Clarke had no intention of reporting McAlinden to police. Wilson should have reported McAlinden to police – including by using the option of blind-reporting from 1997 onwards. His failure to do so constitutes a failure to facilitate and/or assist a police investigation of McAlinden.
- C1.10 The Commission’s principal finding in connection with Malone is that when interviewed by police in November 2011 and questioned about his knowledge of victims of Fletcher, he deliberately failed to mention the existence of AM.
- C1.11 A central element of AM’s complaint, as notified to Malone in 2010, was AM’s contention that Wilson was involved in a ‘cover-up’ of the disclosure he (AM) had made to Wilson in 1976 concerning Fletcher’s sexual abuse of him. This was information that would have been of considerable interest to police. In failing to disclose that information, Malone failed to facilitate and/or assist the Strike Force Lantle police investigation.

- C1.12 In addition, the Commission finds that there were significant institutional failings on the part of Zimmerman Services, the Diocese's child protection unit, in connection with the handling in 2010 and 2011 of AM's letter of complaint and the significant information contained in it.

### **Archbishop Wilson's knowledge of Fletcher's propensity for child sexual abuse**

- C1.13 The Commission took evidence dealing with Wilson's knowledge of matters relating to allegations made by AM and Mr Peter Gogarty and regarding Wilson's conduct and statements he made against the background of Fletcher's criminal prosecution and the coming forward of AB, a further victim of Fletcher, in 2004.

### ***AM's allegations***

#### *Disclosure to Father Wilson: 1976*

- C1.14 The existence of AM as a victim of Fletcher came to the Commission's attention during a review of files held by the Catholic Diocese of Maitland–Newcastle. In a letter to Malone dated 29 July 2010<sup>1</sup> AM stated that Fletcher had abused him in 1970 and that when he (AM) was 15 years old he had told then Father Wilson about the abuse. The Commission approached AM, and he gave evidence at private and in camera hearings.
- C1.15 The Commission found AM to be a credible and impressive witness. His evidence was subject to thorough cross-examination but remained compelling. The Commission accepts AM's evidence that in 1971, when he was 10 years old, he was sexually abused by Fletcher on multiple occasions, across a period of eight to nine months.
- C1.16 The Commission also accepts that AM, then aged 15 and in year 10 at school, made a disclosure about Fletcher's sexual abuse of him to then Father Wilson (a newly ordained priest in the Diocese) in about Easter 1976, during a conversation after a youth group meeting in East Maitland. Although AM was frank about his inability to recall the precise words he used, the disclosure involved AM telling Wilson that on multiple occasions over eight or nine months Fletcher had forced some 'acts of punishment' on him – including making AM undress while Fletcher was fondling his own penis, forcing AM to handle Fletcher's penis until Fletcher ejaculated (or 'relieved himself'), and Fletcher trying to force his penis into AM's mouth. AM told Wilson he had not told anyone else about Fletcher's abuse of him. Wilson told AM he would 'have it looked into'.
- C1.17 The Commission finds that AM had a second conversation with Wilson some months later in 1976, again after a youth group meeting. AM asked Wilson what was happening in relation to what he had told him about Fletcher. Wilson responded that 'they are still looking into it'.
- C1.18 Wilson initially gave evidence that he knew nothing of Fletcher's sexual abuse of boys until his (Fletcher's) arrest in 2003 for offences relating to child sexual abuse of AH. Subsequently, however, after hearing AM's evidence, Wilson told the Commission he had developed a 'gnawing thought that, somehow or other, there was something that happened'. This account from Wilson undermines his initial unqualified denial of any such knowledge, as given before he had heard AM's evidence. The Commission concluded that Wilson's evidence about the 'gnawing thought' was an attempt to accommodate the credible account given by AM.
- C1.19 The Commission finds Wilson's purported inability to recall AM's disclosure to be implausible and untrue. The sexual nature of the acts AM described and particular features of AM's presentation at the time of his disclosure to Wilson in 1976 – including that AM was crying when he told Wilson and that AM had a stutter – made the incident memorable. In addition, it is

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<sup>1</sup> See Appendix CA.



unlikely that Wilson would have forgotten AM's 1976 disclosure to him in view of Wilson's professed previous inexperience of matters relating to child sexual abuse by a priest. Any prospect of Wilson forgetting about the disclosure (even assuming this to have been possible) was highly improbable also because Wilson continued to see AM weekly at youth group meetings until, six months later, AM asked him what was happening in relation to his disclosure.

#### *Failure to report AM's complaint to police*

- C1.20 There is no evidence that Wilson at any time sought to ascertain whether AM was prepared to take his complaint to the police. Had it been reported to police, AM's complaint constituted information that would have facilitated a police investigation of Fletcher in 1976 or at any time thereafter. It was also likely to have assisted the police investigation of Fletcher that began in 2002.
- C1.21 The Commission finds that Wilson failed to report AM's complaint to police in 1976 and that that failure continued beyond 1976. Further, an entry Wilson wrote in his 1987 diary confirms his knowledge of the common law offence of misprision of felony by that time, including his awareness of the obligation on 'anyone' to report criminal acts. The Commission considers that, when making that diary entry in 1987, Wilson would have appreciated the import of the elements of a misprision offence in connection with AM's disclosure to him and the fact that the matter had not been reported to police.

#### *Mr Gogarty's allegations*

##### *Whether Archbishop Wilson should have known Fletcher was abusing Mr Gogarty*

- C1.22 The Commission accepts Mr Peter Gogarty's evidence that he was sexually abused by Fletcher from the age of 13 to 14 until he was almost 18 years old. It further accepts Gogarty's evidence that from 1977 the abuse occurred in Fletcher's bedroom in the bishop's house in Maitland and that the abuse had ceased by November 1978.
- C1.23 Gogarty's contention was, in effect, that Wilson should have known Fletcher was abusing him at the bishop's house in 1977 and 1978 because of Wilson's residence in or frequent attendance at the bishop's house during that time. The Commission accepts Wilson's evidence that he began to live at the bishop's house in 1983, which accords with other evidence before the Commission – a matter conceded by Gogarty.
- C1.24 On the question of whether he should have known Gogarty was being abused by Fletcher, Wilson denied any such knowledge. Gogarty acknowledged that he could not recall any instance of Wilson seeing him being taken to or returning from Fletcher's upstairs bedroom; he also said Fletcher was discrete and sought to hide what was going on. Having regard to the totality of the evidence, it was not open to the Commission to conclude that Wilson knew or should have known that Fletcher was sexually abusing Gogarty.
- C1.25 The Commission does, however, accept Gogarty's evidence of an incident in 1977 or 1978 when he, Wilson and Fletcher discussed Wilson's first overseas trip in the common room of the bishop's house. Wilson's evidence was also to the effect that on occasions during the months he had lived with Fletcher at the bishop's house (that is, from 1983) there was a group of teenage boys around the house and in the kitchen. Wilson also referred to telling Fletcher about restrictions on the presence of 'young people' in the parish house in about March or April 1983.
- C1.26 The Commission is satisfied that, having regard to AM's report to Wilson in 1976 of Fletcher's sexual abuse of him – which would have put Wilson on notice about Fletcher's propensity to sexually abuse young boys – Wilson would have had good reason to be particularly alert to the implications of teenage boys (such as Gogarty) attending the bishop's house while Fletcher was in residence.

## ***Knowledge of matters relating to AB***

### ***Advice to Father Walsh: April 2004***

- C1.27 In late April 2004 Father Glen Walsh, a priest of the Diocese, became aware of a further victim of Fletcher, AB. He sought from Wilson advice about the steps he should take. Wilson told Walsh to contact the Professional Standards Office for advice on the protocol to follow. The Commission finds that Wilson's response was appropriate: it ensured that Walsh received advice that, if followed, was likely to result in independent authorities becoming aware of the existence of a further Fletcher victim.
- C1.28 The Commission also finds that during a meeting between Walsh and Wilson in July 2004 Wilson made an unprompted remark that he 'had nothing to do with' the Fletcher matter and nor did he have any information about it. In view of its findings in relation to Wilson's knowledge about Fletcher, as conveyed by AM, the Commission is of the opinion that the statement Wilson made was disingenuous and designed to mislead Walsh as to Wilson's true state of knowledge concerning Fletcher.

### ***A visit to AB's family: late 2004***

- C1.29 The Commission finds that during a visit to AB's parents in late 2004 Wilson told them that he 'knew absolutely nothing' about Fletcher's propensity to sexually abuse children. In view of the Commission's findings about Wilson's knowledge of Fletcher's sexual abuse of AM since 1976, Wilson's comments to AB's parents were again disingenuous and designed to mislead them about his actual knowledge concerning Fletcher.
- C1.30 Further, the allegations of both AH and AB, which became known to him in 2003 and 2004 respectively, would have reminded Wilson of AM's account to him in 1976 and caused him to appreciate that he could have taken action at an earlier time to prevent Fletcher sexually abusing further victims.

## ***Failure to facilitate or assist a police investigation***

- C1.31 As noted, the Commission is satisfied that after AM's disclosure to him in 1976 Wilson failed to inform police of AM's complaint about Fletcher's sexual abuse of him as a 10-year-old boy. Such information would have either facilitated a potential police investigation of Fletcher or facilitated and/or assisted the police investigation of Fletcher that was under way from 2002 in relation to AH.
- C1.32 Wilson also became aware in April 2004 that a further victim, AB, had complained of sexual abuse by Fletcher. He met with AB's family in late 2004, at which time Wilson knew Fletcher was facing criminal proceedings and knew that the further victim in question was AB. In these circumstances Wilson's ongoing failure to report Fletcher's abuse of AM showed a continued determination to avoid bringing AM's complaint to the attention of the police.

## ***AM's letter of complaint to Bishop Malone***

- C1.33 On 29 July 2010, as noted, AM (then an adult) wrote to Malone outlining the sexual abuse he had suffered as a 10-year-old boy at the hands of Fletcher and the impact this had on his life. AM also revealed that in 1976 he told Wilson (then Father Wilson) about having been repeatedly sexually abused by Fletcher. AM's letter made a number of references to a 'cover-up'.
- C1.34 Neither Malone nor any other person in the Diocese brought AM's complaint to the attention of the New South Wales Police Force, despite the fact that it would have been of significant interest to them. The Commission examined the Diocese's handling of AM's letter of complaint.

### ***Bishop Malone's handling of AM's complaint***

- C1.35 On receiving AM's letter in August 2010 Malone contacted AM and made arrangements to meet him. Malone's evidence was that the reference to Wilson in AM's letter 'did not leap out' at him and that his overwhelming response was one of pastoral care.
- C1.36 The Commission formed the view that Malone's evidence sought to minimise the importance of the information AM's letter contained in relation to Wilson. AM's letter, if true, raised the clear prospect that an archbishop, a senior church official formerly incardinated into the Diocese, might have been involved in concealing, for more than 30 years, offences of child sexual assault committed by Fletcher. In later evidence Malone conceded that, on first reading the letter, he did give particular consideration to the aspect relating to Wilson and in fact wondered whether any action was taken in connection with AM's complaint.

### ***Media allegations and defamation correspondence***

- C1.37 In May and June 2010 Gogarty made claims – including during an ABC Television *Lateline* program on 17 May 2010 – that Wilson knew or should have known of Fletcher's sexual abuse of boys in the late 1970s. In June 2010 Malone was interviewed on *Lateline* and was asked about Wilson's knowledge of McAlinden's propensity for the sexual abuse of children. In evidence Malone agreed that in June 2010 what Wilson knew about child sexual abuse was on his mind.
- C1.38 Following Gogarty's claims in May 2010 on *Lateline*, in June 2010 there was also related correspondence between Wilson and Malone and Wilson's solicitors and Mr Sean Tynan (then manager of Zimmerman Services), raising the prospect of legal action for defamation in relation to an email Tynan had sent.
- C1.39 Notwithstanding these events, Malone repeated his evidence that the reference to Wilson in AM's letter – received in early August 2010, shortly after the 'rife media hype' surrounding Wilson, and the correspondence from Wilson and his solicitors – was not something that caught his attention.
- C1.40 The Commission rejects Malone's evidence that the notable correspondence from Wilson was not a matter that came to mind on reading AM's letter or shortly thereafter. AM in effect asserted that Wilson knew of Fletcher's propensity to sexually abuse boys. This suggested that the 'rife media hype' surrounding Wilson's knowledge of child sexual abuse concerning at least Fletcher was not in fact hype; it also suggested that Wilson had been deceitful in 'patronising' correspondence that had angered Malone and impugned his administration. Against that background, the Commission considers Malone's insistence that the allegations against Wilson in AM's letter of complaint did not 'leap out at him' to be wholly improbable.

### ***The Towards Healing Consultative Panel meeting of 19 August 2010***

- C1.41 AM's complaint was referred to, at least to some extent, during a Towards Healing Consultative Panel meeting on 19 August 2010, a week or so after Malone had received AM's letter. The Consultative Panel was made up of a group of lay and religious people convened to advise the bishop about the operation of the Church's Towards Healing protocol. Panel members who attended the 19 August 2010 meeting were all called to give evidence before the Commission.
- C1.42 The minutes of the panel meeting stated '... a new victim of JF [James Fletcher] has come forward. Bishop Michael Malone has spoken to him and is going to meet with him'.
- C1.43 The Commission finds that, although there was reference during the panel meeting to a further Fletcher victim coming forward, Malone did not refer to the details of AM's letter and in particular did not mention the allegations relating to Wilson.

### ***Bishop Malone's meeting with AM, 26 August 2010***

- C1.44 Malone met with AM alone at AM's home on 26 August 2010 for the stated purpose of offering pastoral support. Malone had never personally attended the home of a victim until that meeting with AM. He thought AM a 'fine man' who was sincere and forthcoming during the meeting despite his nervousness about the subject matter.
- C1.45 Malone gave conflicting accounts about whether the alleged cover-up by Wilson was discussed with AM during the meeting. AM's evidence was that at the meeting he raised with Malone what he (AM) had said to Wilson in 1976. The Commission accepts AM's evidence. He was a credible witness. His account is also supported by a version of events Malone provided in his September 2013 police statement, which refers to the asserted disclosure by AM to Wilson having been discussed.

### ***Bishop Malone's letter of reply to AM, 2 September 2010***

- C1.46 By letter dated 2 September 2010<sup>2</sup> Malone sent a reply to AM, reiterating that he accepted AM's account. Malone also made some suggestions by way of personal support for AM and mentioned the possibility of a damages claim against the Diocese.
- C1.47 Malone's reply letter was copied to Tynan at Malone's request. The Commission finds that Malone did not arrange for a copy of AM's letter of complaint, which contained reference to Wilson and a suggested 'cover up', to be provided to Tynan. Nor did Tynan seek a copy of AM's letter, even though it was referred to in Malone's reply. Tynan's evidence was that he first saw AM's letter of complaint in January 2013, after Commission personnel brought it to his attention. Ms Maureen O'Hearn, the coordinator of Healing and Support at Zimmerman Services, also did not become aware of AM's existence until January 2013, when Commission personnel contacted her.
- C1.48 Malone's failure to arrange to send AM's letter of complaint to Zimmerman Services was irregular.

### ***Bishop Malone's reporting obligations arising from AM's letter***

- C1.49 Fletcher died in January 2006, so there was no obligation on Malone in 2010 to report Fletcher's abuse of AM to police. Nonetheless, AM's allegations against Wilson concerned the concealment of child sexual abuse, which potentially constituted a criminal offence.<sup>3</sup> Malone's evidence was to the effect that he took no steps to report to police the information about Wilson since it was not information that 'leapt out at him as being significant'.<sup>4</sup>
- C1.50 There were, however, a number of important irregularities in Malone's handling of AM's complaint – among them the manner in which AM's complaint was obliquely referred to at the Towards Healing Consultative Panel meeting on 19 August 2010; Malone's meeting with AM at his (AM's) personal residence on 26 August 2010, unaccompanied by a support person from Zimmerman Services (contrary to his usual practice); and Malone's failure to arrange to provide AM's letter of complaint to Tynan at Zimmerman Services.
- C1.51 Despite these factors, it must be acknowledged that Malone could neither foresee nor control whether AM might take things further – in the form of a direct complaint to the police or to a solicitor for the purpose of pursuing a civil claim (in which case police might well have also been

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<sup>2</sup> See Appendix CB.

<sup>3</sup> Namely, the common law offence of misprision of felony and/or the statutory offence of conceal serious indictable offence contrary to s. 316 of the *Crimes Act 1900* (NSW).

<sup>4</sup> Note that the failure by Malone to report to police the allegations concerning Wilson would not constitute an offence under s. 316 of the *Crimes Act* since it would not amount to concealing of a 'serious indictable offence' as defined.

notified). There is also no evidence that Malone sought to dissuade AM from disclosing his complaint about Wilson to any other person or authority. Additionally, the availability of documents the Commission subsequently obtained indicates that Malone did not destroy the relevant documents so as to put them beyond the reach of an external body such as the police or this Commission. Malone also had an 'open house' policy in relation to access to Diocesan records, such that staff from Zimmerman Services and external agencies (such as the police) could gain access to files in the bishop's office if they sought to.

- C1.52 Nevertheless, the Commission finds that Malone's conduct relating to AM's complaint had the consequence of making it less likely that the substance of AM's complaint – particularly the matters relating to Wilson – would come to external notice, including the notice of the police, unless AM himself took some further action. The Commission additionally finds that Malone failed to assist police by bringing AM's complaint to their attention in August 2010 or at any time thereafter; this included a failure to facilitate the Strike Force Lantle investigation. Such reporting was a step Malone should have taken, in particular as head of the Diocese.

### ***Zimmerman Services' handling of AM's letter, April 2011 and following***

- C1.53 Zimmerman Services (previously known as Zimmerman House) consists of a centralised team that provides child protection and healing services for the Diocese.
- C1.54 Tynan told the Commission that in early May 2011 he asked Mr David Muxlow, an investigator employed by Zimmerman Services and a former police officer of 22 years' experience, to prepare a briefing paper examining potential links between known abusive priests in the Diocese in order to ascertain whether there were any 'conspiracies'. Tynan assisted Muxlow in obtaining access to the bishop's files for this purpose.
- C1.55 In examining the bishop's files to obtain information for the task, both Muxlow and another Zimmerman Services investigator, Ms Lisa Wollschlager, found details of AM's letter of complaint, including the information about Wilson. Muxlow referred to this in a report on the 'Clergy Review Analysis' he prepared for Tynan in June 2011, stating, 'Records show that in 1976 Father Philip Wilson was informed of allegations of child sexual abuse by JF upon a victim [AM]. It appears no action was taken as a result of this allegation'.
- C1.56 Neither Muxlow nor Wollschlager followed up this matter with Tynan so as to determine whether any further steps should be taken. For his part, Tynan told the Commission he did not read all the summaries and relevantly did not read the summary relating to Fletcher. The Commission accepts Tynan's evidence in this regard.
- C1.57 There were, however, significant institutional failings in Zimmerman Services' handling of AM's letter of complaint in 2010 and 2011 – Tynan's failure to ask Malone for a copy of AM's letter of complaint on receiving only the bishop's 2 September 2010 reply to AM; his failure to read the Clergy Review Analysis document so as to inform himself about Wilson's potential concealing of child sexual abuse matters; his failure to provide to O'Hearn a copy of the bishop's letter of reply to AM so as to enable her to prepare for possible contact from AM; and his failure to follow up with Malone the status of AM's complaint. Investigators Muxlow and Wollschlager also knew about the material relating to Wilson's potential concealing of AM's complaint of sexual abuse by Fletcher but took no substantive steps to ensure that police became aware of the information. Although such inaction on the part of Tynan, Muxlow and Wollschlager was not calculated to conceal the information about Wilson, the totality of the evidence points to an institutional failure by Zimmerman Services to discharge its responsibilities.
- C1.58 These systemic flaws are such that, as a child protection institution, Zimmerman Services failed to assist or facilitate relevant police investigations in that it failed to report to police potential

criminal offences – namely, the allegations of Wilson’s concealment of child sexual abuse, as set out in AM’s letter of 29 July 2010.

- C1.59 Zimmerman Services’ reporting policies have been revised as a consequence of the deficiencies uncovered in the course of the Commission’s investigations. The Commission considers such revisions commendable: they will likely assist future police investigations of child sexual abuse and any related concealment allegations.

### ***The search warrant, June 2011***

- C1.60 Investigators from the Strike Force Lantle police investigation executed a search warrant on 1 June 2011 at the Zimmerman Services’ premises in order to collect documents Tynan had collated. Neither AM’s letter of 29 July 2010 nor Malone’s reply was provided to police in response to the search warrant; it must be said, however, that that correspondence was not caught by the terms of the search warrant.
- C1.61 There is no evidence that the Diocese failed to comply with the terms of the search warrant as drafted. There were, however, some limitations to the investigation relating to the execution of this particular warrant, including that police proceeded on the basis of an erroneous belief that Malone – a person of interest about whom documents associated with his dealings in relation to McAlinden were specifically sought in the search warrant – had in fact retired from the Diocese and thus would not be consulted about the search warrant. Malone had not yet retired, though, and Tynan had consulted him (as might be expected) about materials collated in connection with the warrant. Further, the search warrant related only to the premises at Zimmerman Services, yet files held in the bishop’s office contained documents relevant to the Strike Force Lantle investigation – including the Bishop’s Fletcher file, in which AM’s letter to Malone was filed at the time of execution of the search warrant on 1 June 2011.

### **Bishop Malone’s participation in a police interview, 30 November 2011**

- C1.62 On 30 November 2011 Malone participated in an interview with investigators from Strike Force Lantle. During the interview Malone was asked, ‘Are you aware of any other victims by Fletcher, child victims?’ to which he replied that he was aware of a particular family in Maitland (being a reference to AB) and otherwise stated, ‘Um, I’m trying, I don’t know, I can’t think of any other off-hand’.
- C1.63 There was no return to this line of questioning during the interview, and nor did Malone volunteer any information about AM at any time. The officer who conducted the interview, Detective Sergeant Jeffrey Little, gave evidence that he considered that, in failing to mention AM, Malone had failed to assist his investigation and that Malone’s answer had in fact misled him.
- C1.64 Having regard to the various things Malone knew at the time of the interview, his failure to mention AM during the interview cannot be attributed to a mere lapse of memory or tiredness on Malone’s part, as he asserted. Apart from Gogarty, there were only two victims Malone knew about – namely AH and AB. The Commission does not accept that Malone simply forgot to mention AM when directly questioned about other victims of Fletcher. It is particularly persuaded of this given that Malone had read AM’s letter and attended a meeting with him at his home, at which time he formed the view that AM was a credible and impressive man. The Commission finds that Malone’s failure to mention AM during the interview was deliberate.
- C1.65 Malone offered a form of assistance to the Strike Force Lantle investigation by voluntarily attending to answer questions on 30 November 2011. He further assisted police by voluntarily attending to provide a statement on 26 September 2013. The Commission considers, however, that there was a deliberate withholding from the Lantle investigators of information that



Malone would have known was relevant in November 2011 – that being AM’s letter and the knowledge of AM as a victim of sexual abuse by Fletcher. A central element of AM’s complaint was his assertion that Wilson was involved in a cover-up of the disclosure AM made to him in 1976 in relation to Fletcher’s sexual abuse. This was information that would obviously have been of great interest to the Strike Force Lantle investigators.

- C1.66 In failing to reveal that information, Malone failed to assist the Lantle investigation and failed to facilitate investigation of other relevant matters – that is, the matters AM raised about Wilson. The answer Malone gave when questioned about his knowledge of victims of Fletcher misled Detective Sergeant Little into believing that Malone knew of no other victims. This was not the true position, and Malone did not ever correct it through subsequent contact with Little.

## **Archbishop Wilson’s knowledge of McAlinden’s propensity for child sexual abuse**

### ***AJ’s disclosure to Father Wilson***

- C1.67 In about 1986 or 1987, before Wilson investigated allegations about McAlinden’s sexual misconduct in Merriwa parish, AJ, then a close friend of Wilson, told him McAlinden had sexually abused her when she was a child. Wilson believed AJ’s account. This disclosure was in the context of a pastoral and personal friendship, and AJ had no expectation that Wilson would take the matter to the police; nor was there any discussion about doing so. Wilson did, however, report the matter to Bishop Clarke, although he provided no details.
- C1.68 On receiving AJ’s account, and knowing McAlinden to be a parish priest in the Diocese who had access to children, Wilson, as a Diocesan official, should have taken steps beyond simply advising Clarke of AJ’s report, including exploring with AJ her attitude toward reporting to the police. Wilson’s failure to consider on any level the question of reporting the matter to police meant that an opportunity for a police investigation into McAlinden at that time was lost.

### ***Investigating complaints from Merriwa***

- C1.69 At some time before or about June 1986 Mr Michael Stanwell, principal of St Joseph’s Primary School in Merriwa, heard reports about inappropriate behaviour on the part of McAlinden and witnessed in the church an incident in which McAlinden had a young girl on his lap; Stanwell thought it ‘wasn’t right’. These events occurred just before McAlinden’s departure at the end of June 1986 to Adamstown parish. Contemporaneous documents establish that Clarke knew of allegations about McAlinden’s behaviour at least by the end of 1986.
- C1.70 There was subsequent impetus for Diocesan action concerning McAlinden’s behaviour in Merriwa when John Hatton MP, the high-profile anti-corruption crusader, wrote to the Archbishop of Sydney, Archbishop Clancy, by letter dated 11 May 1987, about allegations of sexual misbehaviour by McAlinden; the letter referred to a previous complaint relating to McAlinden in 1976 and to ‘several’ (apparently new) complaints about McAlinden’s behaviour with young children at Merriwa.
- C1.71 On 20 July 1987 Wilson (then vicar general) wrote to Hatton acknowledging receipt of Hatton’s letters of 11 May and 16 June 1987. Wilson assured Hatton that ‘both matters’ were receiving attention from Diocesan authorities, with a view to being ‘resolved in the very near future’. In preparing his response to Hatton, Wilson read Hatton’s letter of 11 May 1987 and was therefore on notice as to the 1976 complaint of ‘sexual misbehaviour’ on the part of McAlinden that had led to his (McAlinden’s) transfer out of the Diocese.
- C1.72 On 3 August 1987 Stanwell telephoned Wilson. He reported ‘another case’ and said ‘people [were] willing to take action’, as recorded in a note made by Wilson on that date. On 4 August Wilson spoke separately by telephone with both McAlinden and Stanwell in relation to Stanwell’s further report, as recorded in Wilson’s diary.

- C1.73 On or about 6 August 1987 Wilson went to Merriwa and obtained from a mother, BA, a statement about McAlinden's sexual abuse of her daughter, AD. The conduct described in BA's statement was of a serious nature, demonstrating McAlinden's interference with children.
- C1.74 Following his visit to Merriwa, Wilson told Bishop Clarke of his suspicions about McAlinden's behaviour being of a sexual nature. Clarke and Wilson confronted McAlinden in Adamstown shortly after Wilson had obtained BA's statement. The allegations in BA's statement were put to McAlinden: he denied them. Clarke suspended McAlinden from pastoral activity, and McAlinden was moved out of Adamstown presbytery on or about 3 August 1987. By November 1988, however, McAlinden was working as a priest in Bunbury Diocese, Western Australia, with Clarke's approval.
- C1.75 Having made inquiries since at least 4 June 1987 about psychiatric treatment options for McAlinden, at some time before 25 August 1987 Wilson determined that consultant psychiatrist Dr Derek Johns was a suitable person to assess McAlinden. Some three days later, on 28 August, Wilson wrote to Hatton, stating that the 'matter dealing with the sexual assault of children has been resolved' and noting that McAlinden had left the parish for a 'full programme of psychiatric assessment and help'. Hatton relied on this assurance and took no further steps. While not recalling much of the background to his letters of 11 May and 16 June 1987, Hatton told the Commission he had faith in the Catholic Church to deal with the matter.
- C1.76 Wilson told the Commission he had forgotten about his correspondence and communications with Hatton: his diary revealed there had also been telephone contact between the two on four occasions between 26 May and 19 June 1987. Wilson asserted that his memory had been 'reactivated' on his being shown the letters. Having regard to matters such as Hatton's prominence at that time and the sensitivity of the correspondence, the Commission rejects this evidence as improbable.

### ***Involvement with Dr Johns***

- C1.77 Wilson's initial evidence was that after the confrontation with McAlinden about the Merriwa events, things to do with McAlinden were a 'closed book' to him. The objective evidence was to the contrary, however, confirming Wilson's considerable involvement in making inquiries about a psychiatrist to assess and treat McAlinden, from at least 4 June to 25 August 1987 (as noted). Wilson had continuing contact with Dr Johns after that time, his diary noting telephone contact between the two on three occasions in August, September and October 1987. Wilson also had telephone contact with McAlinden on five occasions in October and November 1987 and February 1988. The Commission regarded as unsatisfactory and implausible Wilson's evidence that he had 'honestly forgotten' about having had a more involved role with McAlinden and about liaising with the psychiatrist in order to have McAlinden assessed.
- C1.78 A report prepared by Johns and dated 5 November 1987 advanced the opinion that there was no evidence of any major psychiatric disorder but did note that there had been previous similar allegations against McAlinden, the first occurring in 1954. Wilson told the Commission he had no recollection of having read the Johns report but agreed that it was in fact 'most unlikely' that he would not have read the report at the time. The Commission finds that Wilson read Johns' report about McAlinden.

### ***Archbishop Wilson's reporting obligations***

- C1.79 Regardless of the content of the Johns report, Wilson said he had made his own assumption in relation to McAlinden – that 'anybody who was like that' was psychiatrically disturbed. Wilson was of the opinion that his responsibility ended with reporting the matter to the bishop. He held this view despite his awareness of the continuing danger McAlinden presented to children.



- C1.80 A note in Wilson's 1987 diary, setting out the main elements of the common law offence of misprision of felony, contradicts Wilson's evidence that he did not turn his mind to the question of potential criminal liability associated with his possession of information about McAlinden's offending. Wilson was unable to offer an explanation for the 'misprision note'. As a consequence of his 'research', he was aware of the legal requirement to report what he knew about McAlinden to police. In addition, his evidence before the Commission demonstrated his awareness that the complaints about McAlinden's conduct at Merriwa would probably be of interest to police and should have been reported.
- C1.81 Although in 1987 there was no police investigation on foot in connection with McAlinden, what Wilson knew at that time – that McAlinden had abused AJ; that there had been a complaint about his conduct in 1976 (as referred to in Hatton's letter of 11 May 1987), as a result of which he was transferred out of the Diocese; and that he had continued to sexually abuse children in Merriwa parish – would unquestionably have been of interest to the police. It was information that would have facilitated and assisted the initiation of a police investigation into McAlinden.

#### ***No discussions between Archbishop Wilson and Bishop Clarke, January 1987 to August 1990***

- C1.82 Wilson served as vicar general from 1 January 1987 to 22 August 1990. He said that after the Merriwa events he and Clarke never again spoke about McAlinden or the Merriwa incident. He also said he was unaware that Clarke had given McAlinden permission to go to Western Australia to work as a priest and told the Commission he would have objected to this course had he known about it. In view of Wilson's seniority as vicar general and a consultor in the Diocese until August 1990, the Commission does not accept that evidence.

#### ***Archbishop Wilson's return to the Diocese, June 1993***

- C1.83 Wilson gave evidence that on his return to the Diocese in June 1993, and before the beginning of the canonical process with which he assisted in 1995, he had not sought to discover what had happened with McAlinden in the intervening years. The state of affairs relating to McAlinden would, however, have been of particular interest to him because his close friend, AJ, had told him in a telephone call just months before his return in 1993 that she had complained to the bishop about her abuse by McAlinden. The Commission does not accept Wilson's evidence that he made no inquiries and sought no further information about McAlinden's status after returning to the Diocese.

#### ***Initiation of formal canonical processes against McAlinden, October 1995***

- C1.84 Wilson gave evidence to the effect that he had no further discussions with anyone in connection with McAlinden until Monsignor Allan Hart (then vicar general) asked him to initiate a canonical process in 1995. By this time Wilson had a degree in canon law. He formed the view that a canon 1044 process, which impeded the exercise of orders (such that McAlinden could not 'act in a priestly way') on the basis of psychiatric disabilities, was the best option for dealing with McAlinden.
- C1.85 Wilson took and notarised statements, both dated 13 October 1995, from AL and AK (then adult women) that described McAlinden's sexual abuse of them as children. He accepted the veracity of their accounts and that what they described amounted to criminal conduct. Despite this, Wilson told the Commission it did not occur to him that McAlinden should be reported to the police. He did not know whether AK and AL were prepared to report McAlinden to the police: he could only have known of their attitude had he made such inquiries, and he did not do so. By this time Wilson was acutely aware of the level of McAlinden's offending, extending over decades – including AJ's disclosure, the complaints at Merriwa, the 1954 complaint referred to in Dr Johns' report, and the 1976 incident noted in Hatton's letter of 11 May 1987 – and the fact that in 1995 McAlinden was still at large and potentially had unsupervised access to children. Wilson was also aware that Clarke had no intention of reporting McAlinden to the police.

Wilson's evidence that he did not report McAlinden to the police because he did not consider he had any responsibility to do so, or because such reporting was the bishop's responsibility, was unsatisfactory. His failure to report McAlinden to the police cannot be justified and amounted to a failure to facilitate and/or assist a police investigation of McAlinden.

### ***Sexual abuse complaints in the Diocese of Wollongong, 1996***

- C1.86 In 1996 Wilson became Bishop of the Diocese of Wollongong. He confirmed that in this role he had had cause to reflect on what had been done about McAlinden's criminal conduct. He said that as Bishop of Wollongong he would have referred a priest who engaged in conduct such as that of McAlinden to the police. Nevertheless, he took no action at that time to ensure that McAlinden was reported to the police, stating that he saw McAlinden as the responsibility of the Bishop of Maitland–Newcastle Diocese.
- C1.87 Wilson gave evidence that in late 1996 or early 1997, at a Professional Standards Committee meeting relating to sexual abuse by clergy, he asked Malone, 'What have you done about the Father McAlinden matter because that's very important and needs to be dealt with?' Wilson told the Commission he could not remember Malone's response. The Commission considered that evidence to be self-serving and inherently unlikely in the circumstances.
- C1.88 Wilson's evidence that, despite the catalogue of information he possessed about a dangerous paedophile, it was the responsibility of the Bishop of Maitland–Newcastle Diocese (in 1996, Malone) to report McAlinden to the police was consistent with his position, at least since Merriwa – a position of purporting to abdicate any personal responsibility for reporting McAlinden to the police. It was open to Wilson to report McAlinden to the police himself at that time (1996 or 1997), as it had been since 1987. His knowledge of McAlinden's offending history meant that Wilson was in fact better placed than Malone to make such a report. Wilson could also have availed himself of the services of the Professional Standards Office to arrange for a blind-report to be made about McAlinden (a facility available from 1997).
- C1.89 Wilson did not do this; nor did he take any steps to report McAlinden to the police in any way. There is no satisfactory explanation for Wilson's failure to report the conduct of McAlinden to police. His failure to report what he knew about McAlinden constitutes a failure to facilitate a police investigation of McAlinden.

### **The credibility of certain witnesses**

- C1.90 The Commission makes adverse findings in relation to the credibility of both Wilson and Malone. Wilson was considered an unsatisfactory and unimpressive witness in a number of respects – one who told the Commission deliberate untruths in relation to his recollections of AM's complaint. Malone gave evidence that in certain respects was unsatisfactory and untruthful. These matters are dealt with in Chapter C5.

# C2 Archbishop Wilson and his knowledge of Fletcher’s propensity for child sexual abuse

## Contents

<b>Introduction</b> .....	<b>18</b>
A decision to hold hearings in camera.....	18
The evidence of Archbishop Wilson and AM: procedural matters.....	19
<b>AM’s allegations</b> .....	<b>20</b>
Archbishop Wilson’s evidence.....	20
General awareness of child sexual abuse and of Fletcher’s and McAlinden’s propensity to sexually abuse children .....	20
Recollection of AM’s disclosure in 1976.....	21
Archbishop Wilson’s evidence in summary .....	23
AM’s evidence .....	23
Fletcher’s abuse, 1971.....	23
Disclosure to Father Wilson, 1976.....	23
A second conversation with Father Wilson, 1976 .....	25
AM’s disclosure to his mother, 2009.....	26
AM’s cross-examination by counsel for Archbishop Wilson.....	26
Archbishop Wilson’s further evidence following AM’s evidence in chief.....	28
Recollection of AM’s complaint.....	28
Archbishop Wilson’s knowledge of the offence of misprision of felony, 1987 .....	29
Failure to report to police .....	29
Conclusions.....	29
AM’s evidence .....	29
Fletcher’s abuse of AM.....	29
AM’s disclosure to Archbishop Wilson in 1976 .....	29
Facilitation of or assistance with police investigations.....	31
Archbishop Wilson’s knowledge of the offence of misprision from 1987.....	31
<b>Mr Gogarty’s allegations</b> .....	<b>31</b>
Background.....	31
Mr Gogarty’s evidence .....	32
Abuse by Fletcher at the bishop’s house, Maitland.....	32
Limited disclosure in a police statement – September 2004.....	33
Contact with Father Wilson.....	34
Father Wilson ‘living’ at the bishop’s house .....	34
Bishop Clarke’s ban on children attending the bishop’s house .....	36
Assertions about what Father Wilson would have seen.....	36
Mr Gogarty’s contention: Archbishop Wilson should have known about Fletcher’s abuse of him.....	37
Phone calls between Mr Gogarty and Archbishop Wilson, 2004 .....	38
Archbishop Wilson’s evidence.....	38
Father Wilson’s arrival in the Diocese and his living arrangements, 1975 to 1990.....	38

First meeting with Mr Gogarty.....	39
Knowledge of Fletcher’s propensity to abuse boys .....	40
Bishop Clarke’s ban on boys at the bishop’s house .....	40
Other contact between Archbishop Wilson and Mr Gogarty.....	41
Conclusions .....	42
Limited disclosure in a police statement of September 2004 .....	42
Archbishop Wilson’s living arrangements and the bishop’s house .....	43
Archbishop Wilson’s concession about the date of meeting Mr Gogarty.....	43
Whether Archbishop Wilson should have known Fletcher was abusing Mr Gogarty .....	43
Telephone conversations between Mr Gogarty and Archbishop Wilson, 2004.....	44
<b>Archbishop Wilson and matters relating to another Fletcher victim (AB).....</b>	<b>44</b>
Father Walsh’s evidence .....	44
Advice from Archbishop Wilson, 2004 .....	44
Archbishop Wilson’s evidence .....	45
Contact with Father Walsh.....	45
Archbishop Wilson’s visit to AB’s family, September or October 2004 .....	45
Conclusions .....	46
Archbishop Wilson’s advice to Father Walsh .....	46
Archbishop Wilson’s ‘unprompted’ comment to Father Walsh.....	46
Archbishop Wilson’s comments to AB’s family .....	46
Failure to facilitate or assist a police investigation .....	46

## Introduction

- C2.1 This chapter begins by examining evidence relating to matters AM raised in connection with his alleged sexual abuse by Father James Fletcher in 1971, when AM was a child, and his alleged report of this in 1976 to then Father Philip Wilson, now Archbishop of Adelaide.
- C2.2 AM came to the Commission’s attention after Commission personnel discovered, during a review of files held by the Catholic Diocese of Maitland–Newcastle, a letter dated 29 July 2010<sup>1</sup> that AM had written to Bishop Michael Malone. The letter disclosed both AM’s abuse by Fletcher in 1970<sup>2</sup> and AM’s assertion of having then told Wilson about it in 1976.<sup>3</sup> Chapter C3 of this confidential volume provides an analysis of the Diocese’s handling of the letter.
- C2.3 This chapter also considers the contention of Mr Peter Gogarty, a reported victim of child sexual abuse by Fletcher in 1977 and 1978, that (then) Father Wilson should have known of Fletcher’s abuse of him (Gogarty), given Wilson’s residence in or frequent visits to, the bishop’s house at that time. In addition, it considers certain conduct of and statements made by Archbishop Wilson in 2003 to 2004 against the background of Fletcher’s criminal prosecution and the coming forward of a further victim of Fletcher (AB) in 2004.

## A decision to hold hearings in camera

- C2.4 During the Commission’s investigations<sup>4</sup> it became apparent that evidence to be given by AM had the potential to raise the question of whether a finding pursuant to s. 10(1) of the *Special*

<sup>1</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>2</sup> Later corrected in sworn evidence before the Commission to 1971; see TOR 2, T41.45–42.7 (AM in camera, 22 July 2013).

<sup>3</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O. AM gave evidence that he has not made a claim for compensation against the Church or the Diocese: TOR 2, T32.10–19 (AM in camera, 21 June 2013).

<sup>4</sup> Before the beginning of the public hearings.

*Commissions of Inquiry Act 1983 (NSW)* should be made. It was apparent that AM's evidence directly and relevantly affected Wilson, as well as Malone. The Commission determined that AM's evidence and that of Wilson and Malone (to the extent that that evidence related to AM) would be taken in camera and be subject to non-publication orders. The Commission adopted this position in order to protect any future criminal proceedings. A further consideration relating to taking AM's evidence in camera was his status as a victim of sexual abuse. Wilson was also allocated a pseudonym, CD, for references to his identity in the public hearings.

- C2.5 There were other areas of evidence in connection with Wilson, concerning events subsequent to his interactions with AM, that in the ordinary course of events would have been heard in public. The Commission determined, however, that evidence about Wilson's role in those subsequent events – including Wilson's involvement with AJ, Merriwa parish, AL and AK (as dealt with in confidential Chapter C4) – should also be dealt with in camera in order to protect any future criminal proceedings. An applicable consideration was the fact that evidence about Wilson's knowledge of and interactions with AM (which was to be the subject of in camera hearings, as just noted) had the potential to affect the manner in which evidence relating to subsequent events involving Wilson should be dealt with – such as the examination of witnesses and questions to be asked, including of Wilson.
- C2.6 Gogarty, one of Fletcher's victims, was granted permission to appear as an interested party in the hearings associated with the Commission's second term of reference. His evidence is dealt with in paragraph C2.75 and following. Despite Gogarty's willingness to give evidence in public, his evidence relating to Wilson was also taken in camera at the Commissioner's direction and was subject to a non-publication order.

### **The evidence of Archbishop Wilson and AM: procedural matters**

- C2.7 As described below, the Commission took evidence from both AM and Wilson about the interactions between them and the matters that are the subject of the first part of this chapter.
- C2.8 AM first gave evidence before the Commission at a private hearing<sup>5</sup> in which, among other things, he provided details of the sexual abuse inflicted upon him by Fletcher. Subsequently, AM gave evidence at an in camera hearing at which Wilson and his legal representatives were present (as were legal representatives for both the Diocese and Malone). At this latter hearing aspects of AM's evidence about his sexual abuse by Fletcher – which was visibly of continuing distress to him – was taken in leading form by a technique of reference back to the evidence he gave in his private hearing.<sup>6</sup> This approach was appropriate in circumstances where the fact of the sexual abuse suffered by AM was not in dispute, something expressly acknowledged by counsel for Wilson.<sup>7</sup>
- C2.9 After AM's evidence was taken in chief, the hearing of his evidence was adjourned for a number of days to provide to Wilson (and other relevant parties) an opportunity to give instructions in respect of matters raised. Wilson's legal representatives were then afforded the opportunity to cross-examine AM before he was re-examined by counsel assisting.
- C2.10 For his part, Wilson's evidence before the Commission was obtained in a number of stages. As was the case with some of the other central witnesses (church officials and police officers), Wilson was first asked, through his legal representatives, if he wished to provide a written

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<sup>5</sup> Private hearings, at which no other parties are present, were often conducted as part of the Commission's investigations before any public in camera hearing involving evidence to be given by that person and attended by authorised persons relevantly affected by such evidence.

<sup>6</sup> The transcript of AM's evidence from the private hearing became an exhibit in the Commission's in camera hearings: private hearing transcript of evidence of AM, dated 27 February 2013, conf ex PP.

<sup>7</sup> TOR 2, T40.17–23 (AM in camera, 22 July 2013).

statement relating to matters of interest to the Commission. Thus, on 7 February 2013 a letter from the Crown Solicitor was sent, requesting a statement from Wilson that dealt with specific topics – including when he first became aware of any reports, complaints or recorded suspicions about child sexual abuse by Fletcher and, if such a situation applied, what steps he then took. In response, Wilson provided an affidavit dated 14 March 2013. Following the provision of that affidavit, a private hearing was conducted with Wilson in March 2013, during which he was also asked, and gave evidence, about his knowledge and involvement relating to matters associated with Fletcher and Father Denis McAlinden. Later, after the Commission’s public hearings had begun, Wilson gave evidence in camera during four days in June and July 2013.<sup>8</sup>

## AM’s allegations

### Archbishop Wilson’s evidence

#### *General awareness of child sexual abuse and of Fletcher’s and McAlinden’s propensity to sexually abuse children*

- C2.11 Wilson gave his initial evidence before the Commission in camera on 20 and 21 June 2013, before he or his legal advisers became aware that AM was to be called to give evidence.
- C2.12 In his affidavit dated 14 March 2013<sup>9</sup> (adopted in his evidence before the Commission on 20 June 2013),<sup>10</sup> Wilson described events concerning the Merriwa parish and school that had taken place ‘sometime in 1985’ in relation to particular allegations concerning McAlinden.<sup>11</sup> Wilson said he told Bishop Leo Clarke that, after investigating, he ‘came away with a suspicion that there is some sort of sexual element to it’.<sup>12</sup> Notably, Wilson said, ‘It is the first time I had ever confronted an issue like this. I didn’t know that priests behaved like this and treated children that way’.<sup>13</sup>
- C2.13 In the same affidavit Wilson responded to questions posed in a letter from the Crown Solicitor, as follows:

**When did I first become aware of any reports, complaints, or recorded suspicions of child sexual abuse by Father James Fletcher?**

113. I first became aware of child sexual abuse allegations in relation to Father Fletcher after his arrest, which I became aware of by hearing a news report or reading the newspaper.

**The steps I took upon receiving any such report, complaint, or recorded suspicion in relation to Father Fletcher.**

114. None. I had no knowledge of any actions by Father Fletcher with respect to child sexual abuse apart from what I had learned through the media.<sup>14</sup>

- C2.14 In oral evidence Wilson said, in relation to his notifying Clarke of the Merriwa incident, ‘... anything that involved a child and their possible abuse would seem to me to be an issue of the highest order that needed to be dealt with’.<sup>15</sup>

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<sup>8</sup> Wilson was given documentary material both before giving evidence and during his examination by counsel assisting. As to the permissibility of the latter course in the context of a special commission of inquiry, see *Aristodemou v Temby* (SCNSW, Grove J, unreported 14 December 1989).

<sup>9</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I.

<sup>10</sup> TOR 2, T68.43–69.8 (Wilson, in camera, 20 June 2013, at 2.27pm).

<sup>11</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 22.

<sup>12</sup> *ibid*, para 41.

<sup>13</sup> *ibid*, para 49.

<sup>14</sup> *ibid*, paras 113–114.

- C2.15 Wilson gave evidence that he was certain that the Merriwa incident (in 1985) constituted the first occasion on which he was told by anyone of sexual abuse of children by a priest of the Diocese. Counsel assisting pressed him on this:
- Q. And you're certain of that in terms of it hadn't been raised with you by anybody at all – not just by the bishop, but not by anybody?
- A. That's right.
- Q. Had it been raised with you, you would have acted in the same way as you have here and raised it with the bishop and said, 'We've got to do something about it'?
- A. Of course.<sup>16</sup>
- C2.16 Counsel assisting also examined Wilson's assertions about his first knowledge of Fletcher's offending. Wilson told the Commission he first heard of Fletcher's arrest in 2003 on the radio. He said he was shocked '... because I never had anything to suspect – never seen anything or had any information to suspect that he behaved like that'.<sup>17</sup>
- C2.17 In his oral evidence Wilson reiterated that he would have told others (possibly including Father Glen Walsh) he knew nothing about matters to do with Fletcher and child sexual abuse 'because that ... [was] true'.<sup>18</sup>

### ***Recollection of AM's disclosure in 1976***

- C2.18 Counsel assisting questioned Wilson about whether in 1976, as an assistant priest at East Maitland parish, he had received a complaint from a young male parishioner about sexual abuse at the hands of Fletcher. He denied that such a thing had occurred and said he would remember if it had:
- Q. In that setting, do you recall any youth of the Diocese coming to see you to tell you about being sexually abused?
- A. No.
- Q. Do you recall a young man coming to you in 1976 and telling you that, when he was an altar boy in 1970, he had occasion to serve mass with James Fletcher?
- A. No, I don't remember that.
- Q. And do you recall this young man sobbing as he told you that Father Fletcher, on repeated occasions, bashed him and made him take Father Fletcher's penis in his mouth?
- A. No.
- Q. If a young man had told you that, you would have remembered, wouldn't you?
- A. Of course.
- Q. You would remember now?
- A. Yes, of course.
- Q. Do you deny that any young man ever came and told you those things?

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<sup>15</sup> TOR 2, T9.36–10.20 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>16</sup> TOR 2, T11.27–35 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>17</sup> To similar effect was Wilson's evidence that 'nobody' had ever told him anything about Fletcher's behaviour that made him suspect Fletcher may have abused children. TOR 2, T114.25–47 (Wilson in camera, 21 June 2013).

<sup>18</sup> TOR 2, T120.4–15 (Wilson in camera, 21 June 2013).

- A. I do deny that.
- Q. You deny it absolutely?
- A. Yes.
- Q. It's not possible you were told those things and forgot?
- A. **No, I don't – I don't think so. If I was told something like that, I'm sure that there'd be no way that I'd forget that.**
- Q. And I suggest to you that this young man told you that this happened repeatedly over a period of some months, that James Fletcher would beat him about the head and make him take his penis in his mouth?
- A. No, I have no recollection of that.
- Q. I suggest to you that this disclosure happened in about Easter of 1976; do you reject that?
- A. I don't remember that.
- Q. I suggest to you that, a few months later, this young man approached you again and said, 'Philip, what's happening about what I've told you about Father Fletcher?' Do you deny that happened?
- A. I do.<sup>19</sup> [emphasis added]

C2.19 Wilson was questioned generally about his recollection of AM while he (Wilson) was an assistant priest in East Maitland parish. Wilson said he remembered having dealings with a boy named AM, whom he thought had attended his youth groups. He remembered that AM belonged to one of the parish families and recalled the names of AM's parents and that they ran a local business.

C2.20 Counsel assisting then questioned Wilson specifically about whether AM had spoken to him about Fletcher having abused him (AM). Wilson denied any recollection of such a matter:

- Q. You don't recall this boy [AM] coming to see you and telling you that he had been sexually abused by Father Fletcher?
- A. No, I do not.
- Q. At the time you were the assistant parish priest, were you?
- A. That's right.
- Q. And the parish priest was Father Newton?
- A. That's right.
- Q. I suggest to you that when [AM] came to you and outlined this abuse this [sic] occurred to him you told him that you would discuss it with Father Newton; does that prompt a recollection at all?
- A. No, it doesn't.
- Q. Do you accept that if you were told about this abuse by Father Fletcher of this boy and that you had, in truth, forgotten about it, being asked about it now in this context and in this setting would prompt a recollection?
- A. **I'm sure it would.**<sup>20</sup> [emphasis added]

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<sup>19</sup> TOR 2, T126.44–127.46 (Wilson in camera, 21 June 2013).



### ***Archbishop Wilson's evidence in summary***

C2.21 Having regard to the foregoing, Wilson's evidence can be summarised thus. Wilson accepted that he knew of AM's family; he also recalled AM as a boy, given his attendance at youth groups that Wilson conducted while an assistant priest. Wilson was, however, resolute in his denial of having ever received a complaint of sexual abuse from AM. He agreed that, had he received such a complaint and subsequently forgotten about it, being questioned on the subject during a hearing before the Commission would surely have prompted a recollection.

### **AM's evidence**

C2.22 On 21 June 2013, at the conclusion of the evidence just referred to and after a luncheon adjournment, counsel assisting called evidence from AM.<sup>21</sup>

### ***Fletcher's abuse, 1971***

C2.23 AM, who was 52 when he gave his evidence, said that at the age of 10 years he had been abused by Fletcher in 1971. He was at that time an altar boy and in year 5 at school. He came from a family of devout Catholics, the only boy among six children.<sup>22</sup> His evidence included the adoption of sworn evidence given to the Commission in an earlier private hearing on 27 February 2013 as to the details of the abuse.

C2.24 AM's earlier sworn evidence included the following:

I was forced to undress out of my altar boy clothing. He grabbed me by the neck and made me kneel down. By this stage he had removed his trousers and had me rub his penis until he ejaculated. That was the first occasion.

C2.25 AM's evidence was that similar behaviour took place on about eight occasions during an eight-to nine-month period.<sup>23</sup>

### ***Disclosure to Father Wilson, 1976***

C2.26 AM gave evidence that he disclosed Fletcher's abuse of him to Father Wilson (as Wilson then was) before Easter in 1976. AM said that at this time his family and the Wilson family were already acquainted, AM getting to know Wilson as the assistant priest and leader of the youth group at East Maitland parish.<sup>24</sup>

C2.27 AM's evidence was that he talked to Wilson about Fletcher having abused him, rather than talking to Father Newton (who was the parish priest at the time), because Wilson 'was obviously a lot younger than what Father Newton was and I thought Father Wilson would understand more than certainly the older priest, Father Newton'.<sup>25</sup>

C2.28 AM told the Commission he approached Wilson because he felt he would receive a kinder, gentler approach than if he had approached someone older 'and because, of course, of the 12

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<sup>20</sup> TOR 2, T128.33–129.8 (Wilson in camera, 21 June 2013).

<sup>21</sup> It was made clear to those present in the hearing room, including Wilson and his legal representatives, that, as noted (see para C2.9) proceedings would be adjourned to another date after AM's evidence in chief to enable parties to provide instructions before AM was cross-examined. This course also allowed time before Wilson was required to give further evidence, having heard the evidence in chief of AM.

<sup>22</sup> TOR 2, T3.42–46 (AM in camera 21 June 2013); letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>23</sup> TOR 2, T4.24–5.25 (AM in camera, 21 June 2013).

<sup>24</sup> TOR 2, T8.21–45; 10.34–38 (AM in camera, 21 June 2013).

<sup>25</sup> TOR 2, T14.9–16 (AM in camera, 21 June 2013).

months or longer that we got to know each other'.<sup>26</sup> AM said he had 'grown to like and trust' Wilson.<sup>27</sup>

C2.29 AM described the context of his disclosure to Wilson: 'It was a huge burden on me and it was having a massive effect on how I was developing, and so forth, and I just felt that I just needed to tell someone what had occurred'.<sup>28</sup> AM gave evidence that the conversation took place 'after our regular youth group meeting, which was held in the presbytery in a room downstairs which was known as the youth group room, and after everyone else had left I asked Father Wilson if he had time to have a chat'.<sup>29</sup>

C2.30 As to the extent and detail of the disclosure, AM said their first conversation took place before 'upcoming Easter services'<sup>30</sup> and lasted between 30 and 40 minutes.<sup>31</sup>

C2.31 AM gave evidence about the disclosure:

Q. Doing the best you can, how was the topic introduced, can you remember?

A. It was very difficult to raise. I asked – I said to Father Wilson that I had concerns over some acts of punishment that had been forced on me by a priest that was at the parish a number of years prior. Father Wilson asked me what type of acts or punishment ... I was made do. He also asked who the priest was.

Q. Can I get you just to pause for a minute and see if you agree with this: is it the position that you can remember the terms of the conversation, but you are not able to say it as if it were a script in terms of 'I said these particular words; he said those particular words'; is that the effect of it?

A. Yes, but it's very difficult, after the length and period of time, to remember the exact words ...

Q. All right. You've just told us that he said something in response to what type of punishment?

A. Yes, the type of punishment performed and Father Wilson's initial reaction was of shock and —

Q. **Well, what sort of detail did you say to him when he asked you what sort of acts of punishment were involved?**

A. **That I was made to strip off my clothing and to handle the penis of Fletcher in assisting him to relieve himself and then —**

Q. Then you say that Father Wilson was – your view of it was that he was shocked. What told you that or why did you draw that conclusion about him?

A. Oh, well, just the look – the look on Father Wilson's face and the – yes, it was just the look, and that he found it difficult to believe that Father Fletcher would be capable of such acts. And Father Wilson asked me, was I sure that I wasn't just making this up or —

Q. And what did you say when you were asked whether you were sure that you weren't making it up or not?

A. I said, 'I'm certainly not making it up, no. I mean it went – this went on for a period of eight to nine months'.

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<sup>26</sup> TOR 2, T60.10–25 (AM in camera, 29 July 2013).

<sup>27</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>28</sup> TOR 2, T10.21–23 (AM in camera, 21 June 2013).

<sup>29</sup> TOR 2, T32–36 (AM in camera, 21 June 2013).

<sup>30</sup> TOR 2, T10.13–38 (AM in camera, 21 June 2013).

<sup>31</sup> TOR 2, T16.10–13 (AM in camera, 21 June 2013).

Q. Did Father Wilson ask you any questions about how often this happened or what was involved apart from that first explanation?

A. He asked what the punishment was for and where it took place.<sup>32</sup> [emphasis added]

C2.32 AM told the Commission he was in tears during the conversation.<sup>33</sup> He also said that at the time he had a 'very bad stutter', which became worse particularly when he was anxious.<sup>34</sup> He added:

... when Father Wilson asked for the description of the acts of punishment that were inflicted on [me] by **Father Fletcher I described ... Fletcher having me take off my clothes and kneel before him while he undid his trousers and he was fondling his penis**. He would clinch [sic] you on the back of the neck with his finger and thumb and make you put your hands up and stroke his penis, until he ejaculated. Other times he tried to force it into my mouth.<sup>35</sup> [emphasis added]

C2.33 AM gave evidence that following his disclosure Wilson said he would have the matter looked into:

Q. When you had concluded, did Father Wilson say anything to you, apart from what you have already said, that gave you to understand his view about Fletcher and the likelihood of him to behave in the way that you were saying he had?

A. That he – that he was shocked and horrified at the – that Fletcher would be capable of doing such a thing and that – and **he would certainly have it looked into**.

...

Q. When he said to you that he would certainly have it looked into, back at that time during that conversation, did he say more about what he meant by that?

A. No, he didn't, no.<sup>36</sup> [emphasis added]

C2.34 In relation to his perceptions of Wilson's reaction to his disclosure of the abuse, AM said:

... I reckon that I would believe that Philip [Wilson] did take it seriously and I – and I took it that when he said that he'd have it looked into that that's what he'd – that's what would happen.<sup>37</sup>

C2.35 AM gave evidence that Wilson had asked him, AM then being 15 years old, whether he had told anyone else about Fletcher's abuse of him and that he told Wilson he (Wilson) was the first person with whom he had raised the matter.<sup>38</sup>

### ***A second conversation with Father Wilson, 1976***

C2.36 AM gave evidence that about six months after his disclosure to Wilson he spoke to him again about the Fletcher matter.<sup>39</sup> AM had continued to attend youth group weekly, and he said that after a youth group meeting 'it was just Father Wilson and myself left, and as we were just packing up chairs and tidying up ... I just asked Father Wilson if he had heard anything about what we had discussed earlier in the year'.<sup>40</sup> AM said that he followed up in this way in order to

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<sup>32</sup> TOR 2, T11.8–12.18 (AM in camera, 21 June 2013).

<sup>33</sup> TOR 2, T29.12–19 (AM in camera, 21 June 2013).

<sup>34</sup> TOR 2, T56.19–57.17 (AM in camera, 21 June 2013).

<sup>35</sup> TOR 2, T96.6–14 (AM in camera, 29 July 2013).

<sup>36</sup> TOR 2, T13.29–47 (AM in camera, 21 June 2013).

<sup>37</sup> TOR 2, T14.18–29 (AM in camera, 21 June 2013).

<sup>38</sup> TOR 2, T14.44–15.6 (AM in camera, 21 June 2013).

<sup>39</sup> TOR 2, T19.42–20.1 (AM in camera, 21 June 2013).

<sup>40</sup> TOR 2, T20.5–9 (AM in camera, 21 June 2013).

find out what was happening about what he had told Wilson. On AM's account, Wilson said words to the effect of 'They are still looking into it' – but did not tell AM who 'they' were.<sup>41</sup>

C2.37 As to AM's state of knowledge and expectation as a 15-year-old, there was the following exchange:

Q. Did you have in your mind, as a 15-year-old, who 'they' might be who were looking into it?

A. No, I had no idea.

...

Q. Do you know what your expectation was about whether he [Wilson] would talk to you again when they had finished looking into it?

A. Oh, I certainly hoped that, yes, if they were looking into it, that something would be done, yes.<sup>42</sup>

C2.38 AM gave evidence that he did not 'hear anything from anyone connected with the Diocese – bishop, priest or otherwise'<sup>43</sup> in relation to the matter from the time of his second conversation with Wilson until after he initiated contact with Bishop Malone in 2010 (having first told his wife and other family members in 2009).<sup>44</sup>

### ***AM's disclosure to his mother, 2009***

C2.39 AM's mother was called to give evidence. She told the Commission that in early 2009 AM contacted her, saying he wanted to have a conversation with her, together with his sister. AM's mother said that during the subsequent conversation AM was 'very upset' and crying.<sup>45</sup> She said he 'came out about the abuse' by Fletcher, although he did not go into the details.<sup>46</sup> AM's mother also recounted AM telling her during the conversation, that 'later on – I think it would have been in his teenage years – that he'd mentioned it to Wilson'.<sup>47</sup> She told the Commission AM said this occurred when he was at the youth group.<sup>48</sup>

### ***AM's cross-examination by counsel for Archbishop Wilson***

C2.40 Counsel for Wilson questioned AM about an error in his 29 July 2010<sup>49</sup> letter to Malone, in which he said the abuse by Fletcher occurred in 1970 (when it was 1971 according to AM's oral evidence before the Commission). AM explained the discrepancy by saying, 'I just miscalculated the year, that's all.'<sup>50</sup>

C2.41 AM made concessions about aspects of his account in relation to Wilson's residential situation in the late 1970s. He was questioned about evidence he gave of feeling 'very uneasy' because of his belief that Fletcher and Wilson were 'living under the same roof' at the bishop's house in Maitland in 1977 and 1978.<sup>51</sup> AM said he formed this belief because Wilson was at the bishop's house on a 'very regular basis',<sup>52</sup> including for church services when he (AM) was in his senior

<sup>41</sup> TOR 2, T20.18–26 (AM in camera, 21 June 2013).

<sup>42</sup> TOR 2, T20.36–21.5 (AM in camera, 21 June 2013).

<sup>43</sup> TOR 2, T21.44–22.5 (AM in camera, 21 June 2013).

<sup>44</sup> TOR 2, T75.40–41 (AM in camera, 29 July 2013); TOR 2, T22.6–9 (AM in camera, 21 June 2013).

<sup>45</sup> TOR 2, T4.13–46 (AM mother's in camera, 27 September 2013).

<sup>46</sup> TOR 2, T5.1–21 (AM mother's in camera, 27 September 2013).

<sup>47</sup> TOR 2, T5.23–26 (AM mother's in camera, 27 September 2013).

<sup>48</sup> TOR 2, T5.35–39 (AM mother's in camera, 27 September 2013).

<sup>49</sup> As mentioned in para C2.2 above, AM wrote to Malone about his abuse by Fletcher and his assertion of having told Wilson of it in 1976 on 29 July 2010: letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>50</sup> TOR 2, T41.24–42.7 (AM in camera, 22 July 2013).

<sup>51</sup> TOR 2, T84.31–38 (AM in camera, 29 July 2013).

<sup>52</sup> TOR 2, T84.37–38 (AM in camera, 29 July 2013).

years at school.<sup>53</sup> AM subsequently conceded he might have been wrong about Wilson in fact living at the bishop's house and said he had assumed that was the case because of the frequency of Wilson's appearances there.<sup>54</sup> AM also said he might have mistaken the year but that Wilson was certainly at the bishop's house when he (AM) was in year 11 (in 1977).<sup>55</sup> AM told the Commission that, even if Wilson did not move into the bishop's house until 1983, in terms of his feeling of unease about Wilson and Fletcher living together that did not 'change anything ... obviously he [Wilson] had knowledge of ... the abuse on me from Fletcher and ... obviously they were seeing each other before then ... whether he was living there or not'.<sup>56</sup>

C2.42 AM rejected a proposition, however, that his 'feeling of unease' in 1977 and 1978 about Wilson was not taken from his own memory but from media reports relating to Peter Gogarty's assertions in connection with Wilson's residence during those years.<sup>57</sup>

C2.43 As to AM's interactions with Gogarty, AM told the Commission of a single telephone conversation with him in 2009 in which 'there was a brief conversation in regards to possibly meeting up and having a chat ... but that never happened'.<sup>58</sup> When asked by counsel for Wilson whether he discussed Wilson with Gogarty during that call, AM replied, 'No'.<sup>59</sup>

C2.44 AM was also cross-examined about the possibility that Wilson might have failed to understand that AM's complaint had a sexual element. AM said he was sure Wilson understood that Fletcher's abuse of him had a sexual element:

Q. Is it possible that [CD] did not fully understand the nature of your complaint at the time?

A. No, it's not.

Q. You said he had an expression of disbelief?

A. Correct, and he stated that as well.

Q. **It's possible, is it not, that he didn't understand what you were telling him beyond the concept of acts of punishment?**

A. **No.**

Q. **Do you utterly reject that as a possibility?**

A. **Yes, I do.**

...

Q. **You say that you were sure he understood what you were saying to him, that it had a sexual element?**

A. **Yes.**<sup>60</sup> [emphasis added]

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<sup>53</sup> TOR 2, T89.32 (AM in camera, 29 July 2013).

<sup>54</sup> TOR 2, T91.38–41 (AM in camera, 29 July 2013).

<sup>55</sup> TOR 2, T89.31–40 (AM in camera, 29 July 2013).

<sup>56</sup> TOR 2, T90.12–18 (AM in camera, 29 July 2013).

<sup>57</sup> TOR 2, T91.43–46 (AM in camera, 29 July 2013).

<sup>58</sup> TOR 2, T76.2–4 (AM in camera, 29 July 2013).

<sup>59</sup> TOR 2, T76.21–22 (Wilson in camera, 27 July 2013).

<sup>60</sup> TOR 2, T59.42–60.29 (AM in camera, 29 July 2013).

## Archbishop Wilson's further evidence following AM's evidence in chief

### Recollection of AM's complaint

C2.45 Having been present when AM gave his initial evidence to the Commission on 21 June 2013, Wilson was asked by his counsel about AM's alleged disclosure to him:

Q. Thinking back to the evidence, the very moving evidence [AM] gave in Sydney, do you have any recollection of him telling you about incidents at the hands of Father Fletcher?

A. No, I don't.

Q. Do you recall any incident which you now, looking back over the 30 years, are able to put your finger on as an incident where [AM] came to you in some distress?

A. **What I have is this big gap in my memory and, in the middle of that gap is a gnawing thought that, somehow or other, there was something that happened**, but I really honestly cannot remember that. Since hearing his evidence and being so deeply affected by that, I've gone over it and over it in my mind and I still can't get a picture of that.<sup>61</sup> [emphasis added]

C2.46 Wilson was further questioned about his asserted absence of memory in relation to AM's disclosure along with the 'gnawing thought' he had described:

Q. Archbishop, just turning to something more about your own experience ... if a boy such as [AM] had told you something like that he had been sexually abused, wouldn't that mean that it would sear into your consciousness so much more greatly?

A. Certainly that would be my view of that and I – so I just don't know what happened.

Q. Yes, because you said it just this evening. You said, 'What I have is this big gap in my memory ... a gnawing thought'.

A. That's right.

Q. Do you think that that is something that you blacked out or blocked out?

A. It could very well be. I just don't know. The fact of the matter is that I had no recollection of [AM] saying this. I had no practical thought in my mind that Fletcher was someone who did this sort of thing. It just wasn't there.

Q. Even though you knew [AM] and you knew his family very well?

A. Yes, that's right.

Q. So it's not as though you have forgotten everything about that person?

A. No, no – that's right.<sup>62</sup>

C2.47 In relation to the question of Wilson's appreciation of the sexual nature of AM's complaint, Wilson agreed that, had he been told AM had had to strip off his clothing and handle Fletcher's penis, he would 'of course' have understood that as something sexual.<sup>63</sup> Of his reaction to that disclosure as an inexperienced young priest, Wilson said, 'I think that my reaction would have been one of anger that that had happened to him and then of, you know, a real feeling of compassion for him as well'.<sup>64</sup>

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<sup>61</sup> TOR 2, T229.12–26 (Wilson in camera, 17 July 2013).

<sup>62</sup> TOR 2, T309.21–310.6 (Wilson in camera, 17 July 2013).

<sup>63</sup> TOR 2, T230.14–17 (Wilson in camera, 17 July 2013).

<sup>64</sup> TOR2, T 30.14–24 (Wilson in camera, 17 July 2013).

## Archbishop Wilson’s knowledge of the offence of misprision of felony, 1987

C2.48 An entry Wilson wrote in his 1987 diary<sup>65</sup> confirms his knowledge of the common law offence of misprision of felony from that time. The note outlines the elements of the offence and includes the words ‘obligation on anyone aware of (criminal act) felony must report it’. That note was ostensibly written in connection with events then unfolding in Merriwa parish (as discussed in Chapter C4 – see para C4.93 and following).

### Failure to report to police

C2.49 There is no dispute that Wilson failed to contact the police in relation to any knowledge of Fletcher’s abuse of AM (with Wilson denying any recollection of the disclosure by AM). That Wilson did not contact the police is demonstrated by three things:

- the evidence of Detective Chief Inspector Fox that, as the officer in charge of the Fletcher investigation, he had no contact with Wilson<sup>66</sup>
- the statutory declaration of Ms Emma Sullivan that none of the material produced in relation to summonses the Commission issued to the New South Wales Police Force contained reference to Wilson having made such a report<sup>67</sup>
- the statutory declaration of Senior Sergeant Mark Twyman and related correspondence<sup>68</sup> – indicating that various searches of the NSW Police databases revealed no entry referring to or consistent with Wilson having made such a report.<sup>69</sup>

## Conclusions

### *AM’s evidence*

C2.50 AM was a credible and impressive witness, his evidence being cogent and consistent. He also made appropriate concessions on certain matters (as described), none of which was of central importance. His account of Fletcher’s sexual abuse of him on multiple occasions in 1971 and of his disclosure of that abuse to Wilson in 1976 was subject to extensive cross-examination. His evidence remained compelling.

### *Fletcher’s abuse of AM*

C2.51 The Commission accepts AM’s evidence that in 1971, when he was 10 years old, he was sexually abused by Fletcher.

### *AM’s disclosure to Archbishop Wilson in 1976*

C2.52 The Commission also accepts AM’s account of his conversations with Wilson in 1976. In particular, the Commission finds that AM, then aged 15 and in year 10 at school, made a disclosure to Wilson around Easter 1976, in a conversation they had after a youth group meeting in East Maitland. Although AM was frank about his inability to recall the exact words he used in the disclosure to Wilson or his knowledge (at the time) of the particular terms for the sexual acts he was subjected to, the disclosure included AM telling Wilson that on multiple occasions Fletcher had forced some ‘acts of punishment’ on him, including the following:

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<sup>65</sup> Handwritten notes of Wilson from his 1987 diary, conf ex PW B, tab 1.

<sup>66</sup> TOR 2, T4.2–13 (Fox in camera, 11 December 2013). For his part, Wilson said that he was not contacted by Detective Chief Inspector Fox in relation to Fletcher between 2002 and 2004: TOR 2, T282.13–28 (Wilson in camera, 17 July 2013).

<sup>67</sup> Statutory declaration of Sullivan, dated 18 December 2013, conf ex SSSS.

<sup>68</sup> Statutory declaration of Twyman, dated 18 December 2013 and relevant correspondence, conf ex TTTT.

<sup>69</sup> *ibid*, para 3.

- making AM undress while Fletcher was fondling his own penis
  - forcing AM to handle Fletcher’s penis until Fletcher ejaculated, or ‘relieved himself’
  - trying to force his penis into AM’s mouth.
- C2.53 Having regard to this evidence, the Commission rejects the proposition that Wilson might not have understood that there was a sexual element to the ‘punishment’ Fletcher inflicted upon AM. The Commission finds that Wilson would have been left in no doubt about this.
- C2.54 The disclosure also involved AM telling Wilson that Fletcher’s abuse of him had gone on for eight or nine months.
- C2.55 The Commission further finds that during that first conversation around Easter 1976 Wilson asked AM whether he had told anyone else of Fletcher’s abuse of him, to which AM replied that he had not, and that Wilson then told AM he would ‘have it looked into’.
- C2.56 The Commission finds that AM had a further conversation with Wilson some months later in 1976, again after a youth group meeting. At this time, AM asked Wilson what was happening in relation to what he had told Wilson about Fletcher, and Wilson responded, ‘They are still looking into it’.
- C2.57 The Commission accepts the evidence of AM’s mother that in early 2009 AM spoke to her and to one of his sisters and disclosed Fletcher’s abuse of him and also the fact that at youth group he had spoken to Wilson about the abuse in his teenage years. This evidence is consistent with AM’s evidence about his disclosure to Wilson.
- C2.58 As to Wilson’s evidence, the Commission notes that he was initially unequivocal in his evidence that he knew nothing of Fletcher’s sexual abuse of boys until the charging of Fletcher (in 2003) with offences relating to child sexual abuse became public knowledge. This evidence is, however, to be contrasted with his subsequent evidence, offered after AM had given evidence in his presence, that he had developed a ‘gnawing thought that, somehow or other, there was something that happened’. This account from Wilson undermines his initial unqualified denial of any such knowledge given before hearing AM’s evidence. The Commission concluded that Wilson’s evidence about the ‘gnawing thought’ was an attempt to accommodate the credible account given by AM.
- C2.59 The Commission finds Wilson’s purported inability to recall AM’s disclosure (as a 15-year-old schoolboy) to him (a newly ordained priest) to be implausible having regard to the sexual nature of the acts described by AM.
- C2.60 There were also particular features of AM’s presentation at the time of his disclosure to Wilson in 1976 that would have made AM and his disclosure memorable. Apart from the violence and degradation he reported, AM was crying while speaking to Wilson and at that time had a ‘very bad stutter’. When Wilson asked him during that first conversation whether he had told anyone else about his abuse by Fletcher, AM made it clear that he had not. Objectively, those particular features make it unlikely that Wilson would forget AM’s disclosure.
- C2.61 It is also unlikely that Wilson would have forgotten AM’s 1976 disclosure to him in view of Wilson’s professed prior inexperience (at that time) of matters relating to child sexual abuse by a priest, which evidence the Commission accepts. Any prospect of Wilson forgetting about the disclosure (even assuming this to have been possible) was highly improbable also because Wilson continued to see AM weekly at youth group until, six months later, AM directly asked him what was happening in relation to his disclosure.



- C2.62 The Commission is satisfied that AM's evidence was truthful and reliable. It rejects Wilson's evidence that he has no memory of AM's disclosure: this is implausible and untrue.
- C2.63 Having regard to AM's presentation as a credible witness, the Commission also accepts his evidence as to the limited nature of his contact with Peter Gogarty in 2009 and does not consider that AM's evidence was in any respect influenced or affected by that contact.

#### ***Facilitation of or assistance with police investigations***

- C2.64 The Commission finds that Wilson did not report AM's disclosure of sexual abuse by Fletcher to the police.
- C2.65 AM told the Commission that, after his disclosure to Wilson around Easter 1976 of Fletcher's sexual abuse of him, Wilson said he would 'have it looked into' and that during the subsequent 'follow-up' conversation some months later Wilson told AM 'they are still looking into it' (although Wilson did not indicate to AM who 'they' were). AM's evidence was, however, that he was never contacted by 'anyone connected with the Diocese – bishop, priest or otherwise' until after he wrote to Bishop Malone in 2010. For his part, Wilson did not proffer any recollection as to matters relating to AM's disclosure. The evidence does not permit the Commission to find whether Wilson in fact reported AM's abuse to others in the Diocesan hierarchy, such as Bishop Leo Clarke.
- C2.66 In addition, there is no evidence that Wilson at any time sought to ascertain whether AM was prepared to take his complaint to the police. In this regard AM's evidence was that he hoped that the 'they' who were looking into his complaint would do something.
- C2.67 The Commission finds that from 1976 Wilson was aware of AM's detailed report of sexual abuse by Fletcher, which was information that, if reported, would have facilitated the initiation of a police investigation of Fletcher at that time or at any time thereafter.
- C2.68 Wilson also knew that AM had not confided in anyone else when he revealed that Fletcher had abused him. Wilson's failure to report AM's disclosure to the police was a gross breach of AM's trust. His failure to subsequently communicate with AM about his (AM's) disclosure and any action to be taken demonstrated an absence of pastoral concern.

#### ***Archbishop Wilson's knowledge of the offence of misprision from 1987***

- C2.69 The evidence shows that Wilson's failure to report AM's abuse by Fletcher to police continued beyond 1976. Further, the 'misprision note' in Wilson's 1987 diary establishes that Wilson was aware of the elements of the offence of misprision of felony and of the obligation on 'anyone' aware of criminal acts that were felonies to report them. The Commission considers that when Wilson was making the diary entry in 1987 he would have appreciated the import of the elements of a misprision offence in connection with AM's disclosure to him (and the fact that that matter had not been reported to police).

## **Mr Gogarty's allegations**

### **Background**

- C2.70 On 17 May 2010 Mr Peter Gogarty appeared on ABC Television's *Lateline* program and made assertions about Wilson's awareness of his (Gogarty's) abuse by Fletcher in the 1970s on the basis that Wilson was living in the bishop's house in Maitland with Fletcher at the time. Gogarty said:

... I mean, again, he lived in that house. He was around that house. If I went up those stairs, there was a chance that he would see me. I mean, he wasn't always there because, you know, priests are out and about, but he would equally see me coming back down the stairs.

Now why would any grown man, why would any adult think that it was appropriate for another adult male – forget about whether or not he's a priest. As a parent, if I saw an adult male taking a young boy into – you know, obviously going to his bedroom – I mean, there was nowhere else for us to go up there.

What was he doing? What would any reasonable adult think of that sort of behaviour?<sup>70</sup>

C2.71 Gogarty also asserted that he had regularly seen Wilson in the bishop's house, that he (Gogarty) was always in the company of Fletcher, and that on these occasions Fletcher would take him upstairs to his bedroom and abuse him.<sup>71</sup>

C2.72 Four days later, on 21 May 2010, Wilson appeared on the South Australian *Stateline* television program, stating:

There was never one incident where I saw Peter Gogarty going upstairs to the bedrooms in the bishop's house and in fact I only came to live at the bishop's house in 1982 when the bishop and I moved back to make it the centre of the diocese again ... and at that time Father Fletcher's bedroom then was moved down to the back of the house ...<sup>72</sup>

C2.73 The next day, in an article entitled "'I never covered up abuse", says Wilson', published in *The Australian*, Wilson was quoted:

Archbishop Wilson said that between 1975 and 1982 he had been based in Newcastle and would occasionally stay overnight in Maitland, but he had not been living in the same house as Fletcher until 1982, when Gogarty was 22.

'I never saw Peter Gogarty going up the stairs or anywhere in the areas of the bedrooms. I had no suspicion there was anything happening at all', he said.<sup>73</sup>

C2.74 The question of whether Wilson (then Father Wilson) knew, or ought to have known, of Fletcher's abuse of Gogarty was explored with both Gogarty and Wilson during the Commission's in camera hearings.

## Mr Gogarty's evidence

### *Abuse by Fletcher at the bishop's house, Maitland*

C2.75 Gogarty was born in 1960.<sup>74</sup> He said Fletcher sexually abused him from when he was aged 13 to 14 (in year 8 at school) until he was almost 18 years old.<sup>75</sup> He said the abuse<sup>76</sup> developed from 'just an occasional flick on the genitals ... through to lingering contacts with my genitals through to him masturbating me, [but] it never went any further than that'.<sup>77</sup> The abuse occurred on multiple occasions.<sup>78</sup>

C2.76 Gogarty told the Commission he first started visiting Fletcher, either alone or with others, at the bishop's house in 1977. He said he was then in year 11 and aged 16, turning 17 in November of

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<sup>70</sup> Transcript of ABC *Lateline* program, 'Archbishop under fire over alleged abuse cover-up', dated 17 May 2010, conf ex R.

<sup>71</sup> *ibid.*

<sup>72</sup> Transcript of ABC *Stateline*, 'Adelaide's Catholic Archbishop rejects accusations he should have known about sexual abuse by other priests,' dated 21 May 2010, conf ex PW A, tab 53.

<sup>73</sup> 'Article entitled "'I never covered up abuse", says Wilson,'" by Michael Owen, *The Australian*, 22 May 2010, conf ex S.

<sup>74</sup> TOR 2, T6.44–45; T8.38–41 (Gogarty in camera, 20 June 2013).

<sup>75</sup> Private hearing transcript of evidence of Gogarty, dated 28 February 2013, conf ex PW P, tab 10, T58.29–33.

<sup>76</sup> Gogarty provided further details of the abuse during a private hearing before the Commission on 28 February 2012, which he confirmed at the subsequent in camera hearing but which are not at present relevant.

<sup>77</sup> Private hearing transcript of evidence of Gogarty, dated 28 February 2013, conf ex PW P, tab 10, T57.30–43.

<sup>78</sup> Private hearing transcript of evidence of Gogarty, dated 28 February 2013, conf ex PW P, tab 10, T58.16–21.

that year.<sup>79</sup> It might have been earlier than that, but he could not recall.<sup>80</sup> Bishop Clarke and Fletcher were then both in residence at the bishop's house, but Gogarty was unable to say what other priests might have been living there when he first started to visit.<sup>81</sup> He recalled visiting Fletcher regularly after he (Fletcher) had moved into the bishop's house, but he could not give an exact month.<sup>82</sup> Gogarty was a student at a high school in Maitland and explained that the boundary fence between the school and the bishop's house (which were adjacent to each other) was only a couple of metres [apart].<sup>83</sup>

C2.77 Gogarty said he would go to the bishop's house, sometimes in the company of friends or cousins who were attending the same school; they would visit Fletcher during the school day.<sup>84</sup> He said it was not unusual for Fletcher to have a group of boys running around after him, and it was fair to describe Fletcher as something of a 'pied piper'.<sup>85</sup> Gogarty identified a number of people who went with him.<sup>86</sup>

C2.78 In relation to the presence of those boys in the bishop's house and whether Wilson ought to have known or harboured a suspicion about Fletcher, Gogarty said:

I think having a group of boys in the house together with Father Fletcher is one thing, but then there were quite a number of times Father Wilson, and I mean a lot of times, where I would then be in that house with Jim Fletcher, either in my school clothes or in my civilian clothes, and still effectively having the run of that house.<sup>87</sup>

C2.79 Gogarty explained that from 1977 until towards the end of 1978 he could go anywhere he wanted in the bishop's house and that he ate food there, took drinks from the refrigerator and sat in the common room and watched television.<sup>88</sup>

C2.80 He confirmed that Fletcher sexually abused him in his (Fletcher's) bedroom at the bishop's house on a number of occasions during that period. After his 18th birthday, in November 1978, however, there were no further sexual encounters of any kind between him and Fletcher.<sup>89</sup>

C2.81 After the abuse stopped Gogarty continued to see Fletcher regularly at the bishop's house until Fletcher left there. By this time Gogarty was in his early 20s.<sup>90</sup> He agreed that to an outside observer at the time it would have seemed that he remained a close associate and friend of Fletcher.<sup>91</sup>

### ***Limited disclosure in a police statement – September 2004***

C2.82 In connection with the police investigation of Fletcher, Gogarty provided to (then) Detective Sergeant Peter Fox a 17-page police statement signed on 10 September 2004.<sup>92</sup> Under questioning by counsel assisting, Gogarty said that at that time he was doing his best to tell the truth although 'in a limited capacity'.<sup>93</sup> He agreed that the most serious complaint in the police statement was the reference to Fletcher grabbing his (Gogarty's) groin 'dozens of times over a

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<sup>79</sup> TOR 2, T7.6–8; T13.5–12 (Gogarty in camera, 20 June 2013).

<sup>80</sup> TOR 2, T13.14–19 (Gogarty in camera, 20 June 2013).

<sup>81</sup> TOR 2, T13.21–40 (Gogarty in camera, 20 June 2013).

<sup>82</sup> TOR 2, T7.47–8.11; T12.18–26 (Gogarty in camera, 20 June 2013).

<sup>83</sup> TOR 2, T12.42–13.3 (Gogarty in camera, 20 June 2013).

<sup>84</sup> TOR 2, T14.41–45 (Gogarty in camera, 20 June 2013).

<sup>85</sup> TOR 2, T58.37–59.2 (Gogarty in camera, 20 June 2013).

<sup>86</sup> TOR 2, T14.36–15.8 (Gogarty in camera, 20 June 2013).

<sup>87</sup> TOR 2, T15.14–20 (Gogarty in camera, 20 June 2013).

<sup>88</sup> TOR 2, T15.22–40 (Gogarty in camera, 20 June 2013).

<sup>89</sup> TOR 2, T7.23–26 (Gogarty in camera, 20 June 2013).

<sup>90</sup> TOR 2, T15.34–40 (Gogarty in camera, 20 June 2013).

<sup>91</sup> TOR 2, T64.46–65.19 (Gogarty in camera, 20 June 2013).

<sup>92</sup> NSW Police statement of Gogarty, dated 16 August 2004, conf ex PW P, tab 1.

<sup>93</sup> TOR 2, T9.6–15 (Gogarty in camera, 20 June 2013).

four- or five-year period'.<sup>94</sup> He also agreed there was no mention of the more serious sexual assaults by Fletcher<sup>95</sup> and, in particular, no reference to Fletcher's masturbation of him.<sup>96</sup>

C2.83 Gogarty said that at the time of making the police statement he was not ready to go into such detail:

... This was a secret that I had buried deep and intended to take to my grave ... I was never going to divulge any of this story to anybody. However in the circumstances, I felt compelled. There were stories going around that there was just one victim who was trying to extort money from the Diocese and I knew otherwise. So I felt compelled to say something, but it was in a deliberately limited fashion because that was all I felt capable of doing at the time.<sup>97</sup>

C2.84 Gogarty also said the following about his discussion with Fox before providing the statement:

I think the conversation I had with ... Detective Sergeant Peter Fox, was to give him the information that I was comfortable about giving, that he would never force any victim to tell more than that, and that's exactly what I did.<sup>98</sup>

C2.85 Under examination by Wilson's counsel, Gogarty agreed that the police statement also made no reference to Wilson knowing of Fletcher's abuse of him. Nor did he make any allegation in the police statement that Wilson was in a position to know what was happening or that Wilson was actively concealing crimes committed against Gogarty.<sup>99</sup> He confirmed, however, that he was now making that claim:<sup>100</sup> he told the Commission that in his opinion Wilson had been actively involved in concealing sex crimes by priests.<sup>101</sup> In this regard, Gogarty agreed that by 2010 his attitude to the role Wilson played in his childhood had changed dramatically: he said his attitude had 'hardened'.<sup>102</sup>

### **Contact with Father Wilson**

C2.86 Gogarty's earliest recollection of Wilson was when Wilson was an ordained priest.<sup>103</sup> He could not recall the date of their first meeting but thought he was in his mid-teens, aged about 15, which would have made the year 1975 or 1976.<sup>104</sup> After Wilson's arrival in East Maitland parish, Gogarty came to know him. He saw Wilson when spending time in East Maitland with grandparents and cousins and also when spending time with Fletcher in Maitland. During that period, and while a school student, Gogarty referred to Wilson as 'Father' but later, from the early to mid-1980s, he took to referring to him on a first-name basis.<sup>105</sup> Wilson also became closer to the Gogarty family after conducting the marriage ceremony for Gogarty's brother in 1985.<sup>106</sup>

### **Father Wilson 'living' at the bishop's house**

C2.87 Gogarty said he had a specific recollection of seeing Wilson at the bishop's house in 1977 or 1978. Asked why he confidently placed the event in that period, he explained that a discussion

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<sup>94</sup> TOR 2, T9.17–38 (Gogarty in camera, 20 June 2013).

<sup>95</sup> TOR 2, T52.39–44 (Gogarty in camera, 20 June 2013).

<sup>96</sup> TOR 2, T52.46–53.4 (Gogarty in camera, 20 June 2013).

<sup>97</sup> TOR 2, T9.46–10.9 (Gogarty in camera, 20 June 2013).

<sup>98</sup> TOR 2, T52.15–22 (Gogarty in camera, 20 June 2013).

<sup>99</sup> TOR 2, T28.29–41 (Gogarty in camera, 20 June 2013).

<sup>100</sup> TOR 2, T28.43–44 (Gogarty in camera, 20 June 2013).

<sup>101</sup> TOR 2, T28.46–29.4 (Gogarty in camera, 20 June 2013).

<sup>102</sup> TOR 2, T51.33–36 (Gogarty in camera, 20 June 2013).

<sup>103</sup> TOR 2, T11.39–43 (Gogarty in camera, 20 June 2013).

<sup>104</sup> TOR 2, T11.45–12.32 (Gogarty in camera, 20 June 2013).

<sup>105</sup> TOR 2, T17.23–18.9 (Gogarty in camera, 20 June 2013).

<sup>106</sup> TOR 2, T24.39–41 (Gogarty in camera, 20 June 2013); affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 100.

had occurred in a very particular context.<sup>107</sup> He said there was a conversation between himself, Fletcher and Wilson in the common room of the bishop's house in Maitland during which Wilson described his first trip overseas. Gogarty told the Commission:

I think my confidence around seeing the then Father Wilson in the bishop's house in around 1977 ... is that there was a conversation between Father Wilson, Father Fletcher and myself about Father Wilson's first overseas trip. He was quite enthused about it and I remember that taking place in the common room of the bishop's house.<sup>108</sup>

C2.88 For his part, Wilson told the Commission that having heard Gogarty's evidence on this did not prompt a recollection of any such discussion.<sup>109</sup>

C2.89 Questioned by counsel assisting, Gogarty said he was not asserting that Wilson lived in the bishop's house in 1977<sup>110</sup> or at the time of the conversation with Wilson about the overseas trip.<sup>111</sup> He sought to clarify the position:

Well, he was a visitor there. That's the way I would describe it. He was in the adjoining parish and, in that period, it may be a five-minute drive – I'm not sure what it would be now, there is a lot more population and a lot more traffic as a result but back then it was a five-minute drive – and I always saw him in that period as a visitor to the house.<sup>112</sup>

C2.90 When Wilson's counsel further examined him about the answer he gave on *Lateline* in May 2010 – to the effect that Wilson had lived in the bishop's house – Gogarty confirmed his position to be that he was not stating that Wilson lived there permanently but that he stayed there overnight from time to time and spent a large amount of time there.<sup>113</sup>

C2.91 Under further questioning, Gogarty conceded that during the time Wilson was overseas (from June until December 1977) he (Wilson) could not have known of Gogarty's presence at the bishop's house and that something was going on between him (Gogarty) and Fletcher.<sup>114</sup>

C2.92 Gogarty said he was not aware that Wilson was a chaplain at St Mary's High School in Maitland in 1977.<sup>115</sup> Although questioned about his knowledge of Wilson living at Adamstown in March 1978 (while teaching at St Pius X High School), Gogarty did not agree that meant he (Wilson) was not spending large amounts of time at the bishop's house at that time. He recalled seeing Wilson regularly after school in 1978 and noted that it was 'not an impossibility to hop in a car' and travel the 30 minutes to the bishop's house in Maitland from Adamstown.<sup>116</sup>

C2.93 Gogarty agreed that Wilson did not live permanently at the bishop's house until 1983.<sup>117</sup> He also agreed that after Wilson moved into the bishop's house he (Gogarty) was still regularly visiting Fletcher there.<sup>118</sup>

C2.94 Gogarty confirmed his earlier evidence that after 1978 nothing sexual occurred between him and Fletcher.<sup>119</sup> Further, there was no change to his pattern of attending the bishop's house. He thus agreed that after 1978 Wilson could not have seen anything between him and Fletcher that was indicative of a sexual relationship. Nor could Wilson have noticed any change in the pattern

<sup>107</sup> TOR 2, T24.5–16 (Gogarty in camera, 20 June 2013).

<sup>108</sup> TOR 2, T65.43–66.2 (Gogarty in camera, 20 June 2013).

<sup>109</sup> TOR 2, T73.3–8 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>110</sup> TOR 2, T14.1–6 (Gogarty in camera, 20 June 2013).

<sup>111</sup> TOR 2, T31.17–44 (Gogarty in camera, 20 June 2013).

<sup>112</sup> TOR 2, T14.8–17 (Gogarty in camera, 20 June 2013).

<sup>113</sup> TOR 2, T22.26–23.22 (Gogarty in camera, 20 June 2013).

<sup>114</sup> TOR 2, T31.41–32.12 (Gogarty in camera, 20 June 2013).

<sup>115</sup> TOR 2, T31.4–11 (Gogarty in camera, 20 June 2013).

<sup>116</sup> TOR 2, T32.14–33.11 (Gogarty in camera, 20 June 2013).

<sup>117</sup> TOR 2, T34.10–21 (Gogarty in camera, 20 June 2013).

<sup>118</sup> TOR 2, T34.23–27 (Gogarty in camera, 20 June 2013).

<sup>119</sup> TOR 2, T35.12–17 (Gogarty in camera, 20 June 2013).

of attendance, except, possibly, for the fact that Gogarty was not wearing a school uniform and that he had probably started arriving in a car rather than on a bike; otherwise, it was the same pattern, 'sneaking through the backdoor and so on'.<sup>120</sup>

### ***Bishop Clarke's ban on children attending the bishop's house***

- C2.95 Gogarty said that at some stage Bishop Clarke specifically banned him from going to the bishop's house.<sup>121</sup> This ban was issued some time after Fletcher first moved into the bishop's house and before Gogarty had finished school.<sup>122</sup> Fletcher told Gogarty that the bishop had 'a set against him [Fletcher]' and that the bishop and some of the other priests in the Diocese did not like him. He also told Gogarty he personally (Gogarty) had been banned from being in the house.<sup>123</sup> Gogarty confirmed, however, that on the basis of what Fletcher told him he also understood that the banning order covered other children too.<sup>124</sup>
- C2.96 Gogarty's understanding of the ban was that he was not to be in the bishop's house.<sup>125</sup> He particularly understood from Fletcher that he was not supposed to be seen by the bishop.<sup>126</sup> The ban changed the way Gogarty went to the house:<sup>127</sup> arrangements to enter were made with a view to avoiding detection.<sup>128</sup> Gogarty also said Fletcher was very discreet in the way he took him up to his bedroom.<sup>129</sup> He agreed that Fletcher was trying to hide what was going on.<sup>130</sup>
- C2.97 Gogarty agreed that he did not know whether Wilson knew of the ban at any time and that it was not something Wilson mentioned to him.<sup>131</sup> He conceded that he could not say whether Wilson would in fact have known anything about the ban.<sup>132</sup>

### ***Assertions about what Father Wilson would have seen***

- C2.98 In oral evidence Gogarty conceded that Wilson did not see him every time he was at the bishop's house.<sup>133</sup> As to whether Wilson ever saw him going upstairs to the bedroom area or coming down from there, he said:
- No, I can't say that I ever – that he would – that I remember a specific occasion when he saw me going up the stairs or down the stairs. I had free run of the house and that included the sort of common areas of the house. On the ground floor, that pretty much meant a common room, kitchen and a little sort of a small area with, you know, a tea table, if you like.<sup>134</sup>
- C2.99 To similar effect was Gogarty's evidence that '... my intention was to say that the then Father Wilson would have seen me in the bishop's house numerous times. The number of times that he would have seen me going up or down the stairs would be, to be fair to him, very limited'.<sup>135</sup>
- C2.100 Gogarty also described Fletcher's bedroom as being in the most isolated and least visible part of the house. Further, there was no one in the adjoining bedroom and the corridor was never well

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<sup>120</sup> TOR 2, T35.19–42 (Gogarty in camera, 20 June 2013).

<sup>121</sup> TOR 2, T15.42–45 (Gogarty in camera, 20 June 2013).

<sup>122</sup> TOR 2, T15.47–16.30 (Gogarty in camera, 20 June 2013).

<sup>123</sup> TOR 2, T16.3–10 (Gogarty in camera, 20 June 2013).

<sup>124</sup> TOR 2, T60.3–20 (Gogarty in camera, 20 June 2013).

<sup>125</sup> TOR 2, T62.20–22 (Gogarty in camera, 20 June 2013).

<sup>126</sup> TOR 2, T62.35–39 (Gogarty in camera, 20 June 2013).

<sup>127</sup> TOR 2, T16.32–39 (Gogarty in camera, 20 June 2013).

<sup>128</sup> TOR 2, T17.16–21 (Gogarty in camera, 20 June 2013).

<sup>129</sup> TOR 2, T62.41–46 (Gogarty in camera, 20 June 2013).

<sup>130</sup> TOR 2, T63.19–28 (Gogarty in camera, 20 June 2013).

<sup>131</sup> TOR 2, T36.1–22 (Gogarty in camera, 20 June 2013).

<sup>132</sup> TOR 2, T17.12–16 (Gogarty in camera, 20 June 2013).

<sup>133</sup> TOR 2, T41.41–42.5 (Gogarty in camera, 20 June 2013).

<sup>134</sup> TOR 2, T14.19–34 (Gogarty in camera, 20 June 2013).

<sup>135</sup> TOR 2, T43.27–34 (Gogarty in camera, 20 June 2013).

lit. He agreed that this was very suitable if someone was seeking to enter secretly.<sup>136</sup> He said he could not recall a single time coming down the main stairs from Fletcher's bedroom and being distressed and seeing Wilson (or any other priest for that matter).<sup>137</sup>

***Mr Gogarty's contention: Archbishop Wilson should have known about Fletcher's abuse of him***

C2.101 Under cross-examination by Wilson's counsel, Gogarty gave evidence that, in the circumstances involving the bishop's house, he believed Wilson should have known (rather than actively *did* know) that something was happening and should have done something about it:

Q. Do you agree with me that you told a national television program that Wilson lived at the bishop's house when you were being abused and did nothing about it? Do you agree with that?

A. Well – yes, I do.

Q. And you now accept that that is not correct?

A. No, they are different questions. I accept that that's ... the case, but did he see me there with Jim Fletcher? Is it ordinary for an adult male to be constantly in the company of a 15- or 16-year-old? Is it reasonable to expect that someone would think that was odd? I think so.<sup>138</sup>

...

Q. You said in your answer to my question that you felt that Archbishop Wilson should have felt – should have realised that something was odd. Is that as high as you now put it?

A. He should have known, and this has been my contention all along, that it was inappropriate for Jim Fletcher to have me in that house on my own. And you've limited my answers to me personally. My contention has always been broader than that.<sup>139</sup>

...

... based on my own experience and my knowledge of Fletcher's method of approach to his victims and my knowledge of what happened in subsequent years – something, you know, the penny should have dropped a lot, lot sooner.

Q. So you're saying that it is something he should have known?

A. Yes.

Q. Rather than saying it's something that he actively did know?

A. I think I've consistently said that.

Q. So what you're saying is that, in the circumstances which you have set out, someone should have known that something was happening and should have done something?

A. And I think I've also been very, very clear in articulating a point of view that said even in 1975, if the then Father Wilson was naive, was he still naive 20 years later when more of this stuff was emerging or should he have turned his mind to what was happening earlier?<sup>140</sup>

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<sup>136</sup> TOR 2, T59.22–37 (Gogarty in camera, 20 June 2013).

<sup>137</sup> TOR 2, T43.9–20 (Gogarty in camera, 20 June 2013).

<sup>138</sup> TOR 2, T41.18–30 (Gogarty in camera, 20 June 2013).

<sup>139</sup> TOR 2, T41.37–45 (Gogarty in camera, 20 June 2013).

<sup>140</sup> TOR 2, T56.7–27 (Gogarty in camera, 20 June 2013).



- C2.102 Gogarty's concerns thus related to the constructive knowledge he believed Wilson to have possessed or, specifically, that Wilson *should* have known that Fletcher was abusing Gogarty at the bishop's house during the period in question, given all the circumstances.

### ***Phone calls between Mr Gogarty and Archbishop Wilson, 2004***

- C2.103 Gogarty told the Commission he made two phone calls to Wilson about or shortly after the time Fletcher was charged but before the matter had gone to trial.<sup>141</sup> He described the purpose of those calls as 'a bit of fishing expedition'.<sup>142</sup> Asked what he meant by that, Gogarty replied:

Well, I thought that the archbishop might know something about what Jim [Fletcher] had been up to in the bishop's house and elsewhere and that he might be able to assist the police with their inquiries in terms of potential other victims ... I was probably thinking that if the archbishop knew something about what Jim had been doing, then he may have been able to assist the police with their inquiries.<sup>143</sup>

- C2.104 Gogarty said Wilson told him he had not 'known anything about what Jim was up to and that he only knew him as a good bloke'.<sup>144</sup>

- C2.105 The phone calls were fairly brief and quite cordial.<sup>145</sup> During the conversations Gogarty did not press the allegations concerning Wilson's knowledge since he had not yet reached a view that Wilson was aware of Fletcher's propensity to abuse boys.<sup>146</sup> Gogarty explained:

I did not want the archbishop to know that I had made allegations against Father Fletcher. What I was looking for was a fairly pure motive, if you like, if the archbishop knew something that may have been of assistance to the police, what was it, and could I encourage him to come forward with it.<sup>147</sup>

### **Archbishop Wilson's evidence**

- C2.106 Wilson also gave evidence before the Commission concerning his knowledge of matters relating to Fletcher's abuse of Gogarty.

### ***Father Wilson's arrival in the Diocese and his living arrangements, 1975 to 1990***

- C2.107 Having regard to the assertions of Gogarty in relation to Wilson's presence at the bishop's house in Maitland in 1977, some detail about Wilson's living arrangements from 1975 until 1983 is necessary.

- C2.108 Wilson gave evidence that he arrived in the Diocese for service as a priest on 2 October 1975. Shortly after he was appointed to St Mary's High School as the school chaplain.<sup>148</sup> From 2 October 1975 he resided at the presbytery in East Maitland.<sup>149</sup> At that time the parish priest in East Maitland was Father John Newton and the other assistant priest was Father Harry Hughes.<sup>150</sup>

- C2.109 Wilson agreed he would have visited the bishop's house in Maitland between October 1975 and when he left for New York at the end of July 1977 and referred to occasional 'social' visits to the

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<sup>141</sup> TOR 2, T18.23–26; T29.6–14 (Gogarty in camera, 20 June 2013).

<sup>142</sup> TOR 2, T18.28–30 (Gogarty in camera, 20 June 2013).

<sup>143</sup> TOR 2, T18.32–41 (Gogarty in camera, 20 June 2013).

<sup>144</sup> TOR 2, T30.43–46 (Gogarty in camera, 20 June 2013).

<sup>145</sup> TOR 2, T30.16–22 (Gogarty in camera, 20 June 2013).

<sup>146</sup> TOR 2, T30.24–32 (Gogarty in camera, 20 June 2013).

<sup>147</sup> TOR 2, T30.36–41 (Gogarty in camera, 20 June 2013).

<sup>148</sup> TOR 2, T72.18–22 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>149</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, p 169, para 5.

<sup>150</sup> TOR 2, T74.43–47 (Wilson in camera, 20 June 2013, at 2.27pm); statutory declaration of Tynan re deceased clergy, dated 4 December 2013, ex 255.



priests who were there.<sup>151</sup> He could not say how many times he would have visited during the period but surmised it amounted to about 20 visits.<sup>152</sup>

- C2.110 From July to December 1977 Wilson took his first overseas trip, to New York to further his qualifications in religious education.<sup>153</sup> On his return to Australia on 31 December 1977 he resumed work in the Diocese, and in January 1978 he was appointed Director of Religious Education, a position based in Newcastle.<sup>154</sup> At this time (December 1977 to January 1978) he lived in the presbytery at Wallsend since he was also relieving the priest in charge of Wallsend parish, who was on sick leave.<sup>155</sup>
- C2.111 From March until the end of 1978 Wilson taught religious education at St Pius X College in Adamstown and lived on the school premises.<sup>156</sup> He then lived in Mayfield until January 1980, when he was appointed secretary to Bishop Clarke, at which time he moved into the bishop's house in Newcastle.<sup>157</sup>
- C2.112 Wilson said that between January 1980 and February 1983 he and Clarke would go to the bishop's house in Maitland for Mass celebrations. They would often go on Saturday evening and stay overnight; Clarke would say Mass the next day and after lunch they would return to Newcastle.<sup>158</sup> Wilson said, however, that such trips occurred on an 'irregular basis'.<sup>159</sup>
- C2.113 Wilson told the Commission he had not stayed overnight at the bishop's house in Maitland before 1980.<sup>160</sup> He was sure that when he did visit the only meals he had were lunches, although he could not recall whether this was on weekdays or weekends.<sup>161</sup>
- C2.114 In February 1983 Wilson moved into the bishop's house in Maitland. He explained that this was because the Diocesan office was transferred from Newcastle to Maitland and from that time the bishop's house at Maitland functioned not only as a residence but also as the Diocesan office. He lived there until mid-August 1990.<sup>162</sup>
- C2.115 On 1 January 1987 Wilson was appointed vicar general of the Diocese.<sup>163</sup>

### ***First meeting with Mr Gogarty***

- C2.116 In Wilson's affidavit of 14 March 2013 (adopted in his oral evidence before the Commission)<sup>164</sup> he said the following of the first time he met Gogarty and Fletcher:

100. I met Peter Gogarty in around 1980 when I started going to Maitland, when he was about 21 years. I performed the marriage ceremony of his brother in about 1985. I knew the Gogarty family well.

101. During the times I visited and lived in the Bishop's House at Maitland, I did not see Father Fletcher taking boys up to his bedroom. I did not see anything in Father Fletcher's behaviour that caused me any concern about his behaviour with children.

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<sup>151</sup> TOR 2, T75.2–9 (Wilson in camera, 20 June 2013 at 2.27pm).

<sup>152</sup> TOR 2, T75.21–24 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>153</sup> TOR 2, T72.43–73.1 (Wilson in camera, 20 June 2013, at 2.27pm); affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 6.

<sup>154</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 7.

<sup>155</sup> *ibid*, para 7.

<sup>156</sup> *ibid*, para 8.

<sup>157</sup> *ibid*, para 9.

<sup>158</sup> *ibid*, para 10.

<sup>159</sup> *ibid*, para 11.

<sup>160</sup> TOR 2, T71.18–20 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>161</sup> TOR 2, T72.8–16 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>162</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 12.

<sup>163</sup> *ibid*, para 14.

<sup>164</sup> TOR 2, T68.43–69.8 (Wilson in camera, 20 June 2013, at 2.27pm).

102. I first recall meeting Father Fletcher in late 1975, or perhaps early 1976, at the front gates to the presbytery at King Street in East Maitland. I recall that he had been on a trip to the beach. He was attached to the parish of Maitland at this time, but was the Chaplain to the Mater Hospital at Waratah ...<sup>165</sup>

C2.117 Wilson revised this evidence, however, after the Commission provided to him Gogarty's statements about the times Gogarty claimed the two met at the bishop's house in the 1970s. Wilson said he did in fact have a recollection of meeting Gogarty before 1980:

... as I reflected on it ... the possibility that we had met beforehand became more and more apparent to me. My initial reaction or recollection was having met him once I was going to Maitland on a more permanent basis.<sup>166</sup>

C2.118 Wilson also agreed it was possible that he had visited the bishop's house in Maitland and met Gogarty there within the time frame Gogarty referred to – that being in the 1970s. This did not, however, prompt any recollection that he had met Gogarty before 1980. Ultimately, Wilson was prepared to accept the possibility that he had met Gogarty before 1980 but simply did not remember.<sup>167</sup> He also agreed it was possible he met Gogarty more than once before 1980.<sup>168</sup>

### ***Knowledge of Fletcher's propensity to abuse boys***

C2.119 As noted, in his affidavit Wilson stated that he first became aware of the child sexual abuse allegations in relation to Fletcher through the media following Fletcher's arrest.<sup>169</sup>

C2.120 Wilson told the Commission that if he had known Fletcher was sexually assaulting Gogarty he would have considered he had a responsibility to do something about it.<sup>170</sup> On this, Wilson said, 'the issue of the protection of children is far more important than careers'.<sup>171</sup>

### ***Bishop Clarke's ban on boys at the bishop's house***

C2.121 Wilson was asked whether, during the time he visited or lived at the bishop's house in Maitland, and particularly when he resided there with Fletcher, he ever saw any children (other than Gogarty) in the company of Fletcher inside the house without other adult company. Wilson told the Commission:

I remember some occasions in the few months in which I lived there with James Fletcher in the bishop's house that there were a group of teenage boys around the house, in the kitchen. That's the only recollection I have.<sup>172</sup>

C2.122 In his affidavit Wilson specifically dealt with the question of the asserted ban by Clarke (as referred to in Gogarty's evidence):

I have been made aware of reports that Peter Gogarty was banned from the Bishop's House in Maitland. Bishop Leo Clarke did not ban Peter Gogarty from the Bishop's House in Maitland. The problem was that Father Fletcher (and others) often had too many people visiting the house and it was interfering with the fact that the House had now been converted into an office. When it did become the office, I was asked by the Bishop to tell Father Fletcher to respect the seriousness of the house, and to restrict the number of visitors, and to restrict the access of visitors to the house. I was not aware of, nor did Bishop Clarke ask me to pass on, any restriction of any particular people (including Peter Gogarty)

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<sup>165</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 100–102.

<sup>166</sup> TOR 2, T70.33–37 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>167</sup> TOR 2, T71.2–10 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>168</sup> TOR 2, T71.12–16 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>169</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 113.

<sup>170</sup> TOR 2, T89.2–8 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>171</sup> TOR 2, T89.19–20 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>172</sup> TOR 2, T93.16–25 (Wilson in camera, 20 June 2013, at 2.27pm).

or of particular classes of people (for example young boys) from the house. This was in about 1983 but before I became Administrator of the Parish.<sup>173</sup>

C2.123 In his oral evidence Wilson recalled the bishop instructing him to tell Fletcher to ensure that people did not visit the house because by then it was also being run as a Diocesan office and workplace. He acknowledged, however, that he could not know whether Bishop Clarke made a comment (in the nature of a ‘ban’ on him having young boys at the house) to Fletcher before 1980.<sup>174</sup> Wilson also gave further evidence as follows:

The only knowledge I have of restrictions being imposed by Bishop Clarke on people participating in the house was the instruction that he gave to me that I had to tell Father Fletcher that the **presence of these young people in the parish house** had to stop because they were running around making noise and being involved in things in the house when we really needed that space to do what was necessary for our pastoral work.<sup>175</sup> [emphasis added]

C2.124 Wilson told the Commission that this occurred in about March or April 1983.<sup>176</sup>

C2.125 In his evidence, however, Gogarty denied that the bishop’s house changed its character from residence to Diocesan office in 1983 and said that evidence was ‘wrong’.<sup>177</sup>

C2.126 To resolve this matter of the asserted change in the character of the bishop’s house, the Commission obtained a statutory declaration from Mr Sean Tynan, manager of Zimmerman Services at the Diocese.<sup>178</sup> On the basis of his inquiries Tynan said that at various times during the 1980s there were two offices located in the bishop’s house – the Diocesan office and a Maitland parish office. During the 1980s the bishop’s house continued to be the bishop’s personal residence, as well as that of a number of priests. In 1983, however, the Diocesan office was relocated from Newcastle to the bishop’s house.<sup>179</sup>

#### ***Other contact between Archbishop Wilson and Mr Gogarty***

C2.127 Wilson had a ‘vague memory’ that he and Gogarty had spoken about Fletcher’s case in two phone calls some time after his 30 November 2000 appointment as Archbishop of Adelaide.<sup>180</sup> He was unable to say where Fletcher’s case was up to at that time<sup>181</sup> and told the Commission:

I remember being asked about whether I knew anything or had any suspicions about Father Fletcher’s behaviour ... I’d have said what I’ve always said – that I knew nothing.<sup>182</sup>

C2.128 In relation to the exchange as asserted by Gogarty, Wilson stated:

... I don’t remember saying that [‘Fletcher was a good bloke’] ... I doubt very much that I would have used that phrase in referring to him ... Once the issues of Father Fletcher became public and he had been charged, I would have been very careful about any statements I made about him to anybody.<sup>183</sup>

...

Q. So before [Fletcher] being criminally charged, you would have given a positive comment about his character based on what you knew?

<sup>173</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 103.

<sup>174</sup> TOR 2, T74.17–34 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>175</sup> TOR 2, T99.18–25 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>176</sup> TOR 2, T99.27–28 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>177</sup> TOR 2, T36.24–41 (Gogarty in camera, 20 June 2013).

<sup>178</sup> Statutory declaration of Tynan, dated 17 December 2013, confidential ex ZZZZ.

<sup>179</sup> *ibid*, paras 4–7.

<sup>180</sup> TOR 2, T76.6–43 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>181</sup> TOR 2, T76.45–47 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>182</sup> TOR 2, T77.5–12 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>183</sup> TOR 2, T77.18–32 (Wilson in camera, 20 June 2013, at 2.27pm).

- A. **I'd have had no reason to say anything negative about his character.**
- Q. And that's based on your having known him for some period of time.
- A. Well, it's based on the knowledge that I had of him as a fellow priest of the Diocese and living with him for those few months in Maitland.
- Q. Are you able to say whether at the time you had this first conversation with Mr Gogarty that you had formed ... a view about James Fletcher's guilt or innocence of the matters that he had been charged with?
- A. If he had been charged, I'd have been really concerned about those facts, but I would have waited until the decision was made by the courts to determine whether he was guilty or not.
- Q. When you say 'if he had had been charged', are you suggesting that you don't know whether this call came to you from Peter Gogarty before or after Jim Fletcher had been charged?
- A. My recollection is it was after he had been charged, because the subject of the conversation that Peter spoke about was that he talked about what had become public about Father Fletcher.<sup>184</sup> [emphasis added]

C2.129 Wilson was, however, unable to say whether the conversation with Gogarty occurred before or after Fletcher had been convicted.<sup>185</sup>

C2.130 On the question of whether he recalled speaking to anyone else around the time he had the conversation with Gogarty, Wilson said he went to see BG (in Rutherford) after Fletcher had been charged to tell her and her family 'how sorry I was to hear such news about him'.<sup>186</sup> There might also have been conversations with others about Fletcher's case: 'I could have been talking to people about the terrible news of what had happened to him'. He could not, however, recall any other conversations.<sup>187</sup>

C2.131 Apart from that, Wilson said he did 'not really' keep track of the progress of the prosecution of Fletcher, although some information in the media came through to Adelaide.<sup>188</sup> He said that after Fletcher was convicted he might have had a single phone call with Father Desmond Harrigan – in the nature of 'a lament about his conviction, that's all'.<sup>189</sup>

## Conclusions

C2.132 The Commission accepts Gogarty's compelling evidence that he was sexually abused by Fletcher from the age of 13 to 14 until he was almost 18 years old.<sup>190</sup> It further accepts Gogarty's evidence that from 1977 the sexual abuse occurred in Fletcher's bedroom in the bishop's house in Maitland and that by November 1978 the sexual abuse ceased.

### *Limited disclosure in a police statement of September 2004*

C2.133 The Commission accepts Gogarty's evidence about the explanation for the omission in his police statement of Fletcher's more serious sexual assaults on him. His evidence about his discussion with Detective Chief Inspector Fox and the basis on which the statement was being provided –

<sup>184</sup> TOR 2, T77.38–78.19 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>185</sup> TOR 2, T80.8–10 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>186</sup> TOR 2, T78.36–44; T79.16–17 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>187</sup> TOR 2, T78.46–79.1–10 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>188</sup> TOR 2, T83.16–25 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>189</sup> TOR 2, T83.27–38 (Wilson in camera, 20 June 2013, at 2.27pm).

<sup>190</sup> Further, his evidence on this aspect was not subject to direct challenge by any person authorised to appear at Gogarty's in camera hearing.

that is, that Gogarty should only provide the information he was comfortable in giving – is also accepted.

### ***Archbishop Wilson's living arrangements and the bishop's house***

C2.134 In view of the variations in Gogarty's account and his ultimate concession regarding the time when Wilson began living full time at the bishop's house, the Commission accepts Wilson's evidence as to when he began to live there full time. This evidence is consistent with the independent records Tynan inspected in relation to changes to the nature of the bishop's house (which occurred in 1983).

### ***Archbishop Wilson's concession about the date of meeting Mr Gogarty***

C2.135 Wilson did, however, resile from his initial account, as contained in his sworn affidavit, that he met Gogarty in about 1980: he ultimately agreed that he had in fact met Gogarty before that time. Wilson's initial account contrasted with Gogarty's evidence of having had fairly regular contact with Wilson from the time of Wilson's arrival in East Maitland parish in 1975.

### ***Whether Archbishop Wilson should have known Fletcher was abusing Mr Gogarty***

C2.136 Wilson denied that he should have known Fletcher was abusing Gogarty. For his part, Gogarty acknowledged that he could not recall an instance of Wilson seeing him being taken to or returning from Fletcher's upstairs bedroom. His assertion was, in effect, that Wilson 'ought to have known' of the abuse given the circumstances of Gogarty constantly being in Fletcher's presence and 'having the run' of the bishop's house until Clarke's ban. Gogarty's evidence was that Fletcher was discreet in taking him to his bedroom and was trying to hide what was going on. The configuration of the house was such that Fletcher's bedroom was isolated and in the least visible location. Gogarty agreed that after November 1978 (when he reached the age of 18) Wilson could not have seen anything between him (Gogarty) and Fletcher that was indicative of a sexual relationship because the abuse had by that stage ceased. Gogarty confirmed that his pattern of attending the bishop's house otherwise remained unchanged. He ultimately accepted that it was not until 1983 that Wilson had in fact moved into the bishop's house in Maitland. Having regard to the totality of the evidence, it is not open to the Commission to conclude that Wilson knew or should have known that Fletcher was sexually abusing Gogarty.

C2.137 Nonetheless, as set out in paragraph C2.50 and following, the Commission finds that in 1976 AM told Wilson about Fletcher sexually abusing him (AM) in 1971. It follows that from 1976 Wilson was on notice of Fletcher's propensity to sexually abuse young boys. The Commission accepts Gogarty's evidence of an incident around 1977 or 1978 when he, Wilson and Fletcher discussed Wilson's first overseas trip in the common room of the bishop's house. Wilson's evidence was also to the effect that on occasions in the months he had lived with Fletcher at the bishop's house, there was a group of teenage boys around the house and in the kitchen. Wilson also referred to telling Fletcher about restrictions on the presence of 'young people' in the parish house in about March or April 1983.

C2.138 The Commission is satisfied that, having regard to AM's report to Wilson in 1976 of Fletcher's sexual abuse of him (which, as noted, would have put Wilson on notice about Fletcher's propensity to sexually abuse young boys), Wilson would have had good reason to be particularly alert to the implications of teenage boys (such as Gogarty) attending the bishop's house while Fletcher was in residence.

C2.139 Wilson also told the Commission that if he had known Fletcher was sexually assaulting Gogarty he would have considered he had a responsibility to do something about it: 'the issue of the protection of children is far more important than careers'. The Commission considered such an assertion to be in the nature of a 'motherhood statement', contrasting starkly with the reality of Wilson's conduct in connection with AM (given the Commission's findings noted above).

### *Telephone conversations between Mr Gogarty and Archbishop Wilson, 2004*

C2.140 In relation to the telephone calls between Wilson and Gogarty, the Commission accepts Gogarty's evidence as to the fact and content of two calls between them in 2004. Wilson's evidence tends to confirm that what Gogarty claimed was discussed during the calls is correct. Gogarty's evidence that he sought to ascertain whether Wilson had any prior knowledge of Fletcher's sexual misconduct with boys is accepted. Gogarty said that, after denying any knowledge of misconduct by Fletcher, Wilson also said words to the effect that he thought Fletcher a good man. The Commission accepts that Wilson said words of that nature.

## Archbishop Wilson and matters relating to another Fletcher victim (AB)

### Father Walsh's evidence

#### *Advice from Archbishop Wilson, 2004*

C2.141 Father Glen Walsh gave evidence before the Commission that in late April 2004 he sought Wilson's advice after he had told Bishop Michael Malone he was aware of a further victim of Fletcher, AB. Walsh said the telephone conversation with Wilson proceeded thus:

I informed Archbishop that I had been told about a victim of Father Fletcher, and I also told him that I had reported the matter to my bishop, Malone, and that I was disturbed by the response that I got from Bishop Michael and therefore that I just wanted to clarify, to be clear in my own mind so that I did the right thing by the victims, the – Father Fletcher, and the community and the Church so that I didn't err – I didn't make a mistake.<sup>191</sup>

C2.142 Walsh's evidence as to Wilson's response was as follows:

... the advice I sought was answered by Archbishop saying, 'Glen, ring the body I set up through Centacare to – the Professional Standards and these are the phone numbers – and talk to [person nominated] and seek their advice as to the exact protocol that you are expected, as a priest, to follow'.<sup>192</sup>

C2.143 Following this advice, Walsh telephoned the person Wilson had nominated and was advised that having reported the matter to his bishop '... it would be then appropriate for me or acceptable for me to ring the police and the Ombudsman and report the matter'.<sup>193</sup>

C2.144 Walsh also gave evidence about subsequently visiting Wilson at his invitation in Adelaide, probably in July 2004:

... [the] Archbishop – out of complete context of the conversation, we were having – turned the conversation and said, 'Glen, I want you to know that with regard to the matters you've reported ... **about Father Fletcher, I want you [to] know that I had nothing to do with that matter, nor do I have any information about it**'.<sup>194</sup> [emphasis added]

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<sup>191</sup> TOR 2, T8.37–47 (Walsh in camera, 26 June 2013, at 5.00pm).

<sup>192</sup> TOR 2, T11.28–35 (Walsh in camera, 26 June 2013, at 5.00pm).

<sup>193</sup> TOR 2, T12.15–17 (Walsh in camera, 26 June 2013, at 5.00pm).

<sup>194</sup> TOR 2, T14.37–42 (Walsh in camera, 26 June 2013, at 5.00 pm).

## Archbishop Wilson's evidence

### Contact with Father Walsh

- C2.145 In evidence Wilson recalled Walsh contacting him after a difference with Malone but remembered no further detail.<sup>195</sup>
- C2.146 Wilson's evidence was that, although he had no recollection of Walsh visiting him in Adelaide or of saying anything to Walsh to the effect of having no knowledge of the matter Walsh had reported in relation to Fletcher, it was something he would have said given that it was true.<sup>196</sup>
- C2.147 In later evidence Wilson said that he believed Walsh had visited him in Adelaide and spoken to him about the allegation that had been first discussed on the telephone but that he did not remember what Walsh had said.<sup>197</sup>

### Archbishop Wilson's visit to AB's family, September or October 2004

- C2.148 Wilson gave evidence that he visited AB's sister, BG, and her husband; he accepted that the visit could have been in September or October 2004.<sup>198</sup> The trial of Fletcher was listed to begin on 22 November 2004.<sup>199</sup> Wilson agreed that during his visit with BG he had been shown a letter dated 27 August 2004 from Malone to BG.<sup>200</sup> He agreed that at the time of his visit to BG he was aware that BG's brother had made allegations of sexual abuse by Fletcher, that the matter was the subject of a police investigation, and that court proceedings were pending.<sup>201</sup>
- C2.149 Wilson's evidence was that he also visited AB's parents and another of AB's sisters, BAA, on the same day.<sup>202</sup> Wilson said that at that meeting there was some discussion of Fletcher facing trial and of AB having made sexual abuse allegations against Fletcher:

- Q. When you visited the parents' home, did you discuss the Fletcher prosecution?
- A. I talked to them about the fact that I – once again, how sorry I was that they'd had this happen in their family and the fact that I – **I knew absolutely nothing about it**, and that I offered them my care and support.
- ...
- Q. At that stage, did any of them raise with you whether you knew anything about Father Fletcher's tendency or —
- A. I volunteered; **I volunteered exactly what I'd said before to other people, that I knew nothing about it.**
- Q. I didn't quite finish the question. You knew nothing about Father Fletcher having sexually abused boys prior to the prosecution being known —
- A. Indeed. **Exactly.**
- Q. — or the charges being laid?
- A. **Exactly.**<sup>203</sup> [emphasis added]

<sup>195</sup> TOR 2, T116.16–31 (Wilson in camera, 21 June 2013).

<sup>196</sup> TOR 2, T118.38–120.15 (Wilson in camera, 21 June 2013).

<sup>197</sup> TOR 2, T197.43–198.5 (Wilson in camera, 27 June 2013).

<sup>198</sup> TOR 2, T123.3–26 (Wilson in camera, 21 June 2013); see also redacted statutory declaration of BG, dated 23 July 2013, conf ex PW S.

<sup>199</sup> NSW Police Force COPS case report C 16128387 re AH, dated 3 June 2002, ex 219, tab 342, p 885.

<sup>200</sup> Letter from Malone to BG, dated 27 August 2004, conf ex PW A, tab 31; TOR 2, T125.28–36 (Wilson in camera, 21 June 2013).

<sup>201</sup> TOR 2, T125.38–45 (Wilson in camera, 21 June 2013).

<sup>202</sup> TOR 2, T124.7–17 (Wilson in camera, 21 June 2013).



## Conclusions

### *Archbishop Wilson's advice to Father Walsh*

C2.150 The Commission accepts Walsh's evidence that in late April 2004, in the context of seeking advice about appropriate steps to take regarding the emergence of a further Fletcher victim (AB), Walsh contacted Wilson (then Bishop of Wollongong) for advice and that Wilson told Walsh to contact Professional Standards, and seek their advice on the protocol to follow. Wilson did not dispute Walsh's evidence about this conversation. The Commission finds that Wilson's response to Walsh was appropriate: it ensured that Walsh received advice that, if followed, was likely to result in independent authorities becoming aware of the existence of a further Fletcher victim.

### *Archbishop Wilson's 'unprompted' comment to Father Walsh*

C2.151 The Commission finds that during a subsequent meeting between Fletcher and Wilson in July 2004, Wilson made an unprompted remark, out of conversational context, that he 'had nothing to do with' the Fletcher matter, nor did he have any information about it. Wilson said he had limited memory of Walsh's visit to Adelaide and did not seriously dispute Walsh's account. In the Commission's view, however, Wilson's comment to Walsh suggests that by that time in 2004 Wilson was concerned about the perception of others in connection with his knowledge of Fletcher's propensity for the sexual abuse of children. Taking account of its findings in relation to Wilson's knowledge about Fletcher given AM's disclosure to him in 1976, the Commission finds that the statement Wilson made was disingenuous and designed to mislead Walsh as to Wilson's true state of knowledge concerning Fletcher.

### *Archbishop Wilson's comments to AB's family*

C2.152 The Commission accepts that in late 2004 Wilson visited AB's family and made comments to the effect that he knew 'absolutely nothing' about Fletcher's propensity to sexually abuse children. There is no evidence to contradict Wilson's account of the conversation, and the comments are consistent with Walsh's evidence of Wilson making a similar unprompted remark to him earlier in 2004. In the light of the Commission's findings about Wilson's knowledge of Fletcher's sexual abuse of AM since 1976, however, Wilson's comments to AB's parents (as with his comments to Walsh) were disingenuous and designed to mislead them as to his true state of knowledge concerning Fletcher.

C2.153 Further, the allegations of both AH and AB, which became known to Wilson in 2003 and 2004 respectively, would have reminded him of AM's account to him in 1976 and caused him to appreciate that he could have taken action at an earlier point to prevent Fletcher continuing to sexually abuse further victims.

### *Failure to facilitate or assist a police investigation*

C2.154 As noted, the Commission is satisfied that after AM's disclosure to him in 1976 Wilson failed to inform the police of AM's complaint about Fletcher's sexual abuse of him as a 10-year-old boy, that being information that would have either facilitated the initiation of a police investigation of Fletcher before one was on foot or facilitated and assisted the police investigation of Fletcher that was under way from 2002.

C2.155 As set out in paragraph C2.16, in 2003 Wilson became aware that Fletcher had been arrested regarding allegations that he had sexually abused a boy (AH). Once the police investigation of Fletcher began, it follows that, from at least this time, Wilson's failure to report to police AM's

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<sup>203</sup> TOR 2, T124.7–35 (Wilson in camera, 21 June 2013).



complaint of Fletcher's sexual abuse of him was a failure to assist or facilitate that extant investigation into Fletcher. Wilson also became aware in April 2004 that a further victim had complained of sexual abuse by Fletcher;<sup>204</sup> he met with AB's family in late October 2004, at which time Wilson knew Fletcher was facing criminal proceedings and knew that the further victim was AB. In these circumstances, Wilson's ongoing failure to report Fletcher's abuse of AM showed a continuing determination to avoid bringing AM's complaint to the attention of the police.

C2.156 For the purposes of s. 10(1) of the *Special Commissions of Inquiry Act 1983* (NSW), the question of whether there is sufficient evidence to warrant the prosecution of Wilson for certain specified offences relating to his conduct in relation to AM's disclosure is dealt with in Part G of this confidential volume. In summary, the Commission is satisfied that there is sufficient evidence warranting the prosecution of Archbishop Wilson for two specified offences.

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<sup>204</sup> This was, in fact, AB; see paras C2.141 and following regarding the evidence of Walsh and Wilson.



# C3 Diocesan knowledge and handling of AM's letter of 29 July 2010

## Contents

<b>Introduction</b> .....	<b>51</b>
<b>AM's letter of 29 July 2010</b> .....	<b>51</b>
<b>Bishop Malone's handling of AM's complaint</b> .....	<b>53</b>
Ms Doyle and AM's letter .....	53
Bishop Malone's receipt of AM's letter .....	53
Conclusions.....	55
<b>Defamation correspondence between Archbishop Wilson and Bishop Malone, June to July 2010</b> .....	<b>56</b>
Conclusion .....	57
<b>The Towards Healing Consultative Panel meeting, 19 August 2010</b> .....	<b>57</b>
Bishop Malone's evidence.....	59
Ms Doyle's evidence.....	61
Mr Tynan's evidence .....	62
The Towards Healing Consultative Panel meeting of 19 August 2010 .....	62
Preparation of the Clergy Case Summary Report .....	62
Other Towards Healing Consultative Panel members .....	63
Ms O'Hearn's evidence.....	64
Conclusions.....	64
<b>Bishop Malone's meeting with AM, 26 August 2010</b> .....	<b>66</b>
Bishop Malone's evidence.....	66
AM's evidence .....	69
Conclusion .....	69
<b>Bishop Malone's letter of reply to AM, 2 September 2010</b> .....	<b>69</b>
Bishop Malone's asserted instruction to Ms Doyle to send AM's letter and his reply to Zimmerman Services.....	70
Bishop Malone's evidence .....	70
Bishop Malone's asserted discussion with Mr Tynan, September 2010.....	71
Ms Doyle's evidence .....	72
Mr Tynan's evidence .....	72
Ms O'Hearn's evidence.....	73
Conclusion .....	74
<b>Bishop Malone's reporting obligations</b> .....	<b>75</b>
Media allegations about Archbishop Wilson's knowledge of child sexual abuse in the Diocese .....	76
Conclusions.....	76
<b>Zimmerman Services' handling of AM's letter</b> .....	<b>78</b>
Mr Tynan's evidence .....	79

The Clergy Review Analysis .....	79
Use of the Clergy Review Analysis document for the briefing note for Bishop Wright.....	81
Conclusions .....	82
AM’s letter first read by Mr Tynan in January 2013.....	82
Conclusion.....	82
Mr Muxlow’s evidence.....	83
Policies and procedures at Zimmerman Services.....	83
Awareness of concealment offences .....	84
Clergy Review Analysis.....	84
Reviewing the bishop’s office files .....	85
The ‘Clergy Abuse within the Diocese of Maitland-Newcastle’ document .....	85
Mr Muxlow’s knowledge of the Strike Force Lantle investigation .....	87
Conclusions .....	88
Ms Wollschlager’s evidence.....	88
Policies and procedures at Zimmerman Services.....	88
Assisting Mr Muxlow with the Clergy Review Analysis .....	89
The ‘Clergy Abuse within the Diocese of Maitland-Newcastle’ document .....	92
Conclusions .....	92
Ms O’Hearn – discussions with Mr Tynan .....	93
Conclusions .....	94
The failings of Zimmerman Services in dealing with AM’s complaint .....	94
Zimmerman Services’ revision of policies, 2013 .....	95
<b>The Strike Force Lantle Search warrant executed on 2 June 2011 .....</b>	<b>95</b>
Discussions before the issuing of the search warrant.....	95
The issuing and execution of the search warrant .....	97
Notifications to persons of interest in relation to execution of the search warrant .....	99
Bishop Malone’s evidence .....	99
Mr Tynan’s evidence.....	101
Conclusions .....	102
<b>Bishop Malone’s participation in a police interview, 30 November 2011 .....</b>	<b>102</b>
Relevant background .....	102
The police interview.....	103
Bishop Malone’s evidence .....	104
Knowledge that Archbishop Wilson was a person of interest .....	104
Knowledge of AM.....	105
Detective Sergeant Little’s evidence.....	107
Conclusions .....	109
Awareness of Archbishop Wilson as a person of interest .....	109
Failure to mention AM to Lantle investigators .....	109

## Introduction

- C3.1 On 29 July 2010, AM, a victim of Father James Fletcher, wrote to Bishop Michael Malone outlining the sexual abuse he had suffered as a 10-year-old boy and its impact on his life (a copy of which appears at Appendix CA). He also revealed that in 1976 he had told Archbishop Philip Wilson (then Father Wilson) about having been repeatedly sexually abused by Fletcher in 1970.<sup>1</sup>
- C3.2 In his early 50s when he wrote the letter, AM was still a practising Catholic and a man of faith, and he had made the decision to come forward in order to alleviate the burden he had carried for 40 years. He wrote that the systems and culture in the Catholic Church at the time led to such crimes being committed and then being covered up.
- C3.3 In early January 2013 Commission personnel discovered a copy of AM's letter in files from the bishop's office relating to Fletcher.<sup>2</sup> The discovery of that letter set in train a number of investigations. Commission personnel contacted AM, and he ultimately agreed to give evidence at private and in camera hearings. The Commission later held a number of further in camera hearings to explore the various matters arising from the letter, as elsewhere detailed in this confidential volume of the report.
- C3.4 This chapter primarily analyses the way in which AM's letter was dealt with, first by Bishop Malone, as head of the Diocese, and then by other church officials in the Diocesan Child Protection Unit (known as Zimmerman Services) – namely, Mr Sean Tynan, Ms Maureen O'Hearn, Mr David Muxlow and Ms Lisa Wollschlager.<sup>3</sup>
- C3.5 Some background details provide context. In June 2010, just five to six weeks before Malone received AM's letter, media attention was focused on whether and the extent to which Wilson knew or should have known that Fletcher sexually abused boys. Malone gave an interview to ABC Television's *Lateline* program in June 2010, and in it he commented on the question of what Wilson knew about child sexual abuse in the Maitland–Newcastle Diocese. Malone was also aware that Mr Peter Gogarty, a victim of Fletcher's from the 1970s, was publicly stating that Wilson knew or should have known about Fletcher's propensity to sexually abuse boys.
- C3.6 Neither Malone nor any other person in the Diocese brought AM's complaint, including the reference to a 'cover-up' in his letter relating to the Diocesan response to his disclosure, to the attention of the New South Wales Police Force. Before the Commission's discovery of AM's letter, NSW Police, including the investigators of Strike Force Lantle (the terms of reference for which included concealment offences and noted Wilson as a person of interest), was unaware of AM's letter and the allegations it contained. The complaint (including the reference to Wilson) would have been of great interest to police. In these circumstances, the chronology of relevant events, from the report of the complaint in July 2010 until the Commission's exposure of the complaint in January 2013, warrants close analysis.

## AM's letter of 29 July 2010

- C3.7 AM's 29 July 2010 letter to Malone was highly personal in nature. In addition to referring to the role of Wilson, on three occasions in the letter AM referred to there having been a 'cover[ing] up' (by the Church) of the crimes committed against him.

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<sup>1</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>2</sup> Statutory declaration of Sullivan, dated 29 November 2013, conf ex PW X, paras 4–7.

<sup>3</sup> As set out below, 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 (see further para C3.147). For the Commission's purposes, however, it is the same entity, and accordingly all references hereafter are to 'Zimmerman Services'.

- C3.8 AM explained to Malone that he was writing ‘after long deliberation to bring to your attention the case of sexual abuse that was inflicted on me and the subsequent cover up that started 40 years ago’.<sup>4</sup>
- C3.9 He wrote that when he (AM) had been an altar boy Fletcher (then a parish priest) sexually assaulted him on many occasions in 1970.<sup>5</sup> He said the offences took place after early morning Mass or after special ceremonies that were held in St Joseph’s church and that most of the assaults occurred in the room immediately behind the altar. He said the behaviour had gone on for months and that Fletcher physically and verbally threatened him not to tell anyone. As a consequence of the sexual assaults, he said, he had avoided altar duty. He was ‘scared, frightened and lonely’; he did not know what to do.<sup>6</sup>
- C3.10 AM wrote that he had devout Catholic parents whom he did not want to shame. He was concerned about how they would react and about the effect that knowledge of the abuse would have on them.<sup>7</sup>
- C3.11 He described having broken the news to his family in the preceding year (2009) and then stated:
- The abuse was bad enough to live with but it was the hint of a cover up or lack of action some years later that really hurts. In 1976 I told Fr Philip Wilson, who had come to our parish as a young priest under Fr John Newton who was Parish Priest at the time, of what had occurred with Fr Fletcher back in 1970. Fr Wilson was someone I had grown to like and trust through his involvement with the youth group in the parish. He said at the time he couldn’t believe Fletcher would do such things but would pass on the information and get it looked into.** To this day I do not know if anything was done at the time, who he spoke to (if anyone) or what. Both Fr Newton and Bishop Leo Clarke have passed on but the guilt I have to carry is that if something was done at the time then most of the other crimes committed by Fletcher could have been prevented in the years to follow. This has been a difficult thing to live with over the years as more and more cases were revealed.<sup>8</sup> [emphasis added]
- C3.12 AM then wrote of the destructive effect of the abuse on his family life, marriage and mental health:
- My health has continued to pay the price of my years of torment and stress. Over the past 10 years I have battled with depression, alcohol and suicidal tendencies to ‘numb’ the hurt. My body is straining to handle the pressure I feel under and I know I will be better off after offloading this burden I have been carrying.
- Your worship, I sit here with tears rolling down my cheeks as this has been the most difficult thing to do. **I do not blame the Church as a whole for what took place but I do lay blame on the systems and culture that the Church allowed to be in place at the time that led to such crimes being committed and then being covered up.** For us victims of sexual abuse our lives will not be the same again, we have been mentally and in some cases physically scarred for life, that is the sad part. Getting on with our lives is the difficult part.<sup>9</sup> [emphasis added]
- C3.13 AM concluded by asking for an opportunity to discuss with Malone the information contained in his letter and asking him to telephone to arrange an appointment.<sup>10</sup>
- C3.14 The letter was stamped as having been received at the Bishop’s Chancery on 10 August 2010.<sup>11</sup>

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<sup>4</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>5</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O. In his evidence AM corrected the year of abuse to 1971: TOR 2, T24.4–6 (AM in camera hearing, 21 June 2013).

<sup>6</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>7</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>8</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>9</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>10</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

## Bishop Malone's handling of AM's complaint

C3.15 In an examination of Malone's actions in response to AM's letter, two primary matters arise for consideration. First, there is the question of whether, and if so why, when he received the letter Malone failed to advise authorities (in particular, the police) about AM's allegation that Wilson had concealed sexual abuse offences. The second question concerns Malone's failure to mention the existence of AM as a victim of Fletcher in response to a direct question during an interview with police on 30 November 2011 in connection with the Strike Force Lantle investigation.

### Ms Doyle and AM's letter

C3.16 Ms Elizabeth Doyle was Malone's personal assistant during his episcopacy. She began her employment with the Diocese on 4 January 1993.<sup>12</sup> From this time she was Bishop Leo Clarke's secretary until his retirement in November 1995, after which she became Malone's secretary and then the Diocesan office manager in 2000.<sup>13</sup>

C3.17 Doyle gave evidence that she specifically recalled opening AM's letter when it arrived at the chancery.<sup>14</sup> On reading the letter and seeing the reference to Fletcher she thought, 'Oh, this has to go straight to the bishop'.<sup>15</sup> She said she did not then read further and nor did she discuss the letter with Malone.<sup>16</sup> She was unable to recall whether she read AM's name in the letter.<sup>17</sup> In relation to the physical whereabouts of AM's letter after the bishop had received it, she explained that he would typically keep such a letter either on his desk or in his briefcase.<sup>18</sup>

### Bishop Malone's receipt of AM's letter

C3.18 Malone gave evidence that after reading AM's letter he contacted him on the mobile phone number provided in the letter. Malone made an annotation on AM's letter: 'left message on 13.8.10 at 10.05am (his mobile)'.<sup>19</sup> On making contact with AM, Malone made arrangements to meet with him at the end of August 2010.<sup>20</sup>

C3.19 Malone told the Commission he believed AM's account in his letter of having been sexually abused on many occasions by Fletcher.<sup>21</sup> Malone also said that it was a 'shock that it had come to me at such a late date, 40 years along the track'.<sup>22</sup>

C3.20 In terms of AM's reference to a 'hint of a cover-up or lack of action', Malone said he did not form a view about that matter because 'the phrase cover up has been thrown around a lot in the media particularly and you need to drill down to find out whether that did or didn't happen, really'.<sup>23</sup>

C3.21 Malone gave evidence that he did not contact Wilson about having received AM's letter and, further, that the mention of Wilson in the letter did not 'leap out' at him, even though he read the letter in its entirety:

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<sup>11</sup> Letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>12</sup> Statement of Doyle, dated 29 July 2013, ex 167, para 5.

<sup>13</sup> Statement of Doyle, dated 29 July 2013, ex 167, paras 7–15.

<sup>14</sup> TOR 2, T15.1–16 (Doyle in camera, 13 August 2013).

<sup>15</sup> TOR 2, T15.17–20 (Doyle in camera, 13 August 2013).

<sup>16</sup> TOR 2, T14.25–28; T15.22–26 (Doyle in camera, 13 August 2013).

<sup>17</sup> TOR 2, T24.19–29 (Doyle in camera, 13 August 2013).

<sup>18</sup> TOR 2, T14.30–35 (Doyle in camera, 13 August 2013).

<sup>19</sup> TOR 2, T5.17–27 (Malone in camera, 12 July 2013, at 3.08pm); letter from AM to Malone, dated 29 July 2010, conf ex O.

<sup>20</sup> TOR 2, T5.29–37 (Malone in camera, 12 July 2013, at 3.08pm)

<sup>21</sup> TOR 2, T2.41–3.8 (Malone in camera, 15 July 2013, at 1.10pm).

<sup>22</sup> TOR 2, T2.44–45 (Malone in camera, 15 July 2013, at 1.10pm).

<sup>23</sup> TOR 2, T29.16–30.12 (Malone in camera, 16 July 2013, at 10.24am).

- Q. Do we take it that you didn't contact Fr Wilson about having received this letter?
- A. No, I did not mention it to him.
- Q. Why not?
- A. I don't know. You know, **the mention of Fr Wilson in the letter did not leap out at me** in the same way that you're saying that it should have.
- Q. So you're saying it should have leaped out at you, but it didn't at the time, is that your evidence.
- A. No, you're saying it should have leapt at me and **I'm saying it didn't leap out at me.**
- Q. You read the letter in its entirety?
- A. Yes.
- Q. I don't mean today; I meant at the time you received it?
- A. Of course, yes.
- Q. Did you make any inquiries of anybody else about the veracity or otherwise of what [AM] had set out in his letter as to what happened to him?
- A. No, I did not. No, I – as I said in my reply to [AM], 'I accept what it is you've told me.'<sup>24</sup> [emphasis added]

C3.22 At a further hearing, in January 2014, counsel assisting challenged Malone about the significance of the allegations against Wilson in AM's letter:

- Q. And what [AM]'s letter suggested was that (a) Fletcher was a paedophile; and (b) that Wilson was told in 1976 –
- A. Yes.
- Q. – that Fletcher had engaged in paedophile acts and violent acts with [AM]?
- A. That's correct
- Q. What I want to suggest to you is that it simply defies belief that that aspect, given the background that we have been over, of [AM]'s letter was not something that you saw as significant in [AM]'s letter?
- A. No. As I say, the overwhelming response on my part was one of pastoral care, and I acted accordingly. My preoccupation with anything to do with Wilson was based on, you know, the newspaper hype about him not acting appropriately with McAlinden and not responding properly with Gogarty seeing him coming and going. They were historic matters and I suppose they would have been somehow handled one way or another, but anything new like this certainly didn't leap out at me, as I've testified, and I'll – I continue to testify that. It may seem – it may seem strange to you that it didn't, but it didn't.<sup>25</sup>

C3.23 Malone gave further evidence in January 2014 that suggested he had in fact considered the aspect of AM's letter relating to the disclosure to Wilson on first reading it:

- Q. When did you turn your mind to the question of wondering about what Wilson, then Father Wilson, would have known about what to do at the time? When did you first turn your mind to that question?

<sup>24</sup> TOR 2, T29.34–36 (Malone in camera, 16 July 2013, at 10.24am).

<sup>25</sup> TOR 2, T22.11–36 (Malone in camera, 31 January 2014).



A. As I mentioned mid-year, I remember my own knowledge of events within the church and beyond from the point of view of a very young immature priest. I wouldn't have known what to do and I could only presume that Wilson probably didn't know what to do either.

Q. Understanding that, when did you turn your mind to what Wilson, then Father Wilson, would have known or what he would have known to do?

A. I suppose when I read [AM]'s letter, you know, and saw that he had spoken to Wilson in the mid-1970s, my thought in the back of my mind was, "I wonder if that ever went anywhere?" Did Wilson act on that? Did he speak to Bishop Clarke about it? Did he speak to anybody about it? I don't know.

Q. When you say, "when I read [AM]'s letter" do you mean the first time you read it?

A. Yes, I'd say so.<sup>26</sup>

C3.24 Malone also agreed that he had read the parts of AM's letter relating to Wilson as part of his consideration of AM's pastoral position.<sup>27</sup>

C3.25 Malone said he did not, on receipt of AM's letter or at any later time, go back and review Fletcher's file to see whether there was further documentation about AM's complaint to Wilson in 1976 and, in particular, to see whether any action had been taken.<sup>28</sup>

C3.26 Malone otherwise gave evidence that in the usual course of events both the letter of complaint and any reply by the bishop would be sent to Zimmerman Services, in case the victim sought assistance from them.<sup>29</sup> He said he filed AM's letter in the 'Fletcher file', which was in the confidential filing cabinet in his office.<sup>30</sup>

C3.27 'Commission personnel ultimately located AM's letter in the bishop's files relating to Fletcher.<sup>31</sup> This is consistent with Malone's evidence that he filed AM's letter in the Fletcher file in his office. Further, Malone gave evidence that with respect to access to Diocesan files (such as those in his office) his 'practice with the police ... [was] open house really. They didn't really have to bring a warrant to look at files ...'<sup>32</sup> Malone's policy of assisting the police with whatever they requested was also confirmed by Doyle.<sup>33</sup>

## Conclusions

C3.28 Malone's evidence at times seemed to downplay the significance of the information AM's letter contained in relation to Wilson. AM's letter (if true) raised the clear prospect that an archbishop – indeed, a senior church official formerly incardinated into the Diocese – might have been involved in concealing offences of child sexual assault committed by Fletcher for more than 30 years. It is not plausible for Malone to suggest that the importance of the allegations against Wilson was not immediately apparent to him. Although Malone sought to maintain that the allegations about Wilson did not 'leap out at him', in later evidence he conceded that on first reading the letter he did give particular consideration to the aspect relating to Wilson and wondered whether any action had been taken in connection with AM's complaint.

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<sup>26</sup> TOR 2, T23.17–39 (Malone in camera, 31 January 2014).

<sup>27</sup> TOR 2, T24.11–20 (Malone in camera, 31 January 2014).

<sup>28</sup> TOR 2, T61.20–25 (Malone in camera, 16 July 2013, at 10.24am).

<sup>29</sup> TOR 2, T7.27–31 (Malone in camera, 12 July 2013, at 3.08pm).

<sup>30</sup> TOR 2, T4.25–5.8 (Malone in camera, 12 July 2013, at 3.08pm); TOR 2, T35.3–40 (Malone in camera, 16 July 2013, at 10.24am).

<sup>31</sup> Statutory declaration of Sullivan, dated 29 November 2013, conf ex PW X; statutory declaration of Sullivan, dated 3 April 2014, conf ex PW X2; see also statutory declaration of Tynan, dated 24 April 2014, conf ex NNNNN.

<sup>32</sup> TOR 2, T1010.12–14 (Malone).

<sup>33</sup> TOR 2, T1956.1–29 (Doyle).

C3.29 The Commission accepts Malone’s evidence as to his filing of AM’s letter in the Bishop’s files relating to Fletcher in his office in or about August 2010. It finds that, after being so filed by Malone, a copy of the letter remained there, where it was located by Commission personnel in January 2013. The Commission also accepts Malone’s evidence about his ‘open house’ policy in connection with access to Diocesan records, such that staff from Zimmerman Services<sup>34</sup> and external agencies (such as police) could obtain access to files in the bishop’s office if requested.

## Defamation correspondence between Archbishop Wilson and Bishop Malone, June to July 2010

C3.30 On 17 May 2010 Gogarty made claims on ABC Television’s *Lateline* program to the effect that Wilson ought to have known he (Gogarty) was being abused by Fletcher in the 1970s. Press and television coverage followed in what Malone described as a ‘a real media fest ...’ with media reportage being rife over ‘weeks and weeks’, if not ‘months and months’, on the question of Wilson’s management of child sexual abuse allegations relating to both Fletcher and Father Denis McAlinden.<sup>35</sup>

C3.31 On 8 June 2010 Sean Tynan sent to senior Diocesan officials an email referring to an article relating to the ABC’s research for the May *Lateline* episode, together with some comments.<sup>36</sup>

C3.32 On 15 June 2010 Wilson sent Malone a letter raising the prospect of legal action against Tynan for his action in referring to the article and its author on 8 June, as well as Tynan’s comments in the covering email. Wilson’s letter stated that those comments contained certain defamatory imputations.<sup>37</sup> Malone regarded the tenor of Wilson’s letter as angry and ‘patronising’ and conveying a ‘certain arrogance’: he (Malone) was ‘not impressed’.<sup>38</sup> Malone understood the letter to contain a threat of legal action.<sup>39</sup> The correspondence also contained assertions about the leaking of documents from someone in the Diocese (naming at least Tynan): from this, Malone thought Wilson was impugning his administration.<sup>40</sup> Tynan himself received from lawyers acting for Wilson a letter containing a threat of legal action if certain remedial steps were not taken.<sup>41</sup> Malone said Tynan was ‘quite visibly distressed that his brief email had been taken amiss by Wilson’.<sup>42</sup> Further correspondence ensued in June and July 2010 between Wilson and Malone and between Tynan and Wilson’s lawyers.

C3.33 As to the tone of the correspondence from Wilson, Malone gave the following additional evidence:

Q. Is it fair to say that, in the correspondence you received from Wilson, he was taking the high moral ground in relation to his work in the area of the abhorrent crime of clergy sexual abuse?

A. He was, yes. In my conversations with him over the years, I think he’s always prided himself on being active in trying to root out clerical sexual abuse both in the Wollongong diocese where he was and then in Adelaide where he is now.

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<sup>34</sup> It is noted, by way of example, that such access was sought by Mr David Muxlow, an investigator with Zimmerman Services, in or around May 2011 for the purposes of undertaking a particular task and to this end, he and his colleague, Ms Wollschlager, accessed the AM letter on the files relating to Fletcher held in the bishop’s office (see paras C3.157, C3.185 and following; C3.214 and following).

<sup>35</sup> TOR 2, T13.7–17 (Malone in camera, 31 January 2014).

<sup>36</sup> Email from Tynan to Doyle and other Diocesan officials, dated 8 June 2010, conf ex EEEEE, p 5.

<sup>37</sup> Letter from Wilson to Malone, dated 16 June 2010, conf ex EEEEE, pp 10–12.

<sup>38</sup> TOR 2, T9.2–8; T19.46–20.2 (Malone in camera, 31 January 2014).

<sup>39</sup> TOR 2, T8.31–32 (Malone in camera, 31 January 2014).

<sup>40</sup> TOR 2, T15.1–11 (Malone in camera, 31 January 2014).

<sup>41</sup> Letter from Agresta to Tynan, dated 15 June 2010 to 6 July 2010, conf ex EEEEE, pp 2–4.

<sup>42</sup> TOR 2, T12.12.14 (Malone in camera, 31 January 2014).

Q. But more relevantly to events in June 2010, it's the position, isn't it, that Wilson was taking the moral high ground regarding allegations that he knew or ought to have known that Fletcher was a paedophile?

...

A. Yes, I think that would be accurate.<sup>43</sup>

C3.34 Later in June 2010 Malone appeared on a *Lateline* episode entitled 'Bishop demands clarity in paedophile case'. The episode was primarily about Wilson's knowledge of McAlinden's offending. Before the Commission, Malone agreed that, at the time of the *Lateline* episode at least, the question of Wilson's knowledge of child sexual abuse allegations was on his mind.<sup>44</sup>

C3.35 Notwithstanding that background, Malone repeated his evidence that the reference to Wilson did not 'leap out' at him (as noted at paras C3.21 to C3.22).<sup>45</sup> Malone also denied that the recent correspondence with Wilson was on his mind when he read AM's letter some weeks later.<sup>46</sup>

## Conclusion

C3.36 The Commission rejects Malone's evidence to the effect that the correspondence from Wilson was not something that came to mind when he read AM's letter (in August 2010) or shortly thereafter. AM had in effect asserted that Wilson knew of Fletcher's propensity to sexually abuse boys. This suggested that the media 'hype' surrounding Wilson's knowledge of child sexual abuse concerning at least Fletcher was not in fact hype. It also suggested that Wilson had been deceitful in the 'patronising' correspondence that had angered Malone and, he thought, impugned his administration. Wilson's correspondence had also cast aspersions on a senior staff member. Against that background, the Commission considers Malone's insistence that the allegations against Wilson in AM's letter did not 'leap out' at him' to be wholly improbable.

## The Towards Healing Consultative Panel meeting, 19 August 2010

C3.37 On 19 August 2010 Malone attended a Towards Healing Consultative Panel meeting, a week or so after he had received AM's letter. The panel consisted of a group of lay and religious individuals<sup>47</sup> whose purpose was to advise the bishop on matters to do with the operation of the Towards Healing protocol in the Diocese.<sup>48</sup> Meetings were held monthly or bi-monthly and were attended by the bishop.<sup>49</sup> Tynan, the Manager of Zimmerman Services, would typically attend and provide a report on matters relating to Zimmerman Services' operations.<sup>50</sup> Malone said the meetings would not necessarily include the tabling of documents recording recently received complaints, but there would be a verbal report about such matters.<sup>51</sup>

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<sup>43</sup> TOR 2, T21.34–22.11 (Malone in camera, 31 January 2014).

<sup>44</sup> TOR 2, T80.2–23 (Malone in camera hearing, 22 November 2013).

<sup>45</sup> TOR 2, T22.22–36 (Malone in camera, 31 January 2014).

<sup>46</sup> TOR 2, T24.22–29 (Malone in camera, 31 January 2014).

<sup>47</sup> Towards Healing Consultative Panel meeting minutes, dated 19 August 2010, conf ex PPP.

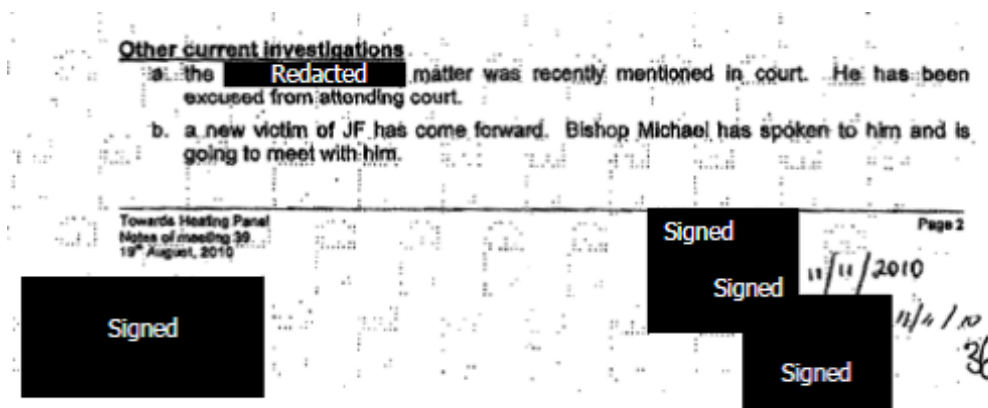
<sup>48</sup> Towards Healing Principles and Procedures in Responding to Complaints of Sexual Abuse Against Personnel of the Catholic Church in Australia, dated January 2010, ex 219, tab 489, pp 1295–1296: 'The panel shall consist of at least five members who collectively provide the expertise, experience and impartiality which are necessary in this field. The panel must be consulted when a priest or religious is charged with a criminal offence in relation to a complaint of abuse. The panel must be consulted in any decision concerning whether a person constitutes an 'unacceptable risk' to children, young people or vulnerable persons. The panel must be consulted in such other decisions as are indicated in these procedures'.

<sup>49</sup> TOR 2, T25.4–6 (Doyle in camera, 13 August 2013).

<sup>50</sup> TOR 2, T30.33–40 (Malone in camera, 16 July 2013, at 10.24am).

<sup>51</sup> TOR 2, T30.42–45 (Malone in camera, 16 July 2013, at 10.24am).

C3.38 The minutes of the Towards Healing Consultative Panel meeting of 19 August 2010 included an entry relating to AM having come forward. The entry appears under the heading ‘Reports – Zimmerman House – update on current matters (Sean Tynan)’ and then under the subheading ‘Other current investigations’ (see Figure C3.1).



Note: the reference to ‘JF’ is to James Fletcher.

Figure C3.1 Extract from minutes of Towards Healing Consultative Panel meeting, 19 August 2010<sup>52</sup>

C3.39 The minutes of the meeting also attached a Towards Healing Consultative Panel report, which included a ‘Clergy Case Summary Report’, and a ‘General Status Report’. Under the latter heading was an overview of ‘Healing Matters’. The evidence revealed that for each such panel meeting the Clergy Case Summary Report was usually prepared by Tynan, with the assistance of information from Ms Maureen O’Hearn as to the ‘Healing Matters’ section.<sup>53</sup> Figure C3.2 shows relevant sections of what appeared in this particular report under the heading ‘Healing Matters’.

*Healing Matters*

Current active cases (Alleged/proven Victims of):

Redacted  
 9 of Denis McAlinden  
 Redacted  
 Redacted  
 Redacted  
 Redacted  
 2 of Jim Fletchers ( Bishop Michael meeting with another possible victim)  
 Redacted  
 Redacted  
 Redacted  
 Redacted

Figure C3.2 Extract from Towards Healing Consultative Panel report, 19 August 2010<sup>54</sup>

<sup>52</sup> Towards Healing Consultative Panel meeting minutes, dated 19 August 2010, conf ex PPP, p 2.

<sup>53</sup> TOR 2, T8.35–42; T21.32–22.25; T23.15–23.32 (O’Hearn in camera, 12 August 2013). Ms O’Hearn was the Coordinator of Healing and Support at Zimmerman Services and had a social work background and many years’ experience: Statutory declaration of O’Hearn, dated 3 June 2013, ex 213, paras 1–2.

<sup>54</sup> Towards Healing Consultative Panel meeting minutes, dated 19 August 2010, conf ex PPP.

## Bishop Malone's evidence

C3.40 Malone gave evidence that he did not really recollect the Towards Healing Consultative Panel meeting of 19 August 2010.<sup>55</sup> He said that in the course of advising that a new victim had come forward he would have explained something of AM's letter and the response he had given and also that he was planning to see AM.<sup>56</sup> Initially Malone said he did not think that during the meeting he referred to the allegations about Wilson in AM's letter.<sup>57</sup> Although it was his practice to take along documents such as AM's letter to meetings of this nature, Malone reiterated that he did not have any specific recollection of this particular meeting.<sup>58</sup> He did, however, tell the Commission about his usual practice in bringing a document such as AM's letter to the meetings:

My normal practice in doing such a thing would be to refresh my own mind when I explained it to the panel what it was that was in the letter. I didn't read the letter to them; just so it was there in front of me as I spoke to it.<sup>59</sup>

C3.41 Malone gave further evidence that when he brought such material to meetings it was not handed around.<sup>60</sup>

C3.42 The Commission later obtained a signed statement that Malone had provided to police in September 2013 and that referred to the Towards Healing Consultative Panel meeting. In that statement Malone said:

I also **tabled** a copy of his letter to me, to the Towards Healing panel in the Diocese which is an advisory group, to determine a plan of action to take matters of sexual abuse forward. I told the panel I had visited [AM], it had been a good pastoral visit, and that I had written to AM outlining what the Diocese had to offer. The panel approved a course of action I had taken with very little comment ...<sup>61</sup> [emphasis added]

C3.43 At the time of the panel meeting on 19 August 2010 Malone was yet to meet with AM – that meeting taking place a week later, on 26 August 2010 (as noted below). It was therefore not possible for him to have told the panel on 19 August 2010 that he had visited AM and that it had been a good pastoral visit. Nor by this stage had Malone written to AM outlining what the Diocese had to offer: his letter of reply was dated 2 September 2010 (as detailed further below). In his evidence Malone explained that the account in his police statement was his best recollection at the time, in the absence of relevant documentation.<sup>62</sup>

C3.44 Counsel assisting also pressed Malone on why his police statement recounted events occurring at the panel meeting as if this was an actual recollection, as opposed to a reconstruction that relied on his usual practice in providing information. This question clearly arose in view of Malone's oral evidence to the Commission in July 2013 – that he had no recollection of the panel meeting of 19 August 2010. Malone said the police statement simply contained his recollection, as 'good or bad as it was', as relayed during his police interview of 26 September 2013.<sup>63</sup>

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<sup>55</sup> TOR 2, T31.31–33 (Malone in camera, 16 July 2013, at 10.24am).

<sup>56</sup> TOR 2, T31.26–29 (Malone in camera, 16 July 2013, at 10.24am).

<sup>57</sup> TOR 2, T31.35–41 (Malone in camera, 16 July 2013, at 10.24am).

<sup>58</sup> TOR 2, T56.39–45 (Malone in camera, 16 July 2013, at 10.24am).

<sup>59</sup> TOR 2, T59.10–14 (Malone in camera, 16 July 2013, at 10.24am).

<sup>60</sup> TOR 2, T59.3–18 (Malone in camera, 16 July 2013, at 10.24am).

<sup>61</sup> NSW Police statement of Malone, dated 26 September 2013, conf ex KKKK, para 18.

<sup>62</sup> TOR 2, T5.29–40 (Malone in camera, 22 November 2013).

<sup>63</sup> TOR 2, T11.16–29 (Malone in camera, 22 November 2013).

C3.45 In oral evidence Malone explained the term ‘tabled’, as used in his police statement:

... there are probably two interpretations for “tabled”. One would be to table the letter with copies for everybody present; another would be simply to hold the letter in my hand and to give those present a rough précis of its contents.<sup>64</sup>

He then gave evidence that he had a specific recollection of holding a copy of AM’s letter in his hand while he spoke of it at the meeting.<sup>65</sup> He told the Commission his recollection was vague in terms of what he had said about AM’s letter but that he *would* have spoken about its contents.<sup>66</sup>

C3.46 Malone was questioned about whether it was his usual practice to mention to the Towards Healing Consultative Panel the circumstances of a victim of sexual abuse having previously reported to a church official and no action having been taken. He replied, ‘It may have been, yes. I mean, according to my usual practice, I would have said something along those lines yes’.<sup>67</sup> Malone also agreed that was the sort of thing that would be brought up as part of the factual description of the complainant’s situation. He could not, however, remember whether he had conveyed that particular information about AM on this occasion.<sup>68</sup> Again on the basis of his usual practice, Malone said it was the sort of thing that he would have said: ‘I’m usually pretty up front with my advisory bodies, and that would have been my normal practice’.<sup>69</sup> It was also, he said, part of his usual practice to mention the identity of the person or church official to whom a victim of child sexual abuse had previously reported.<sup>70</sup> He was not able to say why he would have diverged from his usual practice in this instance.<sup>71</sup> This evidence is in conflict with Malone’s initial evidence that he did not think he had referred to the allegations against Wilson during the panel’s meeting.

C3.47 Malone also told the Commission there would be no sensitivity in relation to the recipient of the earlier complaint being an archbishop.<sup>72</sup> He said the significance of the aspects involving Wilson had not entered his mind: ‘I certainly hadn’t considered the ramifications of his name being mentioned in the letter’.<sup>73</sup>

C3.48 Evidently on instructions, counsel for the Diocese then put to Malone that he did not in fact refer to the aspect of the letter that dealt with Wilson at the meeting. Malone gave evidence that he could not be sure whether he did or not:

Q. Given that background, namely that you have not appreciated the significance of that aspect of the letter —

A. Yes.

Q. — you did not say anything about that aspect in précis of the letter you gave to the meeting.

A. Not necessarily. Again, I didn’t realise the significance of the second aspect, as you describe it. Therefore, my usual practice is to describe the contents of the letter. I would have said that [AM] had reported this in 1976 to Archbishop Wilson but I mean without necessarily saying, you know, ‘Shock, horror, nothing happened about it.’ It was just a fact that was in the letter.

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<sup>64</sup> TOR 2, T5.3–7 (Malone in camera, 22 November 2013).

<sup>65</sup> TOR 2, T14.25–30 (Malone in camera, 22 November 2013).

<sup>66</sup> TOR 2, T14.32–38 (Malone in camera, 22 November 2013).

<sup>67</sup> TOR 2, T27.11–18 (Malone in camera, 22 November 2013).

<sup>68</sup> TOR 2, T27.20–29 (Malone in camera, 22 November 2013).

<sup>69</sup> TOR 2, T27.31–34 (Malone in camera, 22 November 2013).

<sup>70</sup> TOR 2, T27.36–40 (Malone in camera, 22 November 2013).

<sup>71</sup> TOR 2, T34.16–19 (Malone in camera, 22 November 2013).

<sup>72</sup> TOR 2, T34.21–23 (Malone in camera, 22 November 2013).

<sup>73</sup> TOR 2, T61.41–42 (Malone in camera, 22 November 2013).

- Q. Can I suggest to you that that is not the case and that the evidence that you gave on 16 July on this topic ought to be accepted? You were asked on that occasion whether you had raised anything about Archbishop Wilson in that meeting and you said 'I don't think I did'. Can I suggest to you that that is the most likely truth as to what was said at the meeting by you?
- A. Yes, again, you know, this is the issue of recollection versus my usual practice. I can't say yea or nay to that, frankly.
- Q. In any event, I am putting to you that you did not in fact do that.
- A. Well, you could be right. I don't know.<sup>74</sup>

C3.49 Malone said he had no recollection of discussing AM with the Towards Healing Consultative Panel at any time.<sup>75</sup> Had he done so at a subsequent meeting, he said it was possible that such a discussion would not be minuted in any detail. He agreed, however, that, had he mentioned a visit to AM, that was something that would be minuted.<sup>76</sup>

C3.50 The minutes of the following two panel meetings, on 11 November 2010 and 17 February 2011, make no mention of any further oral report to the panel by Malone about AM or a second Fletcher victim;<sup>77</sup> nor do any minutes of subsequent panel meetings. The addition 'Bishop Michael meeting with another possible victim' does, however, appear next to Fletcher's name in the 'Healing Matters' parts of the case summary document attached to the minutes of those two meetings.

### Ms Doyle's evidence

C3.51 Ms Elizabeth Doyle had been on the Towards Healing Consultative Panel since the end of 2008.<sup>78</sup> As shown in the minutes of the 19 August 2010 meeting, she attended the meeting as the minutes secretary. In the ordinary course of events, she would have typed up the minutes; she could not, however, recall typing up the minutes of the 19 August 2010 meeting.<sup>79</sup>

C3.52 Doyle said that since Tynan had been the Manager at Zimmerman Services, from September 2009, he would provide regular updates to the panel on current matters, as would O'Hearn on occasion. There 'was virtually always a written report' that was given and tabled. Sometimes other things were dealt with verbally. Generally, Mr Peter Owens, Mr Mark Sullivan or others on the panel would also sign the written report.<sup>80</sup>

C3.53 In relation to her usual practice for minuting a document that had been tabled at a panel meeting, Doyle explained, 'It would probably be minuted exactly like a document, whatever was tabled' and that normally the document would be annexed to the minutes if it had been tabled.<sup>81</sup> Doyle told the Commission there was nothing in the minutes of the 19 August 2010 meeting to show that AM's letter to Malone was tabled.<sup>82</sup>

C3.54 On being shown the relevant extract from the minutes of 19 August (as shown in Figure C3.1), Doyle confirmed that she knew the genesis of the matter, having read AM's letter. She could not, however, recall whether AM's name had been mentioned during the meeting. Nor could

<sup>74</sup> TOR 2, T62.8–47 (Malone in camera, 22 November 2013).

<sup>75</sup> TOR 2, T16.14–18 (Malone in camera, 22 November 2013).

<sup>76</sup> TOR 2, T16.20–27 (Malone in camera, 22 November 2013).

<sup>77</sup> Towards Healing Consultative Panel meeting minutes, dated 11 November 2010, conf ex LLLL; Towards Healing Consultative Panel meeting minutes, dated 17 February 2011, conf ex MMMM.

<sup>78</sup> TOR 2, T23.19–21 (Doyle in camera, 13 August 2013).

<sup>79</sup> TOR 2, T22.1–22 (Doyle in camera, 13 August 2013).

<sup>80</sup> TOR 2, T23.23–44 (Doyle in camera 13 August 2013).

<sup>81</sup> TOR 2, T22.24–34 (Doyle in camera 13 August 2013).

<sup>82</sup> TOR 2, T24.40–44 (Doyle in camera 13 August 2013).



she assist in relation to the amount of discussion, if any, about the ‘new victim’ of Fletcher coming forward.<sup>83</sup>

C3.55 As to the frequency with which new victims were noted at panel meetings, Doyle said it was hard to say since many of the reports were merely updates. She agreed, however, that in contrast to the situation with McAlinden, a new victim of Fletcher being mentioned on 19 August 2010 would have been a noteworthy event.<sup>84</sup> She was unable to recall any discussion or reaction on 19 August that centred on Malone having revealed that a new Fletcher victim had come forward.<sup>85</sup> She also could not remember whether any such discussion included an indication that Wilson might have known about the complaint, saying, ‘It’s not ringing a bell, but then I really don’t remember’.<sup>86</sup> Asked whether the suggestion of an archbishop having such knowledge would stay in memory, Doyle said, ‘It probably would have jumped out at the time, but how long I would have held that in my memory for I really don’t know’.<sup>87</sup>

### Mr Tynan’s evidence

C3.56 Mr Sean Tynan, Manager of Zimmerman Services since 21 September 2009, has responsibility for the operations of Zimmerman Services – including providing oversight of the intake,<sup>88</sup> investigations and risk management processes adopted – and for keeping the bishop apprised of matters relating to child protection in the Diocese.<sup>89</sup>

### *The Towards Healing Consultative Panel meeting of 19 August 2010*

C3.57 Tynan told the Commission he did not clearly remember whether there was a discussion during the Towards Healing Consultative Panel meeting of 19 August 2010 about a new victim of Fletcher coming forward. He assumed Malone said something about it during the meeting because it was recorded in the minutes, but he could not recall anything else. Although the reference to the new Fletcher victim appeared in the minutes under the heading ‘Reports: Zimmerman House – update on current matters (Sean Tynan)’, Tynan explained that this did not mean he provided that information: others might have spoken and their comments might have been recorded in that section of the minutes.<sup>90</sup>

C3.58 In a statutory declaration dated 7 January 2014 Tynan stated that he did not recall Wilson’s name being mentioned at the panel meeting of 19 August 2010. He thought he would have recalled Wilson’s name coming up during the meeting since he had a heightened awareness of Wilson because of the defamation correspondence sent only months earlier (see paras C3.30 to C3.35).<sup>91</sup>

### *Preparation of the Clergy Case Summary Report*

C3.59 Tynan told the Commission that the Towards Healing Consultative Panel’s, ‘Clergy Case Summary Report’ document attached to the minutes of a panel meeting was prepared by him ‘for the most part’.<sup>92</sup> As a general rule, he prepared this part of the document, while Ms Maureen O’Hearn prepared the ‘Healing Matters’ part.<sup>93</sup> Tynan did not, however, have a

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<sup>83</sup> TOR 2, T24.15–38 (Doyle in camera 13 August 2013).

<sup>84</sup> TOR 2, T24.46–25.22 (Doyle in camera, 13 August 2013).

<sup>85</sup> TOR 2, T25.24–28 (Doyle in camera, 13 August 2013).

<sup>86</sup> TOR 2, T25.30–35 (Doyle in camera, 13 August 2013).

<sup>87</sup> TOR 2, T25.37–43 (Doyle in camera, 13 August 2013).

<sup>88</sup> Intake is the process of gathering information, recording, analysing and classifying information, and then ensuring appropriate follow-up action: statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, paras 18–19.

<sup>89</sup> Statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, paras 15, 27.

<sup>90</sup> TOR 2, T83.28–85.27 (Tynan in camera, 14 August 2013).

<sup>91</sup> Statutory declaration of Tynan, dated 7 January 2014, conf ex FFFFF, paras 3–4.

<sup>92</sup> TOR 2, T128.15–16 (Tynan in camera, 14 August 2013).

<sup>93</sup> TOR 2, T128.30–35 (Tynan in camera, 14 August 2013).



specific recollection of how this part of the document was prepared on this occasion. In relation to the reference to ‘2 of Jim Fletchers (Bishop Michael meeting with another possible victim)’ (as shown in Figure C3.2), Tynan said he believed it meant there were two currently active cases concerning Fletcher, plus a new one.<sup>94</sup>

C3.60 Tynan said he had a vague memory of a discussion with O’Hearn about the two Fletcher victims and the mention of ‘Bishop Michael’ in the report but said he had ‘no great certainty around that at all’.<sup>95</sup> He also believed he might have had more than one conversation with O’Hearn about the matter: one could have been in relation to the preparation of the report, and he also had a recollection that he might have spoken to O’Hearn after receiving Malone’s 6 September 2010 letter to AM (discussed below).<sup>96</sup>

### Other Towards Healing Consultative Panel members

C3.61 The Commission called a number of other panel members who attended the 19 August 2010 Towards Healing Consultative Panel meeting to give evidence at in camera hearings – Sister Patricia Egan, Mr David Ryan, Mr Peter Owens and Mr Mark Sullivan.

C3.62 Those panel members gave evidence about the general nature of their advisory role on the panel. In this respect, Malone would bring matters to the panel, and ask for their advice.<sup>97</sup> Sister Egan told the Commission Malone listened to and carefully considered the advice from the panel.<sup>98</sup> On the matter of reporting requirements (including to the police), Owens explained that by 2010 Bishop Malone ‘knew quite a deal about what his obligations were to report matters’ and that it was not the panel’s role to ‘police what the bishop did or didn’t do. We were an advisory panel for him’.<sup>99</sup>

C3.63 The Commission also heard evidence from these panel members in relation to Bishop Malone’s concern and sympathy for victims, which grew stronger over time.<sup>100</sup> Sullivan said Malone was ‘very close to victims’ and that a concern for victims was one of Malone’s prime motivations.<sup>101</sup>

C3.64 Ryan told the Commission that from time to time there were documents presented at the panel meetings for members to peruse, the content of which ‘should have been recorded in the minutes of the meeting’.<sup>102</sup> Ryan agreed it was also the case that rather than hand around documents he had brought to meetings, Malone would instead speak to documents that he had with him.<sup>103</sup>

C3.65 When shown the minutes from the meeting of 19 August 2010, none of Ryan, Owens and Sullivan was able to assist with any recollection of the minuted matters relating to the ‘new victim of Fletcher coming forward’.<sup>104</sup> Sister Egan, however, on being shown the minutes of that meeting, had a recollection of the matter of a further Fletcher victim being mentioned. As to whether there was any discussion about the new victim, she said, ‘No. No, I don’t think there was any discussion about it. It was just – it was just mentioned as a fact that there’s another

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<sup>94</sup> TOR 2, T82.20–39; T84.21–85.1 (Tynan in camera, 14 August 2013).

<sup>95</sup> TOR 2, T82.36–39 (Tynan in camera, 14 August 2013).

<sup>96</sup> TOR 2, T82.30–83.7 (Tynan in camera, 14 August 2013).

<sup>97</sup> TOR 2, T5.22–29 (Owens in camera, 14 April 2014).

<sup>98</sup> TOR 2, T8.4–9 (Ryan in camera, 14 April 2014); TOR 2, T4.31–33 (Egan in camera, 14 April 2014); TOR 2, T8.29.35–44 (Owens in camera, 14 April 2014).

<sup>99</sup> TOR 2, T10.41–11.3 (Owens in camera, 14 April 2014).

<sup>100</sup> TOR 2, T5.24–32 (Egan in camera, 14 April 2014).

<sup>101</sup> TOR 2, T12.9–12; T13.23–27 (Sullivan in camera, 14 April 2014).

<sup>102</sup> TOR 2, T7.1–12 (Ryan in camera, 14 April 2014).

<sup>103</sup> TOR 2, T7.22–25 (Ryan in camera, 14 April 2014).

<sup>104</sup> Private hearing transcript of evidence of Owens, dated 11 December 2013, conf ex LLLLL, T22.7–9, 37–39; private hearing transcript of evidence of Ryan, dated 11 December 2013, conf ex KKKKK, T12.16–13.25; private hearing transcript of evidence of Sullivan, dated 11 December 2013, conf ex NNNNN, T11.36–14.17.

victim, yes ...<sup>105</sup> Egan also stated that beyond one particular priest (Father Brennan), she could not recall any other priests of the Diocese being mentioned at panel meetings in the context of concealing information.<sup>106</sup>

### Ms O’Hearn’s evidence

- C3.66 Ms Maureen O’Hearn is Coordinator of Healing and Support at Zimmerman Services, having held that position since December 2007.<sup>107</sup>
- C3.67 Her evidence was that she occasionally attended Towards Healing Consultative Panel meetings, if Tynan was unable to attend, in order to provide to the panel a report from Zimmerman Services. She otherwise provided to Tynan statistical information for the ‘Healing Matters’ report about the number of new victims coming forward and the number she had seen in the past couple of months.<sup>108</sup>
- C3.68 O’Hearn did not attend the panel meeting on 19 August 2010.<sup>109</sup> In a statutory declaration dated 14 January 2014, however, she stated that ‘with the passage of time’ she could not now recall preparing the ‘Healing Matters’ section of the report for that meeting. She was thus unable to recall preparing the reference to ‘2 of Jim Fletchers (Bishop Michael meeting with another possible victim)’.<sup>110</sup>
- C3.69 O’Hearn confirmed that to her knowledge the subject of AM was not raised at any panel meeting she attended.<sup>111</sup> Indeed, she told the Commission that until January 2013 she had heard of only three victims of Fletcher – Gogarty, AH and AB. She did not recall any discussion among Zimmerman Services staff about the existence of another Fletcher victim.<sup>112</sup> She said she first became aware of AM after receiving a telephone call from Commission personnel on or about 29 January 2013.<sup>113</sup> O’Hearn’s evidence about subsequent discussions with Tynan in relation to AM’s letter is set out in paragraph C3.122 and following.

### Conclusions

- C3.70 The Commission accepts the evidence of Towards Healing Consultative Panel members Ryan, Owens, Sullivan and Egan that Malone listened to and carefully considered their advice on the matters he brought to them. It also accepts that at panel meetings Malone demonstrated a concern for victims (which grew stronger over time) and a focus on pastoral care.
- C3.71 Notwithstanding this, the Commission regards Malone’s evidence relating to events surrounding the Towards Healing Consultative Panel meeting of 19 August 2010 as unsatisfactory in a number of respects. Malone initially professed no recollection of the meeting at all. He subsequently departed from this to suggest that he did not refer to the allegations against Wilson during the meeting. In his police statement dated 26 September 2013, however, he referred to events that occurred at the 19 August 2010 meeting in terms of an apparent recollection of specific matters that arose during the meeting. Under questioning by counsel

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<sup>105</sup> Private hearing transcript of evidence of Egan, dated 11 December 2013, conf ex JJJJ, T17.23–27; TOR 2, T13.30–43 (Egan in camera, 14 April 2014).

<sup>106</sup> Private hearing transcript of evidence of Egan, dated 11 December 2013, conf ex JJJJ, T18.20–24.

<sup>107</sup> TOR 2, T2.43–3.1 (O’Hearn in camera, 12 August 2013).

<sup>108</sup> TOR 2, T8.13–42 (O’Hearn in camera, 12 August 2013).

<sup>109</sup> The minutes record Malone, Owens, Burston, Ryan and Egan (panel members) and Doyle as minute secretary attending; they also note Tynan from Zimmerman House as in attendance: Towards Healing Consultative Panel meeting minutes, dated 19 August 2010, conf ex PPP.

<sup>110</sup> Statutory declaration of O’Hearn, dated 14 January 2014, conf ex IIIII, para 5.

<sup>111</sup> TOR 2, T9.7–10 (O’Hearn in camera, 12 August 2013).

<sup>112</sup> TOR 2, T7.26–45 (O’Hearn in camera, 12 August 2013).

<sup>113</sup> Statutory declaration of O’Hearn, dated 26 June 2013, conf ex FFF, para 4.

assisting, Malone subsequently conceded that he was in fact referring to events reconstructed by him on the basis of his usual practice. Malone also later told the Commission that, in accordance with his usual practice, he would have spoken about AM's report to Wilson as a fact referred to in the letter but subsequently agreed that he might not have actually done so. Malone accordingly gave inconsistent accounts of his recollection of the Towards Healing Consultative Panel meeting of 19 August 2010.

- C3.72 In addition, Malone's assertion in the police statement that he '... also *tabled* a copy of [AM's letter]' did not accurately reflect his oral evidence before the Commission – namely, stating that he held a copy of the letter in his hand and recalled speaking about it. The language of 'tabling' a letter ordinarily connotes a specific act of providing or putting forward a copy of the letter for discussion or consideration by those present at the meeting, as distinct from simply speaking about the contents of the letter whilst holding a copy of it in one's hand. The Commission finds that the letter was not 'tabled' within the usual meaning of the word – in the sense of being distributed for general consideration and discussion. The Commission formed the view that in his police statement Malone was trying to suggest that he had shared information in the letter with the Towards Healing Consultative Panel.
- C3.73 The Commission accepts Malone's evidence that he took a copy of AM's letter to the panel meeting on 19 August 2010. It finds, however, that during the meeting Malone did not refer to the details of AM's letter and, in particular, did not refer to the allegations relating to Wilson; nor did he name the archbishop. Malone's evidence was uncertain and inconsistent in relation to the disclosure of any details of AM's letter (including whether Malone referred to AM's alleged report to Wilson) at the meeting. The minutes of the panel meeting do not record AM's letter as having been 'tabled' or otherwise referred to; nor do they contain any mention of Wilson.
- C3.74 The Commission accepts Tynan's evidence that he did not recall Wilson's name being mentioned during the meeting and that at that time he had a heightened awareness of Wilson because of the defamation-related correspondence directed to him by Wilson's solicitors in June 2010. The Commission also accepts Doyle's evidence that the revelation of a new Fletcher victim would have been noteworthy in that it 'would have jumped out at the time' (relative, for example, to a more prolific offender such as McAlinden) had it been raised at the meeting. The evidence of Sister Egan also supports the finding that there was no further discussion at the meeting beyond mention of there being a new Fletcher victim.
- C3.75 Malone's evidence that there was no sensitivity attending Wilson's alleged involvement in concealing child sexual abuse was implausible: not only was the person accused of such conduct the Archbishop of Adelaide; he was also a cleric with a high profile in connection with the Catholic Church's response to child sexual abuse, beginning with his episcopacy in Wollongong from 1996. The Commission rejects Malone's evidence on this.
- C3.76 There is no reference in the minutes of subsequent Towards Healing Consultative Panel meetings to Malone having provided an update on the position in relation to the new Fletcher victim, including how the pastoral visit on 26 August 2010 had gone – a matter Malone said would have been minuted had it been mentioned. Had the update been provided, one might reasonably expect that the minutes of the November meeting would have recorded that Malone had provided an update on his meeting with AM and also have noted that Malone had sent a reply to AM, outlining a number of options for him to consider. The absence of any such account in the minutes is consistent with Malone's absence of any recollection of such steps having been notified to the panel. The Commission finds that no such update was provided by Malone.
- C3.77 The apparent absence of any such oral update by Malone to the panel is of note given that the revelation of a new Fletcher victim was something out of the ordinary (relative to reports from other more prolific offenders), as Doyle confirmed in her evidence. There is no documentary

record, including in the minutes, that any other panel member – in particular, Tynan – sought to follow up on the status of the new Fletcher victim at any later date.

- C3.78 The Commission accepts that, consistent with her evidence, O’Hearn did not know of the possible new Fletcher victim until January 2013. Although Tynan was clearly on notice of the possible new Fletcher victim, having prepared the Towards Healing Consultative Panel report, which included reference to the new Fletcher victim, the Commission does not consider he was aware of the specifics at that stage (including that one aspect of AM’s complaint was that in 1976 he had reported Fletcher’s sexual abuse of him to then Father Philip Wilson).
- C3.79 As to the basis for the information referred to in the ‘Healing Matters’ report, Tynan’s evidence was that, at least as ‘a general rule’, O’Hearn provided to him material for that part of the report. Tynan was unable to draw on a specific recollection of having discussed with her the parts relating to Fletcher in the ‘Healing Matters’ report referable to the coming meeting on 19 August 2010 or of a particular email exchange on the subject. The Commission considers that it was Tynan who added the parenthetical information about ‘Bishop Michael meeting another possible victim’ in the ‘Healing Matters’ section of the report. In this respect, the Commission accepts O’Hearn’s evidence that, had she been aware of another possible victim, she would have taken particular steps in relation to that information; the evidence indicates that she took no such steps. The Commission considers Tynan is mistaken in his (admittedly vague) recollection of having discussed the question of the new Fletcher victim with O’Hearn before preparing his report for the panel meeting and of having spoken to O’Hearn after receiving Malone’s 2 September 2010 letter.

## Bishop Malone’s meeting with AM, 26 August 2010

### Bishop Malone’s evidence

- C3.80 Malone met with AM at AM’s home on 26 August 2010.<sup>114</sup>
- C3.81 Malone’s evidence was that in the usual course of events he would have taken a member of the Zimmerman Services staff with him for an interview such as that arranged with AM.<sup>115</sup> In 2010 and 2011 it was his practice to personally attend to interview individuals who complained of sexual abuse, and most often these people had already had dealings with Zimmerman Services.<sup>116</sup> In view of that, Malone would meet with abuse victims for the purpose of hearing their story, offering an apology, and making sure they were being well cared for in terms of attention to their needs.<sup>117</sup>
- C3.82 For her part, O’Hearn confirmed that Malone had met with victims of sexual abuse by clergy, but she understood this was normally done when either she or Ms Helen Keevers (during her time) was present. There was, however, no written directive or protocol in this regard.<sup>118</sup> O’Hearn said that the meetings often took place at Diocesan headquarters but sometimes at Zimmerman Services. If O’Hearn attended the meeting she would make a file note for the person’s file.<sup>119</sup>

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<sup>114</sup> TOR 2, T36.26–43 (Malone in camera, 16 July 2013, at 10.24am); NSW Police statement of Malone, dated 26 September 2013, conf ex KKKK, para 11; see also diary entry by Malone, dated 26 August 2010, conf ex KKKK. Note that while in certain evidence Malone refers to the meeting having been on 28 August 2010 the balance of the evidence clearly supports 26 August 2010 as the date of the meeting.

<sup>115</sup> TOR 2, T18.8–12 (Malone in camera, 16 July 2013 at 10.24am).

<sup>116</sup> TOR 2, T17.32–45 (Malone in camera, 16 July 2013 at 10.24am).

<sup>117</sup> TOR 2, T18.1–6 (Malone, in camera, 16 July 2013 at 10.24am).

<sup>118</sup> TOR 2, T6.3–20; T20.36–21.21 (O’Hearn in camera, 12 August 2013).

<sup>119</sup> TOR 2, T6.28–41 (O’Hearn in camera, 12 August 2013).

C3.83 Malone recalled that no one else was present at the meeting with AM: it was just he and AM.<sup>120</sup> He also said he had never personally attended the home of a victim before his meeting with AM.<sup>121</sup> When asked why he did not bring a Zimmerman Services staff member (such as O’Hearn) with him to the meeting, Malone explained:<sup>122</sup>

... I went to [AM]’s house. I think my thinking behind that was that, you know, this poor man had been suffering since 1970 and it was necessary, with great difficulty, for him to tell the story to the church. He seemed to think that I would be somebody who would be sympathetic to that, so, on the strength of his particular situation, I made the phone call to him and arranged to call and see him, which I did, and since I was in the area for another function, I didn’t have anybody with me.<sup>123</sup>

C3.84 Malone confirmed – as recorded in his diary<sup>124</sup> – that the meeting with AM occurred on Thursday 26 August 2010. He said that earlier that day he had attended a Chaplain’s Day at a location near AM’s residence.<sup>125</sup> The main purpose of the meeting with AM was to offer him pastoral support and empathy.<sup>126</sup> It was also to offer AM the opportunity to participate in the Towards Healing program.<sup>127</sup>

C3.85 Malone made a handwritten note while he was speaking to AM at the face-to-face meeting (see Figure C3.3).<sup>128</sup>

1970 - at St. Joseph's Church,  
East Maitland

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- force - AM was beaten by Flora  
- sworn to silence  
parent's business will be ruined

---

support group  
Towards Healing  
Psychologist  
money

Figure C3.3 Handwritten note made by Malone during his meeting with AM, 26 August 2010<sup>129</sup>

<sup>120</sup> TOR 2, T18.37–41 (Malone in camera, 16 July 2013, at 10.24am).

<sup>121</sup> TOR 2, T18.27–35 (Malone in camera, 16 July 2013, at 10.24am).

<sup>122</sup> TOR 2, T18.8–25 (Malone in camera, 16 July 2013, at 10.24am).

<sup>123</sup> TOR 2, T18.17–25 (Malone in camera, 16 July 2013, at 10.24am).

<sup>124</sup> TOR 2, T36.26–43 (Malone, in camera, 16 July 2013); see also diary entry by Malone, dated 26 August 2010, conf ex KKKK.

<sup>125</sup> TOR 2, T 55.47–56.20 (Malone in camera, 22 November 2013).

<sup>126</sup> TOR 2, T8.26–32 (Malone in camera, 15 July 2013, at 1.10pm).

<sup>127</sup> TOR 2, T10.3–5 (Malone in camera, 15 July 2013, at 1.10pm).

<sup>128</sup> TOR 2, T17.10–19 (Malone in camera, 16 July 2013, at 10.24am).

- C3.86 Malone said it was not his usual practice to make notes of matters discussed during a meeting with a victim of sexual abuse: 'I sort of listen to their story rather than ... writing in front of them'.<sup>130</sup> He said he took notes of the meeting with AM, however, '... for my own sake to keep a record of what [AM] was telling me'.<sup>131</sup>
- C3.87 Malone acknowledged that he saw AM's letter as a plea for help in dealing with the abuse he had experienced.<sup>132</sup> He described AM as 'a very impressive man ... certainly [a man of] faith'.<sup>133</sup> The meeting lasted for at least an hour, probably an hour and 15 minutes.<sup>134</sup> There was nothing during that time that caused Malone to waver from his acceptance of the matters AM had complained about: Malone thought AM a 'fine man'.<sup>135</sup> He agreed that AM was sincere, open and forthcoming during the meeting, despite his nervousness about the subject matter.<sup>136</sup>
- C3.88 Malone said he could not recollect whether AM had outlined any of the acts of sexual abuse perpetrated by Fletcher, nor whether there was any mention during the meeting of AM having told Wilson in 1976 what Fletcher had done to him.<sup>137</sup>
- C3.89 Malone gave evidence that he understood AM's letter as having involved a plea to him (Malone), as AM's spiritual leader, to help him in relation to the 'extremely grave' betrayal<sup>138</sup> AM suffered because of Fletcher's abuse, as well as feelings of betrayal at having told the Church of the abuse in 1976 and nothing being done.<sup>139</sup> When asked whether those matters were also conveyed by AM at the meeting, Malone agreed that they were but added:
- '... **I don't know whether the cover-up matter was discussed all that much between us.** I think it was more a matter of me empathising with him to the point where I was encouraging him to take advantage of the programs we had to offer in Zimmerman House. It was more of a therapeutic conversation than it was going over what he said in his letter.<sup>140</sup> [emphasis added]
- C3.90 Malone's police statement of 26 September 2013 was in this respect in stark contrast with this oral evidence given to the Commission in July 2013.<sup>141</sup> In the police statement Malone gave the following account of the meeting with AM on 26 August 2010:
- [AM] went on to tell me that he had been married but his marriage had broken up. He outlined a fairly familiar story of the consequences of sexual abuse in regard to his ability to settle, to hold relationships firmly in hand, and confusion about his Catholic faith because he had been abused by a Catholic priest. **He also revealed his disillusionment that, having spoken to Fr Philip Wilson, nothing seemed to have happened, and that he, to that day some 40 years later, still did not know whether the matter had been reported to the Bishop at that time.**<sup>142</sup> [emphasis added]

<sup>129</sup> Handwritten note made by Malone during meeting with AM on 26 August 2010, conf ex Z, p 1.

<sup>130</sup> TOR 2, T17.24–25 (Malone in camera, 16 July 2013, at 10.24am).

<sup>131</sup> TOR 2, T17.29–30 (Malone in camera, 16 July 2013, at 10.24am).

<sup>132</sup> TOR 2, T42.15–18 (Malone in camera, 16 July 2013, at 10.24am).

<sup>133</sup> TOR 2, T42.30–33 (Malone in camera, 16 July 2013, at 10.24am).

<sup>134</sup> TOR 2, T7.41–43 (Malone in camera, 15 July 2013, at 1.10pm).

<sup>135</sup> TOR 2, T8.6–10 (Malone in camera, 15 July 2013, at 1.10pm).

<sup>136</sup> TOR 2, T6.39–47 (Malone in camera, 15 July 2013, at 1.10pm).

<sup>137</sup> TOR 2, T4.7–28 (Malone in camera, 15 July 2013, at 1.10pm).

<sup>138</sup> TOR 2, T42.35–40 (Malone in camera, 16 July 2013, at 10.24am).

<sup>139</sup> TOR 2, T43.34–44 (Malone in camera, 16 July 2013, at 10.24am).

<sup>140</sup> TOR 2, T43.27–44.7 (Malone in camera, 16 July 2013, at 10.24am).

<sup>141</sup> The Commission obtained a copy of this police statement having regard to a request by Malone's legal representatives for it to be provided in preparation for further examination regarding matters relating to Malone's cooperation with the Strike Force Lantle investigation at an in camera hearing on 22 November 2013. The statement was subsequently produced by NSW Police under summons.

<sup>142</sup> NSW Police statement of Malone, dated 26 September 2013, conf ex KKKK, para 11.

- C3.91 This specific recollection of AM's 'disillusionment' in relation to Wilson's dealing with the report about Fletcher directly contrasted with Malone's evidence before the Commission, in which he said he was unable to remember whether the matter was discussed during the meeting.
- C3.92 Under further examination by counsel assisting at a subsequent in camera hearing in November 2013, Malone conceded that he was in fact 'hazy' about whether the discussion actually occurred in the way described in his police statement.<sup>143</sup> He thought it was possible that some hindsight knowledge had made its way into the statement, noting, 'It stands to reason, because he's mentioned it in his letter, that that would have cropped up in the course of the conversation'.<sup>144</sup>

### AM's evidence

- C3.93 AM recalled that the meeting with the bishop had been organised as a result of an earlier telephone call from Malone to set a time for a 'face-to-face' meeting. AM said he was alone with Malone at the meeting and they spoke for a good hour-and-a-half.<sup>145</sup>
- C3.94 AM said that at the meeting he had recounted some of the details of what Fletcher had done to him and also what he (AM) had said to Wilson. AM said Malone did not ask any clarifying questions about either aspect; AM formed the view, however, that Malone accepted his account of the abuse and that AM had discussed the matter with Wilson in 1976.<sup>146</sup>

### Conclusion

- C3.95 Malone initially told the Commission in July 2013 that he could not recall whether the alleged 'cover-up' by Wilson was discussed with AM during the meeting on 26 August 2010. This was inconsistent with the specific account provided in his police statement two months after he had given that sworn evidence. Subsequently, in November 2013, Malone gave evidence to the Commission that he was 'hazy' about whether the description in the police statement was in fact correct. AM's evidence was to the effect that at the meeting he raised with Malone what he (AM) had said to Wilson in 1976. AM perceived that Malone accepted what he told him in this regard.
- C3.96 The Commission accepts AM's evidence about the meeting with Malone, including that he raised with Malone what he had told Wilson in 1976. AM was a credible witness, and his account is supported by the version Malone provided in his September 2013 police statement, which refers to AM's asserted disclosure to Wilson as having been discussed.

## Bishop Malone's letter of reply to AM, 2 September 2010

- C3.97 By letter dated 2 September 2010 Malone sent a reply to AM. Doyle confirmed that she typed it (a copy of which appears at Appendix CB).<sup>147</sup> The reply was also copied to Tynan, as Manager of Zimmerman Services,<sup>148</sup> at the request of Malone.<sup>149</sup>
- C3.98 Accompanying the letter of reply were a Towards Healing document, a Towards Healing brochure and some information about Zimmerman Services. The letter also referred to the

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<sup>143</sup> TOR 2, T49.5–18 (Malone in camera, 22 November 2013).

<sup>144</sup> TOR 2, T48.36–38 (Malone in camera, 22 November 2013).

<sup>145</sup> TOR 2, T24.30–25.10 (AM in camera, 21 June 2013).

<sup>146</sup> TOR 2, T25.12–27.19 (AM in camera, 21 June 2013).

<sup>147</sup> TOR 2, T27.15–18 (AM in camera, 21 June 2013); TOR 2, T10.18–27 (Doyle in camera, 13 August 2013); see also Letter from Malone to AM, dated 2 September 2010, conf ex Z.

<sup>148</sup> TOR 2, T10.5–13.10 (Doyle in camera, 13 August 2013); TOR 2, T64.19–23 (Tynan in camera, 14 August 2013), email from Doyle to Tynan, dated 6 September 2010 and letter from Malone to AM, dated 2 September 2010, conf ex Z.

<sup>149</sup> TOR 2, T27.39–43 (Doyle in camera, 13 August 2013).



meeting of 26 August 2010 and acknowledged AM's courage in coming forward. Malone reiterated that he accepted AM's 'sad account of abuse' and believed him; he also apologised for Fletcher's 'abominable behaviour', stating, 'As a priest he abused the trust that should have existed. Please accept my deep regret'.<sup>150</sup>

C3.99 The letter noted certain suggestions by way of personal support for AM – those being contact with the Diocesan Child Protection Unit, the entitlement to make a formal complaint through Towards Healing, and a confirmation of the offer to pay for some counselling sessions – and also stated:

4. On consideration, you may wish to pursue damages against the Diocese. You will need to think about this and speak further with either a Solicitor or as part of your formal complaint to "Towards Healing".

All of the above are suggested to you as part of a process of healing. The Diocese and I are prepared to assist, but you need to assume some control over how that process evolves. I cannot and will not tell you what to do – your own wishes need to be respected.<sup>151</sup>

C3.100 Although the initials 'ED' noted after Malone's own initials on the letter confirmed that Doyle had typed the response, this did not mean she also filed the letter. Malone was unsure who had filed it.<sup>152</sup>

C3.101 Doyle's evidence was that, because the letter of reply referred to 'your letter of late July 2010', this suggested that AM's letter of 29 July 2010 had not been provided to her: she was usually quite specific about dates and would have changed it to the particular date of the letter had she received a copy of it.<sup>153</sup>

## **Bishop Malone's asserted instruction to Ms Doyle to send AM's letter and his reply to Zimmerman Services**

### ***Bishop Malone's evidence***

C3.102 In a statement prepared for the Commission and signed in June 2013 Malone said:

My Personal Assistant, Miss Elizabeth Doyle, typed up my response to [AM]. A copy of that letter was filed in the Fletcher file and another copy, including a copy of [AM's] letter of complaint to me was forwarded to Zimmerman House to prepare them for possible contact from [AM]. My letter to Zimmerman House would have been delivered in the internal mail and would have been marked "Private and Confidential" and directed to Mr Sean Tynan. I cannot recall speaking to Sean Tynan about the matter and I believe what I have indicated is the extent of any communication by me in respect of the complaints by [AM].<sup>154</sup>

C3.103 The matter of directing both AM's letter and Malone's reply to Zimmerman Services was also dealt with in Malone's police statement of 26 September 2013:

I sent a copy of my letter, and a copy of [AM's] letter to me, to the Director of Zimmerman House, Sean Tynan, so that he and his staff would be prepared to speak with [AM] should he get in contact.<sup>155</sup>

C3.104 Malone explained that his practice in relation to sexual abuse matters was to ensure that Tynan at Zimmerman Services 'would get the full story' – not just his response but also the complainant's letter – so as to have a better understanding of the situation.<sup>156</sup>

<sup>150</sup> TOR 2, T10.33–37 (Doyle in camera, 13 August 2013); letter from Malone to AM, dated 2 September 2010, conf ex Z.

<sup>151</sup> Letter from Malone to AM, dated 2 September 2010, conf ex Z.

<sup>152</sup> TOR 2, T10.24–27 (Doyle in camera, 13 August 2013); TOR 2, T7.12–25 (Malone in camera, 12 July 2013, at 3.08pm).

<sup>153</sup> TOR 2, T44.23–42 (Doyle in camera, 13 August 2013).

<sup>154</sup> Supplementary statement of Malone, dated 5 June 2013, conf ex Z, para 5.1.

<sup>155</sup> NSW Police statement of Malone, dated 26 September 2013, conf ex KKKK, para 17.



- C3.105 In oral evidence Malone stated that, not only would he have asked Doyle to send both AM’s letter and his reply to Zimmerman Services;<sup>157</sup> he had an actual recollection of doing so.<sup>158</sup> This was his usual practice, and if Doyle had only sent Malone’s letter to AM that would not have been complying with his request.<sup>159</sup> Subsequently, however, Malone was also firm in his evidence that, having worked with Doyle for 15 years, he found her a very reliable personal assistant who always followed his instructions.<sup>160</sup> Additionally, Malone did not think he had any discussions with Doyle about whether she had in fact sent Tynan the letter of complaint from AM, as well as Malone’s letter, stating that he was ‘pretty sure’ he made the request of her and that she then sent both AM’s letter and Malone’s reply in accordance with that request.<sup>161</sup> Under questioning by Doyle’s counsel, however, Malone later conceded that it was possible he forgot to instruct Doyle to include the AM letter with the correspondence sent to Zimmerman House.<sup>162</sup>
- C3.106 On Monday 6 September 2010 Doyle emailed to Tynan a copy of Malone’s response to AM dated 2 September 2010. Doyle attached an electronic copy of the letter, which was therefore not signed by the bishop. That email did not have AM’s letter of complaint attached to it.<sup>163</sup>
- C3.107 Malone told the Commission that he was ‘rather shocked’ to think that Zimmerman Services might not have received AM’s letter and that for three years he had worked on the assumption that it had been sent and received.<sup>164</sup>

*Bishop Malone’s asserted discussion with Mr Tynan, September 2010*

- C3.108 Malone also gave evidence that he was sure he spoke to Tynan the following week to ensure that he had received the letter.<sup>165</sup> He did acknowledge, however, that he had no mental picture of the actual conversation taking place.<sup>166</sup> This evidence was based on his usual practice in dealing with letters of complaint, Malone stating, ‘It was important for me to know that Tynan had the information and that he would be ready therefore to deal with it, should [AM] decide to get in touch’.<sup>167</sup> Malone gave evidence that he was unable to recollect anything said between him and Tynan in relation to the detail of AM’s complaint.<sup>168</sup>
- C3.109 In contrast with this evidence of being sure that he spoke with Tynan to ensure receipt of the letter, in a statement prepared for the Commission, Malone stated:
- My letter to Zimmerman House would have been delivered in the internal mail and would have been marked “Private and Confidential” and directed to Mr Sean Tynan. I **cannot recall speaking to Sean Tynan about the matter** and I believe what I have indicated is the extent of any communication by me in respect of the complaints by [AM].<sup>169</sup> [emphasis added]
- C3.110 Malone said he did not discuss AM’s allegations involving Wilson with Tynan: as to why, he said, ‘Well frankly it didn’t occur to me that that was a significant admission in the letter’.<sup>170</sup>

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<sup>156</sup> TOR 2, T19.40–47 (Malone in camera, dated 16 July 2013, at 10.24am).

<sup>157</sup> TOR 2, T9.20–23 (Malone in camera, 12 July 2013, at 3.08pm).

<sup>158</sup> TOR 2, T9.25–31 (Malone in camera, 12 July 2013, at 3.08pm).

<sup>159</sup> TOR 2, T9.33–10.4 (Malone in camera, 12 July 2013, at 3.08pm).

<sup>160</sup> TOR 2, T40.4–12 (Malone in camera, 16 July 2013, at 10.24am).

<sup>161</sup> TOR 2, T28.37–43 (Malone in camera, 16 July 2013, at 10.24am).

<sup>162</sup> TOR 2, T40.32–37 (Malone in camera, 16 July 2013, at 10.24am).

<sup>163</sup> Email from Doyle to Tynan, dated 6 September 2010 and letter from Malone to AM, dated 2 September 2010, conf ex Z; TOR 2, T12.46–14.5 (Doyle in camera, 13 August 2013).

<sup>164</sup> TOR 2, T40.14–20 (Malone in camera, 16 July 2013, at 10.24am).

<sup>165</sup> TOR 2, T21.1–2 (Malone in camera, 16 July 2013, at 10.24am).

<sup>166</sup> TOR 2, T21.4–12 (Malone in camera, 16 July 2013, at 10.24am).

<sup>167</sup> TOR 2, T21.14–23 (Malone in camera, 16 July 2013, at 10.24am).

<sup>168</sup> TOR 2, T21.37–38 (Malone in camera, 16 July 2013, at 10.24am).

<sup>169</sup> Supplementary statement of Malone, dated 5 June 2013, conf ex Z, para 5.1.

<sup>170</sup> TOR 2, T21.40–47 (Malone in camera, dated 16 July 2013, at 10.24am).

Notwithstanding this, he agreed that AM's letter was notable in respect of its mention of Wilson.<sup>171</sup> Malone did not have any recollection of Tynan raising with him anything relating to Wilson arising from the letter.<sup>172</sup>

### ***Ms Doyle's evidence***

- C3.111 As noted, on 6 September 2010 Doyle emailed to Tynan a copy of Malone's response to AM dated 2 September 2010. She did not send a copy of AM's letter with this email: were she to have done so, her practice would have been to scan it and attach it as a second attachment.<sup>173</sup> Her understanding was that Malone wanted her to send to Tynan a copy of his (Malone's) response to AM.<sup>174</sup> In the absence of Malone's express instructions to send AM's letter, Doyle said she would not have sent it. She had no recollection of the bishop asking her to do that; nor did she have any independent recollection of actually sending it herself; and nor was there any document indicating that she did send it to Tynan.<sup>175</sup> Doyle confirmed, however, that she had no memory on which to challenge Malone's recollection of asking her to send it.<sup>176</sup>
- C3.112 Under examination by Malone's counsel Doyle agreed that the first line of Malone's letter of 2 September 2010 referred to 'your letter of late July 2010 ...', this being a clear reference to AM's letter. She was familiar with this letter, having opened it and attended the Towards Healing Consultative Panel meeting on 19 August 2010, when reference was made to the new Fletcher victim.<sup>177</sup> She also agreed that this was the sort of document she might scan for the purposes of forwarding<sup>178</sup> (as was her practice in dealing with primary documents that referred to enclosures).<sup>179</sup> She accordingly conceded that it was 'in no way certain' that she did not send on AM's letter to Tynan.<sup>180</sup>

### ***Mr Tynan's evidence***

- C3.113 Tynan told the Commission it was on or about 6 September 2010 that he first became aware that AM had alleged he had been abused by Fletcher, following receipt of Doyle's email attaching Malone's reply to AM. Although Malone's letter acknowledged receipt of AM's letter of late July 2010, Tynan said he had not seen that letter (by September 2010) and he did not ask Malone for a copy of it.<sup>181</sup>
- C3.114 Despite Malone's letter referring to O'Hearn – saying 'One of the staff, Maureen O'Hearn, is designated as a support person for people who have experienced abuse' – Tynan did not provide the letter to O'Hearn. He said he did not see a need to do so and thought Malone had dealt with the matter appropriately. Nor was it standard practice in 2010 to provide a copy of such correspondence to O'Hearn.<sup>182</sup> Tynan nonetheless conceded 'it would have been best' to provide the letter to O'Hearn, noting, 'It would not be an ideal start' if, when victims contacted Zimmerman Services, nobody knew who they were or that they had sent a letter to the bishop about their sexual abuse.<sup>183</sup>

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<sup>171</sup> TOR 2, T22.12–14 (Malone in camera, dated 16 July 2013, at 10.24am).

<sup>172</sup> TOR 2, T22.6–10 (Malone in camera, dated 16 July 2013, at 10.24am).

<sup>173</sup> TOR 2, T29.14–26; T34.20–30 (Doyle in camera, 13 August 2013).

<sup>174</sup> TOR 2, T28.35–29.32 (Doyle in camera, 13 August 2013).

<sup>175</sup> TOR 2, T10.14–16; T33.10–28; T38.3–4 (Doyle in camera, 13 August 2013).

<sup>176</sup> TOR 2, T38.11–17 (Doyle in camera, 13 August 2013).

<sup>177</sup> TOR 2, T36.18–37.7 (Doyle in camera, 13 August 2013).

<sup>178</sup> TOR 2, T36.18–34 (Doyle in camera, 13 August 2013).

<sup>179</sup> TOR 2, T11.42–12.40 (Doyle in camera, 13 August 2013).

<sup>180</sup> TOR 2, T37.9–12 (Doyle in camera, 13 August 2013).

<sup>181</sup> TOR 2, T64.19–23; T65.28–66.24 (Tynan in camera, 14 August 2013); see also email from Doyle to Tynan, dated 6 September 2010, conf ex Z.

<sup>182</sup> TOR 2, T69.16–28; T130.4–18 (Tynan in camera, 14 August 2013); see also letter from Malone to AM, dated 2 September 2010, conf ex Z.

<sup>183</sup> TOR 2, T76.44–77.38 (Tynan in camera, 14 August 2013).

- C3.115 Having received Malone’s letter, and knowing the alleged perpetrator was dead, Tynan said that he satisfied himself that there were no child protection concerns arising and thus no reporting obligations or any prospect of charges being laid. Tynan’s analysis in this regard was based only on Malone’s letter: he had not seen AM’s letter of complaint. Tynan thought Malone had sufficient knowledge of any potential reporting obligations for him (Tynan) not to need to make his own assessment. Ultimately, however, he agreed it would have been better to obtain the July 2010 letter and check that himself.<sup>184</sup>
- C3.116 In contrast with the current, more formalised intake,<sup>185</sup> Tynan said that in 2010:
- ... there was a level of intake done, but it was more limited to those contacts or calls that came in from schools, so it was about the present-day matters ... [T]here were pieces of information ... [in] the letter ... from Bishop Michael, that nowadays would go through a formal intake process and have an intake form attached to it.<sup>186</sup>
- C3.117 There was an intake form in 2010, but Tynan explained that he did not fill it out because of a focus at that time on present-day allegations.<sup>187</sup>
- C3.118 Tynan confirmed that at that stage (2010) the usual practice was not to open a file on a victim until they made contact with or approached Zimmerman Services.<sup>188</sup> This evidence was somewhat at odds with that of O’Hearn, who said that if a complaint was sent to her she would create a file for the person, regardless of whether the person was going to contact Zimmerman Services. This was, she said, to ensure that she would be aware of relevant background information in the event that the person later made contact.<sup>189</sup>
- C3.119 Tynan told the Commission Malone never gave him any hard-copy documents about AM: had Malone done so, Tynan said he would have recalled it. Although at the end of a meeting Malone would occasionally hand Tynan documents for him to take to Zimmerman Services, he said this did not occur with any documents relating to AM.<sup>190</sup>
- C3.120 To the best of his recollection, Tynan said, he ‘had a word to’ O’Hearn in Zimmerman Services about the matter in September 2010. He believed, but could not say ‘absolutely’, that O’Hearn told him she had become aware in August 2010 that Malone was meeting a new victim of Fletcher; this was before Tynan’s receipt of the letter. He said he might also have let O’Hearn know when he received Malone’s letter.<sup>191</sup>

### ***Ms O’Hearn’s evidence***

- C3.121 As noted, O’Hearn told the Commission that until January 2013 she was unaware of any victims of Fletcher beyond Gogarty, AH and AB. She said she first became aware of AM on receiving a telephone call and then an email attaching AM’s letter of complaint from Commission personnel on 29 January 2013.<sup>192</sup>
- C3.122 O’Hearn said that, following the contact by Commission personnel, she ‘vaguely recall[ed]’ mentioning AM to Tynan in passing in January 2013. She did not remember any discussion about the referral or possible referral of AM to Zimmerman Services but said she commented to Tynan

<sup>184</sup> TOR 2, T75.10–25; T78.29–39 (Tynan in camera, 14 August 2013).

<sup>185</sup> As noted, intake is the process of gathering information, recording and analysing and classifying information, and then ensuring appropriate follow-up action: statutory declaration of Tynan dated 27 June 2013, conf ex KKK, para 18.

<sup>186</sup> TOR 2, T79.38–80.6 (Tynan in camera, 14 August 2013).

<sup>187</sup> TOR 2, T79.23–81.15 (Tynan in camera, 14 August 2013).

<sup>188</sup> TOR 2, T75.27–36 (Tynan in camera, 14 August 2013).

<sup>189</sup> TOR 2, T2.43–45; T3.36–4.28; T22.9–13 (O’Hearn in camera, 12 August 2013).

<sup>190</sup> TOR 2, T88.11–30 (Tynan in camera, 14 August 2013).

<sup>191</sup> TOR 2, T73.28–74.28 (Tynan in camera, 14 August 2013).

<sup>192</sup> TOR 2, 7.26–45 O’Hearn in camera, 12 August 2013); statutory declaration of O’Hearn, dated 26 June 2013, conf ex FFF, paras 4–5.

that she had not previously been aware of AM and had not seen the letter Malone had written to AM. She could not recall what response, if any, Tynan made to her comment.<sup>193</sup>

- C3.123 In January 2013, on seeing Malone's reply to AM, O'Hearn remembered thinking it 'would have been helpful for me to have known that ...'<sup>194</sup> She said she was '... probably a little [surprised]' her name was mentioned in the letter in view of the fact that she had not previously been told of AM. She did not, however, follow up with anyone at the Diocese as to why she had not been told.<sup>195</sup>
- C3.124 O'Hearn's understanding was that during Malone's episcopacy new sexual abuse complaints would be referred to Zimmerman Services through Tynan, as the manager; he would then disseminate the information to 'whoever'.
- C3.125 O'Hearn expected that if a letter of complaint had been received from a victim of sexual abuse a copy would be provided to Zimmerman Services. She also expected that in the normal course of events a complaint by a victim of sexual assault who had contacted the bishop would be referred to her.<sup>196</sup> If the complaint was sent to her, O'Hearn said, she would create a file for that person, so that 'if down the track that person made contact ... I would be aware of the background information'.<sup>197</sup> Files were normally created in electronic format, and at a later time O'Hearn would print them out and make a hard-copy file.<sup>198</sup>
- C3.126 O'Hearn agreed that Malone's 2 September 2010 letter to AM could be seen as a report to Zimmerman Services of a complaint of sexual abuse made to the bishop and that it could have been the starting point for follow-up with the victim, but she reiterated that she had not been made aware of the contents of the letter.<sup>199</sup> She said that, had she received a letter like that from AM, which included his telephone number, she would probably have contacted him.<sup>200</sup>

## Conclusion

- C3.127 On the question of whether Malone instructed Doyle to send AM's letter to Tynan, the Commission prefers Doyle's account. Doyle's evidence was measured, and the Commission formed the view that she typically performed her duties with care. This was the effect of Malone's evidence based on her service to him during the 15 years of their working relationship. In accordance with her usual practice, had she been instructed to send AM's letter to Tynan, along with Malone's letter of reply, Doyle would have sent it. The Commission also had regard to the reference in Malone's letter to the non-specific date – 'your letter of late July' – and accepts Doyle's evidence that her practice was to change such general references to the specific date when she had access to the correspondence in question. The absence of a specific date demonstrates that Doyle did not have a copy of AM's letter when she was preparing Malone's reply on 2 September 2010.
- C3.128 Although Malone said he recollected directing Doyle to send both AM's letter and his letter of reply, he did concede it was possible that he forgot to ask Doyle to send AM's letter. The Commission finds that Malone did not instruct Doyle to send AM's 29 July 2010 letter to Tynan, and for that reason it was not sent to him.

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<sup>193</sup> TOR 2, T9.12–41 (O'Hearn in camera, 12 August 2013); statutory declaration of O'Hearn, dated 26 June 2013, conf ex FFF, para 8.

<sup>194</sup> TOR 2, T9.44–47 (O'Hearn in camera, 12 August 2013).

<sup>195</sup> TOR 2, T10.2–11 (O'Hearn in camera, 12 August 2013).

<sup>196</sup> TOR 2, T5.44–6.1 (O'Hearn in camera, 12 August 2013).

<sup>197</sup> TOR 2, T4.1–20 (O'Hearn in camera, 12 August 2013).

<sup>198</sup> TOR 2, T4.30–33 (O'Hearn in camera, 12 August 2013).

<sup>199</sup> TOR 2, T20.12–34 (O'Hearn in camera, 12 August 2013).

<sup>200</sup> TOR 2, T27.36–46 (O'Hearn in camera, 12 August 2013).

- C3.129 In relation to Malone’s evidence about discussions with Tynan after having directed that the AM correspondence be sent to him (Tynan), the Commission considers that evidence unreliable: there are direct inconsistencies between his statement of June 2013 and his oral evidence. The Commission does not accept that Malone had follow-up discussions with Tynan. Had such discussions taken place, it is highly likely that the fact that AM’s letter of complaint had not been sent to Tynan or Zimmerman Services would have been exposed.
- C3.130 The failure to send AM’s letter of complaint to Zimmerman Services was irregular. Normal practice would have involved sending such a letter to Zimmerman Services for their staff’s assistance and information, particularly to prepare them in the event of contact by the complainant. This is one of a number of noteworthy irregularities in the Diocese and Zimmerman Services relating to AM’s complaint, as set out in the Commission’s findings in paragraphs C3.140 and C3.240 to C3.242.
- C3.131 Moreover, Tynan’s failure to provide to O’Hearn a copy of Malone’s letter to AM – which expressly referred to O’Hearn as the contact at Zimmerman Services – was also unsatisfactory in that, as Tynan said, ‘It would not be an ideal start’ if, when victims contacted Zimmerman Services, nobody knew who they were or that they had sent a letter to the bishop about their sexual abuse.
- C3.132 O’Hearn was a candid witness; she also impressed as someone who was diligent in her duties and committed to the task of supporting survivors of child sexual abuse. Her evidence that, had she been made aware of a new Fletcher victim, she would have taken follow-up steps to prepare herself for potential future contact is accepted. Tynan’s evidence about discussions he believes he might have had with O’Hearn in August and/or September 2010 in relation to the new Fletcher victim was uncertain and qualified, as he acknowledged. O’Hearn’s evidence is preferred, to the extent of any inconsistency. As noted (see para C3.78), the Commission finds that O’Hearn did not become aware of AM’s existence until January 2013.

## Bishop Malone’s reporting obligations

- C3.133 Fletcher died on 6 January 2006. In 2010 there was thus no obligation to report Fletcher’s abuse of AM to police, as would have been the case if he had still been alive.<sup>201</sup> AM’s allegations against Wilson concerned the concealment of child sexual abuse and potentially constituted the common law offence of misprision of felony or, after 1990, the statutory offence of concealing a serious indictable offence (s. 316 of the *Crimes Act 1900*). Malone’s evidence was essentially that he took no steps to report the information relating to Wilson because it was not information that leapt out at him as being significant.<sup>202</sup> Indeed, he said, ‘Well, frankly, it didn’t occur to me, that [the reference to Wilson] ... was a significant admission in the letter’.<sup>203</sup> According to him, it did not enter his mind that any of the allegations should be reported.<sup>204</sup> He also thought there were no reporting obligations in relation to any authorities because Fletcher was dead.<sup>205</sup> Had it occurred to him that there was a reporting obligation, Malone said, he would have been quite concerned and would have needed some ‘solid legal advice’ about how to act.<sup>206</sup> He did not, however, obtain legal advice at any relevant time.<sup>207</sup>

<sup>201</sup> Further, since Wilson was no longer a priest of the Diocese, there was no obligation to report matters relating to his asserted involvement, pursuant to the NSW Ombudsman’s legislation; the position would have been different if Wilson had still been incardinated into the Diocese – *Ombudsman Act 1974* (NSW).

<sup>202</sup> TOR 2, T80.25–81.3 (Malone in camera, 22 November 2013).

<sup>203</sup> TOR 2, T21.40–47 (Malone in camera, 16 July 2013, at 10.24am).

<sup>204</sup> TOR 2, T52.24–27 (Malone in camera, 16 July 2013, at 10.24am).

<sup>205</sup> TOR 2, T52.11–14 (Malone in camera, 16 July 2013, at 10.24am).

<sup>206</sup> TOR 2, T52.29–36 (Malone in camera, 16 July 2013, at 10.24am).

<sup>207</sup> TOR 2, T7.3–28 (Malone in camera, 31 January 2014).

## Media allegations about Archbishop Wilson’s knowledge of child sexual abuse in the Diocese

C3.134 In June 2010 Malone was interviewed on ABC Television’s *Lateline* program in relation to Wilson’s knowledge of McAlinden’s propensity for the sexual abuse of children. The *Lateline* episode was entitled ‘Bishop demands clarity in paedophile case’, and the presenter introduced the program by stating:

The Catholic Bishop of Maitland-Newcastle, Michael Malone, says Archbishop Philip Wilson of Adelaide should clarify what he knew about a paedophile priest that sexually assaulted young girls in the diocese over four decades.<sup>208</sup>

C3.135 When interviewed as part of the program, Malone said:

I think certainly there was enough known about [McAlinden’s] predilections, but whether sufficient was known to act on them is a point that probably needs to be clarified by Archbishop Philip Wilson. Seriously.<sup>209</sup>

C3.136 Under questioning by counsel assisting, Malone agreed that as a result of the *Lateline* program Wilson’s knowledge of child sexual abuse matters concerning McAlinden was on his mind at least in June 2010.<sup>210</sup>

C3.137 AM sent his letter to Malone in early August 2010, five to six weeks after the airing of the *Lateline* program. Malone agreed that the question of Wilson’s knowledge of child sexual abuse was something that (as at August 2010) he had recently considered. Nevertheless, he sought to maintain that the importance of the reference to Wilson in AM’s letter was *not* something that caught his attention:

Q. I want to suggest to you ... that when [AM]’s letter came in, the information regarding AM would have told Archbishop Wilson that he had been sexually abused by Fletcher would have leaped out at you?

A. No, well, it didn’t leap out at me. As I have testified before the Commission, it didn’t leap out at me.<sup>211</sup>

C3.138 Against the background of Gogarty’s claims in May and June 2010 – including on an earlier *Lateline* program, on 17 May 2010<sup>212</sup> – that Wilson knew or ought to have known of Fletcher’s abuse of boys during the late 1970s, Malone accepted that, having regard to his answers to certain media outlets about Gogarty’s allegations, the question of Wilson’s knowledge of child sexual abuse concerning Fletcher was on his (Malone’s) mind in June 2010.<sup>213</sup>

## Conclusions

C3.139 The Commission rejects Malone’s assertions that, on first reading AM’s letter or at any time thereafter, he did not appreciate the import of the information relating to Wilson in the letter. As previously stated, AM’s letter raised the prospect of a current archbishop having possibly concealed knowledge of child sexual abuse offences for over 30 years. In addition, Malone’s awareness of the considerable media focus on Wilson’s knowledge of child sexual abuse matters only weeks before he (Malone) received AM’s letter makes it implausible that Malone would not

<sup>208</sup> Audio recording of ABC *Lateline* episode, dated 18 June 2010, conf ex PW U, 00:00–00:12; transcript of ABC *Lateline* program, ‘Bishop demands clarity in paedophile case’, dated 18 June 2010, conf ex OO, p 21.

<sup>209</sup> Audio recording of ABC *Lateline* episode, dated 18 June 2010, conf ex PW U, 05:37–05:53; transcript of ABC *Lateline* program, ‘Bishop demands clarity in paedophile case’, dated 18 June 2010, conf ex OO, p 23.

<sup>210</sup> TOR 2, T80.8–23 (Malone in camera, 22 November 2013).

<sup>211</sup> TOR 2, T80.25–81.3 (Malone in camera, 22 November 2013).

<sup>212</sup> Transcript of ABC *Lateline* program, ‘Archbishop under fire over alleged abuse cover-up’, dated 17 May 2010, conf ex OO, p 15.

<sup>213</sup> TOR 2, T83.15–30 (Malone in camera, 22 November 2013).

have been alive to the relevance of the assertions about Wilson. The Commission rejects Malone's account that he took no steps in relation to the allegations about Wilson because that aspect did not 'leap out' at him.

- C3.140 A number of irregularities in Malone's handling of AM's complaint are relevant to a consideration of the bishop's conduct. In brief, those irregularities are as follows:
- Malone's oblique reference to the nature and details of AM's complaint at the Towards Healing Consultative Panel meeting of 19 August 2010 was in contrast to his usual practice of referring to the circumstances of any previous disclosures to a church official and identifying the church official who had initially received the complaint.
  - Malone attended his 26 August 2010 meeting with AM unaccompanied by a support person from Zimmerman Services, contrary to his usual practice, and also attended AM's residence rather than conducting the meeting at the Diocese or at Zimmerman Services. Indeed, visiting a victim of abuse at his or her own residence was something Malone had never previously done.
  - Malone took notes during his meeting with AM, which again was contrary to his usual practice.
  - Malone failed to update the Towards Healing Consultative Panel about his 26 August 2010 visit to AM at the next panel meeting, in November 2010, or at any time thereafter.
  - In the case of AM's letter, Malone failed to instruct Doyle to provide it to Tynan of Zimmerman Services, again contrary to his usual practice.
  - Malone failed to follow up with Tynan in order to confirm Tynan's receipt of the AM correspondence (and particularly AM's letter of complaint) and to determine whether AM had contacted Zimmerman Services at some later time.
- C3.141 In important respects, then, Malone dealt with AM's complaint in a manner inconsistent with his usual practice.
- C3.142 Malone could, however, neither foresee nor control whether AM might ultimately take matters further – whether in the form of a direct complaint to the police or to a solicitor for the purpose of pursuing a civil claim (in which case police might well have also been notified).<sup>214</sup>
- C3.143 There is also no evidence suggesting that Malone sought to dissuade AM from disclosing his complaint about Wilson to any other person or authority: indeed, Malone's letter of reply to AM dated 2 September 2010 expressly referred to AM's options to file a complaint through the Towards Healing process, or pursue damages against the Diocese (and in this regard to speak further with a solicitor).
- C3.144 It should also be acknowledged that the availability of documents subsequently obtained by the Commission indicates that Malone did not destroy the relevant documents so as to put them beyond the reach of an external body such as the police or this Commission.<sup>215</sup> In this regard (as previously stated), the Commission accepts that Malone had an 'open house' policy for access to Diocesan records, such that staff from Zimmerman Services<sup>216</sup> and external agencies (such as police) could obtain access to files in the bishop's office if requested.

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<sup>214</sup> This was a course expressly noted as available in Malone's letter to AM of 2 September 2010.

<sup>215</sup> As observed earlier, Commission personnel were able to locate the documentation in the Diocesan records reviewed in January 2013 – see further statutory declaration of Sullivan, dated 29 November 2013, conf ex PW X.

<sup>216</sup> See in this respect the matters noted at footnote 34.



- C3.145 Despite these factors, the Commission finds that Malone’s conduct relating to AM’s complaint had the consequence of making it less likely that the substance of AM’s complaint – particularly the matters relating to Wilson – would come to external notice (including the notice of the police) unless AM himself took some further action.
- C3.146 The Commission additionally finds that there was a failure by Malone to assist police by bringing the AM complaint to their attention in August 2010 or at any time thereafter; this included a failure to facilitate the Strike Force Lantle investigation.<sup>217</sup> Such reporting was a step that Malone should have taken, in particular as the head of the Diocese. His failure to disclose his knowledge about AM to the Lantle investigators in November 2011 is further analysed in paragraphs C3.280 and following.

## Zimmerman Services’ handling of AM’s letter

- C3.147 Zimmerman Services, previously known as Zimmerman House, consists of a centralised team of individuals who provide child protection and healing services for the Diocese. Zimmerman House was officially opened on 4 September 2007. On 27 June 2011 the Diocese’s child protection services were restructured and renamed Zimmerman Services.<sup>218</sup> The stated purpose of Zimmerman Services is to:
- meet its moral imperative and legislative requirements to protect the children of the diocese from abuse, and
  - address the enduring legacy of historic child sexual assault that occurred within the diocese.<sup>219</sup>
- C3.148 Zimmerman Services is made up of three distinct parts – the Diocesan Child Protection Unit, Healing and Support, and Insights. The DCPU offers an intake service that provides professional advice, guidance and support in dealing with child protection concerns; conducts investigations and inquiries into allegations of abusive conduct against children and certain breaches of professional standards by current Diocesan personnel; and provides child protection training to Diocesan personnel and risk assessment and management for members of the Diocese who are the subject of an investigation.<sup>220</sup>
- C3.149 The Healing and Support arm of Zimmerman Services works with victims of abuse and their families to support and promote healing and is led by Ms Maureen O’Hearn, Co-ordinator Healing and Support.<sup>221</sup>
- C3.150 The Insights group arose ‘from an identified need to explore the deep, lasting effects of child sexual abuse on faith communities within the Diocese’. It has worked with a number of local communities affected by child sexual abuse.<sup>222</sup>
- C3.151 In light of the above, and given the particular mandate of Zimmerman Services in the child protection field, it is necessary to examine how it came about that AM’s complaint was not reported to the Strike Force Lantle investigators or otherwise to the New South Wales Police Force, given its obvious importance.

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<sup>217</sup> The investigation was formally established about a month after the relevant correspondence in September 2010.

<sup>218</sup> Statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, para 8, 14.

<sup>219</sup> Statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, paras 17–23.

<sup>220</sup> Statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, paras 18–19.

<sup>221</sup> Statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, para 21.

<sup>222</sup> Statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, para 23.



## Mr Tynan's evidence

C3.152 Tynan began work as Manager of Zimmerman Services on 21 September 2009.<sup>223</sup> He explained his role thus:

As Manager I have responsibility for the effective and efficient running of Zimmerman Services. I have a responsibility to keep the Bishop and senior Diocesan leadership apprised of matters related to child protection within the Diocese. More broadly, one of my responsibilities is to work to ensure that the Diocese meets its moral and legislative requirements to protect the children of the Diocese and support the Diocese to meet its enduring legacy of the harm caused by the historical child sexual abuse that occurred ... I [also] manage civil claims brought against the Diocese by victims of child sexual abuse committed by diocesan personnel that are outside of the Towards Healing protocol.<sup>224</sup>

C3.153 His role also involves overseeing the intake, 'investigations' and 'risk management processes'.<sup>225</sup>

C3.154 Tynan gave evidence that he encourages open communication and investigation staff are encouraged to tell him about anything significant they discover because of his belief that 'collective testing of thinking [results in] increased safety and an increased level of rigour'.<sup>226</sup>

### *The Clergy Review Analysis*

C3.155 On occasion Tynan delegated to investigation staff – particularly Mr David Muxlow – tasks requiring examination of Diocesan records and extraction of information about particular priests, including any knowledge the Diocese might have had about a priest's propensity for child sexual abuse.<sup>227</sup>

C3.156 Tynan told the Commission that in early May 2011 he asked Muxlow to prepare a briefing paper. He explained that he wanted Muxlow to do the following:

... to review the material available in the diocese ... around known abusive priests in the diocese and look to see what linkages there were between them to ... test that proposition as put in the media, that there was [sic] in fact conspiracies.<sup>228</sup>

C3.157 Tynan said Muxlow was to use all relevant files for clergy and known offenders in preparing the document. He did not know if he mentioned the bishop's files but expected Muxlow to inspect those files because they contained information that was not available to Zimmerman Services.<sup>229</sup> For his part, Muxlow recalled Tynan expressly asking him to look at the bishop's files and saying they 'might be of interest to look at'.<sup>230</sup> Tynan said he did not know which sources Muxlow used for the task; he did, however, help Muxlow obtain access to the bishop's files. Tynan was ultimately unable to recall whether Muxlow in fact used the bishop's files and said he did not make an inquiry to find out.<sup>231</sup>

C3.158 Tynan's evidence was that he did not believe he had provided to Muxlow a list of priests to review, adding that, in view of Muxlow's background, he was 'far and away a better investigator than I am and I wanted him to be as free of any specific direction or limitations around his capacity to explore and analyse ...'<sup>232</sup> To the best of Tynan's recollection, any conversation he

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<sup>223</sup> Statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, para 7.

<sup>224</sup> Statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, para 15.

<sup>225</sup> Statutory declaration of Tynan, dated 27 June 2013, conf ex KKK, para 27.

<sup>226</sup> TOR 2, T6.16–18 (Tynan in camera, 13 August 2013).

<sup>227</sup> TOR 2, T6.22–43 (Tynan in camera, 13 August 2013).

<sup>228</sup> TOR 2, T31.3–9 (Tynan in camera, 13 August 2013).

<sup>229</sup> TOR 2, T33.5–25 (Tynan in camera, 13 August 2013).

<sup>230</sup> TOR 2, T21.29–33 (Muxlow in camera, 19 August 2013).

<sup>231</sup> TOR 2, T125.14–126.2 (Tynan in camera, 14 August 2013).

<sup>232</sup> TOR 2, T58.6–18 (Tynan in camera, 13 August 2013); T96.40–97.10 (Tynan in camera, 14 August 2013).

had with Muxlow about preparation of the clergy review document focused on NP and Father Vincent Ryan, not Fletcher.<sup>233</sup>

C3.159 Tynan told the Commission that Muxlow's task was independent of him (Tynan) informing Bishop William Wright (as incoming bishop)<sup>234</sup> of the problems relating to child sexual abuse and arose out of his concern about newspaper reports suggesting that there were paedophile rings involving clergy from the Diocese.<sup>235</sup> In this respect, Tynan prepared two briefing notes for Bishop Wright (as described in paragraph C3.167).

C3.160 As to whether there was a need to understand all the material Muxlow collated, Tynan said he needed Muxlow, as a senior investigator, to perform the analysis and provide to Tynan background knowledge: he said he (Tynan) did not need to know 'chapter and verse'.<sup>236</sup>

C3.161 What Tynan ultimately received from Muxlow was not a report but rather a 'set of summaries of different matters', only some of which Tynan said he read.<sup>237</sup> Tynan told the Commission he did not read the summary relating to Fletcher. He did not agree that it would have been extraordinary for him to have omitted to read the Fletcher summary in view of the assertions that Fletcher had been part of a paedophilia ring. Tynan said it was a lengthy report and he had 'a hell of a lot going on'.<sup>238</sup> He said the briefing notes he was preparing for Bishop Wright did not mention Fletcher because he did not think 'he was on the radar'.<sup>239</sup>

Jim Fletcher was a dead, convicted paedophile. There were no civil claims that were pending or current. He was not an issue of concern that I raised in the reporting document or the briefing document to Bishop Bill ... I believed at that stage, he was done and dusted, for want of a better term. There was no issue of concern around him.<sup>240</sup>

C3.162 Tynan agreed that at the time of the preparation of the Clergy Review Analysis document he was aware that Fletcher had been convicted of multiple counts of sexual abuse of one particular boy. As to the proposition that he would have been concerned whether there were connections between Fletcher and other clergy in the Diocese, Tynan responded, 'I don't remember Fletcher being on the radar around conspiracies'.<sup>241</sup> He explained that the reason Fletcher was included in the list of priests to be reviewed for the task was because he 'wanted Muxlow to test that, I wanted him to have a complete look at [that]'.<sup>242</sup>

C3.163 Tynan denied there would have been a gap in his understanding of the task he had asked Muxlow to perform if he had not read about Fletcher in the report. He relied on Muxlow's email (noted in para C3.192), which had informed him that the analysis was yet to be done.

C3.164 Tynan agreed that it would have been helpful if Muxlow had brought the information in his (Muxlow's) report relating to Wilson to his attention. The relevant entry stated:

Records show that in 1976 Father Philip Wilson was informed of allegations of child sexual abuse by JF upon a victim [AM]. It appears no action was taken as a result of this allegation.<sup>243</sup>

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<sup>233</sup> TOR 2, T105.34–41 (Tynan in camera, 14 August 2013).

<sup>234</sup> Bishop Wright commenced working as bishop of the Diocese on 15 June 2011; TOR 2, T9.6–8 (Wright in camera); statutory declaration of Wright, dated 29 July 2013, ex 214, para 1.

<sup>235</sup> TOR 2, T28.1–11 (Tynan in camera, 13 August 2013).

<sup>236</sup> TOR 2, T28.21–28 (Tynan in camera, 13 August 2013).

<sup>237</sup> TOR 2, T28.16–29.21 (Tynan in camera, 13 August 2013).

<sup>238</sup> TOR 2, T29.44–30.2 (Tynan in camera, 13 August 2013).

<sup>239</sup> TOR 2, T29.31–42 (Tynan in camera, 13 August 2013).

<sup>240</sup> TOR 2, T132.4–16 (Tynan in camera, 14 August 2013).

<sup>241</sup> TOR 2, T31.24–39; T32.16–21 (Tynan in camera, 13 August 2013).

<sup>242</sup> TOR 2, T31.41–32.3 (Tynan in camera, 13 August 2013).

<sup>243</sup> Redacted document titled 'Clergy Abuse within the Diocese Maitland–Newcastle,' undated, conf ex DDD, p 7.

- C3.165 Tynan then said, however, ‘it’s not necessarily what I would expect David to do. He prepared this report, he gave it to me. I think – the fault in not finding it is mine’.<sup>244</sup> Had he read the information about Wilson at the time, Tynan said, he would have included it in his report to Bishop Wright and, despite the fact that the information suggested Wilson might have committed an offence under s. 316 of the *Crimes Act 1900* (concealing serious indictable offence), Tynan said he would have felt constrained from taking any steps until he had brought the matter to Bishop Wright’s attention.<sup>245</sup>
- C3.166 Tynan gave evidence that, to the best of his recollection, there was at the time no policy in operation requiring a member of the Diocese who believed they were in receipt of information pertaining to a crime to raise their concerns with their supervisor. The focus at the time was to ensure that ‘child protection concerns’ were reported – not necessarily to police but to the Department of Family and Community Services or the Diocesan Child Protection Unit.<sup>246</sup> As discussed in paragraphs C3.243 to C3.245, Diocesan child protection reporting and investigation policies have since been revised in relation to reporting requirements concerning people who have died and matters of criminality generally.

### ***Use of the Clergy Review Analysis document for the briefing note for Bishop Wright***

- C3.167 Tynan told the Commission he prepared two briefing notes for Wright when he (Wright) took up his episcopacy.<sup>247</sup> One was entitled ‘The current issues related to child sexual abuse in the Diocese of Maitland-Newcastle’.<sup>248</sup> Tynan said the briefing note included ‘current criminal investigations, issues of prior knowledge, clerics who have elevated risk factors and the issue of civil claims against the diocese’.<sup>249</sup> He agreed that this note included reference to concealing knowledge of sexual abuse of children.<sup>250</sup> Tynan said it mentioned three clerics (one of them Fletcher) who had been convicted of multiple child sexual assault offences and that he had wanted to give Wright as thorough and relevant an overview of matters to do with child sexual abuse as he could.<sup>251</sup>
- C3.168 Tynan said he advised the bishop about the problems relating to prior knowledge of abuse among Diocesan leadership that had not been communicated to external authorities and that he was able to inform himself about this through his knowledge of McAlinden. He also said he had used parts of Muxlow’s Clergy Review Analysis document to inform his briefing note: ‘I certainly scanned parts of it for some of the key individuals’.<sup>252</sup> He said he was looking at some of the ‘key individuals’ with the possibility of their involvement in a type of paedophile ring in mind and referred to ‘conspiracy theories’ that claimed there was evidence to support links between a number of clergy against whom charges had been brought.<sup>253</sup>
- C3.169 Tynan conceded that the parts of the Clergy Review Analysis document he did not read might well have contained evidence supporting the existence of paedophile rings operating in the Diocese at that time. Although agreeing that ‘in hindsight’ he should have read Muxlow’s report while considering prior knowledge of sexual abuse, Tynan said that at the time he focused on current investigations.<sup>254</sup>

<sup>244</sup> TOR 2, T109.33–41; T110.4–13 (Tynan in camera, 14 August 2013).

<sup>245</sup> TOR 2, T108.16–109.3 (Tynan in camera, 14 August 2013).

<sup>246</sup> TOR 2, T113.38–114.38 (Tynan in camera, 14 August 2013).

<sup>247</sup> TOR 2, T26.19–27.29 (Tynan in camera, 13 August 2013).

<sup>248</sup> TOR 2, T37.35–41 (Tynan in camera, 13 August 2013).

<sup>249</sup> TOR 2, T38.10–17 (Tynan in camera, 13 August 2013).

<sup>250</sup> TOR 2, T39.7–22 (Tynan in camera, 13 August 2013).

<sup>251</sup> TOR 2, T39.40–40.15 (Tynan in camera, 13 August 2013).

<sup>252</sup> TOR 2, T40.45–41.27 (Tynan in camera, 13 August 2013).

<sup>253</sup> TOR 2, T41.29–42.23 (Tynan in camera, 13 August 2013).

<sup>254</sup> TOR 2, T43.33–36 (Tynan in camera, 13 August 2013); T104.37–43 (Tynan in camera, 14 August 2013).

## Conclusions

- C3.170 Tynan’s evidence about having read only parts of Muxlow’s Clergy Review Analysis document requires scrutiny. Although it appears that Muxlow compiled the list of priests to be considered for the purposes of the task, Fletcher was seemingly expressly included by Tynan because he ‘wanted Muxlow to test that ... to have a complete look at [that]’. It would not have been particularly burdensome for Malone to review the document Muxlow had prepared, it being 29 pages long in its entirety. In giving his evidence Tynan appeared to be a person who approached his work with a high degree of care and attention. His evidence that he merely scanned certain parts of a document he had expressly commissioned some months earlier is inconsistent with that approach, particularly since the document’s contents had some apparent relevance to the briefing task he was performing for the incoming bishop.
- C3.171 Notwithstanding these observations, the Commission cannot be comfortably satisfied that at the relevant time Tynan read the section of the document dealing with Fletcher that referred to AM’s complaint against Wilson. Rejection of Tynan’s evidence on this matter effectively results in a finding that Tynan was on notice of the allegations about Wilson concealing AM’s complaint against Fletcher (and did not thereafter take appropriate steps, such as notifying police). The Commission is not persuaded there is sufficiently compelling evidence to permit such a finding.<sup>255</sup>

## AM’s letter first read by Mr Tynan in January 2013

- C3.172 Tynan told the Commission he did not read AM’s 29 July 2010 letter until late on 8 January or early on 9 January 2013, after it had been attached to an email from Commission personnel.<sup>256</sup> Tynan told the Commission that on reading the letter he remembered:

... feeling quite ill actually when I read it. It was a very powerful letter, I felt a very honest letter. It took me, I guess, a couple of reads to start putting things together in my head, but certainly, I recognised the significance of the information in it.<sup>257</sup>

- C3.173 Tynan said he was concerned that Wilson had apparently done nothing about AM’s allegation, and he (Tynan) linked it to conversations he had had with Gogarty and his allegations about the bishop’s house. Tynan added:

If AM was true, and as I said it struck me as a very honest letter, I guess my thought was, “Well, hold on, if this guy knew this then, what did that mean for his action or lack of action in bishop’s house if Peter Gogarty’s claims were true?”<sup>258</sup>

## Conclusion

- C3.174 The Commission accepts Tynan’s evidence that this was in fact the first time he had read AM’s letter of complaint. His account of his initial reaction to reading the letter was credible – including in connection with his instant recognition of the significance of the information about Wilson’s apparent inaction.<sup>259</sup>

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<sup>255</sup> This finding is also consistent with the evidence of O’Hearn concerning her discussions with Tynan in January 2013, where she formed the view that Tynan had not seen AM’s letter to Malone, given his surprise regarding the aspect relating to Wilson; she thought it was ‘... news to him’ – see para C3.235.

<sup>256</sup> T54.33–40 (Tynan in camera, 13 August 2013); TOR 2, T92.28–36 (Tynan in camera, 14 August 2013).

<sup>257</sup> TOR 2, 92.38–93.1 (Tynan in camera, 14 August 2013).

<sup>258</sup> TOR 2, T93.28–36 (Tynan in camera, 14 August 2013).

<sup>259</sup> His evidence was consistent with O’Hearn’s perceptions of Tynan’s reaction to an awareness of the AM letter in January 2013; TOR 2, T14.15–29 (O’Hearn in camera, 12 August 2013).

## Mr Muxlow's evidence

- C3.175 Until 2009 Mr David Muxlow was a police officer with the New South Wales Police Force, serving for about 22 years. During that time he carried out investigations into the sexual abuse of children.<sup>260</sup>
- C3.176 Muxlow began work at Zimmerman Services in October 2010.<sup>261</sup> The position he applied for was advertised as 'case worker' and called for either an investigative or a social work background.<sup>262</sup> When Muxlow took up his duties, Tynan explained the position to him, describing the role as one of an investigator, 'to investigate reportable conduct allegations against employees of the diocese'.<sup>263</sup> Muxlow told the Commission that Tynan also told him that, in addition to the training of all Diocesan personnel who worked on child protection and the conduct of audits within the schools system, he might also have conducted professional standards investigations for matters that fell outside the scope of reportable conduct.<sup>264</sup> In this regard, Muxlow told the Commission that the first time he recalled having any involvement in an investigation concerning McAlinden and Fletcher was at the time of the clergy review task he performed in 2011 (as detailed below).<sup>265</sup>

### *Policies and procedures at Zimmerman Services*

- C3.177 When he started work at Zimmerman Services, Muxlow said, there was no folder of policy and procedure documents to review: if a question arose about how to manage something, Muxlow would ask either Tynan or one of the other investigators.<sup>266</sup> At the time he came to Zimmerman Services Ms Lisa Wollschlager had already been with the unit for about 12 months. They shared an office, and she was a sounding board for him. Muxlow said he would ask questions of her and also of Tynan, whom he found very approachable.<sup>267</sup>
- C3.178 In his oral evidence Muxlow confirmed that he was advised that criminal conduct involving children had to be reported to the police in relation to the principal offender. He was told that one of the problems the Diocese had historically had was that individuals in authority had failed to report matters to the police.<sup>268</sup> The policy for reporting allegations of child sexual abuse to the police was that they (the investigators) 'would report personally',<sup>269</sup> including in relation to historical matters that had occurred 20 years ago, for example.<sup>270</sup>
- C3.179 Muxlow confirmed that he would report matters to the police even if the perpetrator had died,<sup>271</sup> which was possibly a practice resulting from his police background.<sup>272</sup> He told the Commission he had several conversations with Tynan about his approach in reporting directly to the police even if the perpetrator was dead<sup>273</sup> and, although he was unsure of Tynan's view, Tynan certainly did not tell him not to do this.<sup>274</sup>

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<sup>260</sup> TOR 2, T3.2–12; T3.30–31; T4.22–28 (Muxlow in camera, 19 August 2013).

<sup>261</sup> TOR 2, T3.26–28; T6.36–38 (Muxlow in camera, 19 August 2013).

<sup>262</sup> TOR 2, T4.9–16 (Muxlow in camera, 19 August 2013).

<sup>263</sup> TOR 2, T4.45–47 (Muxlow in camera).

<sup>264</sup> TOR 2, T5.1–7 (Muxlow in camera).

<sup>265</sup> TOR 2, T5.34–6.4 (Muxlow in camera, 19 August 2013).

<sup>266</sup> TOR 2, T6.40–7.1 (Muxlow in camera, 19 August 2013).

<sup>267</sup> TOR 2, T7.3–20; T7.34–37 (Muxlow in camera, 19 August 2013).

<sup>268</sup> TOR 2, T13.2–17 (Muxlow in camera, 19 August 2013).

<sup>269</sup> TOR 2, T8.6–15 (Muxlow in camera, 19 August 2013).

<sup>270</sup> TOR 2, T8.24–26 (Muxlow in camera, 19 August 2013).

<sup>271</sup> TOR 2, T8.28–30 (Muxlow in camera, 19 August 2013).

<sup>272</sup> TOR 2, T8.47–9.2 (Muxlow in camera, 19 August 2013).

<sup>273</sup> TOR 2, T9.21–24 (Muxlow in camera, 19 August 2013).

<sup>274</sup> TOR 2, T9.26–33 (Muxlow in camera, 19 August 2013).

- C3.180 This evidence differs somewhat from that of Tynan. Tynan said it was not the practice of Zimmerman Services to report new allegations to the police if the perpetrator had died, and he was not aware of staff having made a report in those circumstances; he also testified that he never instructed staff to do so.<sup>275</sup>
- C3.181 Muxlow confirmed that Zimmerman Services' policies now expressly refer to the requirement to report matters to the police even when the perpetrator has died (further canvassed in paras C3.243 to C3.245).<sup>276</sup> It was Muxlow's perception that Tynan (as the Manager of Zimmerman Services) was content for matters to be reported to outside authorities and, indeed, encouraged this, subject to seeking appropriate legal protections.<sup>277</sup>

### ***Awareness of concealment offences***

- C3.182 Muxlow gave evidence that, because of his training as a police officer, he was aware that concealing an indictable offence is a crime, although he added, 'whether the thought actually entered my head during my early days or even up until recently is another story'.<sup>278</sup> Muxlow did not recollect having discussions with Tynan about s. 316 of the *Crimes Act 1900* or concealing offences generally in relation to the work of Zimmerman Services. He thought he would remember if such discussions had occurred.<sup>279</sup>

### ***Clergy Review Analysis***

- C3.183 At some time on or about 8 April 2011 Tynan allocated to Muxlow a task described as preparation of a 'Clergy Analysis'. According to Muxlow, the task Tynan outlined to him was as follows:
- The initial purpose was that Sean wanted to find – one was to find, to collate, all the information that was known within Zimmerman Services, plus the bishop's records, into one document – so a summary. The second part was to attempt to establish whether there was any pattern that could be identified from that analysis or from looking at those records – for example, priests living in the same presbytery at the same time; whether there was a possibility that they were working together as offenders; whether that had anything to do with the seminary someone attended, et cetera.<sup>280</sup>
- C3.184 The due date for the 'Clergy Analysis', 3 June 2011, was set out in the first case review document relating to the task.<sup>281</sup> Muxlow said he knew the task would take some weeks.<sup>282</sup>
- C3.185 Muxlow said Tynan told him he (Muxlow) needed to review the bishop's files for the purpose of the task, Tynan saying they 'might be of interest'.<sup>283</sup> Muxlow sought Wollschlager's assistance in analysing the information held in the bishop's office, so as to ensure he completed the review in the time available.<sup>284</sup>
- C3.186 Muxlow said he constructed his own list of files to look at<sup>285</sup> and added some people to the list after looking at the bishop's records and conducting a search of Zimmerman Services' records.<sup>286</sup>

<sup>275</sup> TOR 2, T86.22–87.7 (Tynan in camera, 14 August 2013).

<sup>276</sup> TOR 2, T11.30–37 (Muxlow in camera, 19 August 2013).

<sup>277</sup> TOR 2, T9.35–10.4 (Muxlow in camera, 19 August 2013).

<sup>278</sup> TOR 2, T13.19–26 (Muxlow in camera, 19 August 2013).

<sup>279</sup> TOR 2, T13.28–38 (Muxlow in camera, 19 August 2013).

<sup>280</sup> TOR 2, T21.5–17 (Muxlow in camera, 19 August 2013).

<sup>281</sup> Zimmerman House supervision case reviews, dated 20 May, 26 June, 4 July and 1 August 2011, conf ex WWW.

<sup>282</sup> TOR 2, T21.2–3; T22.19–25; T22.31–41 (Muxlow in camera, 19 August 2013).

<sup>283</sup> TOR 2, T21.23–33 (Muxlow in camera, 19 August 2013).

<sup>284</sup> TOR 2, T22.1–17 (Muxlow in camera, 19 August 2013).

<sup>285</sup> TOR 2, T22.43–46 (Muxlow in camera, 19 August 2013).

<sup>286</sup> TOR 2, T23.1–14; T23.28–33 (Muxlow in camera, 19 August 2013).

He agreed he was looking to see if there was any pattern in terms of people acting together to commit child sexual offences and in order to collate the information.<sup>287</sup>

C3.187 Muxlow said that, while carrying out his investigations in order to complete his analysis, he did talk with Tynan intermittently. He sat down and had case reviews with Tynan, which was more about discussing time frames than about the substance of the work itself.<sup>288</sup> Muxlow provided to the Commission a bundle of ‘Zimmerman House Supervision: Case Review’ forms for the dates 20 May, 23 June, 4 July and 1 August 2011. These forms were the basis for monthly discussions with Tynan about his progress with the ‘Clergy Review Analysis’ task.<sup>289</sup>

### ***Reviewing the bishop’s office files***

C3.188 Before starting to review the files at the bishop’s office, Muxlow said, he discussed the task with Wollschlager and why it needed to be completed. He also recalled speaking to her about completing the information on the designated form to assist in writing the report for Tynan.<sup>290</sup> Muxlow then said, however, that, rather than specifically recalling the discussion with Wollschlager, he was *surmising* it occurred.<sup>291</sup>

C3.189 Muxlow designed the form used for the task so that it would summarise what was in the bishop’s office: the files were not removed from their location.<sup>292</sup> The form provided space for entries that might assist in an analysis of any links between clergy and where they lived and for looking at whether there might have been connections in terms of paedophile offences.<sup>293</sup>

C3.190 Wollschlager and Muxlow then went to the bishop’s office and reviewed the files. Wollschlager reviewed Fletcher’s file and completed the form relating to it.<sup>294</sup> Muxlow confirmed that the searches took place over a couple of days, with one of the case reviews referring to the date as 26 to 27 May 2011.<sup>295</sup> Muxlow said that as they went through the material, he might have had discussions with Wollschlager<sup>296</sup> and it was ‘possible we spoke about individual cases of what people found, but I just can’t recall’.<sup>297</sup>

C3.191 When Muxlow was shown a copy of the ‘Clergy Analysis’ form Wollschlager had filled in<sup>298</sup> he confirmed that the handwriting ‘Fr James (Jim) Fletcher’ at the top of the document was his.<sup>299</sup> He identified the rest of the handwriting as Wollschlager’s.<sup>300</sup> Muxlow used the information provided on this form to compile the more detailed Clergy Abuse Review document.<sup>301</sup>

### ***The ‘Clergy Abuse within the Diocese of Maitland-Newcastle’ document***

C3.192 On 10 June 2011 Muxlow sent the result of his review of the Diocesan records – a document entitled ‘Clergy Abuse within the Diocese of Maitland-Newcastle’<sup>302</sup> – to Tynan by email. He was unable to recall whether he also provided a hard copy but said he might have done so.<sup>303</sup> He said

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<sup>287</sup> TOR 2, T23.40–44 (Muxlow in camera, 19 August 2013).

<sup>288</sup> TOR 2, T24.10–23; T24.25–41 (Muxlow in camera, 19 August 2013).

<sup>289</sup> TOR 2, T19.10–36 (Muxlow in camera, 19 August 2013); Zimmerman House supervision case reviews, dated 20 May, 26 June, 4 July and 1 August 2011, conf ex WWW.

<sup>290</sup> TOR 2, T25.41–26.3 (Muxlow in camera, 19 August 2013).

<sup>291</sup> TOR 2, T26.5–7; T36.44–37.4 (Muxlow in camera, 19 August 2013).

<sup>292</sup> TOR 2, T26.9–21 (Muxlow in camera, 19 August 2013).

<sup>293</sup> TOR 2, T26.16–31 (Muxlow in camera, 19 August 2013).

<sup>294</sup> TOR 2, T54.42–55.5 (Muxlow in camera, 19 August 2013).

<sup>295</sup> TOR 2, T72.20–36 (Muxlow in camera, 19 August 2013).

<sup>296</sup> TOR 2, T25.21–32 (Muxlow in camera, 19 August 2013).

<sup>297</sup> TOR 2, T25.34–39 (Muxlow in camera, 19 August 2013).

<sup>298</sup> Clergy analysis form re Fletcher, undated, conf ex SSS.

<sup>299</sup> TOR 2, T27.42–44 (Muxlow in camera, 19 August 2013).

<sup>300</sup> TOR 2, T27.46–28.15 (Muxlow in camera, 19 August 2013).

<sup>301</sup> TOR 2, T28.3–6 (Muxlow in camera, 19 August 2013).

<sup>302</sup> Redacted document titled ‘Clergy Abuse within the Diocese Maitland-Newcastle,’ undated, conf ex DDD.

<sup>303</sup> TOR 2, T28.22–30 (Muxlow in camera, 19 August 2013).



he was the only one who prepared the report.<sup>304</sup> There could have been a discussion with Tynan before he sent it, but he could not specifically recall.<sup>305</sup> Muxlow thought the apology in the covering email was because the document was a week late.<sup>306</sup> As to the reference in the email to 'Further analysis needed on links and non-clergy links', Muxlow explained that he had planned to do more work on it but had never returned to it.<sup>307</sup> He nonetheless agreed there was a certain degree of analysis involved in constructing the document and extracting information from the forms, some of which he had not personally completed.<sup>308</sup>

C3.193 Of particular note, on page 7 of the document in the Fletcher section, the following paragraph appears:

Records show that in 1976 Father Philip Wilson was informed of allegations of child sexual abuse by JF upon a victim [AM]. It appears no action was taken as a result of this allegation.<sup>309</sup>

C3.194 Muxlow confirmed that he would have read the Clergy Analysis form completed by Wollschlager in order to prepare his report and that he transferred some of the information on that form into the report.<sup>310</sup> He did not, however, have a recollection of looking at this information in particular.<sup>311</sup> Nor could he recall having any discussions with Wollschlager about what she had written on the form.<sup>312</sup>

C3.195 Muxlow agreed that the information given to Wilson in 1976 about abuse by Fletcher was a significant matter noted on the form.<sup>313</sup> Although he became aware at some stage that Wilson was in fact the Archbishop of Adelaide, Muxlow said he might not have known that at the time of preparing his report (but he was at least then aware Wilson was no longer in the Diocese).<sup>314</sup>

C3.196 In this regard, although he was also aware, at the time of giving evidence before the Commission, of assertions by Gogarty in the media about Wilson – to the effect that Wilson knew or ought to have known that Fletcher abused young boys<sup>315</sup> – Muxlow could not specify the timing of his learning that, stating it was after he began work at Zimmerman Services but, as to when, said he would otherwise be guessing.<sup>316</sup>

C3.197 Muxlow gave evidence that he did not know whether he looked at the raw information on which Wollschlager based the information she included in the Clergy Analysis form.<sup>317</sup> In connection with this, he initially told the Commission he also might have looked at the bishop's files to see if there was anything else, but he could not recall whether he had done so or simply used what Wollschlager had written.<sup>318</sup> He later said he did not check the bishop's file to see if there was any other information about the allegation: Wollschlager had reviewed that file and completed the relevant form.<sup>319</sup>

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<sup>304</sup> TOR 2, T34.4–6 (Muxlow in camera, 19 August 2013).

<sup>305</sup> TOR 2, T31.25–37 (Muxlow in camera, 19 August 2013).

<sup>306</sup> TOR 2, T28.36–44 (Muxlow in camera, 19 August 2013).

<sup>307</sup> TOR 2, T29.8–15 (Muxlow in camera, 19 August 2013).

<sup>308</sup> TOR 2, T29.23–39 (Muxlow in camera, 19 August 2013).

<sup>309</sup> TOR 2, T33.21–24 (Muxlow in camera, 19 August 2013); redacted document titled 'Clergy Abuse within the Diocese Maitland-Newcastle' (undated), conf ex DDD, para 5.

<sup>310</sup> TOR 2, T34.24–26; T34.33–35; T35.40–36.1 (Muxlow in camera, 19 August 2013).

<sup>311</sup> TOR 2, T36.3–5 (Muxlow in camera, 19 August 2013).

<sup>312</sup> TOR 2, T35.8–10 (Muxlow in camera, 19 August 2013).

<sup>313</sup> TOR 2, T36.7–10 (Muxlow in camera, 19 August 2013).

<sup>314</sup> TOR 2, T36.17–42 (Muxlow in camera, 19 August 2013).

<sup>315</sup> TOR 2, T37.47–38.8 (Muxlow in camera, 19 August 2013).

<sup>316</sup> TOR 2, T38.10–16 (Muxlow in camera, 19 August 2013).

<sup>317</sup> TOR 2, T35.33–38 (Muxlow in camera, 19 August 2013).

<sup>318</sup> TOR 2, T35.2–6 (Muxlow in camera, 19 August 2013).

<sup>319</sup> TOR 2, T47.23–33 (Muxlow in camera, 19 August 2013).



- C3.198 Muxlow agreed there was nothing in Wollschlager’s form that stated ‘it appears no action was taken as a result of this allegation’, as set out on page 7 of the report he prepared.<sup>320</sup> He confirmed his evidence to the effect that in this regard he believed he had checked the Zimmerman Services files before the review of the bishop’s files.<sup>321</sup> This included his personal review of the Zimmerman Services files on Fletcher.<sup>322</sup> He said it might also have been the case that when he wrote that sentence it was informed by some of the discussions he had had with Wollschlager at the time they were doing the searches of the bishop’s files.<sup>323</sup>
- C3.199 Muxlow also said that it was possible he checked the Zimmerman Services Fletcher files again after the review of the bishop’s files; he believed he did so, although he was not confident that this was the case. He reiterated, however, that he might have made the particular reference ‘purely on what Lisa had written’ because there was no other document there or recorded by Wollschlager to say what had been done about AM’s complaint to Wilson.<sup>324</sup>
- C3.200 As to whether Muxlow himself checked the bishop’s file to see if there was any other information about the allegation on that occasion or at about the time the form was completed, he said, ‘I may have but I can’t recall’.<sup>325</sup> Muxlow said he might also have had discussions with Wollschlager in which she told him she had looked at the bishop’s file to see if any action had been taken in response to the alleged report to Wilson in 1976.<sup>326</sup>
- C3.201 Under examination by counsel for the Diocese, Muxlow agreed that there was a substantial amount of detail in the report he ultimately prepared for Tynan. He confirmed he was not able to draw on any independent recollection of discussing the paragraph of the report dealing with AM’s allegation with Tynan at the time the report was prepared or after it.<sup>327</sup>
- C3.202 Despite this, Muxlow agreed that knowledge by an official of the Diocese that a particular priest was alleged to have sexually abused a child was a matter of relevance and importance to the work of Zimmerman Services.<sup>328</sup> He also agreed that part of his role was evaluative and investigative and that he was not merely a data collection person.<sup>329</sup> There was then the following exchange with counsel assisting:

- Q. And it is the position, isn’t it, that you knew, even in June 2011, that there was relevance in the information that Archbishop Wilson had been informed back in 1976 that someone was alleging that Fletcher had sexually abused them?
- A. And I passed that information on to my manager.
- Q. In the form of it being mentioned in a 29-page document?
- A. Yes, it is.<sup>330</sup>

### ***Mr Muxlow’s knowledge of the Strike Force Lantle investigation***

- C3.203 Muxlow said that while he was working at Zimmerman Services he became aware of the Strike Force Lantle police investigation.<sup>331</sup> He told the Commission, however, that it was only recently –

<sup>320</sup> TOR 2, T46.2–15 (Muxlow in camera, 19 August 2013).

<sup>321</sup> TOR 2, T46.17–20 (Muxlow in camera, 19 August 2013).

<sup>322</sup> TOR 2, T46.22–25 (Muxlow in camera, 19 August 2013).

<sup>323</sup> TOR 2, T73.20–25 (Muxlow in camera, 19 August 2013).

<sup>324</sup> TOR 2, T47.1–21 (Muxlow in camera, 19 August 2013).

<sup>325</sup> TOR 2, T47.35–40 (Muxlow in camera, 19 August 2013).

<sup>326</sup> TOR 2, T55.7–17; T60.13–17 (Muxlow in camera, 19 August 2013).

<sup>327</sup> TOR 2, T69.33–42 (Muxlow in camera, 19 August 2013).

<sup>328</sup> TOR 2, T74.21–25 (Muxlow in camera, 19 August 2013).

<sup>329</sup> TOR 2, T74.27–34 (Muxlow in camera, 19 August 2013).

<sup>330</sup> TOR 2, T74.36–44 (Muxlow in camera, 19 August 2013).

<sup>331</sup> TOR 2, T38.23–25 (Muxlow in camera, 19 August 2013).

that is, a matter of weeks before giving evidence on 19 August 2013 – that he had discovered that part of the Lantle investigation related to Fletcher, rather than only McAlinden.<sup>332</sup>

- C3.204 He confirmed that in his time at Zimmerman Services he had not sought to hinder or obstruct any police investigation, including Strike Force Lantle. Certainly he had not colluded with others to do so. He said his aim was for full disclosure in relation to information that might assist police with their investigation.<sup>333</sup>

### **Conclusions**

- C3.205 Muxlow had extensive experience as a former police investigator and knew that concealment of an indictable offence could constitute a criminal act. He should have discussed with Tynan the information about Wilson that he uncovered while undertaking the Clergy Review Analysis task so as to ascertain what steps (such as notifying the police) could or should have been taken in connection with that information, particularly in circumstances where, as stated in his report, he was aware that ‘no action was taken as a result of [the] allegation’.

### **Ms Wollschlager’s evidence**

- C3.206 Wollschlager obtained a qualification in social sciences, majoring in psychology, in 1997. She then worked for two years in the New South Wales Department of Community Services and later spent about 18 months working in England, again in the child protection field.<sup>334</sup>
- C3.207 In November 2009 she began work at Zimmerman Services, having been hired as a part-time case worker.<sup>335</sup> Wollschlager told the Commission her duties at Zimmerman Services largely involved ‘ombudsman’s inquiries’, which included risks to children arising from allegations relating to foster care, ‘CatholicCare’ and the 53 schools in the Diocese<sup>336</sup> but also providing training in child protection for teachers.<sup>337</sup> Occasionally, however, she was asked to review files and to collate information for investigative purposes.<sup>338</sup>
- C3.208 It would appear that Wollschlager was the first person associated with Zimmerman Services to see AM’s letter of 29 July 2010, having come across it during her review of the bishop’s files while assisting Muxlow with the ‘Clergy Review Analysis’ task.

### **Policies and procedures at Zimmerman Services**

- C3.209 Tynan was Wollschlager’s direct supervisor. Sometimes, however, she assisted investigators, including Muxlow, with particular tasks.<sup>339</sup>
- C3.210 When she began work at Zimmerman Services, Wollschlager said, there had been an in-house orientation with Tynan. During the orientation process, Wollschlager thought Tynan had told her about Zimmerman Services’ policy and procedures for reporting matters to the police.<sup>340</sup> As to what he told her, she stated:

In terms – yes, so speaking to your manager about the necessity to report to police; speaking to the alleged victim about their wishes in going to the police; and then informing them that

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<sup>332</sup> TOR 2, T38.37–39; T67.35–68.1; T70.45–71.3 (Muxlow in camera, 19 August 2013).

<sup>333</sup> TOR 2, T71.44–72.13 (Muxlow in camera, 19 August 2013).

<sup>334</sup> TOR 2, T2.45–3.18 (Wollschlager in camera, 15 August 2013).

<sup>335</sup> TOR 2, T3.20–29; T4.26–28 (Wollschlager in camera, 15 August 2013).

<sup>336</sup> TOR 2, T3.31–34; T14.15–23 (Wollschlager in camera, 15 August 2013).

<sup>337</sup> TOR 2, T3.31–39 (Wollschlager in camera, 15 August 2013).

<sup>338</sup> TOR 2, T3.41–44 (Wollschlager in camera, 15 August 2013).

<sup>339</sup> TOR 2, T3.46–4.11 (Wollschlager in camera, 15 August 2013).

<sup>340</sup> TOR 2, T5.46–6.9 (Wollschlager in camera, 15 August 2013).

if they do not choose to make a statement to police, we still need to pass information on, yes, for the police's intelligence purposes.<sup>341</sup>

- C3.211 She did not specifically recall, however, whether Tynan explained to her a policy or procedure for reporting of cases where the perpetrator was dead.<sup>342</sup> Asked about her own approach to such matters, Wollschlager told the Commission that if information came to her, such as a new victim, she would discuss with Tynan what to do and whether to report the matter to the police, even if the perpetrator of the abuse had died.<sup>343</sup> She was otherwise unable to remember any discussions with Tynan about how to deal with historical information in the files or records held at Zimmerman Services.<sup>344</sup>
- C3.212 Wollschlager said that, although she did not recall any specific conversation with Tynan or anyone at the Diocese, she was aware that the 'concealing of any crime is an offence' and thought that was common knowledge.<sup>345</sup> In this regard she confirmed that Tynan had told her the Diocese had a recognised problem of information relating to paedophile priests not having been provided to police (although she could not say when this discussion occurred).<sup>346</sup> She also confirmed that after her move to Newcastle in 2004 and until mid-2011 she had read newspaper reports dealing with the Diocese's history in relation to paedophile priests being concealed from or not reported to police.<sup>347</sup> She was thus aware of the situation in general terms.
- C3.213 Wollschlager agreed that occasionally during her work as a case worker she would find documents of a historical nature reporting things that had occurred some time ago. She explained that new complaints were generally mailed to them or would be dealt with 'via an intake' and were reported and stamped when they came in; old information, however, was kept on file.<sup>348</sup> She said if a document came in it would be processed in a manner that alerted staff to the fact it was a new complaint, even if it concerned something that had occurred many years before.<sup>349</sup> She agreed that the process subsequently evolved.<sup>350</sup>

### ***Assisting Mr Muxlow with the Clergy Review Analysis***

- C3.214 Wollschlager told the Commission that at one stage Muxlow was 'particularly stretched' by his workload and she offered to assist him. Muxlow accepted her offer and asked whether she could help him review some files.<sup>351</sup> In relation to understanding the task, Wollschlager thought Muxlow said he was 'compiling information about historical matters relating to clergy'.<sup>352</sup> Her role, she told the Commission, was to put information (from the bishop's files) into the form Muxlow provided, so that others could evaluate it: 'my role was purely just to extract the information'.<sup>353</sup>
- C3.215 Wollschlager could not recall specifically what Muxlow told her he was trying to extract from the files, but she understood it was 'just to be a summary of the information on those files'.<sup>354</sup> The files were divided between her and Muxlow, and the Fletcher file fell to her.<sup>355</sup>

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<sup>341</sup> TOR 2, T6.12–17 (Wollschlager in camera, 15 August 2013).

<sup>342</sup> TOR 2, T6.27–31 (Wollschlager in camera, 15 August 2013).

<sup>343</sup> TOR 2, T6.39–7.9 (Wollschlager in camera, 15 August 2013).

<sup>344</sup> TOR 2, T7.25–28 (Wollschlager in camera, 15 August 2013).

<sup>345</sup> TOR 2, T20.30–44 (Wollschlager in camera, 15 August 2013).

<sup>346</sup> TOR 2, T21.5–15 (Wollschlager in camera, 15 August 2013).

<sup>347</sup> TOR 2, T21.12–23 (Wollschlager in camera, 15 August 2013).

<sup>348</sup> TOR 2, T8.27–41 (Wollschlager in camera, 15 August 2013).

<sup>349</sup> TOR 2, T8.43–9.3 (Wollschlager in camera, 15 August 2013).

<sup>350</sup> TOR 2, T9.19–23 (Wollschlager in camera, 15 August 2013).

<sup>351</sup> TOR 2, T12.7–19 (Wollschlager in camera, 15 August 2013).

<sup>352</sup> TOR 2, T12.21–28 (Wollschlager in camera, 15 August 2013).

<sup>353</sup> TOR 2, T20.15–23 (Wollschlager in camera, 15 August 2013).

<sup>354</sup> TOR 2, T12.30–45 (Wollschlager in camera, 15 August 2013).

<sup>355</sup> TOR 2, T37.7–11 (Wollschlager in camera, 15 August 2013).

- C3.216 Counsel assisting examined Wollschlager about the form entitled ‘Clergy Analysis’,<sup>356</sup> that Muxlow had designed for the purposes of the review of the files in the bishop’s office.<sup>357</sup> The name ‘Fr James (Jim) Fletcher’ written on the form was in Muxlow’s writing, but Wollschlager confirmed that the date of birth (‘7.01.06’) and other notations on the form were hers.<sup>358</sup>
- C3.217 Wollschlager explained that she completed the form in a small room near the bishop’s office<sup>359</sup> – Muxlow and her both sitting at a round table with ‘files kind of strewn around’.<sup>360</sup> She said she had a vague recollection of carrying out the task and thought the review took a couple of hours; she was unable to recall how many priests she reviewed.<sup>361</sup>
- C3.218 Wollschlager said she obtained the information she wrote down from the ‘Service History’ section of the form from Fletcher’s file.<sup>362</sup> Figure C3.4 shows the information Wollschlager entered in the two sections of the form.
- C3.219 Wollschlager said she obtained the three victim names she entered on the form (those being AB, AH and Gogarty) from the bishop’s file on Fletcher.<sup>363</sup> The information on page 3 of the form – ‘1970 [AM] altar boy’ – was also from the Fletcher file, she said, specifically from AM’s letter.<sup>364</sup>
- C3.220 Under the heading ‘Other Relevant Information’ Wollschlager wrote, ‘\*connection to Philip Wilson → shared house?’. She explained that this referred to her understanding that Fletcher and Wilson had shared the bishop’s house at East Maitland at one stage. She agreed she had made that note because she knew this was a matter of some relevance to Fletcher.<sup>365</sup> She could not say whether that information came from something she had read in the paper, but she knew that Gogarty had spoken about it, and she had seen a *Lateline* (or *Dateline*) program that raised that particular subject – or a number of programs in which Gogarty was saying things about what Wilson should have known in relation to Fletcher.<sup>366</sup>

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<sup>356</sup> TOR 2, T18.6–20.23; T22.27–34.10 (Wollschlager in camera, 15 August 2013).

<sup>357</sup> TOR 2, T26.9–31 (Muxlow in camera, 19 August 2013).

<sup>358</sup> TOR 2, T18.10–19; T19.11–13 (Wollschlager in camera, 15 August 2013).

<sup>359</sup> TOR 2, T18.25–29 (Wollschlager in camera, 15 August 2013).

<sup>360</sup> TOR 2, T31.23–26 (Wollschlager in camera, 15 August 2013).

<sup>361</sup> TOR 2, T18.38–19.9 (Wollschlager in camera, 15 August 2013).

<sup>362</sup> TOR 2, T18.31–36 (Wollschlager in camera, 15 August 2013).

<sup>363</sup> TOR 2, T22.27–23.5 (Wollschlager in camera, 15 August 2013).

<sup>364</sup> TOR 2, T26.10–36 (Wollschlager in camera, 15 August 2013).

<sup>365</sup> TOR 2, T24.28–41; T28.43–29.2 (Wollschlager in camera, 15 August 2013).

<sup>366</sup> TOR 2, T24.28–25.6; T28.16–41 (Wollschlager in camera, 15 August 2013).

Service History	Date from	Date to	Location	Other clergy at this location-
	1969	1973	St Josephs East Maitland (AP)	
	1973	1977	Corpus Christi - Waratah (AP)	
	1977	1979	St Johns Maitland (AP)	
	1979	1983	St Johns Maitland (Administrator)	
	1983	1985	St Pauls Oakstead (AP)	
	1985	1987	St Bernard Clairvaux (AP)	
	1987	1988	St Marys Dugess - Parish in charge	
	1988		St Marys Dugess AP	
	1995	2002	St Brigids Braxton (AP)	
2002		St Patrick Lochmoe		

} concerned from 2002

Links to identified and suspected paedophile clergy	Date	Identified link	How linked
	1976	Victim Phillip Wilson	1976 victim told him of abuse by J F C [AM]

Figure C3.4 Extract from Clergy Analysis form for Fletcher, undated<sup>367</sup>

- C3.221 More particularly, with respect to Gogarty’s allegations against Wilson, Wollschlager gave evidence that she was aware that Gogarty had said Wilson should have been aware of his (Gogarty’s) own experience – that is, being taken to Fletcher’s room in the house at East Maitland.<sup>368</sup> Asked about the timing of her knowledge, Wollschlager said she ‘probably ... knew about Peter [Gogarty] before, which is why I’ve probably written that asterisk there’.<sup>369</sup>
- C3.222 Wollschlager said she did not recall having a specific conversation about what she had found in the letter.<sup>370</sup> What AM had told Wilson in 1976 – that Fletcher had abused him – was not something she knew about before embarking on this task.<sup>371</sup>
- C3.223 Wollschlager told the Commission she did not discuss the matter with Tynan, or at least could not recall a conversation with him about it, saying, ‘... my role was just to go through the file. I knew a report was to be prepared for him so that was why I didn’t’.<sup>372</sup> Later she said she could not be sure what Tynan did or did not know: she had simply gone through a historical file in order to extract information.<sup>373</sup> She also agreed that the fact that AM’s letter had handwriting on it prompted her to think the letter had been otherwise ‘actioned’.<sup>374</sup>

<sup>367</sup> Clergy analysis form re Fletcher, undated, conf ex SSS, p 2.

<sup>368</sup> TOR 2, T27.28–28.1 (Wollschlager in camera, 15 August 2013).

<sup>369</sup> TOR 2, T28.3–9 (Wollschlager in camera, 15 August 2013).

<sup>370</sup> TOR 2, T26.38–45 (Wollschlager in camera, 15 August 2013).

<sup>371</sup> TOR 2, T26.47–27.6 (Wollschlager in camera, 15 August 2013).

<sup>372</sup> TOR 2, T29.4–16 (Wollschlager in camera, 15 August 2013).

<sup>373</sup> TOR 2, T30.31–38 (Wollschlager in camera, 15 August 2013).

<sup>374</sup> TOR 2, T30.46–31.11 (Wollschlager in camera, 15 August 2013).

- C3.224 Wollschlager also said she did not speak to anyone about whether AM's complaint had been taken further; nor did she recall speaking with Muxlow about what she wrote on the form concerning Wilson. She did, however, give Muxlow the form when she had completed it.<sup>375</sup>
- C3.225 Wollschlager thought the reference in AM's letter to having told Wilson of the abuse in 1976 was 'concerning' and noted that if 'someone was told about it ... it could have been stopped then'.<sup>376</sup> She said she did not recall Muxlow and herself showing each other documents while they were reviewing files in the bishop's office; nor could she recall Muxlow looking at Fletcher's file in that office.<sup>377</sup>
- C3.226 Under questioning by counsel for the Diocese Wollschlager said she did not regard AM's letter as warranting an 'intake' of the complaint because it was a historical file.<sup>378</sup> She agreed with the proposition put to her that she did not consider there was 'first point of contact' responsibility to deal with the contents of the letter in the way that would have arisen had AM come to or sent the letter directly to Zimmerman Services.<sup>379</sup>
- C3.227 Wollschlager said that she had not knowingly or intentionally sought to impede or fail to assist any police investigation and nor had she colluded with others to do so. She agreed that, to the extent that she was able, she had always done her best to assist police.<sup>380</sup> Wollschlager told the Commission she had not had anything to do with Strike Force Lantle and did not know that Wilson was a person of interest for that investigation.<sup>381</sup>

### ***The 'Clergy Abuse within the Diocese of Maitland-Newcastle' document***

- C3.228 On being shown the document entitled 'Clergy Abuse within the Diocese of Maitland-Newcastle'<sup>382</sup> Wollschlager said she did not recall ever having seen it.<sup>383</sup> Nor did she remember any discussions with Muxlow about the comment in the document that 'It appears no action was taken as a result of this investigation'.<sup>384</sup> She said, however, that when reviewing the files with Muxlow she did not imagine the two of them were silent the entire time and agreed with the suggestion that she might have expressed her personal view at the time that 'it [the abuse] could have been stopped there'.<sup>385</sup>

### ***Conclusions***

- C3.229 Despite the fact that Wollschlager evidently appreciated the significance of the information in AM's letter – noting that it was 'concerning ... that back then someone was told about it' and that the abuse could have been stopped at that point – she apparently did not see it as her role to do anything other than collate the information to pass on for the consideration of others.
- C3.230 Her insistence that she did nothing more than extract the information on the 'Clergy Analysis' form is contradicted by the note she made about the potential connection between Fletcher and Wilson sharing a house, which was based on external information she had gathered from Gogarty's appearances in the media. Her conduct reveals that her role extended beyond merely noting information on a form in a mechanical fashion to conducting an independent analysis and synthesis of the material with other information known to her. Such analysis was appropriate in

<sup>375</sup> TOR 2, T31.13–21 (Wollschlager in camera, 15 August 2013).

<sup>376</sup> TOR 2, T31.35–32.3 (Wollschlager in camera, 15 August 2013).

<sup>377</sup> TOR 2, T33.40–34.5 (Wollschlager in camera, 15 August 2013).

<sup>378</sup> TOR 2, T39.27–37 (Wollschlager in camera, 15 August 2013).

<sup>379</sup> TOR 2, T42.35–44 (Wollschlager in camera, 15 August 2013).

<sup>380</sup> TOR 2, T47.19–29 (Wollschlager in camera, 15 August 2013).

<sup>381</sup> TOR 2, T47.33–48.8 (Wollschlager in camera, 15 August 2013).

<sup>382</sup> Redacted document titled 'Clergy abuse within the Diocese of Maitland-Newcastle' (undated), conf ex DDD.

<sup>383</sup> TOR 2, T34.33–39; T36.4–6 (Wollschlager in camera, 15 August 2013).

<sup>384</sup> TOR 2, T35.15–36 (Wollschlager in camera, 15 August 2013).

<sup>385</sup> TOR 2, T44.9–45.5 (Wollschlager in camera, 15 August 2013).

view of her role in the Diocese as a case worker whose job had investigative aspects attached to it.

- C3.231 The Commission considers Wollschlager should have directly raised with Tynan the information about Wilson in AM's letter. Alternatively, she should have inquired of Muxlow whether he had raised that information in order to ascertain what, if any, further steps she needed to take.

### Ms O'Hearn – discussions with Mr Tynan

- C3.232 As noted, Ms Maureen O'Hearn gave evidence, which the Commission accepts, that it was not until late January 2013, when contacted by Commission personnel, that she became aware of the existence of AM (see paras C3.66 to C.69, C3.78 and C3.132).
- C3.233 O'Hearn recalled a 'vague' discussion with Tynan some time after 29 January 2013 about the Commission's request that she contact AM.<sup>386</sup> This was in the context of O'Hearn mentioning to Tynan that there was a new victim – although she usually reported new victims to him only if it was a new offender or something out of the ordinary, 'which this next victim would have been'.<sup>387</sup>
- C3.234 O'Hearn thought she had seen Malone's letter to AM by the time of this discussion with Tynan, having recalled that it would have been helpful to have been sent the letter at the time since her name had been mentioned in it: it was for that reason she commented to Tynan that she had not previously been aware of AM.<sup>388</sup>
- C3.235 From this passing conversation with Tynan O'Hearn formed the impression that before January 2013 he had not seen AM's letter to Malone. She said the particular aspect of the letter she recalled discussing with Tynan was 'that [AM] had reported the matter to [Wilson] and it was obvious to me that Tynan had not been aware of that'.<sup>389</sup> O'Hearn could not recall exactly what Tynan had said in response but observed that whatever it was made her think 'it was news to him',<sup>390</sup> adding that Tynan seemed 'surprised' by that aspect of the letter.<sup>391</sup> Additionally, she said she had not seen any document suggesting that AM's letter had in fact been sent to Tynan before January 2013.<sup>392</sup>
- C3.236 O'Hearn agreed that the allegation about Wilson that AM made in his letter was 'pretty significant'.<sup>393</sup> In the ordinary course of events, O'Hearn said, a matter of that nature would be referred for discussion or action at Zimmerman Services.<sup>394</sup>
- C3.237 O'Hearn said she did not have any subsequent discussions with Tynan about the content of AM's letter and the way in which it was managed in the Diocese before January 2013.<sup>395</sup> Ultimately, however, O'Hearn told the Commission she was surprised that AM's letter came to her from the Commission, rather than from someone in the Diocese.<sup>396</sup>

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<sup>386</sup> Statutory declaration of O'Hearn, dated 26 June 2013, conf ex FFF, para 8.

<sup>387</sup> TOR 2, T9.12–29 (O'Hearn in camera, 12 August 2013).

<sup>388</sup> TOR 2, T9.31–47 (O'Hearn in camera, 12 August 2013).

<sup>389</sup> TOR 2, T12.36–13.17 (O'Hearn in camera, 12 August 2013).

<sup>390</sup> TOR 2, T13.26–27 (O'Hearn in camera, 12 August 2013).

<sup>391</sup> TOR 2, T14.15–29 (O'Hearn in camera, 12 August 2013).

<sup>392</sup> TOR 2, T13.29–34 (O'Hearn in camera, 12 August 2013).

<sup>393</sup> TOR 2, T14.31–33 (O'Hearn in camera, 12 August 2013).

<sup>394</sup> TOR 2, T14.35–45 (O'Hearn in camera, 12 August 2013).

<sup>395</sup> TOR 2, T15.22–24; T16.6–12 (O'Hearn in camera, 12 August 2013).

<sup>396</sup> TOR 2, T15.14–20 (O'Hearn in camera, 12 August 2013).



## Conclusions

### *The failings of Zimmerman Services in dealing with AM's complaint*

C3.238 The Commission heard evidence from a number of survivors of abuse who paid tribute to the invaluable support provided by Zimmerman Services, first under the management of Ms Helen Keever and then under Tynan. Their evidence was to the effect that Zimmerman Services is now well resourced and is developing and improving its structures as time passes. The evidence also revealed that the protection of children and the care of victims receive the highest priority from Zimmerman Services personnel. During the Commission's hearings O'Hearn, in particular, was singled out as being a tremendous support for victims. In addition, Detective Sergeant Kristi Faber praised O'Hearn's interaction with Strike Force Georgiana:

As far as Zimmerman Services are concerned, we've worked very closely with them over the entire five years and they have brought to us numerous complainants and when we get complainants, we contact Maureen O'Hearn from Zimmerman Services, who works tirelessly in relation to counselling and support of our victims in these matters.<sup>397</sup>

C3.239 O'Hearn was also pivotal in supporting a number of victims and their families during their involvement with the Commission. It is also apparent that Tynan is committed to ensuring that Zimmerman Services operates with a high degree of professionalism and efficacy in the child protection field and that he is personally committed to the important work Zimmerman Services does.

C3.240 There can, however, be little doubt that Zimmerman Services' handling of AM's complaint in 2010 and 2011 was unsatisfactory. Concerns include the following failures on the part of Tynan:

- failure to ask Malone for a copy of AM's letter of complaint upon only receiving the bishop's 2 September 2010 reply to AM
- failure to provide to O'Hearn a copy of the bishop's letter of reply to AM so as to enable her to prepare for possible contact from AM
- failure to follow up with Malone the status of AM's complaint and to discuss the possibility of further contact with AM by either the bishop or O'Hearn so as to ascertain how he was faring
- failure to read the Clergy Review Analysis document so as to inform himself about Wilson's potential concealing of child sexual abuse matters.

C3.241 Tynan, Muxlow and Wollschlager took no steps to report to police the information about Wilson's potential concealing of child sexual abuse. Tynan said he did not know about AM's allegations in relation to Wilson until January 2013. Wollschlager and Muxlow knew of that material, however, but took no substantive steps towards ensuring that police became aware of the information. Consequential institutional failures also arose from the failure by either Muxlow or Wollschlager to have separately raised with Tynan, directly, the information about Wilson and to have sought advice from him as to further steps that could or should be taken, including whether to notify the police. Although the Commission does not find that such inaction on the part of Tynan, Muxlow and Wollschlager was calculated to conceal the information about Wilson, viewed in its totality the evidence points to an institutional failure by Zimmerman Services to discharge its responsibilities.

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<sup>397</sup> Excerpts from TOR 1 public hearing transcript of evidence of Faber, dated 28 June 2013, ex 308, T1639.35–41.



C3.242 These failings (which are in the nature of systemic flaws, particularly relating to Zimmerman Services' reporting policies) are such that the Commission finds that Zimmerman Services, as a child protection institution, failed to assist or facilitate police investigations in that it failed to report to police potential criminal offences – namely, the allegations of Wilson's concealment of child sexual abuse, as set out in AM's letter of 29 July 2010.

### **Zimmerman Services' revision of policies, 2013**

C3.243 To the credit of the Diocese, and of Tynan in particular, there is evidence that Zimmerman Services' reporting policies have now been revised as a consequence of the deficiencies uncovered in the course of the Commission's investigations.

C3.244 Tynan's evidence was that in September 2010 it was not the practice of Zimmerman Services to report new allegations to the police if the perpetrator had died.<sup>398</sup> In June 2013 Tynan drafted a revised Investigations Policy requiring the reporting of allegations to the police regardless of whether the alleged perpetrator is dead.<sup>399</sup> Additionally, the revised policy requires that any information pertaining to a crime or conspiracy to commit a crime be raised with a person's supervisor. The Diocese's 'Reporting Child Protection Concerns Policy' now also includes an outline of s. 316 of the *Crimes Act 1900*, together with the requirement that a member of the Diocese raise concerns about potential criminality with their supervisor within one working day.<sup>400</sup> The latter policy also states:

It is understood that there is no possibility of obtaining an indictment where an alleged offender is deceased. Nevertheless, those crimes committed against children that were allegedly committed by a deceased person, will be reported to Police for the purposes of supplying intelligence.<sup>401</sup>

C3.245 These policy revisions are commendable since they are likely to assist prospective police investigations of child sexual abuse and related concealment allegations.

### **The Strike Force Lantle Search warrant executed on 2 June 2011**

C3.246 Compliance with a search warrant, even though mandated by law, constitutes a form of cooperation with police. For this reason the Commission received evidence relating to the circumstances in which Strike Force Lantle investigators obtained and executed a search warrant on Zimmerman Services in June 2011 and the various related Diocesan events occurring before and after execution of the warrant.

C3.247 The relevance of the police search warrant for the Commission had two elements. First, there was the question of whether AM's letter of 29 July 2010 (filed in the bishop's file on Fletcher by Malone in or about August 2010, as noted in para C3.29) was captured by the search warrant. Second, discussions between Tynan and Malone in anticipation of and following execution of the search warrant reinforced Malone's awareness of the nature and scope of the Strike Force Lantle investigation.

### **Discussions before the issuing of the search warrant**

C3.248 On 17 May 2011 Detective Senior Constable Jason Freney, an officer then attached to the Strike Force Lantle investigation, sent a letter to Tynan, as the Manager of Zimmerman Services, in

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<sup>398</sup> TOR 2, T86.22–26 (Tynan in camera, 14 August 2013).

<sup>399</sup> TOR 2, T112.9–113.36; T129.21–31 (Tynan in camera, 14 August 2013).

<sup>400</sup> TOR 2, T92.6–21 (Tynan in camera, 14 August 2013).

<sup>401</sup> Procedure for reporting allegations of criminal conduct, dated June 2013, annexure F to ex 206, p 53.

anticipation of the issuing of a search warrant relating to documents relevant to the Strike Force Lantle investigation. The letter was as follows:

Re: Strike Force Lantle – Request for documents

Newcastle Detectives are currently investigating allegations of concealing offences by clergy, formerly & currently, attached to the Maitland Newcastle Diocese of the Catholic Church during the period 1985-1999. This investigation stems from complaints made by [AL], [AK], Peter Cogarty [sic]<sup>402</sup> and [AJ].

In order to investigate the matter further, and as per your earlier request, a search warrant will be applied for seeking documents relating to the following:

1. Files / documents / recordings and other holdings in respect to alleged victims: [AL], [AK], Peter Cogarty and [AJ].
2. Files / documents / recordings and other holdings in respect to Denis McAlinden and the before mentioned victims only.
3. Files / documents / recordings and other holdings in respect to persons of interest Archbishop Wilson, Retired Bishop Michael Malone, Father Brian Lucas, Monsignor Alan HART and Archbishop Barry Hickey (Documents only in respect to their dealings in the Denis McAlinden investigation and / or the before mentioned victims).
4. A document written by Monsignor Patrick Cotter (Unknown date) where he indicated that it was fortunate that McAlinden's offending was on children and not on adults and females.
5. Documents / statements from witnesses that identify themselves as witnesses of first complaint from the before mentioned victims.

I understand that you have already compiled a file on Denis McAlinden, as outlined to Detective Sergeant Steel, during a conversation in December 2010.

**Please advise when you have all the documents compiled and I will make arrangements to apply for a search warrant authorising their release.**<sup>403</sup> [emphasis added]

C3.249 As is evident from the letter, it was preceded by discussions between Tynan and Freney as to the documents that were to be sought by the search warrant (although in effect neither Tynan nor Freney could recall the content of discussions relating to the search warrant).<sup>404</sup> Detective Sergeant Jeffrey Little, the officer in charge of the Lantle investigation, gave evidence that the letter was sent because the search warrant was not considered 'high risk' but was instead a warrant for documents.<sup>405</sup>

C3.250 Little subsequently provided to the Commission a statutory declaration<sup>406</sup> dealing with certain matters relating to the search warrant, including communications with Zimmerman Services and the drafting and execution of the warrant. In his declaration he stated that he considered execution of the warrant to be 'low risk'<sup>407</sup> and noted that Zimmerman Services (and its manager) had a history of cooperation with police.<sup>408</sup>

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<sup>402</sup> Although misspelt, this reference and the subsequent one are clearly intended to be to Mr Peter Gogarty.

<sup>403</sup> Letter from Freney to Tynan, dated 17 May 2011, ex 219, tab 504, p 1475.

<sup>404</sup> TOR 2, T9.16–10.2 (Tynan in camera, 13 August 2013); TOR 2, T134.9–15 (Tynan in camera, 15 August 2013); statutory declaration of Freney, dated 17 December 2013, ex 264.

<sup>405</sup> TOR 2, T5.27–33 (Little in camera, 1 November 2013, at 12:14pm).

<sup>406</sup> Statutory declaration of Little dated 22 January 2014, conf ex HHHHH.

<sup>407</sup> Statutory declaration of Little, dated 22 January 2014, conf ex HHHHH, para 21.

<sup>408</sup> Statutory declaration of Little, dated 22 January 2014, conf ex HHHHH, para 24.

- C3.251 At the time of executing the search warrant Little thought Malone had retired in early April 2011, so did not ‘reasonably expect’ that Malone would be consulted in relation to the warrant during the period 17 to 31 May 2011.<sup>409</sup> This position was erroneous: Malone did not in fact retire until mid-June 2011.<sup>410</sup>
- C3.252 Little also said he did not review the contents of Freney’s 17 May 2011 letter before it was sent or the search warrant itself before it was executed and noted that it was not his practice at that time (and is not his current practice) to nominate persons of interest in the body of a search warrant. He considered, however, that ‘no substantial harm or danger was done by such nomination’ in view of the wide media attention the Lantle investigation had received, including the reporting of Wilson and Malone as persons of interest.<sup>411</sup>
- C3.253 Tynan’s evidence was that he understood the Lantle investigators were seeking documents relating to McAlinden.<sup>412</sup> He said he was also under the impression that the original material on McAlinden from the bishop’s files had been delivered to Zimmerman Services before he began work there.<sup>413</sup> Nevertheless, Tynan said that on 18 May 2011 he met with Malone; he stated, ‘... I had the letter with me, so we looked at it and I specifically asked about McAlinden and he said that the McAlinden files were at Zimmerman House’.<sup>414</sup> Tynan confirmed he asked Malone only about McAlinden (even though the letter was in somewhat broader terms).<sup>415</sup>
- C3.254 Tynan told the Commission he also made inquiries of others at Zimmerman Services, and of Doyle at the bishop’s office, with a view to ensuring he had obtained all the relevant information needed for the forthcoming search warrant.<sup>416</sup>
- C3.255 Malone told the Commission he was unable to recall any specific conversations with Tynan about the search warrant or documents that were going to be sought by officers from Strike Force Lantle.<sup>417</sup> He acknowledged, however, that he might have had such discussions, adding, ‘I just had such confidence in him that he would provide the necessary documents that were required’.<sup>418</sup>
- C3.256 The Commission accepts Tynan’s evidence to the effect that on 18 May 2011, after receiving Freney’s letter, he met with Malone and together they went through the letter and discussed the material to be provided in response. The Commission also accepts that the discussion focused on matters concerning McAlinden. At the relevant time, however, it is unlikely to have escaped Malone’s attention that he himself was a person in respect of whom documents were being sought.

## The issuing and execution of the search warrant

- C3.257 On 31 May 2011 Freney applied for and obtained a search warrant in relation to the premises at Zimmerman Services (located at 58 Gipps Street, Carrington). As Figure C3.5 shows, the warrant authorised a ‘search’ of the premises with respect to a number of ‘things’.<sup>419</sup>

<sup>409</sup> Statutory declaration of Little, dated 22 January 2014, conf ex HHHHH, para 31.

<sup>410</sup> TOR 2, T1031.10–11 (Malone).

<sup>411</sup> Statutory declaration of Little, dated 22 January 2014, conf ex HHHHH, paras 11–13.

<sup>412</sup> TOR 2, T133.47–134.30 (Tynan in camera, 14 August 2013).

<sup>413</sup> TOR 2, T15.38–42; T6.6–10 (Tynan in camera, 13 August 2013).

<sup>414</sup> TOR 2, T11.27–29 (Tynan in camera, 13 August 2013).

<sup>415</sup> TOR 2, T11.10–29 (Tynan in camera, 13 August 2013).

<sup>416</sup> TOR 2, T10.32–37 (Tynan in camera, 13 August 2013).

<sup>417</sup> TOR 2, T43.12–17 (Malone in camera, 22 November 2013).

<sup>418</sup> TOR 2, T43.24–26 (Malone in camera, 22 November 2013).

<sup>419</sup> The search warrant stated that the applicant, Freney, had reasonable grounds for believing that the ‘things’ referred to were connected with the offences of s. 316 (conceal serious indictable offence), s. 315 (hinder discovery of evidence re serious indictable

2<sup>o</sup> To search those premises for any of the following things: <sup>(1)</sup>

-Files/ documents / recordings and other holdings in respect to alleged victims: AL, AK  
Peter COGARTY and AJ  
-Files / documents / recordings and other holdings in respect to Denis McALINDEN and the before  
mentioned victims only ( AL, AK COGARTY and AJ ).  
-Files / documents / recordings and other holdings in respect to Persons of Interest: Archbishop Phillip  
WILSON, Retired Bishop Michael MALONE, Father Brian LUCAS, Monsignor Alan HART and  
Archbishop Barry HICKEY (Documents only in respect to their dealings in the Denis MCALINDEN  
investigation and / or the before mentioned victims).  
-Documents / statements from witnesses that identify themselves as witnesses of first complaint from the  
before mentioned victims ( AL, AK , COGARTY and AJ .

Figure C3.5 Extract from Part 5 search warrant, dated 31 May 2011<sup>420</sup>

- C3.258 The search warrant was executed on or about 1 June 2011 at Zimmerman Services' premises, in the sense that Little and Freney attended to obtain the documents Tynan had collated.<sup>421</sup> In evidence before the Commission, Little said he estimated that a filled 'large filing cabinet drawer' of material was provided, including the 'original' McAlinden files, which contained a mixture of original documents and photocopies.<sup>422</sup> He confirmed that the documents the Diocese produced were of assistance to the Lantle investigation.<sup>423</sup> Notably, however, neither AM's letter of 29 July 2010 nor Malone's reply (collectively 'the AM correspondence') was provided to police in response to the search warrant.
- C3.259 As further described below, the Commission finds there is no evidence that the Diocese failed to comply with the terms of the search warrant as drafted. Rather, the evidence indicates that the Diocese, through Tynan, took steps to comply with the warrant. As noted, strictly speaking, such compliance can be regarded as a form of cooperation with a police investigation, albeit compelled by law.
- C3.260 The use of this particular search warrant, as drafted and executed, was, however, a less than effective means whereby the New South Wales Police Force could seek to obtain relevant information. This was so because of the narrow ambit of the identified documents sought and the manner in which police chose to execute the warrant.
- C3.261 On a proper reading of the search warrant the AM correspondence would not have been caught. Tynan's evidence was that he thought the warrant was confined to matters pertaining to McAlinden<sup>424</sup> and, although aware that Gogarty was a victim of Fletcher, he was unsure what information Gogarty might also have had about McAlinden.<sup>425</sup>
- C3.262 For the reasons noted in paragraph 16.2, in determining the extent to which Diocesan officials cooperated with police investigations, it is necessary also to note the parameters of such investigations, including any limitations where relevant. Such limitations can affect the capacity of church officials to facilitate, assist or cooperate with police investigations. There were some limitations to the investigation relating to the execution of this particular warrant. Strike Force Lantle was investigating allegations of *concealing* offences by clergy both formerly and currently 'attached' to the Diocese. Relevantly, Malone was considered a person of interest to the investigation, and documents associated with his dealings in relation to McAlinden were

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offence) and s. 319 (pervert the course of justice) of the *Crimes Act 1900*; warrant to search Zimmerman House Diocesan Child Protection and Professional Conduct Unit, dated 31 May 2011, conf ex CCCC, tab 11.

<sup>420</sup> Warrant to search Zimmerman House Diocesan Child Protection and Professional Conduct Unit, dated 31 May 2011, conf ex CCCC, tab 11, p 1477.

<sup>421</sup> Memorandum from Tynan to Malone, dated 1 June 2011, conf ex PPPP.

<sup>422</sup> TOR 2, T11.39-45; T43.29-36; T53.18-27 (Little in camera, 1 November 2013, at 12.14pm).

<sup>423</sup> TOR 2, T11.47-12.2 (Little in camera, 1 November 2013, at 12.14pm).

<sup>424</sup> TOR 2, T133.14-31 (Tynan in camera, 14 August 2013).

<sup>425</sup> TOR 2, T11.31-43; T12.8-18; T14.26-31 (Tynan in camera, 13 August 2013).

specifically sought in the search warrant. At the time the warrant was executed Malone was the head of the Diocese and had been consulted by Tynan (as might be expected) about materials collated in relation to the warrant.<sup>426</sup> However, police proceeded on the basis of an erroneous belief that Malone had in fact retired from the Diocese and thus would not be consulted about the search warrant. In this respect, the Lantle investigation should be distinguished from the circumstances in which material was generally sought from Zimmerman Services – for example, in relation to complaints of sexual abuse concerning priests not otherwise connected with the church hierarchy or potentially implicated in concealing crimes – given that members of the Diocesan hierarchy (including the then head of the Diocese) were named as persons of interest on the search warrant.

- C3.263 Further, the search warrant related only to the premises at Zimmerman Services. Files held in the bishop's office, however, contained documents relevant to the Strike Force Lantle investigation – including the Fletcher file, in which AM's letter to Malone was filed at the time of the execution of the search warrant on 1 June 2011 (see para 3.29).
- C3.264 The manner in which the search warrant was executed also provided, at least in theory, the opportunity for persons under investigation to vet or remove any inculpatory documents among those proposed to be provided to police. The police approach to execution of the search warrant was more in the nature of seeking compliance with a civil subpoena or summons for production.

### **Notifications to persons of interest in relation to execution of the search warrant**

- C3.265 After the execution of the search warrant on 1 June 2011 Tynan prepared a memorandum to Malone, as shown in Figure C3.6.
- C3.266 The significance of the memorandum was something the Commission explored.

### ***Bishop Malone's evidence***

- C3.267 At a hearing on 22 November 2013 Malone gave evidence without the benefit of having been shown a copy of the 1 June 2011 memorandum. He said he could not remember having a discussion with Tynan about persons of interest named in the search warrant being informed that the warrant had been executed, but he did acknowledge that such a discussion might have taken place.<sup>427</sup> As to the appropriateness of this, he said:

... it would not be appropriate, I would think, to inform the subjects of a police inquiry into documentation regarding them. I don't know that that would be an appropriate course of action.<sup>428</sup>

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<sup>426</sup> Notwithstanding Little's belief to the contrary: see statutory declaration of Little, dated 22 January 2014, conf ex HHHHH, para 31(c).

<sup>427</sup> TOR 2, T44.34–42 (Malone in camera, 22 November 2013).

<sup>428</sup> TOR 2, T45.6–9 (Malone in camera, 22 November 2013)

# Memorandum

**To:** Bishop Michael Malone  
**From:** Sean Tynan  
**Cc:**  
**Subject:** S.316 Investigation  
**Sensitivity:** Highly Confidential  
**Date:** 1 June 2011

Police served the long expected search warrant on 1 June 2011. They have taken the files pertaining to:

- Fr Denis MacAlinden
- AL
- AK
- Peter Gogarty
- AJ

The warrant also identified the following persons of interest:

- ✓ Archbishop Barry Hickey
- ✓ Archbishop Philip Wilson
- ✓ Bishop Michael Malone
- ✓ Mons Alan Hart
- ✓ Fr Brian Lucas

*away these re this warrant - no collusion*

As per your Diocesan expectations, Zimmerman House cooperated with Police inquiries.

Having discharged those responsibilities, I believe the Diocese now has an obligation to advise the above listed persons that they are persons of interest in an investigation pertaining to s.316 of the Crimes Act 1900. The knowledge of this investigation and most of the persons listed, has been in the public arena for some time. I do not believe the Diocese could be seen to be interfering with an investigation by providing those persons listed with the recommended information.

For your information,

Sean Tynan  
Manager, Zimmerman House  
Diocese of Maitland-Newcastle

**Figure C3.6 Memorandum from Sean Tynan to Malone (with handwritten notations by Malone), 1 June 2011**<sup>429</sup>

C3.268 Malone was later given a copy of the memorandum and in response provided a statutory declaration recording his explanation of the circumstances surrounding the memorandum and related matters.<sup>430</sup> In addition to confirming the handwriting on the memorandum as his own,<sup>431</sup> Malone stated that the tick beside each name on the list of 'persons of interest' indicated that he had contacted the person in some way. Although unable to recall what he said to each person contacted, he believed he would have used words to the following effect:

You have been named on a warrant issued by the Police for an investigation surrounding historical child abuse offences. The Diocese has assisted in the provision of that information.<sup>432</sup>

<sup>429</sup> Memorandum from Tynan to Malone, dated 1 June 2011, conf ex PPPP.

<sup>430</sup> Statutory declaration of Malone, dated 18 December 2013, conf ex RRRR.

<sup>431</sup> Statutory declaration of Malone, dated 18 December 2013, conf ex RRRR, para 4.

<sup>432</sup> Statutory declaration of Malone, dated 18 December 2013, conf ex RRRR, para 5.

C3.269 Malone recalled that he tried to contact Wilson but found he was away (hence the notation 'away'). He therefore spoke with Monsignor Cappo, Wilson's vicar general, giving him a message in the form of the words just cited.<sup>433</sup> He also stated the following:

In contacting each of the persons of interest I did not disclose any other person of interest to that person as I was mindful that there could not be any collusion in respect of the matter and the Police investigation could not be undermined.<sup>434</sup>

C3.270 Apart from the notes appearing on the memorandum from Tynan, Malone confirmed that he made no additional notes about the various telephone discussions.<sup>435</sup>

C3.271 In his statutory declaration Malone clarified his evidence given on 22 November 2013 – as to whether he had contacted individuals named in the warrant as persons of interest and the inappropriateness of doing so – noting that his memory had been refreshed by access to the memorandum:

12. At the time of giving my evidence I indicated that I would not have contacted the persons listed in the warrant. This statement is made with the benefit of reflecting on the Fletcher Investigation and my involvement in this Special Commission of Inquiry.
13. I contacted the persons in accordance with the recommendations of Mr Tynan. I believed that Mr Tynan had sufficient expertise in the area of the investigation of child abuse allegations so as to properly advise me in respect of these matters.
14. I accepted his advice and made contact accordingly.
15. As I have indicated, with the benefit of hindsight I believe now that I would not have contacted the persons named in the warrant.<sup>436</sup>

C3.272 A change in position was reflected in Malone's evidence on this topic – that is, his recollection of whether he had contacted people named in the warrant and the appropriateness of doing so. He made calls to senior colleagues. Two of the named persons of interest were archbishops, and the calls involved notifying them of a serious matter – that is, that they were named in a police search warrant relating to allegations of concealment offences. The matter had also been in the media (as noted below). For present purposes, however, the primary relevance of Malone's conduct in relation to the memorandum of 1 June 2011 concerns his knowledge that at that time the police were investigating Wilson for concealment offences.

### ***Mr Tynan's evidence***

C3.273 Tynan was questioned about his recollection of the circumstances to do with contacting the persons of interest referred to in the warrant, although also without the benefit of a copy of his memorandum to refresh his memory. He confirmed that he advised Malone that he could contact the persons of interest, explaining the basis for his advice thus:

All bar Archbishop Hickey had been the subject of one or more stories in the media. They were – it was already in the public domain that they were being the subject or they were the subject of investigation by Lantle. It appeared that material was getting into the public domain around what was occurring in Lantle.<sup>437</sup>

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<sup>433</sup> Statutory declaration of Malone, dated 18 December 2013, conf ex RRRR, para 6.

<sup>434</sup> Statutory declaration of Malone, dated 18 December 2013, conf ex RRRR, para 8.

<sup>435</sup> Statutory declaration of Malone, dated 18 December 2013, conf ex RRRR, para 17.

<sup>436</sup> Statutory declaration of Malone, dated 18 December 2013, conf ex RRRR, paras 12–15.

<sup>437</sup> TOR 2, T51.37–42 (Tynan in camera, 13 August 2013).



C3.274 As to the need for Malone to make contact with the persons of interest in the search warrant, Tynan explained:

... I was concerned about Bishop Malone and his relationships within the church, that he had already been out in front of everything and that we had – I believe we had cooperated fully with the police and that we'd provided them anything that they wanted and that we had not been told to keep that quiet. There was no ... direction from the police that that was to be on a tight hold and, therefore, having provided the material, as per the warrant, that he could advise them.<sup>438</sup>

C3.275 Malone informed Tynan after he had made the relevant calls: Tynan was not present when the calls were made.<sup>439</sup> Tynan said he also believed at the time that the individuals named knew they were being investigated by the police.<sup>440</sup>

C3.276 A statutory declaration from Tynan dated 17 December 2013 confirmed that he prepared the confidential memorandum and also his recollection that Malone told him he (Malone) had spoken to the people identified in it.<sup>441</sup>

C3.277 In his statutory declaration Detective Sergeant Little stated he had no recollection of specifically asking Zimmerman Services staff to treat the identity of the persons of interest named in the search warrant as confidential.<sup>442</sup>

### Conclusions

C3.278 The reference to persons of interest in the memorandum of 1 June 2011 and the discussion between Tynan and Malone were important factors, as reflected in the phone calls Malone made. This demonstrates an actual recognition on the part of Malone – perhaps assisted by his discussion with Tynan – that the police were actively investigating Wilson, among others, for concealing offences. Nevertheless, in view of the fact that both the letter from Freney to Tynan and the search warrant expressly referred to the persons of interest and the police took no steps to impress on Malone or Diocesan staff the confidential nature of that information, Malone's action cannot properly be characterised as either hindering or failing to assist a police investigation.

C3.279 One important consideration does, however, arise. Wilson's being named as a person of interest on the warrant, along with Malone's admitted attempt to communicate that fact to him, meant that Malone was squarely on notice that the police were investigating Wilson. Malone knew that only five to six months before Little interviewed him as part of the Strike Force Lantle investigation. Malone was well aware in June 2011, if not before, that Wilson's conduct was being scrutinised as part of that investigation, and this has relevance to the final matter explored in this chapter.

## Bishop Malone's participation in a police interview, 30 November 2011

### Relevant background

C3.280 By November 2011 some 16 months had passed since Malone had received AM's 29 July 2010 letter of complaint about the asserted cover-up by Wilson. However, a number of relevant events occurred during that time. At the Towards Healing Consultative Panel meeting on 19

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<sup>438</sup> TOR 2, T52.15–24 (Tynan in camera, 13 August 2013).

<sup>439</sup> TOR 2, T51.18–22 (Tynan in camera, 13 August 2013).

<sup>440</sup> TOR 2, T52.35–37 (Tynan in camera, 13 August 2013).

<sup>441</sup> Statutory declaration of Tynan, dated 17 December 2013, conf ex QQQQ, para 8.

<sup>442</sup> Statutory declaration of Little, dated 22 January 2014, conf ex HHHH, para 34.



August 2010, Malone had alluded to a new victim of Fletcher coming forward; he had met with AM at his home on 26 August 2010; and he had sent his 2 September 2010 reply to AM, outlining certain matters to help AM determine what further steps to take in relation to the complaint. Additionally, some months before receiving AM's letter there had been considerable media coverage of Gogarty's claims about Wilson's knowledge of Fletcher's abuse of boys at the bishop's house in Maitland. During June and July 2010 Malone had also dealt with Wilson's threat of defamation and his (Wilson's) assertion of leaking confidential information about Tynan in connection with the media coverage. Further, Malone had participated in an ABC Television *Lateline* interview in June 2010, in which he had said Wilson needed to clarify his knowledge of matters relating to McAlinden – 'seriously'.<sup>443</sup>

## The police interview

C3.281 Against that background, on 30 November 2011 Malone voluntarily participated in an electronically recorded interview (D-ERISP<sup>444</sup>) in relation to the Strike Force Lantle investigation. Detective Sergeant Jeffrey Little conducted the interview as the officer in charge of the investigation. As Little noted in his evidence, there was no obligation for Malone to attend to be interviewed: he had done so voluntarily.<sup>445</sup> From the transcript of the interview, it appears that Malone and Little had had a conversation on 24 November 2011, at which time the voluntary nature of Malone's participation in the interview was emphasised.<sup>446</sup> The interview was extensive, lasting almost four hours and involving 814 questions and answers, with one break of about 20 minutes at the two-hour mark.<sup>447</sup> A solicitor attended with Malone during the interview. Although Malone was a person of interest to the Lantle investigators, Little did not caution him.

C3.282 In the introductory stages of the interview Little set out the terms of reference for the Lantle investigation:

This statement that we're conducting here now, this statement interview relates to the terms of reference to Strike Force Lantle ... Those terms of reference are to investigate allegations of concealing offences by clergy formerly and currently attached to the Maitland-Newcastle diocese of the Catholic Church during the period 1985 to 1999, stemming from complaints made by [AL], [AK], Peter Gogarty [sic] and [AJ].<sup>448</sup>

C3.283 Little also made it clear that the investigation did not concern allegations of sexual assault on the part of clergy who had since died but that it instead concerned the alleged actions or inaction by clergy who had knowledge pertaining to child sex offences during the period in question (1985 to 1999).<sup>449</sup>

C3.284 Malone was given and adopted by reading onto the record a jurat,<sup>450</sup> as follows:

... this statement made by me accurately sets out the evidence that I would be prepared if necessary to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that ... if it is tendered in evidence I will be liable to prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.<sup>451</sup>

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<sup>443</sup> Audio recording of ABC *Lateline* episode, dated 18 June 2010, conf ex PW U, 05:37–05:53; transcript of ABC *Lateline* program, 'Bishop demands clarity in paedophile case', dated 18 June 2010, conf ex OO, p 23.

<sup>444</sup> D-ERISP refers to a digitally electronically recorded interview with a suspected person.

<sup>445</sup> TOR 2, T4.1–28 (Little in camera, 7 November 2013).

<sup>446</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJ, p 3.

<sup>447</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJ, p 74.

<sup>448</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJ, p 3.

<sup>449</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJ, p 3.

<sup>450</sup> A jurat is a statement of the circumstances in which an affidavit is made or sworn.

<sup>451</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJ, p 4.

He also confirmed that he understood and was happy with the jurat he read onto the record.<sup>452</sup>

C3.285 About three-quarters of the way through the interview Malone was asked (at question 624) ‘What can you tell me about a person by the name of Peter Gogarty?’ He gave a detailed answer, which included the information that Gogarty had been abused by Fletcher and he (Malone) had met with Gogarty on a number of occasions.<sup>453</sup> He then said:

He, he really has a vendetta against Phil Wilson big time because ah, as the newspapers have said, you know, he claims that Phil Wilson was sitting in the lounge downstairs that backed onto bishops house when Jim Fletcher was taking [AH] and himself and others up to his room, you know, in the nearby staircase, so he maintains that Phil must have seen something or known something or that Leo Clarke probably would have as well, you know. Um, so he’s, he’s got the dirt on Phil.<sup>454</sup>

C3.286 Shortly thereafter there was the following exchange:

Q661 **Are you aware of any other victims by Fletcher, child victims?**

A **I am. Um, there was a, a family in Maitland about, up at ... Um, their son was a victim of Fletcher um, but ah, he did not, didn’t want to come forward and as far as I know, he hasn’t come forward.**

Q662 O.K.

A **Um, I’m trying, I don’t know, I can’t think of any other off-hand.**

Q663 Yep. And when you learnt of this young fellow, was that after the —

A Yeah, it was sort of the wash-up of the, of the Fletcher case. Um, again Helen Keevers to her credit um, she had made, I don’t know um, whether [AH] might’ve said something about this particular chap.

Q664 Yep.

A I, I can’t think of his name, frankly, and um, but um, his name was kind of known as a victim of Fletcher to the family and to us um, but he didn’t want to come forward at all. But Helen was very good. She worked with the parents and the family in this whole matter and I think she encouraged the, the lad also, who was a man by this time. She encouraged him to come forward to the police, but he, he was not interested in doing that.<sup>455</sup> [emphasis added]

C3.287 There was no return to this line of questioning during the interview, as Little accepted during his evidence.<sup>456</sup> Nor did Malone at any point during the interview volunteer information about AM.

C3.288 Before concluding the interview Little asked whether there was anything else Malone wished to say. Malone replied, ‘I think I’ve said enough’.<sup>457</sup>

## **Bishop Malone’s evidence**

### ***Knowledge that Archbishop Wilson was a person of interest***

C3.289 During an in camera hearing before the Commission Malone was questioned about his understanding of the Lantle investigation.<sup>458</sup> He responded:

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<sup>452</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJJ, p 4.

<sup>453</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJJ, p 90.

<sup>454</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJJ, p 91.

<sup>455</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJJ, pp 95–96.

<sup>456</sup> TOR 2, T20.26–44 (Little in camera, 7 November 2013).

<sup>457</sup> D-ERISP of Malone, dated 30 November 2011, conf ex JJJJ, p 117.

I understood that Lantle was put together in order to have a look at the possibility of non-cooperation with the police in investigating matters related to sexual abuse.<sup>459</sup>

C3.290 Malone was also aware that the Lantle investigation involved looking into allegations of concealing knowledge of sexual abuse on the part of clergy.<sup>460</sup> He said, however, he was not aware that Wilson was a person of interest:

Q. You understood that one of the people they were investigating was Archbishop Philip Wilson?

A. Not exactly, no. I wasn't sure who they were investigating.<sup>461</sup>

C3.291 He also said initially that he did not know Gogarty was one of the complainants in the investigation.<sup>462</sup> He subsequently agreed, however, that the terms of reference for the Lantle investigation had been read to him during the interview and that this prompted him to remember that Gogarty was in fact a complainant.<sup>463</sup> Malone confirmed he knew Gogarty's complaint was that Wilson ought to have known about Fletcher having sexually abused boys: Gogarty had told him that himself (before November 2011).<sup>464</sup>

### **Knowledge of AM**

C3.292 Counsel assisting asked Malone whether he volunteered any of the contents of AM's letter to Little during his interview:

A. **I don't think that I did.** The interview that I had with Detective Sergeant Little was a very long and tiring interview. It was four hours in duration with a little break in between. I answered as truthfully as I could the questions that were put to me and I don't recollect that I mentioned anything about [AM].

Q. Why not?

A. **I have no idea why not.** It was certainly not in any intention to deceive the investigation at all.<sup>465</sup> [emphasis added]

C3.293 Malone agreed that he knew Little's investigation was looking at offences of concealing of child sexual abuse by clergy.<sup>466</sup> He also knew that one of the perpetrators associated with the concealing offences was Fletcher. He knew, too, that AM was a victim of Fletcher and that AM had asserted in his letter that Wilson had been told about Fletcher and no action had been taken in relation to the complaint.<sup>467</sup>

C3.294 Malone agreed that in response to Little's question (at 661) about whether he was aware of any other child victims of Fletcher, he had provided information about AB (although he could not recall doing so). As to why Malone had not told Little about AM, however, he said:

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<sup>458</sup> TOR 2, T2.30–22.7 (Malone in camera, 16 July 2013, at 3.42pm). Notably, at the date of this initial in camera hearing, there were certain public interest immunity constraints relating to the extent to which Malone's D-ERISP interview could be used by the Commission (such that only certain pages were the subject of examination). However, in the interests of procedural fairness, the issue of the D-ERISP interview was revisited at a further in camera hearing on 22 November 2013, at which time the entire interview was tendered: TOR 2, T3.34–85.46 (Malone in camera, 22 November 2013); D-ERISP of Malone, dated 30 November 2011, conf ex JJJ, pp 95–96.

<sup>459</sup> TOR 2, T2.43–3.1 (Malone in camera, 16 July 2013, at 3:42pm).

<sup>460</sup> TOR 2, T3.3–5 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>461</sup> TOR 2, T3.8–11 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>462</sup> TOR 2, T3.16–19 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>463</sup> TOR 2, T3.21–31 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>464</sup> TOR 2, T3.33–41 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>465</sup> TOR 2, T3.47–4.13 (Malone in camera, 16 July 2013, at 3:42pm).

<sup>466</sup> TOR 2, T4.14–24 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>467</sup> TOR 2, T4.26–39 (Malone in camera, 16 July 2013, at 3.42pm).

... I don't know why I didn't. It certainly wasn't in any intention to deceive, as I said a moment ago. It is probably because I was tired at that point, it just didn't come to mind.<sup>468</sup>

- C3.295 Malone conceded that the existence of AM as a further victim of Fletcher was something he should have told Little.<sup>469</sup>
- C3.296 Under questioning from his counsel about his answer that he could not recall any other victims 'off hand', Malone said that at the time he was trying to remember the 'chap' from Maitland (AB). He was 'struggling' to remember him, notwithstanding that at the time of the interview he had had knowledge of AB's case of abuse for nine years (since 2002).<sup>470</sup> He had also had contact with AB's family.<sup>471</sup> After 660 questions, Malone agreed that he could not 'dredge up' AB's specific name.<sup>472</sup> He said that, when questioned about his awareness of other Fletcher victims, he was doing his best to try and recollect; he was trying to think of AB and could not think of any others 'off hand'.<sup>473</sup>
- C3.297 Additionally, when explaining the physical circumstances of the interview, Malone told the Commission it was conducted in a basement room in the police station, near the cells; it was a 'pokey' room. It was also a very hot day, he said. The interview process had not been easy (although there was a break for a few minutes) and Malone described it as a 'long torrid kind of interview'.<sup>474</sup>
- C3.298 Malone otherwise reiterated his evidence that he did not intend to deliberately fail to mention AM during the interview with Little, saying, 'If I had recollected him, I certainly would have mentioned him and I just didn't recollect'.<sup>475</sup>
- C3.299 As the transcript of the electronically recorded interview confirms, nothing Little said in the interview suggested that he (Little) already knew about AM. In any event, on Malone's account, he simply forgot to tell Little about AM, even when asked about his awareness of other victims of Fletcher.
- C3.300 Under questioning by counsel assisting, Malone agreed that AM was 'definitely' a recently revealed victim of Fletcher, having come forward only 12 months before the interview with Little. Despite that, Malone confirmed his evidence to the Commission that he 'forgot' to mention AM. He firmly denied, however, that he had deliberately kept the information to himself.<sup>476</sup>
- Q. You knew that part of Detective Sergeant Little's investigation was addressing assertions, in this case by Peter Gogarty, that Archbishop Wilson knew things about Fletcher abusing boys?
- A. Yes. Yes, I knew that.
- Q. But you still did not provide any information to Detective Sergeant Little about [AM].
- A. No, I didn't, and, as I say, it wasn't to deliberately mislead. It was simply that I forgot.<sup>477</sup>
- C3.301 Malone's dealings with Gogarty and his assertions in relation to Wilson were further explored:

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<sup>468</sup> TOR 2, T5.9–29 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>469</sup> TOR 2, T11.37–42 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>470</sup> TOR 2, T68.40–69.1 (Malone in camera, 22 November 2013).

<sup>471</sup> TOR 2, T69.8–9 (Malone in camera, 22 November 2013).

<sup>472</sup> TOR 2, T69.15–17 (Malone in camera, 22 November 2013).

<sup>473</sup> TOR 2, T69.19–23 (Malone in camera, 22 November 2013).

<sup>474</sup> TOR 2, T69.25–70.3 (Malone in camera, 22 November 2013).

<sup>475</sup> TOR 2, T70.5–8 (Malone in camera, 22 November 2013).

<sup>476</sup> TOR 2, T5.5–46 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>477</sup> TOR 2, T6.39–7.1 (Malone in camera, 16 July 2013, at 3.42pm).

- Q. Do you recall that you were asked a specific question by Detective Sergeant Little about Peter Gogarty and what you knew about Peter Gogarty?
- A. Yes, I remember he did ask me what I thought of Peter Gogarty, yes.
- Q. You gave a fairly long answer outlining what you knew because, by that time, you'd had a fair bit of interface with Peter Gogarty?
- A. We'd met often and spoken to each other, yes. And I knew of his concerns about Fr Wilson.
- Q. What were his concerns about Fr Wilson, as you understood it?
- A. As I understood it, he maintained that when he was being ushered upstairs in the bishop's house in Maitland, he would often pass by the lounge room, which was downstairs, and that Fr Wilson was there in the lounge room and would have seen him being ushered up the stairs.
- Q. Yes?
- A. He would have – and he would have seen that on more than one occasion.
- Q. That was what Mr Gogarty was asserting to you in relation to Archbishop Wilson?
- A. Yes, he did, yes.
- Q. That material was gone over with Detective Sergeant Little, wasn't it? You provided that information to Detective Sergeant Little?
- A. Yes, I'd imagine I did, yes.
- Q. In so providing that, didn't it prompt in your mind a connection to the fact that you had been told by someone you found credible – that is, [AM] – that Fletcher had actually sexually abused him?
- A. **Well, as I say, I'd forgotten that, even though it was a relatively recent matter.**
- Q. You had absolutely, completely forgotten about [AM]?
- A. Well, I'd forgotten – you know, as I mentioned a moment ago, it was a long and tedious interview and it was very constant. I tried, as truthfully as I could, to answer all of the questions that were put to me. I was, by the end of that time, you know, pretty tired and exhausted and my mind was obviously not working very well, **so I overlooked it completely, yes.**<sup>478</sup> [emphasis added]

C3.302 Malone denied that the reason he failed to advise Little about AM was because it would have exposed Wilson to further scrutiny in relation to concealing child sexual abuse.<sup>479</sup>

### ***Detective Sergeant Little's evidence***

C3.303 The Commission questioned Little about his view of Malone's cooperation during the interview of 30 November 2011. Counsel assisting asked Little why he posed question 661, about whether Malone knew of any other victims of Fletcher. Little replied:

Basically to – whilst the ... [terms] of reference were fairly tight we certainly had some flexibility with the terms of reference in order to establish any other tendency evidence in relation to Fletcher and any concealment therein.<sup>480</sup>

C3.304 Little said he had an expectation that Malone would tell him what he knew about any other victims of Fletcher; certainly he had no reason to think Malone would not do so.<sup>481</sup> Little thought

<sup>478</sup> TOR 2, T7.3–8.3 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>479</sup> TOR 2, T8.26–36 (Malone in camera, 16 July 2013, at 3.42pm).

<sup>480</sup> TOR 2, T7.28–32 (Little in camera, 7 November 2013).

Malone had in fact failed to assist his investigation by failing to mention AM. He did not, however, consider that Malone's conduct fell into the category of hindering (there being no specific act of hindrance)<sup>482</sup> or failing to cooperate with the investigation.<sup>483</sup> As to his opinion of Malone's cooperation, he said:

He cooperated. He actually answered the questions that I asked him. Having said that, question 662 where he didn't actually – he said, "I can't think of any offhand." That's basically something you would need to take up with him, but he knowingly and definitely – and let me just clarify this: I am a little concerned that he didn't disclose it. He had been told only 17 months prior to my interview ... about 16 months ... I would have thought – this is just from my perspective – reasonable to believe that he would have had that fairly fresh in his mind and it is a fairly significant matter.<sup>484</sup>

C3.305 As the officer in charge of Strike Force Lantle, Little expanded on why he considered the AM matter to be 'fairly significant':

... the contents of – the actual outline of the offences that were committed upon [AM] are on the bad side of horrible ... They are horrendous, actually, and it's not something that I would forget in quite a few years. The question I asked was directed directly at any other victims in relation to Fletcher.<sup>485</sup>

C3.306 Little otherwise observed that, as another victim of Fletcher, AM fitted into the question 'Are there any other victims of Fletcher, child victims?' Disclosing AM's existence '... would have been the perfect answer'.<sup>486</sup> Little also said that, because AM's letter referred to Wilson, it was 'yet another allegation of concealment by him in relation to clergy abuse of children in the Maitland-Newcastle Diocese' and was thus relevant to the investigation he was carrying out.<sup>487</sup>

C3.307 As to whether Little was misled by Malone's response to question 661 (as noted above), he stated:

I believe so, yes. There was a misdirection because by saying, "I don't know" – like, what I have asked him is if there were any other victims of Fletcher. He replied: ... *I don't know, I can't think of any other offhand.*

There may be an excuse – well, I shouldn't analyse that, I guess, but that was a concern to me, yes.<sup>488</sup>

C3.308 Little confirmed that 'of course' he would have taken further steps in relation to the information about AM had Malone drawn it to his attention.<sup>489</sup>

C3.309 Little gave evidence that he was not considering potential criminal offences relating to either s. 315 (hinder police investigation) or s. 316 (conceal serious indictable offence) of the *Crimes Act 1900* in connection with Malone's failure to advise him of AM's existence. He explained that those offences were not applicable to the circumstances and there was no legislation compelling Malone to notify police about AM.<sup>490</sup>

C3.310 The Commission accepts that the facts surrounding Malone's non-disclosure in connection with AM do not raise questions of potential criminal conduct on the part of Malone. In this respect,

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<sup>481</sup> TOR 2, T7.38–45 (Little in camera, 7 November 2013).

<sup>482</sup> TOR 2, T11.17–31 (Little in camera, 7 November 2013).

<sup>483</sup> TOR 2, T11.39–45 (Little in camera, 7 November 2013).

<sup>484</sup> TOR 2, T12.1–24 (Little in camera, 7 November 2013).

<sup>485</sup> TOR 2, T12.26–32 (Little in camera, 7 November 2013).

<sup>486</sup> TOR 2, T9.4–20 (Little in camera, 7 November 2013).

<sup>487</sup> TOR 2, T9.22–31 (Little in camera, 7 November 2013).

<sup>488</sup> TOR 2, T12.37–47 (Little in camera, 7 November 2013).

<sup>489</sup> TOR 2, T13.19–22 (Little in camera, 7 November 2013).

<sup>490</sup> TOR 2, T10.3–11.5 (Little in camera, 7 November 2013).

ss. 315 and 316 of the *Crimes Act* have no application because Fletcher is dead and any alleged concealment by Wilson would not constitute a 'serious indictable offence' as defined.

## Conclusions

### *Awareness of Archbishop Wilson as a person of interest*

C3.311 The Commission does not accept Malone's evidence that he was unaware that Wilson was in fact a person of interest to the Strike Force Lantle investigation. Malone was aware that Gogarty's complaint concerned an assertion that Wilson knew of Fletcher's child sexual abuse. Further, in early June 2011 Malone tried to contact Wilson but, being unsuccessful, instead conveyed a message through Cappo that Wilson had been 'named on a search warrant issued by the police for an investigation surrounding historical child abuse offences'. That investigation was, of course, Strike Force Lantle – as was made clear by the terms of the letter dated 17 May 2011 from Freney (as quoted above) that Malone looked at with Tynan on 18 May. Both the search warrant (as shown in Figure C3.5) and Freney's 17 May 2011 letter identified Wilson as a person of interest. Wilson was also identified as such in Tynan's memorandum of 1 June 2011 (as shown in Figure 3.6). In those circumstances Wilson's status as a person of interest must have been clearly apparent to Malone. It is also highly improbable that Malone would have forgotten Wilson's status as a person being investigated for potential concealment offences – particularly in view of Wilson's stature within the church hierarchy and the fact that Malone himself was also under investigation by the same strike force.

### *Failure to mention AM to Lantle investigators*

C3.312 Malone offered assistance to the Strike Force Lantle investigation by voluntarily attending to answer questions on 30 November 2011. He further assisted police by voluntarily attending to provide a statement on 26 September 2013. Little's evidence that, in terms of the provision of this information to investigators, there was at least cooperation to that extent is accepted.

C3.313 However, the Commission has no doubt that, as he accepts, Malone knew about AM at the time of the interview with Little. Malone had previously received from AM a letter that clearly identified him (AM) as having been a victim of Fletcher and that voiced a complaint that Wilson had been associated with a cover-up by the Church of the crimes committed against him (AM). Malone had travelled to AM's home and met with him for more than an hour. He said he was impressed by AM and believed his account of the abuse committed by Fletcher, finding AM wholly credible. Malone thought AM to be a 'fine man' and regarded him as having been sincere, open and forthcoming during the meeting.

C3.314 In the light of Malone accepting that he knew of Gogarty's complaint about Wilson, it is improbable that the exchanges with Little concerning this subject matter (that is, Wilson and Gogarty) would not have prompted Malone to remember AM's claims about Wilson.

C3.315 Having regard to the various things Malone knew at the time, his failure to mention AM to Little during the interview cannot be attributed to a mere lapse of memory or tiredness on his part, as he asserted. In contrast with other prolific sexual offenders such as McAlinden, who had a great number of victims, the evidence demonstrates that there were only two victims, in addition to Gogarty, that Malone knew about, these being AH and AB. The Commission does not accept that – having read AM's letter and having relatively recently attended a meeting with him (in August 2010) at his home, at which time he formed the view AM was a credible and impressive man – when directly questioned about other victims of Fletcher, Malone forgot to mention AM. The failure to mention AM during the interview was deliberate.

- C3.316 The concerns Malone raised about the circumstances of the interview – such as its length or the ‘pokey’, hot room in which it was conducted – do not explain his failure to advise Little that AM was a further victim of Fletcher.
- C3.317 AM’s letter to Malone expressly referred to a cover-up in connection with Wilson and possibly others in view of the apparent failure to act on the complaint. That is something that would have been at the forefront of Malone’s mind given the subject matter canvassed in the interview with Little and the information Malone provided about Gogarty’s claims against Wilson. This would be so even if it had not already been in his mind by virtue of his having been read the terms of reference of the Lantle investigation at the beginning of the interview.
- C3.318 In such circumstances the Commission is comfortably satisfied that Malone’s failure to provide the information about AM to Little during the interview of 30 November 2011 (or at any time thereafter) was deliberate. Malone accordingly withheld from the Lantle investigators information that he would have known was relevant – that being AM’s letter and the knowledge of AM as a victim of sexual abuse by Fletcher. A central element of AM’s complaint was his assertion that Wilson was involved in a cover-up of the disclosure AM made to him in 1976 in relation to Fletcher’s sexual abuse. This was information that would obviously have been of great interest to the Strike Force Lantle investigators.
- C3.319 In not disclosing that information, Malone failed to assist the Lantle investigation and failed to facilitate the investigation of other relevant matters – namely, the matters AM raised about Wilson. The answer he gave to question 661 misled Little into believing that he knew of no other victims of Fletcher. This was not the true position; nor did Malone ever correct it in subsequent contact with Little.



# C4 Archbishop Wilson and his knowledge of McAlinden’s propensity for child sexual abuse

## Contents

<b>AJ’s disclosure to Father Wilson .....</b>	<b>113</b>
AJ’s evidence .....	113
Disclosure to Archbishop Wilson .....	113
The Merriwa matter .....	115
A phone call to Washington, 1993.....	116
Archbishop Wilson’s evidence.....	116
The ‘first event’ in 1985: investigations at Merriwa .....	116
The ‘second event’ in 1985: AJ’s disclosure.....	117
The 1993 phone call .....	118
Conclusions.....	119
<b>McAlinden’s movement from Merriwa to Adamstown and beyond, 1985 to 1988.....</b>	<b>121</b>
<b>Archbishop Wilson’s investigation of complaints from Merriwa .....</b>	<b>122</b>
Archbishop Wilson’s evidence.....	122
Timing of the investigations .....	122
Agitation to investigate a complaint about McAlinden .....	123
The visit to Merriwa .....	123
Receiving the complaint of a parent.....	124
A handwritten statement from BA .....	125
Information conveyed to the bishop .....	125
Contemporaneous documents relating to Archbishop Wilson’s involvement .....	127
Communication with Mr Hatton MP .....	127
The 20 July 1987 letter from Archbishop Wilson to Mr Hatton MP .....	129
Archbishop Wilson’s 1987 diary .....	131
The ‘misprision note’ .....	132
Wilson’s note of 3 August 1987.....	134
BA’s evidence .....	135
Mr Stanwell’s evidence .....	135
Initial concerns expressed during a staff meeting in early 1986 .....	136
The 1987 statement .....	136
The police statement.....	137
The handwritten submission .....	137
Discussions with Mr Ray Hanley .....	137
The 1987 statement .....	137
The police statement.....	137
Witnessing an incident involving McAlinden.....	138
The 1987 statement .....	138
The police statement.....	138
Contact with Bishop Clarke and the bishop’s secretary .....	139
The 1987 statement .....	139
The police statement.....	140

The handwritten submission.....	141
McAlinden’s removal from Merriwa.....	142
The 1987 statement.....	142
The police statement.....	142
Mr Stanwell’s attitude towards reporting to the police.....	142
Denial of Archbishop Wilson’s version of events.....	143
Ostracism.....	143
Conclusions.....	144
Mr Stanwell’s recollection.....	144
<b>Management of the Merriwa complaints.....</b>	<b>144</b>
Archbishop Wilson’s communication with Bishop Clarke.....	144
The confrontation with McAlinden.....	145
Inquiries about a psychiatrist.....	146
A further letter from Archbishop Wilson to Mr Hatton MP.....	148
Dr Johns’ report.....	149
Archbishop Wilson’s view of his reporting obligations.....	150
Mr Hatton MP.....	151
Dr Johns.....	153
Conclusions.....	154
The Merriwa events: the facts.....	154
Archbishop Wilson’s correspondence with Mr John Hatton MP.....	158
Archbishop Wilson’s involvement with Dr Johns.....	159
Archbishop Wilson’s reporting obligations.....	160
No discussions between Archbishop Wilson and Bishop Clarke, January 1987 to August 1990.....	162
A handover to Monsignor Hart in 1990?.....	163
Archbishop Wilson’s evidence.....	163
Monsignor Hart’s evidence.....	164
Conclusion.....	164
AJ, Archbishop Wilson and AJ’s complaint to the Diocese, 1993.....	164
Archbishop Wilson’s return to the Diocese, June 1993.....	164
The initiation of formal canonical processes against McAlinden, October 1995.....	165
Archbishop Wilson’s evidence.....	165
Archbishop Wilson’s choice of a canon 1044 process.....	166
Statements by AL and AK.....	167
The ‘Father Denis McAlinden: impediment to exercise orders C1044 summary of evidence’ document.....	168
Monsignor Hart’s evidence.....	169
Bishop Clarke’s letter of 19 October 1995.....	169
Conclusions.....	169
Archbishop Wilson and sexual abuse complaints in the Diocese of Wollongong, 1996.....	170
Conclusions.....	171

- C4.1 In Chapter 12 of the public volume of this report the Commission examines the extent to which officials of the Catholic Church had either cause to suspect or knowledge about McAlinden's propensity for child sexual abuse. That chapter deals with reports from 1954 to 2002. In order to protect the integrity of any future criminal proceedings, it does not discuss matters concerning Archbishop Philip Wilson.
- C4.2 This chapter of the confidential volume considers the timing and extent of Wilson's knowledge in connection with McAlinden's propensity to sexually abuse children. Consistent with the approach described in confidential Chapter C2, evidence on these matters was taken in camera so as to protect the integrity of any future criminal proceedings.
- C4.3 In broad terms, there are three areas to be examined in relation to Wilson's knowledge of and involvement with reports of McAlinden's sexual offending and Wilson's communication with other church officials about them:
- AJ's reports to Wilson in the early to mid-1980s that when she was a child McAlinden had sexually abused her
  - reports Wilson received from people in Merriwa in and about 1986 or 1987, when he was involved in investigating complaints and dealing with McAlinden
  - Wilson's role in the canonical process against McAlinden begun in October 1995.
- C4.4 An assessment of Wilson's knowledge and actions (or otherwise) in relation to allegations of child sexual abuse by McAlinden is important in order to gain an understanding of Wilson's personal role and attitudes and, ultimately, the extent of his facilitation of or assisting with (or otherwise) police investigations of relevant matters.
- C4.5 The Commission also relies on material in this chapter and in Chapter C2 in forming an adverse view of Wilson's general credibility as a witness – see chapter C5 of this confidential volume.

## AJ's disclosure to Father Wilson

### AJ's evidence

- C4.6 AJ is a 64-year-old woman who gave evidence before the Commission. As part of her evidence she adopted the contents of a statement dated 29 June 2010 that she had given to police.<sup>1</sup> AJ was from a devout Catholic family.<sup>2</sup> McAlinden sexually abused her in 1961 or 1962 in Singleton during the summer holidays, when she was aged either 11 or 12 years. While she was sitting on his lap at the family's kitchen table, opposite her mother, McAlinden stroked her vaginal area under her shorts and underpants.<sup>3</sup>
- C4.7 In 1968 AJ told her mother of the abuse. She thought her mother 'didn't want to hear what [had] happened' and 'just wanted to dismiss it'.<sup>4</sup>

### Disclosure to Archbishop Wilson

- C4.8 Some years later, in 1975, AJ came to know Wilson as the parish priest in East Maitland.<sup>5</sup> Her association with him continued, and between 1983 and 1986 she became quite close to him.<sup>6</sup> AJ

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<sup>1</sup> TOR 2, T3.5–9; T3.23–26 (AJ in camera, 8 July 2013); NSW Police statement of AJ, dated 29 June 2010, conf ex W.

<sup>2</sup> NSW Police statement of AJ, dated 29 June 2010, conf ex W, para 3.

<sup>3</sup> *ibid*, paras 7–9.

<sup>4</sup> *ibid*, para 18.

<sup>5</sup> TOR 2, T14.36–15 (AJ in camera, 8 July 2013).

<sup>6</sup> TOR 2, T16.16–18 (AJ in camera, 8 July 2013).

said that in the years before 1985 Wilson would 'come out to our home most weeks, on a weeknight, and catch up with us. We were considered one of his closest friends'.<sup>7</sup> Her evidence was that from mid-1983 through to 1985 she held at her house women's meetings that Wilson attended.<sup>8</sup> Wilson also helped in hosting Antioch youth groups with AJ from 1985 to 1988 at her home every Sunday night.<sup>9</sup>

C4.9 AJ told the Commission that at some time between 1981 and 1985<sup>10</sup>, at her home, she told Wilson McAlinden had abused her. In her police statement, she stated the following in relation to this disclosure:

... In 1982 or 1983 I spoke to Father Philip Wilson, a priest assigned to the Maitland Bishop's House and who was a very close friend of my husband and I. **I told him on a personal level in my home that Denis McAlinden had sexually abused me when I was a child.** He just listened and empathised and I know he believed me. We had a close relationship and I just felt the need to share with him what had happened to me. It was nothing more than that; it wasn't that I expect[ed] him to do any more than just listen. We may have made reference to this one or twice more over the years.<sup>11</sup> [emphasis added]

C4.10 She observed that Wilson was sympathetic and compassionate, and she formed the view that he believed her.<sup>12</sup> AJ did not ask Wilson to take her complaint to the bishop. Her expectations in this regard were as follows:

I didn't want to put him in a position of saying, "Can you take this to the bishop?" I felt giving him the information was enough for him to make his decision and that is either to keep it to himself or take it to the bishop.<sup>13</sup>

C4.11 She thus agreed that Wilson's keeping the information to himself was not contrary to her wishes; equally, if he had spoken to the bishop about it that was something he was also entitled to do.<sup>14</sup> AJ said it was never part of her expectation that Wilson would take the matter to the police, and she did not ask him to do so.<sup>15</sup>

C4.12 In her police statement AJ referred to the conversation with Wilson occurring in 1982 or 1983.<sup>16</sup> In oral evidence she said she was confident the discussion did not take place before 1981 and definitely occurred earlier than 1985. She explained that she was confident of this time frame because by 1982 or 1983 Wilson was a 'very close family friend'.<sup>17</sup> AJ thought the timing was very close to 1981 because of a circumstance in which Wilson gave her advice about a family matter involving difficulties she was experiencing with her mother. At the time AJ was pregnant with her fourth child.<sup>18</sup> She said she had a good relationship with Wilson: 'That's why he was at our place all the time. He knew my mum and knew the situation there and he was urging me to stand up to mum, and that was when I was pregnant'.<sup>19</sup> AJ said the conversation was 'definitely before 1985' and at least 12 months before a conversation she had had with Wilson about Merriwa.<sup>20</sup> She fixed it thus because:

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<sup>7</sup> TOR 2, T17.7–10 (AJ in camera, 8 July 2013).

<sup>8</sup> TOR 2, T69.4–11; T74.41–47 (AJ in camera, 8 July 2013).

<sup>9</sup> TOR 2, T16.24–4035; T74.22–31 (AJ in camera, 8 July 2013).

<sup>10</sup> TOR 2, T5.41–6.13 (AJ in camera, 8 July 2013).

<sup>11</sup> NSW Police statement of AJ, dated 29 June 2010, conf ex W, para 21.

<sup>12</sup> TOR 2, T7.4–7; T23.26–45 (AJ in camera, 8 July 2013).

<sup>13</sup> TOR 2, T24.1718–21 (AJ in camera, 8 July 2013).

<sup>14</sup> TOR 2, T24.17–30 (AJ in camera, 8 July 2013).

<sup>15</sup> TOR 2, T28.43–29.1 (AJ in camera, 8 July 2013). See also NSW Police statement of AJ, dated 29 June 2010, conf ex W, para 21.

<sup>16</sup> NSW Police statement of AJ, dated 29 June 2010, conf ex W, para 21.

<sup>17</sup> TOR 2, T4.43–47 (AJ in camera, 8 July 2013).

<sup>18</sup> TOR 2, T5.2–39; T69.36–38 (AJ in camera, 8 July 2013).

<sup>19</sup> TOR 2, T75.2–11 (AJ in camera, 8 July 2013).

<sup>20</sup> TOR 2, T5.41–6.18; T22.25–31 (AJ in camera, 8 July 2013).

... when he came to my home in 1985, I didn't have any urgency to tell him about McAlinden – or to remind him about what happened to me with McAlinden. I just know that he knew and I just remember that it was not – it had not happened, you know in that last 12 months ...<sup>21</sup>

### **The Merriwa matter**

C4.13 In her police statement AJ also described a further incident, which she placed as occurring in 1985:

22. In 1985, Father Wilson called in one night to unwind and catch up as was his usual habit. He was just talking socially with me. He unburden[ed] himself in his discussion by telling me that he had to deal with a difficult matter in a parish. He wasn't his normal self when he mentioned this. I knew him well enough to tell this was weighing heavily upon him and it must have been very grave by his manner. **He didn't say what the matter was; just that it concerned a priest and was very difficult on him.** I knew that he dealt with many matters in his role that [he] was not able to share, so I just listened and did not ask questions ...

23. Later that same evening he unknowingly let slip that he had to go<sup>22</sup> to Merriwa that week. I later discovered that Father McAlinden was the priest at Merriwa when Father Wilson made that trip. I put two and two together that he must have gone there in relation to another allegation of sexual assault involving Father McAlinden. I was never told that is why he went there, it was just my assumption from the manner of Father Wilson and my knowledge of Father McAlinden and that he was at Merriwa at that time.<sup>23</sup> [emphasis added]

C4.14 AJ said the initial discussion about a 'difficult situation' had occurred in the family room; later, in the lounge room, Wilson 'happened to mention ... he'd been to Merriwa' and that it had been 'stressful'.<sup>24</sup> AJ recalled her subsequent gradual realisation about the connection between the Merriwa situation and McAlinden as follows:

All I know is that it was to do with Merriwa; it was a difficult situation; he [Wilson] was distressed by it. All I remember is when I found – I put two and two together when he mentioned Merriwa, and it was only a matter of a couple of weeks later I found out McAlinden was at Merriwa and that's when I thought "Okay, maybe this is the story of why he was there". Years later – well, through communication with others, the situation with Merriwa and McAlinden came to – was validated in that sense.<sup>25</sup>

C4.15 AJ said when she later realised the connection between the Merriwa matter and McAlinden, she thought, 'Oh, that's interesting. Father Wilson, if he had a few doubts about what I had told him earlier, he would certainly know now that, you know, this is true'.<sup>26</sup> She explained that there had been at least two occasions on which she spoke to Wilson – one before 1985 and one after – but there was no 'exchange' with Wilson concerning Merriwa.<sup>27</sup> She explained:

... And me knowing about Merriwa – he really had my information about me. And what was happening at Merriwa, I found out by just a presumption on my part, him saying he had been to Merriwa, this dreadful situation, and what happened. So I didn't think it was my place, from my own assumptions, to mention my situation, he knew mine.<sup>28</sup>

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<sup>21</sup> TOR 2, T6.20–26 (AJ in camera, 8 July 2013).

<sup>22</sup> AJ's evidence establishes that by the time of this discussion, Wilson had already been to Merriwa (rather than proposing to go): TOR 2, T20.36–22.23; T25.27.28 (AJ in camera, 8 July 2013): '... And what was happening at Merriwa ... Him saying he had been to Merriwa, this dreadful situation, and what happened'.

<sup>23</sup> NSW Police statement of AJ, dated 29 June 2010, conf ex W, paras 22–23.

<sup>24</sup> TOR 2, T20.36–21.8 (AJ in camera, 8 July 2013).

<sup>25</sup> TOR 2, T23.10–18 (AJ in camera, 8 July 2013).

<sup>26</sup> TOR 2, T24.44–47 (AJ in camera, 8 July 2013).

<sup>27</sup> TOR 2, T24.47–25.13 (AJ in camera, 8 July 2013).

<sup>28</sup> TOR 2, T25.24–30 (AJ in camera, 8 July 2013).

C4.16 In this regard AJ confirmed that she would have been happy if Wilson had taken her complaint about McAlinden to the bishop at the time of the Merriwa matter. She did not, however, know whether he had done so or what actions if any, he took in relation to McAlinden and the Merriwa matter.<sup>29</sup>

### ***A phone call to Washington, 1993***

C4.17 AJ said she again raised McAlinden with Wilson in the first of half 1993, when he was in the United States, in Washington DC. As to the timing of the phone call, she said it was either ‘during what I was doing with Father Hart’ – which related to her February 1993 complaint to Monsignor Allan Hart about McAlinden with a view to having McAlinden ‘stopped’ from further offending – or ‘just after’ (as described in Chapter 12). She said she was surprised that when she told Wilson of what she was doing he did not know about it (because he had been out of the Diocese studying since 1990).<sup>30</sup> AJ explained that she discussed the matter with Wilson in 1993 because of their special relationship: ‘Father Wilson and I had a relationship that was – I was like a sister. I’d tell him everything and he’d tell me things he wouldn’t tell his own sister’.<sup>31</sup> She confirmed that she did not ask Wilson to take her complaint to police and knew it was being handled by the Church to some extent.<sup>32</sup> She thought, however, that it was in this phone conversation that she had said her whole purpose in coming forward was ‘to have Father McAlinden removed and put away somewhere so that he could not re-offend’.<sup>33</sup>

## **Archbishop Wilson’s evidence**

### ***The ‘first event’ in 1985: investigations at Merriwa***

C4.18 Wilson’s evidence as to when AJ first disclosed McAlinden’s abuse to him was at odds with that of AJ.

C4.19 In an affidavit sworn on 14 March 2013 Wilson stated that the first time he became aware of reports of complaints or recorded suspicions of child sexual abuse by McAlinden was in 1985, after he became aware of a ‘general complaint that “something” was going on at the school at which Fr McAlinden taught’ in Merriwa.<sup>34</sup> He stated that he then heard a complaint from a mother that McAlinden was suspected of being responsible for marks on the body of her child.<sup>35</sup> In his oral evidence, when questioned about his first awareness in connection with paedophiles, Wilson said, ‘In my memory, the first time I became aware of that happening was in regards to the information about Father McAlinden and Merriwa’.<sup>36</sup> He told the Commission he was ‘certain’ that the Merriwa matter was the first time sexual abuse of a child by a priest had been raised with him by anyone.<sup>37</sup>

C4.20 Wilson agreed that, had an allegation of child sexual abuse been raised with him before this time in 1985, he would have said to the bishop, ‘We’ve got to do something about it’.<sup>38</sup>

C4.21 Wilson said AJ had told him about her sexual abuse after the Merriwa matter had arisen; he rejected the suggestion that AJ told him about it before then.<sup>39</sup>

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<sup>29</sup> TOR 2, T26.16–34 (AJ in camera, 8 July 2013).

<sup>30</sup> TOR 2, T26.36–27.35; T28.39–41 (AJ in camera, 8 July 2013); NSW Police statement of AJ, dated 29 June 2010, conf ex W, para 48).

<sup>31</sup> TOR 2, T28.13–15 (AJ in camera, 8 July 2013).

<sup>32</sup> TOR 2, T28.43–45; T29.3–7 (AJ in camera, 8 July 2013).

<sup>33</sup> NSW Police statement of AJ, dated 29 June 2010, conf ex W, para 48.

<sup>34</sup> Affidavit of Wilson, dated 14 March, conf ex PW I, para 111.

<sup>35</sup> *ibid*, paras 25–26, 33.

<sup>36</sup> TOR 2, T188.39–41 (Wilson in camera, 27 June 2013).

<sup>37</sup> TOR 2, T11.22–25 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>38</sup> TOR 2, T11.15–35 (Wilson in camera, 20 June 2013, at 3.57pm).

### *Establishing the chronology*

- C4.22 Wilson's involvement in allegations about McAlinden's conduct in Merriwa is considered below. For present purposes it is noteworthy that Wilson's evidence was that this event in 1985 was when he first became aware of complaints or suspicions relating to McAlinden: there had been no earlier disclosure by AJ.
- C4.23 Establishing the correct chronology of events is relevant to the nature of Wilson's belief at the time that he was sent to Merriwa to 'investigate' complaints about McAlinden (as detailed below). Obviously, if he had received an earlier disclosure from AJ about abuse by McAlinden and believed it to be true, this information would have lent additional credibility to the Merriwa reports Wilson was investigating.

### ***The 'second event' in 1985: AJ's disclosure***

- C4.24 Wilson confirmed that he first met AJ and her husband, BS, in East Maitland parish in 1975. He said that from 1980 to 1983 he would have seen AJ and her husband regularly at Mass. In 1983, he said, a 'very close friendship' developed between him, AJ and her husband. The relationship then became closer between 1983 and 1986 as they were all involved in parish life.<sup>40</sup> For example, Wilson said that in 1985 AJ and he ran youth groups together, as well as some programs for young mothers at the school. He also went on holidays with AJ and her family and was close to her four children.<sup>41</sup>
- C4.25 In his affidavit Wilson described AJ's disclosure to him about McAlinden's abuse:
57. The particular night [in 1985] she told me about her allegations was within about a month of the Bishop and I having confronted Father McAlinden ... I was at their house having dinner and the three of us were present. I think that I said to both of them words to the effect, "You know I'm really overwhelmed that things have occurred where I have been involved in a situation where it seems as though a Priest has been interfering with children".
58. I was referring to my meeting with the woman at the school which is set out above and the subsequent confronting of Father McAlinden. AJ said words to the effect "Is that Father McAlinden?" And I said, "Yes it is" and then she said "Oh well he interfered with me". She told me about his groping her under the table at the family dinner when she was a young girl back in the 1950's when he would come and visit their house.
59. I think that she told me it happened to her on several occasions.<sup>42</sup>
- C4.26 To similar effect was Wilson's oral evidence. He recalled sitting in AJ's home, having coffee and 'just lamenting the facts'.<sup>43</sup> He said AJ said to him, 'Are you talking about Father McAlinden?' to which he replied 'Yes' and she said, 'Well, then, you know, this is what's happened to me'.<sup>44</sup> Wilson confirmed his view of AJ as a person of truthfulness and probity and said he would have no reason to disbelieve what she had told him.<sup>45</sup>
- C4.27 Wilson stated that after the disclosure he sympathised with AJ and was 'sure' that he said, 'Well then do you want me to do something about that?' and that 'Basically, she said no'. He could not recall whether he advised her to do anything and, if so, what.<sup>46</sup>

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<sup>39</sup> TOR 2, T188.37–189.17 (Wilson in camera, 27 June 2013).

<sup>40</sup> TOR 2, T235.44–236.2; T260.44–261.27 (Wilson in camera, 17 July 2013); affidavit of Wilson, dated 14 March, conf ex PW I, para 53.

<sup>41</sup> Affidavit of Wilson, dated 14 March, conf ex PW I, paras 53–55.

<sup>42</sup> *ibid*, paras 57–59.

<sup>43</sup> TOR 2, T261.40–41 (Wilson in camera, 17 July 2013).

<sup>44</sup> TOR 2, T261.43–262.2 (Wilson in camera, 17 July 2013).

<sup>45</sup> TOR 2, T144.38–45 (Wilson in camera, 21 June 2013).

<sup>46</sup> Affidavit of Wilson, dated 14 March, conf ex PW I, para 60.

- C4.28 In his affidavit Wilson stated that he raised AJ’s abuse with the bishop but only on a confidential basis, by way of telling the bishop he had ‘another report of McAlinden’s behaviour that indicated even further the dangerous nature of his life’.<sup>47</sup> In oral evidence Wilson said his recollection was that he told Bishop Leo Clarke he had ‘further information pointing out that ... Denis McAlinden had been abusing children’ and that he knew a particular person he had abused.<sup>48</sup> He said he gave the bishop no actual details of the event.<sup>49</sup> He did not recall telling AJ he had conveyed her information to Clarke and thought it was ‘highly likely’ that he did not tell her he had done so.<sup>50</sup>
- C4.29 Wilson said he did not ask AJ for a statement: he considered this account to be in a ‘completely different context from the woman at the school’ in that AJ was telling him as a friend and a priest involved with her.<sup>51</sup> He said that at the time of the conversation at dinner he did not think there was any mention of the police.<sup>52</sup>
- C4.30 Wilson said he had ‘never again spoken to [AJ] about her allegations against Father McAlinden’.<sup>53</sup> As noted below, Wilson later conceded that this evidence was incorrect, given that AJ had raised the matter with him in a telephone call in 1993.
- C4.31 In his oral evidence Wilson agreed that, to the extent that the evidence showed the Merriwa events had taken place in 1987 (rather than 1985), AJ’s disclosure occurred after that – ‘whatever the timing was about Merriwa’.<sup>54</sup> He rejected the suggestion AJ had told him before then.<sup>55</sup> He later conceded the possibility, however, that AJ had raised the subject of her abuse with him before his visit to Merriwa but that he had no memory of it.<sup>56</sup> In this regard there was the following exchange between Wilson and AJ’s counsel:

- Q. I think, as I understand your evidence, it was in answer to your counsel that it’s possible she had raised this issue of McAlinden with you prior to this conversation you can recall, but you are just not sure about that?
- A. That’s right. I don’t – I don’t have any memory of that issue coming up because I – I don’t have any memory of talking to anybody about these sorts of matters.
- Q. So you don’t dispute – when she said that there was an earlier conversation, you don’t dispute that; you say, “I just don’t recall it”?
- A. That’s right.<sup>57</sup>

### ***The 1993 phone call***

- C4.32 Under examination by his own counsel, Wilson said he had no recollection of any phone calls between him and AJ.<sup>58</sup> He did not, however, dispute that AJ had telephoned him in Washington: he just did not recall the discussion.<sup>59</sup>
- C4.33 He did, however, recall having had a conversation with AJ in the 1990s, after he returned from the United States, in which ‘... she told me that she had gone to the bishop about these matters

<sup>47</sup> *ibid*, para 61.

<sup>48</sup> TOR 2, T262.25–30 (Wilson in camera, 17 July 2013).

<sup>49</sup> TOR 2, T265.2–5 (Wilson in camera, 17 July 2013).

<sup>50</sup> TOR 2, T264.23–30 (Wilson in camera, 17 July 2013).

<sup>51</sup> Affidavit of Wilson, dated 14 March 2013, *conf ex PW I*, para 63.

<sup>52</sup> *ibid*, para 64.

<sup>53</sup> *ibid*, para 69.

<sup>54</sup> TOR 2, T31.44–32.3 (Wilson in camera, 20 June 2013).

<sup>55</sup> TOR 2, T144.47–145.24 (Wilson, in camera, 27 June 2013).

<sup>56</sup> TOR 2, T262.7–8 (Wilson in camera, 17 July 2013).

<sup>57</sup> TOR 2, T265.34–45 (Wilson in camera, 17 July 2013).

<sup>58</sup> TOR 2, T262.45–263.5 (Wilson in camera, 17 July 2013).

<sup>59</sup> TOR 2, T263.36–47 (Wilson in camera, 17 July 2013).



and I encouraged her and said I was very pleased that had happened'.<sup>60</sup> Wilson did not remember any other details but said it was 'pretty clear' that she did not say anything more than that she had gone to see the bishop about the matter and that he (Wilson) told her he 'thought that it was the right thing to do'.<sup>61</sup> He said he could not remember whether the discussion was by phone or in person.<sup>62</sup>

## Conclusions

- C4.34 As noted, the timing of AJ's disclosure to Wilson is important because, if it occurred before the investigations he conducted at Merriwa, it follows that he had prior knowledge of McAlinden's propensity to abuse children – specifically, AJ's report.
- C4.35 Although both AJ and Wilson appeared initially to believe the Merriwa events occurred in 1985, the objective evidence suggests it was more probably 1986 or 1987, something Wilson accepted.<sup>63</sup>
- C4.36 AJ was an impressive and credible witness. She gave a straightforward account of events and was careful in her evidence generally. Moreover, she was disinterested in the timing of events associated with the disclosure. Her evidence about the close relationship with Wilson from 1981 – a time she could readily identify because of the advice he had given her then about the difficulties she was experiencing with her mother – was believable.<sup>64</sup> She was also confident that the disclosure occurred at least 12 months before Wilson mentioned his Merriwa visit.<sup>65</sup> In contrast, Wilson ultimately conceded the possibility that AJ had told him of her abuse before his involvement at Merriwa and that he did not recall it.<sup>66</sup> In this respect the Commission also had regard to the fact that during the hearings Wilson's memory was, as he acknowledged, shown to be faulty in relation to a number of objectively verifiable matters – for example, in relation to his correspondence about McAlinden with a high-profile anti-corruption politician in 1987, as detailed in paragraph C4.76 and following.
- C4.37 The Commission accepts AJ's account that she told Wilson about McAlinden's abuse of her before Wilson became involved in events at Merriwa.
- C4.38 The Commission accordingly finds that at some time before Wilson's involvement in the Merriwa matter AJ told him she had been sexually abused by McAlinden when she was a child – specifically, that she had been groped under the table as a young girl (as Wilson stated).<sup>67</sup> Wilson believed AJ's account.<sup>68</sup> The disclosure was in the context of a pastoral and personal friendship, and AJ had no expectation that Wilson would take any particular steps in response to the information.<sup>69</sup> Further, there was no discussion between AJ and Wilson about taking the matter to the police.<sup>70</sup>

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<sup>60</sup> TOR 2, T264.36–39 (Wilson in camera, 17 July 2013).

<sup>61</sup> TOR 2, T146.2–15 (Wilson in camera, 17 July 2013).

<sup>62</sup> TOR 2, T145.38–41 (Wilson in camera, 17 July 2013).

<sup>63</sup> TOR 2, T5.28–33; T21.6–13; T31.44–32.3 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>64</sup> TOR 2, T5.2–34 (AJ in camera, 8 July 2013).

<sup>65</sup> TOR 2, T6.15–26 (AJ in camera, 8 July 2013).

<sup>66</sup> TOR 2, T62.4–8; T65.35–45 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>67</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 58; NSW Police statement of AJ, dated 29 June 2010, conf ex W, para 21.

<sup>68</sup> TOR 2, T144.38–45 (Wilson in camera, 27 June 2013).

<sup>69</sup> TOR 2, T24.10–25 (AJ in camera, 8 July 2013); NSW Police statement of AJ, dated 29 June 2010, conf ex W, para 21.

<sup>70</sup> TOR 2, T28.43–29.1 (AJ in camera, 8 July 2013).

- C4.39 Wilson's account was that he told Clarke what AJ had told him, although he gave him no specific details. There is no other evidence to cast doubt on that account.<sup>71</sup> Wilson conveying AJ's information to Clarke was also within the purview of what AJ contemplated Wilson might do.<sup>72</sup>
- C4.40 In relation to AJ's initial disclosure, the Commission considers that, on hearing AJ's account of sexual abuse by McAlinden (which Wilson considered to be truthful)<sup>73</sup> and knowing McAlinden to be a parish priest in the Diocese who had access to children, Wilson should have taken steps beyond simply advising Clarke of the incident in general terms.<sup>74</sup> Wilson should have explored with AJ her attitude to reporting the matter to the police. If she did not want it to be reported for personal reasons, that might well have been a reasonable basis for deciding not to report the matter at the time. On his own evidence, however, Wilson was unaware of AJ's position in relation to reporting McAlinden to the police, having not raised the subject with her.<sup>75</sup> The Commission considers that as a Diocesan official it was incumbent on Wilson to have explored that aspect with her, even though the disclosure might have occurred in a confidential and possibly even pastoral context.<sup>76</sup> Wilson's failure to consider on any level the question of reporting the matter to police meant that an opportunity for a police investigation into McAlinden at that time was lost.
- C4.41 It is clear that there was a subsequent conversation at AJ's home at some time after Wilson had been to Merriwa to investigate the complaints about McAlinden. On this occasion Wilson said he was dealing with a matter that concerned a priest and that it was difficult for him; he also later said he had been to Merriwa.<sup>77</sup> The Commission accepts AJ's evidence that Wilson did not provide more detail on the matter.<sup>78</sup> It does not accept Wilson's evidence that the conversation was to the effect that he referred to an overwhelming situation with a priest apparently 'interfering with children', after which AJ asked whether it was McAlinden and, on confirmation that it was, said she had also been 'interfered with'.<sup>79</sup> Having accepted AJ's evidence of an initial disclosure before the Merriwa events, the Commission finds it illogical for the conversation to unfold as Wilson recounted, in circumstances where he had already received AJ's disclosure.
- C4.42 In addition, if, as the Commission finds, Wilson received a complaint of child sexual abuse from AM in 1976 and that he would remember that complaint, his evidence that the Merriwa complaint was his first knowledge of child sexual abuse matters cannot be accepted.<sup>80</sup>
- C4.43 The Commission also finds that AJ telephoned Wilson in the first half of 1993, while he was in Washington DC, and told him of the steps she was taking with Hart in relation to McAlinden. This finding is consistent with AJ's evidence on the topic, which was not contradicted by the evidence of Wilson.<sup>81</sup>
- C4.44 The Commission's findings regarding Wilson's involvement with investigations at Merriwa concerning allegations of child sexual abuse by McAlinden follow. The more information Wilson accumulated about McAlinden's propensity to abuse children – and hence the continuing risk he

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<sup>71</sup> TOR 2, T 262.17–30 (Wilson in camera, 17 July 2013); affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 61.

<sup>72</sup> TOR 2, T24.10–26.22 (AJ in camera, 8 July 2013).

<sup>73</sup> TOR 2, T144.38–45 (Wilson in camera, 27 June 2013).

<sup>74</sup> TOR 2, T262.17–263.15 (Wilson in camera, 17 July 2013).

<sup>75</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 64.

<sup>76</sup> TOR 2, T262.32–43 (Wilson in camera, 17 July 2013).

<sup>77</sup> NSW Police statement of AJ, dated 29 June 2010, conf ex W, paras 22–23; affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 57–59.

<sup>78</sup> NSW Police statement of AJ, dated 29 June 2010, conf ex W, para 23.

<sup>79</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 57–58.

<sup>80</sup> TOR 2, T188.39–41 (Wilson in camera, 27 June 2013).

<sup>81</sup> TOR 2, T26.36–27.35 (AJ in camera, 8 July 2013); TOR 2, T263.3–5; 263.36–47 (Wilson in camera, 17 July 2013).

posed to children – the more compelling became the need for him to report McAlinden to police<sup>82</sup> or, at the very least, to urge the bishop to do so.<sup>83</sup>

## McAlinden’s movement from Merriwa to Adamstown and beyond, 1985 to 1988

- C4.45 Before examining Wilson’s role in investigating complaints at Merriwa, it is useful to note what the contemporaneous documentary evidence discloses about McAlinden’s placements and movements between 1985 and 1988.
- C4.46 McAlinden was appointed parish priest at Merriwa on 24 April 1985.<sup>84</sup>
- C4.47 He wrote to Clarke in late 1985 about suggested dangers to his health if he were to remain in Merriwa, because of its cold climate. Clarke asked that medical evidence in this regard be obtained.<sup>85</sup> McAlinden duly obtained a medical certificate dealing with the impact of cold weather on his health.<sup>86</sup>
- C4.48 By letter dated 3 April 1986 McAlinden threatened to take three months’ leave during winter if he was not transferred from Merriwa to a more suitable parish ‘climate-wise’.<sup>87</sup> On 11 May 1986 he sent to Clarke a letter asking that he be considered for the parish of Adamstown in view of the appearance of the ‘first signs of frost’ in Merriwa.<sup>88</sup>
- C4.49 McAlinden’s application for Adamstown was discussed at a College of Consultors<sup>89</sup> meeting on 6 June 1986, and it was proposed that he be given that parish as requested, the changes to take place at the end of June 1986.<sup>90</sup>
- C4.50 By letter dated 12 June 1986 to McAlinden, Clarke formalised McAlinden’s appointment as parish priest at St Columba’s, Adamstown, effective from 1 July 1986.<sup>91</sup>
- C4.51 Almost a year later, in a letter dated 4 June 1987, McAlinden asked to be considered for the parish of Raymond Terrace on the basis that Adamstown was so settled as to be ‘lacking in any real challenge’.<sup>92</sup> Clarke refused this request, advising McAlinden of his decision in a letter dated 18 June 1987.<sup>93</sup>
- C4.52 On 6 August 1987 McAlinden sent to Clarke a letter suggesting that he (McAlinden) apply for a three-month course at ‘St Peter Centre for Clergy Renewal ... in view of the present circumstances’. No further elaboration was provided.<sup>94</sup>

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<sup>82</sup> Even, if necessary, in terms that anonymised the names of particular victims if that was consistent with their stated wishes.

<sup>83</sup> The Commission is not satisfied that under s.10 of the *Special Commissions of Inquiry Act (1983)* there would be sufficient evidence warranting the prosecution of Wilson, in respect of the information provided by AJ, for the offence of misprision of felony. In this respect, since Wilson’s own evidence would not be admissible in any criminal proceedings, the evidence as to his actual knowledge of a felony is limited (AJ’s account being that she told him only that she had been sexually abused). In addition, AJ was an adult and provided her disclosure ostensibly in a quasi-pastoral context in which she had no expectation that matters would be reported to the police and which may bring into play common law defences of justification or excuse.

<sup>84</sup> Letter from Clarke to McAlinden, dated 25 April 1985, ex 219, tab 116.

<sup>85</sup> Letter from Clarke to McAlinden, dated 17 January 1986, ex 219, tab 122.

<sup>86</sup> Letter from Taranto to Clarke, dated 17 February 1986, ex 219, tab 124.

<sup>87</sup> Letter from McAlinden to Clarke, dated 3 April 1986, ex 219, tab 126.

<sup>88</sup> Letter from McAlinden to Clarke, dated 5 May 1986, ex 219, tab 127.

<sup>89</sup> The role of the College of Consultors, being Diocesan clergy appointed to advise the bishop, is discussed in Chapter 6 of the public volume of this report.

<sup>90</sup> Minutes of meeting of College of Consultors, Maitland, dated 6 June 1986, ex 219, tab 128.

<sup>91</sup> Letter from Clarke to McAlinden, dated 12 June 1986, ex 219, tab 129.

<sup>92</sup> Letter from McAlinden to Clarke, dated 4 June 1987, ex 219, tab 134.

<sup>93</sup> Letter from Clarke to McAlinden, dated 18 June 1987, ex 219, tab 136.

<sup>94</sup> Letter from McAlinden to Clarke, dated 6 August 1987, ex 219, tab 137.

- C4.53 On 31 March 1988 McAlinden wrote to Clarke referring to the following under the heading ‘Re my situation in the Diocese’:

First of all, I wish to state categorically that what you described as “allegations” made by certain accusers during my time at Merriwa are totally false. As I am well aware that there is the danger that you or V.G might be inclined to think otherwise, because I submitted so readily to certain punitive measures and treatment, I am advised, therefore, that there is sufficient reason in these circumstances to take a solemn Oath in denial of them. The past 7 months of “penal servitude” which, in fact, I have been able to accept and offer up for my past sins, have proved most fruitful. **Furthermore, you had made it clear that you had to protect yourself against threats from a certain politician<sup>95</sup> who was in league with these “accusers”, as well as against Media [sic] publication.** My original plan (already formulated in my mind long before these “allegations” had been made known to me) to transfer to a much warmer climate, for medical reasons, would have taken care of both these problems; however, it seems that you have thwarted that opportunity also – at least in so far as the Australian Bishop are concerned ...

**You already knew of these “allegations” when you came to Adamstown for Confirmation at the end of ‘86, but you never mentioned them.** Wouldn’t that have been an ideal time to discuss the matter? ...<sup>96</sup> [emphasis added]

- C4.54 On 13 July 1988 McAlinden wrote to Clarke referring to his having left Adamstown on or about 3 August 1987.<sup>97</sup>
- C4.55 After leaving Adamstown on or about 3 August 1987 McAlinden spent time in Nelson Bay (six weeks), St Joseph’s Home at Sandgate (11 weeks)<sup>98</sup> and Ireland (from 14 July to 27 August 1988).<sup>99</sup> By November 1988 was working in Bunbury Diocese, Western Australia, with the approval of Clarke.<sup>100</sup>

## Archbishop Wilson’s investigation of complaints from Merriwa

### Archbishop Wilson’s evidence

#### *Timing of the investigations*

- C4.56 Wilson carried out investigations of complaints relating to McAlinden’s conduct in Merriwa parish at some time between 1986 and 1987. In this regard, during his initial in camera hearing Wilson said the dates stated in his affidavit of 14 March 2013 (which placed the events in 1985) in connection with the Merriwa matter were incorrect, and he believed his activities relating to Merriwa occurred in 1987.<sup>101</sup>
- C4.57 In response to the suggestion that he might have visited Merriwa in 1986 to investigate complaints, Wilson said he was confused and could neither reject nor confirm that as having occurred.<sup>102</sup>

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<sup>95</sup> As described below, the ‘certain politician’ is a reference to Mr John Hatton MP, then a well-known independent member of the NSW Parliament with a strong interest in revealing institutional corruption and maladministration.

<sup>96</sup> Letter from McAlinden to Clarke, dated 31 March 1988, ex 219, tab 150, p 234.

<sup>97</sup> Letter from McAlinden to Clarke, dated 13 July 1988, ex 219, tab 157, p 248.

<sup>98</sup> Letter McAlinden to Clarke, dated 13 July 1988, ex 219, tab 157.

<sup>99</sup> Letter from McAlinden to Clarke, dated 24 June 1988, ex 219, tab 155.

<sup>100</sup> Letter from Clarke to McAlinden, dated 7 October 1988, ex 219, tab 164.

<sup>101</sup> TOR 2, T5.40–6.11 (Wilson in camera, 20 June 2013, at 3.47pm); see also affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 22.

<sup>102</sup> TOR 2, 71.4–24 (Wilson in camera, 21 June 2013).

### ***Agitation to investigate a complaint about McAlinden***

- C4.58 In his affidavit Wilson said that at some time in 1985<sup>103</sup> (when he was the bishop's secretary) Clarke spoke to him about 'someone having said that McAlinden was behaving in a strange way with the children in the Parish at Merriwa'.<sup>104</sup> Wilson did not remember Clarke's exact words – just that the behaviour was 'incorrect or wrong or something untoward was going on there'.<sup>105</sup> Wilson clearly recalled that he then said to Clarke words to the effect of 'We've got to do something about this'.<sup>106</sup> As to why he clearly recalled this, he said, 'Well, anything that involved a child and their possible abuse would seem to me to be an issue of the highest order that needed to be dealt with'.<sup>107</sup>
- C4.59 In connection with this Wilson also told the Commission his 'awareness was always very strong about the need to protect children and to deal with any issues that involved their abuse'.<sup>108</sup> He said the bishop replied, 'Well if you feel you should go and do something about it, then do it and report back to me'.<sup>109</sup> In oral evidence Wilson agreed this was an 'odd' response in view of the significance of the matter.<sup>110</sup> He said, 'I just felt that it was something we needed to take action [on] and that it was up to me to take up the opportunity he gave me and to go and do it'.<sup>111</sup> Clarke sent him without any particular instructions, but Wilson said he had an open mind about going to find out the facts.<sup>112</sup> Wilson said that at this time, given his naivety about such matters, he did not consider whether there might have been a history of such behaviour by McAlinden. Nor did Clarke tell him of complaints about McAlinden sexually abusing children in 1976.<sup>113</sup>
- C4.60 Wilson said he telephoned Mr Michael Stanwell, principal of the local Catholic school associated with Merriwa parish, and said words to the effect of 'There have been some reports about things happening in Merriwa, I'd like to come and talk to you about that and see what's going on'.<sup>114</sup> He said he and Stanwell did not discuss details of the allegations during their telephone conversation.<sup>115</sup>

### ***The visit to Merriwa***

- C4.61 Wilson recalled going to Merriwa a day or two later and within a week of speaking to the bishop.<sup>116</sup> At this time, he said, McAlinden was already at Adamstown, having been transferred there in the 'normal course of events'.<sup>117</sup>
- C4.62 Wilson said he asked Stanwell whether he knew anything of the 'reports' and Stanwell said he had his own suspicions about McAlinden's behaviour. He said Stanwell described one incident when 'he [Stanwell] burst in on McAlinden' in the church and thought his behaviour, with a child sitting on his knee, was 'not correct or something like that'.<sup>118</sup> Wilson said he did not ask

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<sup>103</sup> Taken to be 1986 or 1987 in the light of Wilson's oral evidence, as referred to.

<sup>104</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 22.

<sup>105</sup> *ibid.*

<sup>106</sup> TOR 2, T10.6–12 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>107</sup> TOR 2, T10.18–20 (Wilson in camera, 20 June 2013, at 3.47pm).

<sup>108</sup> TOR 2, T10.27–29 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>109</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 22.

<sup>110</sup> TOR 2, T10.38–43 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>111</sup> TOR 2, T11.1–3 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>112</sup> TOR 2, T14.19–23, T15.39–44 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>113</sup> TOR 2, T14.1–13 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>114</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 24.

<sup>115</sup> TOR 2, T12.4–14 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>116</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 25.

<sup>117</sup> That is, Wilson was not aware of any concerns relating to this movement but agreed that the bishop might have kept such matters to himself: TOR 2, T12.23–47 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>118</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 27.

Stanwell to put this information in writing or provide a statement and nor did Stanwell volunteer whether he had done so.<sup>119</sup>

C4.63 He also recalled that Stanwell said, 'Some of the parents have spoken to me about their worries'. Wilson said he told Stanwell to tell people to come and see him if they wanted to make a complaint<sup>120</sup> and that he was prepared to stay in Merriwa to hear their stories and to act on the information provided.<sup>121</sup> Wilson formed the impression there was more than one person who could have come forward.<sup>122</sup>

C4.64 Importantly, Wilson stated in his affidavit that, in response to Stanwell referring to the parents' concerns, he said to Stanwell words to the following effect:

Michael, if there are complaints like that then people should go to the police. You need to look at your responsibilities as the Principal of the school.<sup>123</sup>

C4.65 Wilson said he did not document his discussions with Stanwell. He told the Commission he became aware of the need to document such things after completing his canon law course in 1993.<sup>124</sup>

### ***Receiving the complaint of a parent***

C4.66 Wilson gave evidence that at about 11.30 am that day in the principal's office Stanwell introduced Wilson to a woman in her 20s who was prepared to talk. Wilson then saw the woman in Stanwell's absence. She told Wilson she had seen marks on her daughter's body while washing her in the bath. Wilson said that, although the woman said she would assist by providing a statement of what she suspected had occurred, she would not allow her name to be used and would not sign the document.<sup>125</sup> He recalled that he said to her it would be more useful 'for the opportunity of doing something if she did allow ... use [of] her name', but she would not agree to this.<sup>126</sup> He recalled that such a document was then typewritten with the names left out.<sup>127</sup>

C4.67 Wilson said he specifically recalled saying to the woman that she ought to take her allegations to the police or 'feel free to go to the police'.<sup>128</sup> He did not, however, see that he had any duty to report the matter to the police himself: 'No. I considered it was my duty to report these matters to the bishop'.<sup>129</sup>

C4.68 Save for this incident, Wilson said he had no recollection of interviewing any other person in Merriwa.<sup>130</sup>

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<sup>119</sup> TOR 2, T16.1–18; T22.12–33 (Wilson in camera, 20 June 2013, at 3.57pm); T69.27–36 (Wilson in camera, 21 June 2013).

<sup>120</sup> TOR 2, T16.31–36 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>121</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 29.

<sup>122</sup> *ibid*, para 30.

<sup>123</sup> *ibid*, para 31.

<sup>124</sup> TOR 2, T14.25–28; T15.14–24 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>125</sup> TOR 2, T14.30–38; T16.40–46 (Wilson in camera, 20 June 2013, at 3.57pm); affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 32–33.

<sup>126</sup> TOR 2, T17.9–21 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>127</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 33, 36; typewritten statement of BA (produced with redactions), dated 6 August 1987, conf ex PW B, tab 10.

<sup>128</sup> TOR 2, T20.28–45 (Wilson in camera, 20 June 2013, at 3.57pm); see also T243.18–25 (Wilson in camera, 17 July 2013).

<sup>129</sup> TOR 2, T20.47–21.4 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>130</sup> TOR 2, T17.23–26 (Wilson in camera, 20 June 2013, at 3.57pm).

### ***A handwritten statement from BA***

C4.69 On being shown a handwritten statement dated 6 August 1987 (see Figure C4.1), Wilson initially told the Commission it did not ‘seem to be’ his handwriting on the document.<sup>131</sup> The document appears to bear Wilson’s signature, with the letters ‘V.G.’ (for Vicar General) after his name.<sup>132</sup> On the question of whether the handwriting was in fact Wilson’s, in evidence the following day there was this exchange with counsel assisting:

Q. Have you had time to reflect on whether it is, in fact, your handwriting?

A. I have. I have thought about that long and hard. It looks somewhat like my handwriting, although I don’t recognise it as being that, but I would take it that it is.

Q. I’m confused. So are you now saying that is your handwriting?

A. Well, what I’m – no. I’m confused about it. It certainly looks like my handwriting but I – there are just parts of it that don’t – that don’t seem to be like the way I write.<sup>133</sup>

C4.70 Wilson ultimately accepted, however, that the handwriting was his.<sup>134</sup>

C4.71 Wilson gave evidence that certain documents, including the letter from McAlinden to Clarke dated 13 July 1988, and a file note prepared by him (Wilson) dated 3 August 1987, pointed to BA’s statement being the document with which McAlinden was confronted (as discussed in para C4.164), although he subsequently said his recall of what had occurred was very confused.<sup>135</sup> Contrary to his initial evidence, he agreed that the statement suggested the mother was prepared to make a formal statement. He said he was surprised by that and stated, ‘I don’t remember that document at all ... All I can remember ... is the events, as I described in my statement’.<sup>136</sup> Wilson agreed that his recollection, as expressed in the affidavit, did not ‘square’ with the statement.<sup>137</sup>

C4.72 Wilson said the dates in the statement did not help him in relation to when he might have spoken to BA: ‘I can’t remember what the date was when I went to Merriwa ... my memory of those dates is completely inaccurate ...’<sup>138</sup>

### ***Information conveyed to the bishop***

C4.73 Wilson said he told Stanwell he was going to pass the information on to the bishop.<sup>139</sup> He then took the statement back with him and provided it to the bishop.<sup>140</sup> He said he had suggested to the bishop that on the basis of the statement McAlinden ‘needed to be confronted’.<sup>141</sup> In contrast, in his affidavit he stated that it was the bishop who ‘said something like “well we’ll have to go and confront him now”’.<sup>142</sup>

C4.74 Wilson said that after he and Clarke had the ‘confrontation’ with McAlinden (as discussed in paras C4.160 to C4.166) he (Wilson) had no further involvement with McAlinden.<sup>143</sup>

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<sup>131</sup> TOR 2, T17.28–32 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>132</sup> Handwritten statement of BA, dated 6 August 1987, conf ex PW F.

<sup>133</sup> TOR 2, T101.18–29 (Wilson in camera, 21 June 2013).

<sup>134</sup> TOR 2, T102.10–12 (Wilson in camera, 21 June 2013).

<sup>135</sup> TOR 2, T250.18–251.26 (Wilson in camera, 17 July 2013).

<sup>136</sup> TOR 2, T18.13–40 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>137</sup> TOR 2, T20.2–4 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>138</sup> TOR 2, T19.3–6; T19.24–25 (Wilson in camera, 20 June 2013, at 3.57pm). The Commission obtained a statutory declaration from BA in relation to the statement of 6 August 1987 (statutory declaration of BA, dated 12 July 2013, conf ex PW Q).

<sup>139</sup> TOR 2, T15.35–37 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>140</sup> TOR 2, T17.1–4 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>141</sup> TOR 2, T19.37–42 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>142</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 42.

<sup>143</sup> *ibid*, para 52.



Statement of [REDACTED] [REDACTED] [REDACTED] of Merriwa  
Parish.

[REDACTED] [REDACTED] reports that on several occasions she came to pick up her daughter from school and the daughter was in the presbytery with Fr. McAlinden. Sometimes she came from the presbytery with gifts of lollies. These events occurred in 1986.

After a programme on Television earlier this (approx. May 1987.) which was about child sexual abuse; [REDACTED] [REDACTED] told her mother that that's what Fr. McAlinden did to me. This information was unsolicited by her mother and volunteered by the little girl.

She then described how Fr. held her on his knees and lap, kissed her on the lips and touched her in a stroking manner between the legs. [REDACTED] [REDACTED] demonstrated the last action to her mother.

Subsequently again unsolicited, [REDACTED] [REDACTED] described a similar incident to her mother that occurred in the Church. This involved Fr. holding her on his lap in such a manner that she couldn't break away and kissing her on the lips.

This is an accurate transcript of what happened.

[REDACTED]

Philip Wilson V.G.  
6/8/87.

Figure C4.1 Handwritten statement of BA, 6 August 1987<sup>144</sup>

<sup>144</sup> Handwritten statement of BA, dated 6 August 1987, conf ex PW F. Transcription as follows: 'Statement BA of Merriwa Parish. BA reports that on several occasions she came to pick up her daughter from school and the daughter was in the presbytery with Fr. McAlinden. Sometimes she came from the presbytery with gifts of lollies. These events occurred in 1986. After a programme on Television earlier this (approx. May 1987.) which was about child sexual abuse; [AD] told her mother that that's what Fr. McAlinden did to me. This information was unsolicited by her mother and volunteered by the little girl. She then described how Fr. held her on his knees and lap, kissed her on the lips and touched her in a stroking manner between the legs. [AD] demonstrated the last action to her mother.'



Mrs. \_\_\_\_\_ reports that on several occasions she came to pick up her daughter from school and the daughter was in the presbytery with Fr. McAlinden. Sometimes she came from the presbytery with gifts of lollies. These events occurred in 1986.

After a programme on Television earlier this year (approximately May 1987) which was about child sexual abuse; \_\_\_\_\_ told her mother that "that's what Fr. McAlinden did to me". This information was unsolicited by her mother and volunteered by the little girl.

She then described how Fr. \_\_\_\_\_ held her on his knees and lap, kissed her on the lips and touched her in a stroking manner between the legs. \_\_\_\_\_ demonstrated the last action to her mother.

Subsequently, again unsolicited, \_\_\_\_\_ described a similar incident to her mother that occurred in the Church. This involved Fr. \_\_\_\_\_ holding her on his lap in such a manner that she couldn't break away and kissing her on the lips.

This is an accurate transcript of what happened.

Signed

Witnessed Philip Wilson, V.G.

Dated 6/8/87

Figure C4.2 Typewritten version of statement of BA, 6 August 1987<sup>145</sup>

## Contemporaneous documents relating to Archbishop Wilson's involvement

### *Communication with Mr Hatton MP*

C4.75 On 11 May 1987 Mr John Hatton MP, an independent member of the New South Wales Parliament, forwarded a letter to the then Archbishop of Sydney, Edward Clancy:

I write in a very confidential way about an extremely delicate matter which has come my way and which I believe should be handled within the Church. **It concerns allegations of sexual misbehaviour by Fr 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

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Subsequently again unsolicited, [AD] described a similar incident to her mother that occurred in the Church. This involved Fr. \_\_\_\_\_ holding her on this lap in such a manner that she couldn't break away and kissing her on the lips. This is an accurate transcript of what happened [signed by BA] Philip Wilson V.G. 6/8/87'.

<sup>145</sup> Typewritten statement of BA (produced with redactions), dated 6 August 1987, conf ex PW B, tab 10.

Fr McAlinden was transferred out of the Maitland Diocese. He later came back to the Diocese of Maitland being appointed to the Catholic Church, Merriwa ...

**There have been several complaints about his behaviour with young children and there exists a great deal of concern at his continuing access to young people.** But the great difficulty facing me and you is the reluctance of people 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. As you can see, it is a problem of great worry to me and only after considerable thought have I decided to bring it to your attention, on a strictly confidential basis, to avoid any injustice and to avoid any reflection upon the church. I genuinely feel from the people with whom I have discussed this matter that if an assurance were given that they would in no way be victimised they would speak out frankly and the evidence could be obtained.

I know of no other way of handling this matter to avoid embarrassment and to have the problem corrected other than by this very confidential approach directly to you. It is a matter that then could be handled by sending your personal envoy to make discreet enquiries of people who I could name but in order for me to provide that information to you I would need to be sure, in fairness to these people, that they will in some way be protected against defamation or some form of retaliatory action from within the church structure.

I know you would be greatly concerned by what I have said and it is important that the matter be discreetly and thoroughly dealt with. It would appear to me from my discussion that, ideally, it should be an envoy appointed directly by you from outside of the diocese who can give an independent evaluation directly to you. How it is handled from then on, of course, is a matter for yourself but 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 permanent and satisfactory solution found ..."<sup>146</sup> [emphasis added]

C4.76 In his initial oral evidence, on 20 June 2013, Wilson agreed that he was 'absolutely sure' he had never seen this letter before it was recently shown to him by his lawyers.<sup>147</sup> Nor could he recall corresponding with Hatton in relation to what was raised in the letter.<sup>148</sup> Wilson said he would remember if he had corresponded with Hatton because of Hatton's profile at the time and because it was a significant matter.<sup>149</sup> He also agreed that if Hatton's letter had been the origin of the complaint to the bishop, it would have 'stuck in [his] mind'.<sup>150</sup>

C4.77 Looking at the letter from Hatton, Wilson said that it might well have been the prompt for the bishop to ask him to go to Merriwa.<sup>151</sup> Under questioning by his own counsel, Wilson gave the following evidence:

Q. Do you now recall [the Hatton] letter?

A. I'd have to say that the letter – the letter stands on its own and, as a result of that, it flames my thoughts and memory of it really. I don't actually remember seeing the letter but I – in looking at it here, I – I can see that it was something that obviously I referred to later ...

Q. Does that letter assist you in timing the visit that you took to Merriwa to speak to parents at the school making allegations against Father McAlinden?

A. I have a recollection that it did. I said in my statement originally that the bishop spoke to me about some politician raising an issue and I thought that that's what happened that led me going up to the school.

<sup>146</sup> Letter from Hatton to Clancy, dated 11 May 1987, conf ex PW B, tab 2.

<sup>147</sup> TOR 2, T7.25–39, T33.25–26 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>148</sup> TOR 2, T7.41–44 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>149</sup> TOR 2, T7.46–8.11 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>150</sup> TOR 2, T8.13–16 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>151</sup> TOR 2, T6.13–34; T7.25–31 (Wilson in camera, 20 June 2013, at 3.57pm).

Q. So you would accept that your actions in relation to Father McAlinden must have taken place after May 1987?

A. Yes, I would. I would now.<sup>152</sup>

- C4.78 Wilson was, however, in error in saying that his 'statement' (or, rather, affidavit) made reference to any politician raising a concern about McAlinden (as the affidavit did not include such material).<sup>153</sup> When first confronted with the error, Wilson told the Commission he was confused about the matter.<sup>154</sup> As noted above, however, Wilson repeated similar evidence on 17 July 2013 during examination by his own counsel.
- C4.79 Wilson's 1987 diary recorded that he rang Hatton on 26 May 1987 (15 days after Hatton's letter).<sup>155</sup> Wilson said he 'must have had a personal conversation' with Hatton but could not now recall it.<sup>156</sup>
- C4.80 On 10 June 1987 Wilson's diary also recorded that he rang Stanwell.<sup>157</sup>
- C4.81 Hatton subsequently sent another letter, dated 16 June 1987, apparently referring to a further complaint about McAlinden. This letter, which is referred to in Wilson's letter to Hatton dated 20 July 1987 (see Figure C4.3), was not produced to the Commission.
- C4.82 On 18 June 1987 Wilson's diary recorded 'rang J. Hatton M.P.'<sup>158</sup> Wilson agreed this suggested he had a further telephone conversation with Hatton, but he said he was unable to recall it.<sup>159</sup>
- C4.83 The diary recorded that the following day, 19 June 1987, Wilson separately telephoned McAlinden, Hatton and Stanwell.<sup>160</sup> Wilson agreed that this appeared to be the third telephone call he had with Hatton.<sup>161</sup> He said he could not recall what was discussed during that call.<sup>162</sup> He also agreed that the series of telephone calls with McAlinden, Hatton and Stanwell suggested that he was 'following through some kind of process or discussion' in relation to McAlinden's offending, but again he could not recall the details.<sup>163</sup>

#### ***The 20 July 1987 letter from Archbishop Wilson to Mr Hatton MP***

- C4.84 As noted, on 20 July 1987 Wilson sent a letter to Hatton, as shown in Figure C4.3.

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<sup>152</sup> TOR 2, T239.29–46 (Wilson in camera, 17 July 2013).

<sup>153</sup> TOR 2, T6.13–7.31 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>154</sup> TOR 2, T7.15 (Wilson in camera, 20 June 2013, at 3.57pm); TOR 2, T239.29–46 (Wilson in camera, 17 July 2013).

<sup>155</sup> Diary entry by Wilson, dated 26 May 1987, conf ex PW B, tab 3, p 5.

<sup>156</sup> TOR 2, T36.3–20 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>157</sup> Diary entry by Wilson, dated 10 June 1987, conf ex PW B, tab 5, p 11.

<sup>158</sup> Diary entry by Wilson, dated 18 June 1987, conf ex PW B, tab 5, p 12.

<sup>159</sup> TOR 2, T42.7–16 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>160</sup> Diary entry by Wilson, dated 19 June 1987, PW B, tab 5, p 17.

<sup>161</sup> TOR 2, T45.27–34 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>162</sup> TOR 2, T45.36–38 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>163</sup> TOR 2, T46.9–18 (Wilson in camera, 20 June 2013, at 3.57pm).

20th July, 1987

Mr. John Hatton, M.P.,  
Member for South Coast  
Parliament House  
SYDNEY NSW 2000

Dear Mr. Hatton,

I acknowledge receipt of your letters of 11 May and 16 June 1987.

May I take this opportunity of thanking you for bringing both matters to the attention of the authorities of the Diocese Of Maitland. May I also assure you that both matters are receiving the most serious attention by the Diocesan authorities with the hope that both will be resolved in the very near future.

It is regretted that the people who brought these matters to your attention felt that they could not approach the appropriate authorities in the Diocese. They would have been treated with every kindness and their allegations treated with the appropriate seriousness.

My hope is that in the resolution of these two problems they will gain greater confidence in those who have authority within the Diocese.

With every best wish,

Yours sincerely,

Rev Mgr P Wilson  
VICAR GENERAL

Figure C4.3 Letter from Wilson to Hatton, 20 July 1987<sup>164</sup>

C4.85 When shown the 20 July 1987 letter during his evidence on 20 June 2013, Wilson agreed it was a letter he had sent.<sup>165</sup> He told the Commission he had forgotten about it.<sup>166</sup> He also agreed it suggested that he had read Hatton's letter of 11 May 1987.<sup>167</sup> Wilson said he had 'honestly forgotten' about the correspondence with Hatton and that his memory had since been 'reactivated' about these matters:

- Q. Are you stating to this Commission that you have no recollection of dealing with Mr Hatton's inquiries about Father McAlinden?
- A. I'm now – my memory has been reactivated and I – I do remember these things now. I'd forgotten completely about it ...
- Q. Had you had inquiries about other independent MPs directed to you as vicar general at Maitland-Newcastle diocese about other priests sexually abusing children?
- A. I don't remember, no.
- Q. And this has totally gone out of your mind that you had correspondence with John Hatton?
- A. Yes, it did.
- Q. About Father McAlinden sexually abusing children?
- A. It did.

<sup>164</sup> Letter from Wilson to Hatton, dated 20 July 1987, conf ex PW B, tab 8.

<sup>165</sup> TOR 2, T46.41–43 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>166</sup> TOR 2, T46.45–47.1 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>167</sup> TOR 2, T47.11–13 (Wilson in camera, 20 June 2013, at 3.57pm).

Q. Can I suggest to you that because you thought nobody knew about this correspondence or that the documents about it would be long gone or lost that you deliberately did not raise these matters with the Commission?

A. No. That's not true. I did – I did honestly forget about them.<sup>168</sup>

C4.86 Later Wilson told the Commission he had a retentive memory on which he had always prided himself. He said he had been 'somewhat taken aback' as to how faulty it actually was, as highlighted by the Commission's processes.<sup>169</sup>

C4.87 Wilson also agreed that, in view of the fact that Hatton's letter of 11 May 1987 referred to allegations about McAlinden in 1976, he (Wilson) must also have known about that matter.<sup>170</sup> This, Wilson agreed, was something he had also forgotten.<sup>171</sup> In this respect, Wilson agreed with counsel assisting's proposition that it seemed 'extraordinary' these things had escaped his mind.<sup>172</sup>

C4.88 Rather than avoiding scrutiny by Hatton, Wilson said he 'would have been acting with the thought that we had responded properly to what John Hatton had asked and tried to deal with this in the best way that we could'.<sup>173</sup> He said he thought it would have been his intention, in sending the letter of 20 July 1987, that he was 'closing the matter' regarding Hatton.<sup>174</sup> He gave evidence that he would not have deliberately misled Hatton about what had been done with McAlinden.<sup>175</sup>

C4.89 Wilson also sent a further letter to Hatton, on 28 August 1987 (see para C4.174).

#### **Archbishop Wilson's 1987 diary**

C4.90 Wilson's 1987 diary assists in attempting to piece together the events that occurred at Merriwa.<sup>176</sup> Wilson recorded appointments and telephone calls in his diary.<sup>177</sup> In oral evidence he further explained that the diary entries consisted of appointments noted above the ruled line on each page and below that line a list of names of people to whom he had spoken on the telephone that day.<sup>178</sup> He told the Commission it was not his practice to record all the trips he made to parishes.<sup>179</sup>

C4.91 The diary refers to the following ostensibly relevant contacts during 1987:

- 10 April 1987 – 'AM rang ... Michael Stanwell'.<sup>180</sup>
- 26 May 1987 – 'Rang ... John Hatton MP'.<sup>181</sup>
- 28 May 1987 – '4.00pm. Denis McAlinden. [new line] – (2) Denis McAlinden rang'.<sup>182</sup>
- 4 June 1987 – 'Rang ... John Hatton MP. – Nowra'.

<sup>168</sup> TOR 2, T47.15–47.39 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>169</sup> TOR 2, T76.34–38 (Wilson in camera, 21 June 2013).

<sup>170</sup> TOR 2, T47.41–47 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>171</sup> TOR 2, T48.1–2 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>172</sup> TOR 2, T48.10–18 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>173</sup> TOR 2, T48.24–27 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>174</sup> TOR 2, T49.23–25 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>175</sup> TOR 2, T49.44–47 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>176</sup> Wilson's Liturgical Desk Calendar for 1986 was also produced to the Commission but contained no information of relevance.

<sup>177</sup> TOR 2, T35.41–42 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>178</sup> TOR 2, T34.3–7; T36.22–40; T37.10–22 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>179</sup> TOR 2, T300.18–20 (Wilson in camera, 17 July 2013).

<sup>180</sup> Diary entry by Wilson, dated 10 April 1987, conf ex XX, p 1.

<sup>181</sup> *ibid*, p 2.

<sup>182</sup> Diary entry by Wilson, dated 28 May 1987, conf ex PW B, tab 3, p 6.

- 10 June 1987 – ‘Rang Michael Stanwell’.<sup>183</sup>
- 11 June 1987 – ‘10.30am Merriwa school’.<sup>184</sup>
- 18 June 1987 – ‘Rang J. Hatton MP.’<sup>185</sup>
- 19 June 1987 – ‘Denis McAlinden phoned. [new line] Rang John Hatton MP. [new line] Michael Stanwell. 065.48-2035’.<sup>186</sup>
- 28 June 1987 – ‘P/V Merriwa’.<sup>187</sup>
- 3 August 1987 – ‘Michael Stanwell rang’.<sup>188</sup>
- 4 August 1987 – ‘Rang – St John of God Richmond ... [new line] Denis McAlinden ... [new line] Michael Stanwell 4824300’.<sup>189</sup>
- 12 August 1987 – ‘Ring D McAlinden. 571057 ... Rang ... Denis McAlinden’.<sup>190</sup>
- 13 August 1987 – ‘11am D.McAlinden’. [entry struck through]<sup>191</sup>
- 26 August 1987 – ‘12.30. am. Denis McAlinden’.<sup>192</sup>

C4.92 Wilson’s diary records also show that contact with McAlinden, and with McAlinden’s treating psychiatrist, Dr Derek Johns, continued through August 1987 to February 1988 (as discussed below).

### ***The ‘misprision note’***

C4.93 Wilson’s 1987 diary also contained notes on the ‘Notes’ page near the back of the diary which included the following:

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<sup>183</sup> Diary entry by Wilson, dated 10 June 1987, conf ex XX, p 4.

<sup>184</sup> *ibid*, p 5.

<sup>185</sup> Diary entry by Wilson, dated 18 June 1987, conf ex PW B, tab 5, p 12.

<sup>186</sup> Diary entry by Wilson, dated 19 June 1987, conf ex XX, p 6.

<sup>187</sup> Diary entry by Wilson, dated 28 June 1987, conf ex PW B, tab 7, p 18.

<sup>188</sup> Diary entry by Wilson, dated 3 August 1987, conf ex XX, p 7.

<sup>189</sup> *ibid*, p 8.

<sup>190</sup> Diary entry by Wilson, dated 12 August 1987, conf ex PW B, tab 12, p 24.

<sup>191</sup> *ibid*, p 25.

<sup>192</sup> *ibid*, p 32.

## Notes

sect 148 B. - Obligatory  
Medicos / Teachers.  
obligations to be extended  
to clergymen.

reasonable grounds of suspecting the child has been abused.

(Mispriaion of felony) - obligation on anyone aware of (criminal act) must report it.

punishable or fine and imprisonment

details of name place act.

so serious a character that it ought to be reported.

Figure C4.4 Handwritten notes by Wilson in the 'Notes' section of his 1987 diary<sup>193</sup>

C4.94 The transcription of the note is as follows:

Section 148 B – Obligatory

medicos

Teachers obligations to be extended to clergymen.

reasonable grounds of suspecting the child has been abused.

Mispriaion of felony/- obligation on anyone

aware of (criminal act) felony

must report it.

Punishable on fine and imprisonment

Details of name  
Place  
+ act

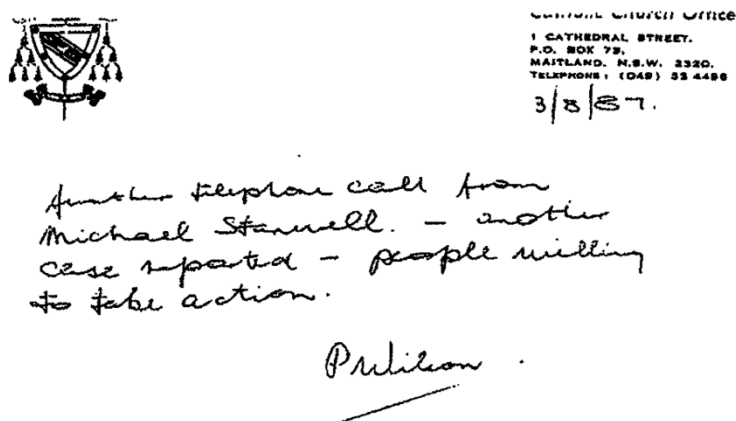
so serious a character that it ought to be reported.

<sup>193</sup> Diary entry by Wilson, dated 13 August 1987, conf ex PW B.

C4.95 In oral evidence Wilson confirmed that the note was in his handwriting<sup>194</sup> but said he could not recall any reason why he was outlining the elements of misprision of felony or where the information for it came from.<sup>195</sup> He said he could not remember making the notes and had asked himself ‘the question about why I did it and what ... I was pursuing at the time’.<sup>196</sup> Wilson acknowledged that, given the notes’ placement in the 1987 diary, that was likely to be the year in which he made the entry.<sup>197</sup> He could not recall seeking legal advice or whether he himself looked things up in legal papers. He denied, however, that, because of events in 1987, he was concerned about being party to matters that could constitute a misprision of felony by him if he did not report to police.<sup>198</sup> He told the Commission he had said to the bishop, ‘We should get legal advice about how to deal with these issues’.<sup>199</sup> After dealing with the Merriwa situation, Wilson said, he could not recall whether he sought any legal advice about his obligation to report allegations of criminal conduct to the police.<sup>200</sup>

### **Wilson’s note of 3 August 1987**

C4.96 Figure C4.5 shows a handwritten note of Wilson dated 3 August 1987.



**Figure C4.5 Wilson’s handwritten note dated 3 August 1987**<sup>201</sup>

C4.97 Wilson confirmed that the document bore his handwriting.<sup>202</sup> He had no recollection, however, of the conversation with Stanwell referred to in the note and thought the note meant that ‘people were willing to make a statement about a particular matter involving Father McAlinden’.<sup>203</sup> He was unable to recall the names of those who were prepared to take action. Wilson said he ‘deduced’ that the note was related to his diary entry noting a telephone call from Stanwell on 3 August 1987. He was unable to say, however, whether there was any link between this note and BA’s statement taken by him on 6 August 1987.<sup>204</sup>

<sup>194</sup> TOR 2, T64.13–22 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>195</sup> TOR 2, T64.36–65.25 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>196</sup> TOR 2, T244.30–34 (Wilson in camera, 17 July 2013).

<sup>197</sup> TOR 2, T291.33–292.18 (Wilson in camera, 17 July 2013).

<sup>198</sup> TOR 2, T65.10–32 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>199</sup> TOR 2, T244.36–39 (Wilson in camera, 17 July 2013).

<sup>200</sup> TOR 2, T34.38–42 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>201</sup> Transcription as follows: ‘Another telephone call from Michael Stanwell. – another case reported – people willing to take action. P Wilson’.

<sup>202</sup> TOR 2, T202.30–31 (Wilson in camera, 17 July 2013).

<sup>203</sup> TOR 2, T203.30–204.7 (Wilson in camera, 17 July 2013).

<sup>204</sup> TOR 2, T204.29–205.15 (Wilson in camera, 17 July 2013).



## BA's evidence

- C4.98 The Commission obtained from BA, AD's mother, a statutory declaration that was received in evidence before the Commission.<sup>205</sup>
- C4.99 BA stated that her daughter AD turned 7 years old in May 1986. She had been in the composite 1/2 class in 1985 and 1986.<sup>206</sup> BA stated that during 1986 her eldest daughter, ABG, brought AD into the house to see her, and AD had then told her McAlinden made her sit on his knee and had put his hands under her uniform to rub her. BA stated, 'When AD told me this, she gestured towards her undies between her legs'.<sup>207</sup>
- C4.100 BA believed AD and told her never to be alone with McAlinden in the church or presbytery or to accept lollies from him (McAlinden used to bring lollies to the playground to give to children).<sup>208</sup> BA thought that at the time of AD's disclosure McAlinden was still at Merriwa (because she had taken steps to ensure AD was not alone near him in the church or presbytery).<sup>209</sup>
- C4.101 After AD's disclosure BA recalled having collected AD from the presbytery on a previous occasion; AD had been there with McAlinden and two other young girls, AU and AT. At the time BA had thought it was 'a bit strange'.<sup>210</sup>
- C4.102 BA recalled that soon after the disclosure AD said Stanwell, the principal at St Joseph's Primary School, had said the church was 'out of bounds'.<sup>211</sup>
- C4.103 In relation to her statement (see Figure C4.1), BA confirmed that the handwriting 'This is an accurate transcript of what happened' appeared to be her own. The document also bears her signature, although she could not recall signing any document. Nor did she recall ever having met Wilson.<sup>212</sup> BA also said she had no recollection of any television 'programme' associated with AD's disclosure about McAlinden, and she recalled that the disclosure occurred during 1986, not 1987 in the terms previously noted.<sup>213</sup>
- C4.104 BA stated that she did have a vague recollection of Stanwell telling her someone from the bishop's office would come to Merriwa and that she was told this soon after AD's disclosure. She did not, however, recall having any visit from any priest or anyone from the bishop's office in relation to AD or McAlinden.<sup>214</sup>

## Mr Stanwell's evidence

- C4.105 Stanwell gave evidence about his involvement in matters relating to McAlinden. In 1986 he was the new principal at St Joseph's Primary School in Merriwa.<sup>215</sup> It was a small school with only four classes; in all, there were 96 pupils ranging from kindergarten to year 6.<sup>216</sup> He had lived in Merriwa parish for four years before becoming the principal.<sup>217</sup>

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<sup>205</sup> Statutory declaration of BA, dated 12 July 2013, conf ex PW Q. BA was not called to give evidence; nor did any person authorised to appear, including Wilson, apply for her to be called.

<sup>206</sup> *ibid*, para 5.

<sup>207</sup> *ibid*, paras 6–9.

<sup>208</sup> *ibid*, paras 14, 16.

<sup>209</sup> *ibid*, para 20.

<sup>210</sup> *ibid*, para 15.

<sup>211</sup> *ibid*, para 17.

<sup>212</sup> *ibid*, para 38.

<sup>213</sup> *ibid*, paras 40–41.

<sup>214</sup> *ibid*, paras 42–43.

<sup>215</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 3.

<sup>216</sup> TOR 2, T75.6–15 (Stanwell in camera, 2 August 2013).

<sup>217</sup> TOR 2, T75.34–36 (Stanwell in camera, 2 August 2013).

- C4.106 Three documents prepared at different times – in 1987, 2010 and 2013 – recorded Stanwell’s recollection of events pertaining to McAlinden. Each document was tendered into evidence.
- C4.107 The first document is a statement dated 18 June 1987 that Stanwell prepared for his own purposes after the events at Merriwa (referred to here as ‘the 1987 statement’).<sup>218</sup> The statement began thus: ‘The reason for making this statement is so that, in the future, I will have a record of what occurred’.<sup>219</sup> Stanwell’s recollection was that he handwrote the statement and his wife then typed it, probably on the date shown on the statement.<sup>220</sup> He later explained that the purpose of the statement was to protect himself and that he was ‘trying to indicate what Fr McAlinden’s activities were and what [he] had done about it’.<sup>221</sup> He said that his father, who had been a school principal, had also encouraged him to prepare the document.<sup>222</sup>
- C4.108 Stanwell was adamant that the events described in the document occurred in 1986 rather than 1987.<sup>223</sup> He denied that he had been asked to prepare the statement in 1987 pursuant to a request from Wilson, to assist in confronting McAlinden.<sup>224</sup> He also denied that he had provided the statement to Wilson after it had been prepared.<sup>225</sup> He told the Commission he had put the statement and his diary in an envelope and signed across the seal so that if it had been opened it would show; he wrote on the envelope that the contents concerned incidents in 1986 and if anyone wanted to open it they were to contact him.<sup>226</sup> Stanwell said he had been led to believe by the principal who succeeded him that the statement had been destroyed – that it had been burnt in an incinerator.<sup>227</sup> He said he was surprised to be presented with it by police in the course of preparing his police statement in 2010.<sup>228</sup>
- C4.109 The second of Stanwell’s documents is a police statement taken on 22 July 2010 by Detective Chief Inspector Peter Fox.<sup>229</sup> This statement contained information beyond that contained in the 1987 statement.
- C4.110 The third document is a short letter in the form of a submission sent to the Commission and dated 17 January 2013.<sup>230</sup> Stanwell explained the purpose of the document: ‘I sent in a very brief letter just to say ... who I was and that I’d been in Merriwa when McAlinden was there’.<sup>231</sup> He agreed that the letter was not an attempt to describe matters exhaustively; it was just to give an overview.<sup>232</sup>
- C4.111 There are a number of differences in the versions of events set out in these three documents.

### *Initial concerns expressed during a staff meeting in early 1986*

#### *The 1987 statement*

- C4.112 In his 1987 statement Stanwell recorded that at a staff meeting on the first day of school in 1986 staff told him of behaviour by McAlinden that had apparently led to action being taken to

<sup>218</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK.

<sup>219</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK, p 13.

<sup>220</sup> TOR 2, T11.13–47 (Stanwell in camera, 25 July 2013).

<sup>221</sup> TOR 2, T147.6–12 (Stanwell in camera, 2 August 2013).

<sup>222</sup> TOR 2, T11.37–38 (Stanwell in camera, 25 July 2013); T87.21–25 (Stanwell in camera, 2 August 2013).

<sup>223</sup> TOR 2, T11.45–12.11; T89.13–90.6 (Stanwell in camera, 2 August 2013).

<sup>224</sup> TOR 2, T87.6–25; T88.31–34 (Stanwell in camera, 2 August 2013).

<sup>225</sup> TOR 2, T98.1–4 (Stanwell in camera, 2 August 2013).

<sup>226</sup> TOR 2, T98.1–9; T132.39–44 (Stanwell in camera, 2 August 2013). No copy of the diary was located by or produced to the Commission.

<sup>227</sup> TOR 2, T134.28–32 (Stanwell in camera, 2 August 2013).

<sup>228</sup> TOR 2, T13.23–26 (Stanwell in camera, 25 July 2013); T134.6–15 (Stanwell in camera, 2 August 2013).

<sup>229</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL.

<sup>230</sup> Submission of Stanwell, dated 17 January 2013, conf ex MM.

<sup>231</sup> TOR 2, T45.41–43 (Stanwell in camera, 25 July 2013).

<sup>232</sup> TOR 2, T47.27–30 (Stanwell in camera, 25 July 2013).

prevent children from going to the church. Subsequent contact with other 'religious' people confirmed his idea that McAlinden was very affectionate with young girls.<sup>233</sup>

- C4.113 In oral evidence Stanwell sought to clarify that he was not aware of McAlinden's 'activities' at the time of the first staff meeting in 1986: at that time the concern was children playing 'games' around the church.<sup>234</sup>

#### *The police statement*

- C4.114 Somewhat in contrast, in his police statement Stanwell stated that the first time he became aware of McAlinden's conduct was after having witnessed an incident in the church in April 1986 (see para C4.122). He stated that he then raised the matter with two of his staff, who told him of other concerns of which they were aware.<sup>235</sup>

#### *The handwritten submission*

- C4.115 In his handwritten submission Stanwell stated that soon after his appointment as principal he became aware of McAlinden's sexual activities. He wrote that the first time the behaviour came to his notice was when he was speaking to 'two young ladies and a Josephite nun'. At morning assembly the following day he told the children they were not to go to the church before school or to approach McAlinden in the playground.<sup>236</sup>

#### *Discussions with Mr Ray Hanley*

##### *The 1987 statement*

- C4.116 Stanwell recorded that at the beginning of June 1986, when Mr Ray Hanley (who worked at the Catholic Education Office and was in charge of staffing)<sup>237</sup> visited Merriwa, he (Stanwell) told him of his 'worries' about McAlinden's actions and that children were 'staying in the presbytery overnight'.<sup>238</sup> In oral evidence Stanwell said this was a reference to the complaints of AU and AT, 8-year-old twins.<sup>239</sup> Stanwell stated that Hanley said he would pass the information on to Mr Ray Kelly,<sup>240</sup> who later rang Stanwell and said he would contact the bishop's secretary.<sup>241</sup>
- C4.117 In oral evidence Stanwell said that, by the time of this discussion with Hanley, he had observed an incident involving McAlinden with a young girl on his knee (noted below).<sup>242</sup> That evidence is, however, inconsistent with the order of events set out in the 1987 statement, which referred to the incident Stanwell witnessed as occurring on Friday 20 June 1986 (after the discussion with Hanley).

##### *The police statement*

- C4.118 The police statement does not refer to any discussions with Hanley.

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<sup>233</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK, p 13.

<sup>234</sup> TOR 2, T158.24–44 (Stanwell in camera, 2 August 2013).

<sup>235</sup> NSW Police statement of Stanwell dated 23 July 2010, conf ex LL, paras 5–6.

<sup>236</sup> Submission of Stanwell, dated 17 January 2013, conf ex MM.

<sup>237</sup> TOR 2, T16.36–41 (Stanwell in camera, 25 July 2013).

<sup>238</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK, p 14.

<sup>239</sup> TOR 2, T107.10–16 (Stanwell in camera, 2 August 2013).

<sup>240</sup> Stanwell explained that he was 'sort of like in a position between Hanley and Monsignor Coolahan' in the Catholic Education Office: TOR 2, T18.22–33 (Stanwell in camera, 25 July 2013). Coolahan was then the director of the Catholic Education Office for all schools in the Diocese and reported to the Bishop: TOR 2, T237.26–40 (Wilson in camera, 17 July 2013).

<sup>241</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK.

<sup>242</sup> TOR 2, T17.29–32 (Stanwell in camera, 25 July 2013).

## *Witnessing an incident involving McAlinden*

### *The 1987 statement*

C4.119 In the 1987 statement Stanwell said he was worried that the level of McAlinden's unacceptable activity might increase in the weeks before McAlinden left Merriwa parish. He then recorded an event said to have occurred on Friday 20 June 1986 that caused him great concern:

On Friday June 20 I went to look for Father to give him a message. I went to the Presbytery but he wasn't there ... I went to the Church to see if Father McAlinden was inside. I went to speak with him in the Church. He had a kindergarten girl sitting on his lap, facing him with her legs sprea[d] apart. He was rocking backwards and forwards. I was shocked to see them in such a position. Father also appeared shocked when he saw me. They parted rapidly and the child who looked very frightened, rapidly retreated.<sup>243</sup>

C4.120 In oral evidence Stanwell explained that he was confident of the date being 20 June 1986 because it was based on a diary entry. He said he had put his diary in the envelope along with the statement, which he understood had been destroyed. He said he had not seen the diary since that time.<sup>244</sup>

C4.121 Stanwell told the Commission he was confident the girl he saw on McAlinden's lap was AD, despite Wilson's counsel suggesting that it might not have been.<sup>245</sup> Stanwell said that, on witnessing the incident, he did not know exactly what he felt but just 'knew that this wasn't right'.<sup>246</sup>

### *The police statement*

C4.122 In his police statement Stanwell described this incident in slightly different terms and did not describe either McAlinden or the young girl becoming aware of his presence:

I believe it was around April 1986 that I went to the Catholic Church in Merriwa to say a private prayer. When I entered the Church I saw Father McAlinden seated on one of the pews. His back was towards me and there was no one else in the Church at the time ... I also saw a young girl seated on his lap. I recognised this young girl as one of my students. Her name then was [AD] and I believe she was about 8 years old at the time. I stopped as I assumed she must have been there for confession. I was concerned that she was seated on his lap at the time; I didn't think it proper for that to be happening when they were alone together. I then made my way back out of the church [sic] without alerting them to my presence.<sup>247</sup>

C4.123 Stanwell also said the following in the police statement: 'Although I didn't see anything wrong, I didn't feel comfortable about the situation I had seen Father McAlinden in'.<sup>248</sup> He stated that he then spoke to two of his staff, who told him there had been other reports.<sup>249</sup> In contrast with having had concerns previously raised with him on the first day of school in 1986 (as noted in the 1987 statement) or at some time shortly thereafter,<sup>250</sup> in the police statement Stanwell referred to having been hit rather hard: 'I never heard about any of this before that day'.<sup>251</sup>

C4.124 The police statement then recorded the steps Stanwell took to warn the children about not going to the church in the morning before school and not to approach McAlinden when he was

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<sup>243</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK, p 14.

<sup>244</sup> TOR 2, T19.7–24 (Stanwell in camera, 25 July 2013).

<sup>245</sup> TOR 2, T19.35–44 (Stanwell in camera, 25 July 2013); T119.16–24 (Stanwell in camera, 2 August 2013).

<sup>246</sup> TOR 2, T20.9–13 (Stanwell in camera, 25 July 2013).

<sup>247</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 5.

<sup>248</sup> *ibid*, para 6.

<sup>249</sup> *ibid*.

<sup>250</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK, p 13.

<sup>251</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 7.

in the school grounds.<sup>252</sup> Stanwell stated that, although McAlinden never spoke to him about the matter, during Mass he preached in a manner Stanwell took to be critical of his actions in restricting the children's access to the church. Thereafter the relationship between Stanwell and McAlinden changed dramatically.<sup>253</sup> They had until then enjoyed a cordial relationship, McAlinden having come to Stanwell's home to say Mass with his family.<sup>254</sup>

- C4.125 In oral evidence Stanwell agreed that the date ascribed to the incident in the police statement (April 1986) was wrong: he said the correct date was that stated in his 1987 statement (20 June 1986).<sup>255</sup>

### **Contact with Bishop Clarke and the bishop's secretary**

#### *The 1987 statement*

- C4.126 In his 1987 statement Stanwell said that after seeing the girl on McAlinden's lap he rang the Catholic Education Office and spoke to Kelly, describing what had happened that day and what action he had taken.<sup>256</sup> Stanwell said Kelly agreed with his actions (keeping the children away from the church)<sup>257</sup> and told him he would pass the matter on to the bishop's secretary, Father Wilson.<sup>258</sup>
- C4.127 Stanwell said he received a telephone call from Wilson<sup>259</sup> later that afternoon, although in oral evidence he said he was not confident that Wilson did in fact call on the same day.<sup>260</sup> The 1987 statement noted that they spoke about McAlinden's activities (meaning the 'girl sitting on [McAlinden's] knee')<sup>261</sup> and particularly discussed concerns about the safety of the children and the ban on them visiting the church for the next week. Stanwell said Wilson agreed with the directions earlier issued – directing students not to go to the presbytery or the church alone. Stanwell noted that he felt he had been placed in an 'invidious' position because the following week McAlinden constantly told the children they could come down to the church. He also stated that McAlinden became very upset at his action, although he (McAlinden) did not approach him.<sup>262</sup>
- C4.128 That is where the 1987 statement effectively concludes, being signed and dated 18 June 1987.
- C4.129 In oral evidence Stanwell said he had a memory of Wilson coming to see him at the school at Merriwa; he said he was 'extremely confident' that these events occurred in 1986.<sup>263</sup> Stanwell said Wilson visited him only once and came to investigate the incident involving AD sitting on McAlinden's lap.<sup>264</sup> As to discussions with Wilson, Stanwell explained that there were two brief meetings – when Wilson first arrived and when he was leaving. Stanwell said that when Wilson first arrived at his classroom, he went outside and spoke to him 'about what [he] had seen' and gave him directions to AD's parents.<sup>265</sup> Stanwell told the Commission:

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<sup>252</sup> *ibid*, para 8.

<sup>253</sup> *ibid*, para 9.

<sup>254</sup> *ibid*, para 4.

<sup>255</sup> TOR 2, T34.23–34 (Stanwell in camera, 25 July 2013); T118.32–42 (Stanwell in camera, 2 August 2013).

<sup>256</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK, p 15.

<sup>257</sup> TOR 2, T21.42–45 (Stanwell in camera, 25 July 2013).

<sup>258</sup> Statement of Stanwell dated, 18 June 1987, conf ex KK, p 15.

<sup>259</sup> Wilson was the bishop's secretary in 1986: TOR 2, T236.3–8 (Wilson in camera, 17 July 2013). He was promoted to vicar general from 1 January 1987 – see biography of Wilson, conf ex PW J.

<sup>260</sup> TOR 2, T22.7–20 (Stanwell in camera, 25 July 2013); statement of Stanwell dated, 18 June 1987, conf ex KK, p 15.

<sup>261</sup> As explained by Stanwell in his oral evidence: TOR 2, T22.22–24 (Stanwell in camera, 25 July 2013).

<sup>262</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK, pp 15–16.

<sup>263</sup> TOR 2, T26.7–9 (Stanwell in camera, 25 July 2013).

<sup>264</sup> TOR 2, T24.44–25.23 (Stanwell in camera, 25 July 2013).

<sup>265</sup> TOR 2, T29.3–20 (Stanwell in camera, 25 July 2013).

He was gone for a little while. Then he came back – and the same thing, he came up to the door. I organised a bit of work and went back outside. We spoke and he said, yes, there had definitely been something going on and he would organise for McAlinden to be removed in the very near future.<sup>266</sup>

- C4.130 Stanwell said the time gap between the conversation with Wilson and McAlinden’s removal from the parish was within a week.<sup>267</sup>
- C4.131 Stanwell initially told the Commission there was nothing to explain why Wilson’s visit to Merriwa and his own visit to the bishop (as referred to below) were not referred to in his 1987 statement.<sup>268</sup> He then stated, however, that he did not think those events were relevant:
- When I prepared the document, I had great faith that the church was handling the matter in an appropriate way. I had no reason to think that going to see Bishop Clarke and having Wilson come up was important to what had happened. I saw it as being about Father McAlinden.<sup>269</sup>
- C4.132 Stanwell later confirmed that he had no concerns with the way the Church handled the McAlinden matter at the time he prepared his 1987 statement.<sup>270</sup> He said that was also why he did not go to see Hatton, a course his fellow principals urged him to take (as noted below).<sup>271</sup>
- C4.133 Stanwell was adamant that at the time of the visit to Merriwa Wilson was a monsignor (because he was the vicar general), despite the fact that the 1987 statement referred to ‘Father Wilson’.<sup>272</sup> Although advised that Wilson became a monsignor on 1 January 1987 (after becoming vicar general), Stanwell nonetheless denied that the events took place in 1987, his contention being that the events occurred in 1986. Stanwell said he was positive he had no contact at all with Wilson in 1987 concerning McAlinden or, indeed, any other matters.<sup>273</sup>

### *The police statement*

- C4.134 Again in contrast, Stanwell’s police statement refers to witnessing the incident between McAlinden and AD; raising the matter with two of his staff, who confirmed that McAlinden’s conduct was well known; and ultimately deciding to speak with the bishop because he could ‘not stand by and do nothing’.<sup>274</sup> Stanwell stated that this was against the advice of his fellow principals, who urged him to contact Hatton, who was well known for his anti-corruption stance, with a view to having the matter raised in parliament.<sup>275</sup> Notwithstanding this advice, in oral evidence Stanwell said he ‘wouldn’t do it’.<sup>276</sup>
- C4.135 Instead, Stanwell referred to raising the matter with Clarke, who said it was not the first time he had heard of McAlinden’s activities. In oral evidence Stanwell said he had a strong recollection of that being said during his meeting with Clarke.<sup>277</sup> The bishop said he would do something about McAlinden but that it would ‘take some time before [he] could have him placed for rehabilitation’.<sup>278</sup>

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<sup>266</sup> TOR 2, T29.20–25 (Stanwell in camera, 25 July 2013).

<sup>267</sup> TOR 2, T29.41–30.3 (Stanwell in camera, 25 July 2013).

<sup>268</sup> TOR 2, T27.3–4; T27.42–44 (Stanwell in camera, 25 July 2013).

<sup>269</sup> TOR 2, T28.25–29 (Stanwell in camera, 25 July 2013). To similar effect was Stanwell’s evidence at: TOR 2, T38.33–37 (Stanwell in camera, 25 July 2013).

<sup>270</sup> TOR 2, T147.14–19 (Stanwell in camera, 2 August 2013).

<sup>271</sup> TOR 2, T145.23–29 (Stanwell in camera, 2 August 2013).

<sup>272</sup> TOR 2, T25.38–43; T27.23–40 (Stanwell in camera, 25 July 2013).

<sup>273</sup> TOR 2, T89.13–90.6 (Stanwell in camera, 2 August 2013).

<sup>274</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 10.

<sup>275</sup> *ibid.*

<sup>276</sup> TOR 2, T91.13–15 (Stanwell in camera, 2 August 2013).

<sup>277</sup> TOR 2, T37.12–26 (Stanwell in camera, 25 July 2013).

<sup>278</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 11; TOR 2, T38.2–13 (Stanwell in camera, 25 July 2013).

- C4.136 Later in the police statement Stanwell described a further incident reported to him in June 1986 by a nun; this time the incident involved McAlinden taking a brother and sister, 8-year-old twins, away for a weekend and touching the girl's bottom in a way that she was 'not happy with' during a bath. Stanwell described visiting the girl's parents, who refused to accept that McAlinden could behave in such a way.<sup>279</sup> In oral evidence Stanwell said they were unwilling to speak with anyone about the incident.<sup>280</sup> He said this matter was alluded to in his 1987 statement, where he had stated that he told Hanley that children were 'staying overnight in the presbytery'.<sup>281</sup>
- C4.137 Stanwell said this incident compelled him to make a further appointment to see the bishop and that he travelled to the bishop's house at Maitland to see Clarke but instead saw Wilson.<sup>282</sup> In his police statement Stanwell said he was disappointed that he was not speaking to the bishop about something so 'sensitive and important'.<sup>283</sup> Nonetheless, he told Wilson 'something new has now come up' and outlined the allegations concerning AT (the 8-year-old girl) and the meeting with the child's parents. Stanwell stated that Wilson said he would do something about the matter and would investigate it himself. Stanwell said, 'He was very pleasant and gave me the impression that he would ensure something happened'.<sup>284</sup>
- C4.138 Stanwell also said in his police statement that, because Wilson was coming to investigate, he (Stanwell) spoke to BA, AD's mother, and told her what he had seen in the church and of his concerns. He said she agreed to speak with Wilson.<sup>285</sup> Under questioning by his own counsel, however, Stanwell gave contrary evidence, stating that he had never spoken to AD's mother about McAlinden and AD in 1986.<sup>286</sup>
- C4.139 Stanwell recorded in his police statement that when Wilson came to Merriwa he directed him to AD's house. On returning, Wilson said to Stanwell, 'Something has definitely gone on ... McAlinden will be removed as soon as I can organise something'.<sup>287</sup>
- C4.140 In oral evidence Stanwell explained that he did not direct Wilson to AT's parents' house because they did not 'believe that Father McAlinden would do something like that'.<sup>288</sup> In this respect he agreed that when he met with Wilson he would have said words to the effect of 'They [AT's parents] don't believe it. They're not willing to come forward'.<sup>289</sup> Later in oral evidence, and somewhat contrary to his initial evidence, Stanwell said he believed Wilson spoke to AT's parents, although he did not know what might have been said.<sup>290</sup> He said he understood this because Wilson told him he had spoken to them.<sup>291</sup>

#### *The handwritten submission*

- C4.141 In his handwritten submission, however, Stanwell said he sought an appointment with Clarke after his (Stanwell's) staff had raised concerns about McAlinden. He stated that Clarke said it was not the first time such incidents had been brought up but that he would do something about it, although it might take some time.<sup>292</sup> Stanwell stated that it was within a few weeks that the incident with the 8-year-old twins (and the girl in particular) was referred to him, and he

<sup>279</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, paras 13–14.

<sup>280</sup> TOR 2, T54.1–5 (Stanwell in camera, 25 July 2013).

<sup>281</sup> TOR 2, T107.10–16 (Stanwell in camera, 2 August 2013).

<sup>282</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, paras 15–16.

<sup>283</sup> *ibid*, para 15.

<sup>284</sup> *ibid*, para 16.

<sup>285</sup> *ibid*, para 17.

<sup>286</sup> TOR 2, T161.21–33 (Stanwell in camera, 2 August 2013).

<sup>287</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 18.

<sup>288</sup> TOR 2, T40.7–10 (Stanwell in camera, 25 July 2013).

<sup>289</sup> TOR 2, T54.7–13 (Stanwell in camera, 25 July 2013).

<sup>290</sup> TOR 2, T88.36–43 (Stanwell in camera, 2 August 2013).

<sup>291</sup> TOR 2, T89.6–7 (Stanwell in camera, 2 August 2013).

<sup>292</sup> Submission of Stanwell, dated 17 January 2013, conf ex MM.



immediately contacted Clarke for another interview. Consistent with his police statement, he said he then met Wilson, the vicar general, who came to Merriwa within the next few days.<sup>293</sup>

### ***McAlinden's removal from Merriwa***

#### *The 1987 statement*

- C4.142 In his 1987 statement Stanwell referred to being concerned, about the beginning of June that year, that the level of McAlinden's 'unacceptable activity' might increase in the weeks before he left Merriwa. The statement also makes reference to Stanwell discussing with Wilson and his own teaching staff the ban he introduced in order to prevent the children visiting the church 'for the next week' or the 'forthcoming week' (ostensibly as a result of such concerns).<sup>294</sup>
- C4.143 In oral evidence, when examined about the reference to McAlinden leaving, Stanwell said McAlinden was going to be moving from the parish and he (Stanwell) could not recall why this was so; he did not, however, understand that it was because of any complaints.<sup>295</sup> In later evidence and to the contrary, Stanwell said that before he spoke to Wilson 'I don't think he [McAlinden] was going to be leaving'.<sup>296</sup>
- C4.144 Stanwell also told the Commission McAlinden was moved after Wilson came to Merriwa to investigate the matter, although Wilson did not tell him why the removal had occurred.<sup>297</sup> In this regard Stanwell said that after Wilson returned from visiting AD's parents he (Wilson) said there 'had definitely been something going on' and that McAlinden would be removed.<sup>298</sup>

#### *The police statement*

- C4.145 In his police statement Stanwell said that after Wilson's visit McAlinden was moved from Merriwa to Adamstown, where the presbytery was alongside St Columba's Primary School, within the week. Stanwell said he was 'stunned'.<sup>299</sup> In oral evidence he explained this was because '... the man [had] been moved from Merriwa because he [had] been interfering with children and he [was] moved to another school where he [was] adjacent to the playground again'.<sup>300</sup> In his police statement Stanwell said that after he called the principal of St Columba's to warn her about McAlinden.<sup>301</sup> McAlinden was also removed from Adamstown 'overnight', and Stanwell was unsure where he went to next.<sup>302</sup> Under examination by counsel for the Diocese, however, Stanwell told the Commission he was not in fact in a position to state that 'they just moved him on and nothing else'.<sup>303</sup> He also agreed he was in no position to know how long McAlinden was at Adamstown and it was not correct to state that McAlinden had been removed overnight.<sup>304</sup>

### ***Mr Stanwell's attitude towards reporting to the police***

- C4.146 In his police statement Stanwell said he thought that after Wilson's comment about AD's allegations – that 'something [had] definitely gone on' – the matter should have been taken to the police.<sup>305</sup> In oral evidence he said he was unsure whether he thought Wilson was in fact

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<sup>293</sup> *ibid.*

<sup>294</sup> Statement of Stanwell dated 18 June 1987, conf ex KK, p 15.

<sup>295</sup> TOR 2, T17.34–18.13 (Stanwell in camera, 25 July 2013).

<sup>296</sup> TOR 2, T30.27–30 (Stanwell in camera, 25 July 2013).

<sup>297</sup> TOR 2, T40.26–33 (Stanwell in camera, 25 July 2013).

<sup>298</sup> TOR 2, T26.11–43 (Stanwell in camera, 25 July 2013).

<sup>299</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 19.

<sup>300</sup> TOR 2, T52.27–30 (Stanwell in camera, 25 July 2013).

<sup>301</sup> TOR 2, T41.21–46 (Stanwell in camera, 25 July 2013).

<sup>302</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 20.

<sup>303</sup> TOR 2, T141.10–12 (Stanwell in camera, 2 August 2013).

<sup>304</sup> TOR 2, T142.13–24; T143.1–5 (Stanwell in camera, 2 August 2013).

<sup>305</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 20.



going to take the matter to the police: he said, 'I've got neither yes or no', and agreed he had not really thought it through to that level at the time.<sup>306</sup>

C4.147 The police statement also referred to media reports that Wilson had said no one was prepared to make a statement about the Merriwa incident. In response to this, Stanwell told the Commission:

That was not true. I was prepared to make a statement. He never asked me for a statement. But I would not have hesitated if he had. I was more than happy to take this to police.<sup>307</sup>

C4.148 Stanwell gave evidence that Wilson had not asked him to provide a statement; nor had Stanwell approached Wilson and asked to make a statement.<sup>308</sup> He also denied that Wilson told him to go the police in 1986, when Wilson came to Merriwa to see him.<sup>309</sup>

C4.149 As to his specific attitude towards reporting events to the police, Stanwell said he thought the concerns relating to McAlinden were a matter for the Church '... because I had great faith in the church and that it was an institution that would deal with this matter in an appropriate way'.<sup>310</sup> To similar effect in later evidence, Stanwell told the Commission he had confidence that the Diocese or the bishop was going to manage the situation 'in an appropriate way'.<sup>311</sup>

C4.150 Stanwell denied that Wilson had said to him, 'If there are complaints like that, then people should go to the police. You need to look at your responsibilities as principal of the school'.<sup>312</sup>

### ***Denial of Archbishop Wilson's version of events***

C4.151 Stanwell denied Wilson's version of events as put to him by Wilson's counsel. He disagreed that Wilson rang him after McAlinden had left Merriwa for Adamstown to speak about complaints relating to McAlinden. He denied 'absolutely' that Wilson went to see him after McAlinden had already gone to Adamstown.<sup>313</sup> He said he did not speak with Wilson after McAlinden left.<sup>314</sup> He also denied that there had been a conversation in the terms asserted by Wilson – to the effect that, on arrival at the school, Wilson said, 'There are these reports. Do you know anything about it?'<sup>315</sup> Stanwell agreed he would have said to Wilson that in the church he saw McAlinden doing something inappropriate with a child.<sup>316</sup> He denied telling Wilson 'Some of the parents have spoken to me about their worries'.<sup>317</sup> He conceded that Wilson might have said to him 'Ask these people to come and see me. I'm quite prepared to listen to their story and take the information and act on it' after Wilson had been to see AD's parents. Stanwell also said he had named AU and AT (the twins) and that their parents 'didn't want to do anything about it'.<sup>318</sup>

### ***Ostracism***

C4.152 In oral evidence Stanwell confirmed his belief (stated in his police statement) that he had been ostracised by other parishioners and clergy as a consequence of his stance against McAlinden.<sup>319</sup> He believed it was a factor causing marital and family problems for him; his health also

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<sup>306</sup> TOR 2, T42.10–21 (Stanwell in camera, 25 July 2013).

<sup>307</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 25.

<sup>308</sup> TOR 2, T42.41–47 (Stanwell in camera, 25 July 2013).

<sup>309</sup> TOR 2, T156.16–19 (Stanwell in camera, 2 August 2013).

<sup>310</sup> TOR 2, T36.46–37.10 (Stanwell in camera, 25 July 2013).

<sup>311</sup> TOR 2, T137.43–47 (Stanwell in camera, 2 August 2013).

<sup>312</sup> TOR 2, T127.3–6 (Stanwell in camera, 2 August 2013).

<sup>313</sup> TOR 2, T125.35–41 (Stanwell in camera, 2 August 2013).

<sup>314</sup> TOR 2, T126.15–24 (Stanwell in camera, 2 August 2013).

<sup>315</sup> TOR 2, T125.42–47 (Stanwell in camera, 2 August 2013).

<sup>316</sup> TOR 2, T126.10–13 (Stanwell in camera, 2 August 2013).

<sup>317</sup> TOR 2, T126.26–28 (Stanwell in camera, 2 August 2013).

<sup>318</sup> TOR 2, T126.38–127.1 (Stanwell in camera, 2 August 2013).

<sup>319</sup> TOR 2, T43.6–43 (Stanwell in camera, 25 July 2013); NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 28.

deteriorated after the McAlinden matter gained more prominence in about 1990.<sup>320</sup> Stanwell told the Commission he wished he had done more at the time.<sup>321</sup>

## Conclusions

### Mr Stanwell's recollection

- C4.153 A number of aspects of Stanwell's evidence suggest that, despite his efforts to describe things to the best of his recollection, his evidence must be regarded as unreliable in certain respects. The Commission proceeded on the basis that in the main reliance should be placed on Stanwell's evidence only where that evidence was supported by contemporaneous documentation or other reliable evidence.
- C4.154 First, Stanwell was 'positive' he had no contact with Wilson in 1987 in relation to McAlinden or, indeed, any other matters. Wilson's diary, however, makes reference to contact on a number of occasions, including telephone calls on 10 April and 10 June 1987. Stanwell did not deny that such calls had occurred but said he could not remember them.<sup>322</sup> There was also a diary reference to a meeting at the school on 11 June 1987: Stanwell thought such a meeting would have been unusual and that he would be unlikely to forget.<sup>323</sup> He also denied that he telephoned Wilson on 3 August 1987 and told him another case had been reported, as is suggested by a note Wilson made on that date.<sup>324</sup> There is, however, no basis for considering that these contemporaneous records ought not be relied on as providing an accurate record of contact between Wilson and Stanwell.
- C4.155 Second, in relation to certain important events Stanwell's own evidence was internally inconsistent. For example, in his police statement he said that, in anticipation of Wilson's visit to Merriwa, he had visited AD's mother, BA, to ask her to see Wilson. In oral evidence, however, Stanwell told the Commission he had never spoken to AD's mother about McAlinden. Similarly, Stanwell's evidence on whether McAlinden was leaving Merriwa in the ordinary course of events at the end of June 1986 or whether he was in fact removed after Wilson's visit was entirely at odds.
- C4.156 Third, Wilson's counsel questioned Stanwell about an interview he gave to ABC Television's *Lateline* program on 17 May 2010.<sup>325</sup> Twice Stanwell gave evidence that he had 'definitely' never given an interview to *Lateline*; although his participation had been sought, Stanwell said, he had declined all requests.<sup>326</sup> When played an audio recording of an interview introduced by journalist Ms Suzanne Smith, however, Stanwell accepted that it was his voice and said, '... I mean, obviously I've spoken to them. I just don't have a recollection of doing it'.<sup>327</sup>

## Management of the Merriwa complaints

### Archbishop Wilson's communication with Bishop Clarke

- C4.157 Wilson said he told the bishop about what he had found out when he went to Merriwa and that he had come away with a suspicion that there had been some sort of sexual element to McAlinden's behaviour. He handed the bishop what he recollected to be a de-identified

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<sup>320</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, para 28.

<sup>321</sup> TOR 2, T44.5–7 (Stanwell in camera, 25 July 2013).

<sup>322</sup> TOR 2, T96.11–33 (Stanwell in camera, 2 August 2013).

<sup>323</sup> TOR 2, T97.2–34 (Stanwell in camera, 2 August 2013).

<sup>324</sup> TOR 2, T100.2–15 (Stanwell in camera, 2 August 2013).

<sup>325</sup> Audio recording of ABC *Lateline* interview between Smith and Stanwell, dated 17 May 2010, conf ex WW.

<sup>326</sup> TOR 2, T80.10–81.2 (Stanwell in camera, 2 August 2013).

<sup>327</sup> TOR 2, T82.9–30 (Stanwell in camera, 2 August 2013).

statement from the mother of one of the children with whom McAlinden had interfered.<sup>328</sup> He said he told the bishop, 'We should act upon this'.<sup>329</sup>

C4.158 Wilson said he considered his responsibility was to hand the matter over to the bishop for him to make decisions about what should happen. He did not make any notes about talking to the bishop, about confronting McAlinden, or about his interviews the preceding day at the school, explaining, 'It is the first time I had ever confronted an issue like this. I didn't know that people behaved like this and treated children that way'.<sup>330</sup>

C4.159 In his affidavit Wilson said the bishop thanked him for the information and said they would now have to 'go and confront' McAlinden.<sup>331</sup> In oral evidence, however, Wilson told the Commission it was he who had suggested to the bishop that, on the basis of the statement obtained, McAlinden 'needed to be confronted'.<sup>332</sup>

### The confrontation with McAlinden

C4.160 Wilson told the Commission he had a clear recollection of going with Clarke to 'interview' McAlinden.<sup>333</sup> He recalled that he and Clarke drove to Adamstown to confront McAlinden the following day. Wilson said the bishop did not say anything to him about having previously discussed such matters with McAlinden.<sup>334</sup> He said the bishop interviewed McAlinden in his (Wilson's) presence in the lounge room of the presbytery. In his affidavit, Wilson described Clarke's confrontation with McAlinden:

45. The Bishop said words to the effect 'We've had these reports from Merriwa about your behaviour there with young children and we have a statement from this woman about the suspicions she has about her daughter. I think he said that a mother has made allegations that there are some marks that have appeared on the body of her daughter and that 'She suspects that it's a result of your behaviour'. The bishop said this is very serious and we have to do something about it.

46. Father McAlinden immediately denied everything and said this is not true, I don't behave like that at all, they're all lies, people lie about these things etcetera.

47. The Bishop said words to the effect of 'I suspend you from pastoral activity and will have you assessed by a psychiatrist'. I don't remember whether I suggested it or whether he did, but I would have concurred with his judgment about those actions.<sup>335</sup>

C4.161 In his affidavit Wilson stated that he did not remember who chose the psychiatrist or the psychiatrist's name; he stated that the bishop had told him some months later that he received a report from the psychiatrist and it was 'not very helpful'.<sup>336</sup> He said he did not see the psychiatrist's report.<sup>337</sup> Having read the report for the purposes of this Commission, Wilson said it accorded with his recollection that Clarke had said it was 'not very helpful'.<sup>338</sup>

C4.162 A 13 July 1988 letter from McAlinden, sent from a relative's residence in Garden Suburb, New South Wales, referred to his having left Adamstown on 3 August 1987.<sup>339</sup> Wilson's evidence was

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<sup>328</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 37–41.

<sup>329</sup> TOR 2, T239.12–14 (Wilson in camera, 17 July 2013).

<sup>330</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 49.

<sup>331</sup> *ibid*, para 42.

<sup>332</sup> TOR 2, T19.37–42 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>333</sup> TOR 2, T23.1–3 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>334</sup> TOR 2, T23.23–26 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>335</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 45–47.

<sup>336</sup> *ibid*, para 51.

<sup>337</sup> *ibid*.

<sup>338</sup> TOR 2, T258.3–6 (Wilson in camera, 17 July 2013).

<sup>339</sup> Letter from McAlinden to Clarke, dated 13 July 1988, ex 219, tab 157.

that this was consistent with McAlinden being suspended from ministry at some point in 1987 and also moving out of the presbytery.<sup>340</sup>

C4.163 Wilson's affidavit further stated, 'I had nothing more to do with Father McAlinden and only know of his movements from subsequent media articles'.<sup>341</sup> In oral evidence Wilson maintained that position: 'The issues about Fr McAlinden were, after that period of time, a closed book to me'.<sup>342</sup>

C4.164 Wilson initially agreed with counsel assisting that, because he could not recall BA's handwritten statement, he was unable to assist with whether that was the document presented to McAlinden.<sup>343</sup> He subsequently told the Commission certain documents pointed to it being the document with which McAlinden was confronted, although he stated:

In my mind, the only recollection I have about ... confronting Father McAlinden with is confronting him with the document about the bathing allegation and I have to admit that, as a result of all these discussions in the Commission's activities, my views about what happened are very confused.<sup>344</sup>

C4.165 Contrary to Wilson's assertion about having no further involvement with McAlinden after the confrontation, documentary evidence shows that he had a continuing involvement in the McAlinden matter, extending to at least about February 1988. Such material includes Wilson's 1987 diary recording various phone calls and meetings, correspondence with Hatton, and notes in Wilson's handwriting relating to the engagement of Dr Derek Johns, a consultant psychiatrist in Castle Hill, Sydney.

C4.166 Wilson told the Commission he was not aware that in October 1988 Clarke allowed McAlinden to go to a diocese in Western Australia as a priest. Had he been aware of that, Wilson said, he 'would have raised an objection with the bishop'.<sup>345</sup> Wilson told the Commission he thought he did everything he could to deal with the problems being created by McAlinden. He said:

It would seem to me that at the time I felt a big sense of responsibility to bring all this to an end and organise things in such a way that McAlinden would be stopped.<sup>346</sup>

## Inquiries about a psychiatrist

C4.167 During August 1987 – specifically on 4, 12, 13 and 26 August – Wilson's diary records contact with McAlinden.<sup>347</sup> Wilson agreed that, in view of the timing, these entries suggested he had quite an active role in discussing with McAlinden matters relating to his ministry.<sup>348</sup> He confirmed that the contact with McAlinden would have been '... as a result of the issues about Merriwa and the consequences of that'.<sup>349</sup> He also thought an entry on 12 August 1987 ('rang Denis McAlinden') related to his speaking to McAlinden about the processes associated with assessment by a psychiatrist (Dr Johns).<sup>350</sup>

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<sup>340</sup> TOR 2, T246.42–247.10 (Wilson in camera, 17 July 2013).

<sup>341</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 49–52.

<sup>342</sup> TOR 2, T29.29–30 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>343</sup> TOR 2, T23.43–47 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>344</sup> TOR 2, T251.21–26 (Wilson in camera, 17 July 2013).

<sup>345</sup> TOR 2, T258.28–41 (Wilson in camera, 17 July 2013).

<sup>346</sup> TOR 2, T259.8–11 (Wilson in camera, 17 July 2013).

<sup>347</sup> Diary entry by Wilson, dated 4 August 1987, conf ex PW B, tab 8, p 21; diary entry by Wilson, dated 12 August 1987, conf ex PW B, tab 12, p 24; diary entry by Wilson, dated 13 August 1987, conf ex PW B, tab 12, p 25; diary entry by Wilson, dated 26 August 1987, conf ex PW B, tab 14, p 32.

<sup>348</sup> TOR 2, T54.45–55.3 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>349</sup> TOR 2, T53.38–55.11 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>350</sup> TOR 2, T54.20–30 (Wilson in camera, 20 June 2013, at 3.57pm).

C4.168 During his evidence Wilson was shown some handwritten notes apparently relating to inquiries about psychiatric treatment options and logistical arrangements for McAlinden (the notes included reference to Dr Johns).<sup>351</sup> On 17 July 2013, after his initial evidence on 20, 21 and 27 June 2013, in which he denied that certain parts of the notes were in his handwriting, Wilson conceded that those parts were in fact in his own hand.<sup>352</sup> He said the reason for his change in position was his 'own reflection and thinking about it'<sup>353</sup> and not because he was aware that a handwriting expert retained by the Commission had formed the view that some of the contested handwriting was Wilson's.<sup>354</sup>

C4.169 Under questioning by his own counsel Wilson agreed that, contrary to his 'preliminary recollections', the notes (which include the date 4 June 1987)<sup>355</sup> confirmed that he was involved in finding a psychiatrist for McAlinden.<sup>356</sup> He also agreed the notes showed that he had made a number of inquiries about a psychiatrist or places where McAlinden could go for treatment.<sup>357</sup>

C4.170 Notably, on 25 August 1987 Wilson wrote to Dr Johns:

Thank you for agreeing to see Fr Denis McAlinden of the Diocese of Maitland at such short notice.

We are very grateful to Fr McAlinden for his willingness to present himself to you for an initial assessment. As he will explain, serious allegations have been made about his behaviour with young girls in one of the parishes of this Diocese. Father denies these allegations and so his willingness to undergo assessment and accept your directions are to his credit. His cooperation with the Bishop and myself has been deeply appreciated.<sup>358</sup>

C4.171 The letter was headed 'Private and Confidential'. From the terms of the letter, it appears that no documents (such as BA's statement) were enclosed other than a form of agreement to be signed by McAlinden, allowing Johns to inform the bishop of the results of the assessment of his condition and his progress if a treatment program was considered necessary.<sup>359</sup>

C4.172 Wilson agreed the letter prompted him to recall that he had in fact made appointments and arrangements for McAlinden to see a psychiatrist. He told the Commission he had 'honestly forgotten' about having had a more involved role with McAlinden and agreed that he had 'totally forgotten' about liaising with the psychiatrist about having McAlinden assessed.<sup>360</sup> The letter prompted Wilson to remember the following:

... the intention of referring to the psychiatrist was to get some accurate information about the situation with Father McAlinden and to get some advice about what needed to happen.<sup>361</sup>

C4.173 The day after Wilson wrote the letter to Dr Johns, on 26 August 1987, an entry in Wilson's diary apparently refers to an appointment with Denis McAlinden.<sup>362</sup>

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<sup>351</sup> TOR 2, T240.1–5; T303.21–23 (Wilson in camera, 17 July 2013); handwritten notes by Wilson, undated, conf ex PW B, tab 4. The Commission undertook investigations in relation to certain names referred to in Wilson's notes as is evident from the following exhibits: statutory declaration of Causer, dated 27 November 2013, conf ex PW BB; correspondence between the NSW Crown Solicitor and Kalimniou, dated 22 October – 25 November 2013, conf ex PW Y; statutory declaration of Duncan, dated 11 November 2013, conf ex PW Z. That evidence was ultimately unable to advance matters.

<sup>352</sup> Diary entry by Wilson, dated 4 August 1987, conf ex PW B, tab 4, p 9–11; TOR 2, T240.1–5 (Wilson in camera, 17 July 2013).

<sup>353</sup> TOR 2, T303.24–27 (Wilson in camera, 17 July 2013).

<sup>354</sup> TOR 2, T303.29–304.32 (Wilson in camera, 17 July 2013).

<sup>355</sup> Handwritten notes by Wilson, undated, conf ex PW B, tab 4, p 7.

<sup>356</sup> TOR 2, T240.37–41 (Wilson in camera, 17 July 2013); handwritten notes by Wilson, undated, conf ex PW B, tab 4.

<sup>357</sup> TOR 2, T240.43–241.2 (Wilson in camera, 17 July 2013).

<sup>358</sup> Letter from Wilson to Johns, dated 25 August 1987, conf ex PW B, tab 13, p 30.

<sup>359</sup> Letter from Wilson to Johns, dated 25 August 1987, conf ex PW B, tab 13, p 30; unsigned consent form for McAlinden, (undated), conf ex PW B, tab 13, p 31.

<sup>360</sup> TOR 2, T50.20–26 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>361</sup> TOR 2, T50.37–40 (Wilson in camera, 20 June 2013, at 3.57pm).

## A further letter from Archbishop Wilson to Mr Hatton MP

- C4.174 A 28 August 1987 entry in Wilson's diary states, 'rang Dr Johns – verbal report – ring each fortnight'.<sup>363</sup> On the same day Wilson also wrote to Hatton (see Figure C4.6).

28th August, 1987

Mr. John Hatton, M.P.,  
Member for South Coast,  
NOWRA Box 634,  
NOWRA NSW 2541

Dear Mr. Hatton,

Further to your earlier correspondence this year I write to inform you that the matter dealing with allegations of the sexual assault of children has been resolved.

The priest concerned has left his parish in this diocese for a full programme of psychiatric assessment and help. The decisions about his future in the ministry of the Church will be determined by Diocesan authorities after consultation with the Doctor responsible for his treatment.

You may be assured that no decision will be made that would place any further children at risk.

Yours sincerely,

Rev. Mgr. P. Wilson  
VICAR GENERAL

Figure C4.6 Letter from Monsignor Wilson to John Hatton MP, 28 August 1987<sup>364</sup>

- C4.175 In connection with Wilson's statement to Hatton that the allegations relating to the sexual assault of children had been 'resolved', Wilson stated '... my view was that, as I said, I hoped that it had been resolved'.<sup>365</sup> Under questioning by counsel assisting, however, Wilson agreed that it was untrue that the matter dealing with the allegations of sexual assault of children had been 'resolved'.<sup>366</sup> He sought to explain his statement: 'I think the ... view of resolution would have been that he was sent for this psychiatric assessment and the decision [was] to be made about Fr McAlinden's future after that'.<sup>367</sup> He said the purpose of the letter to Hatton was '... to express the fact that we had taken these matters seriously and we were trying to deal with them and resolve them'.<sup>368</sup> At the time of the letter, Wilson said, McAlinden had left the parish after he and the bishop had seen him and was living somewhere in Sydney.
- C4.176 Wilson told the Commission the assurance that no decision would be made that would place any further children at risk was an 'expression of [his] hope and view'<sup>369</sup> rather than a position that had been secured.<sup>370</sup> He said he did not know anything to the contrary from the bishop or any other person that would make the statement untrue at the time.<sup>371</sup> Since Wilson was not

<sup>362</sup> Diary entry by Wilson, dated 26 August 1987, conf ex PW B, tab 14, p 32.

<sup>363</sup> *ibid*, p 33.

<sup>364</sup> Letter from Wilson to Hatton, dated 28 August 1987, conf ex PW B, tab 15.

<sup>365</sup> TOR 2, T302.42–44 (Wilson in camera, 17 July 2013).

<sup>366</sup> TOR 2, T51.21–34 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>367</sup> TOR 2, T51.37–40 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>368</sup> TOR 2, T53.2–11 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>369</sup> TOR 2, T255.21–28 (Wilson in camera, 17 July 2013).

<sup>370</sup> TOR 2, T53.13–46 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>371</sup> TOR 2, T255.30–33 (Wilson in camera, 17 July 2013).

McAlinden's bishop, however, he agreed that he was in fact in no position to provide the assurance given in the letter to Hatton.<sup>372</sup>

- C4.177 A 25 September 1987 entry in Wilson's diary recorded 'Dr Johns → Fr McAlinden – 30 years – Castle Hill'. Wilson said he was unable to assist with what that note related to.<sup>373</sup> Entries in Wilson's diary for 9, 12 and 22 October 1987 recorded further contact with McAlinden.<sup>374</sup>

### Dr Johns' report

- C4.178 As noted, Dr Derek Johns was a consultant psychiatrist based in 1987 in Castle Hill.
- C4.179 Johns prepared a report of his consultations with McAlinden. The report was dated 5 November 1987 and was stamped as received by the Diocese on 10 November 1987. It was addressed to Bishop Clarke in Maitland.<sup>375</sup> The report referred to Johns having interviewed McAlinden on four occasions. It said McAlinden had 'steadfastly maintained his innocence in connection with sexual activity involving children' but that he did admit that following his missionary work in New Guinea from 1968 to 1976 he 'may have become a little over familiar with children'.<sup>376</sup> Johns reported that McAlinden maintained that the allegations made against him were the result of misinterpretation by others. He found there was no evidence of any major psychiatric disorder and no evidence of any kind of organic cerebral impairment.<sup>377</sup> He also noted the following:

In any case according to Fr 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 Fr McAlinden at that time ...<sup>378</sup> [emphasis added]

- C4.180 In another part of the report Johns commented thus:

The long period of time over which these alleged incidence [sic] have taken place on a recurring basis, certainly makes one suspicious as to Father McAlinden's intent, as does his apparent difficulty in learning from experience, and his absolute denial of ever having experienced any form of sexual interest in his life. However, as I mentioned previously Father McAlinden remained firm in his position regarding his innocence, and expressed his desire for the whole situation, to be resolved as quickly as possible, and in whatever way you saw fit.<sup>379</sup>

- C4.181 Johns concluded, 'In view of my findings and Fr McAlinden's position in the matter, we both agreed that there would be no purpose served in his continuing to see me ...'<sup>380</sup>
- C4.182 As noted, Wilson initially told the Commission he had no recollection of having read Johns' report. He later agreed it was 'most unlikely' he had not read the report but stated, '... I don't remember reading it. I didn't see it, but I – as I said, my recollection was the bishop said that he had received the report and it wasn't helpful'.<sup>381</sup>
- C4.183 Wilson acknowledged that Johns' report made mention of previous allegations, the first having been made in 1954. Wilson said when he was dealing with McAlinden at the end of 1987 he had not been aware of allegations having been made in 1954.<sup>382</sup>

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<sup>372</sup> TOR 2, T300.43–47 (Wilson in camera, 17 July 2013).

<sup>373</sup> TOR 2, T56.16–24 (Wilson in camera, 20 June 2013).

<sup>374</sup> Diary entries by Wilson, dated 9, 12 and 22 October 1987, conf ex PW B, tab 17, pp 36–38.

<sup>375</sup> Report of Johns to Clarke, dated 5 November 1987, conf ex PW B, tab 18, pp 39–41.

<sup>376</sup> *ibid*, p 39.

<sup>377</sup> *ibid*, pp 39–40.

<sup>378</sup> *ibid*, p 40.

<sup>379</sup> *ibid*.

<sup>380</sup> *ibid*.

<sup>381</sup> TOR 2, T58.4–11 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>382</sup> TOR 2, T58.18–38 (Wilson in camera, 20 June 2013, at 3.57pm).



- C4.184 Although agreeing that the report suggested there were no psychiatric concerns in relation to McAlinden, Wilson said his presumption in 1987 ‘would have been that anyone who interfered with children that the cause was psychiatric’.<sup>383</sup>
- C4.185 On 10 November 1987 Clarke sent Johns a letter thanking him for his report about McAlinden and his ‘assistance and professional interest and concern’.<sup>384</sup>
- C4.186 A 13 November 1987 note in Wilson’s diary referred to McAlinden calling him.<sup>385</sup> A subsequent entry, on 2 February 1988, stated, ‘Fr McAlinden. Rang’. Wilson was unable to say what this related to but agreed it suggested ongoing contact with McAlinden. He also agreed that this was contrary to the evidence in his affidavit, in which he had stated that he did not have anything more to do with McAlinden after the bishop told him the psychiatrist’s report had not been very helpful. In this respect Wilson agreed that he had failed to recall multiple appointments and phone calls with McAlinden.<sup>386</sup>
- C4.187 Later in his evidence Wilson said that as vicar general he did not have any role in supervising McAlinden and ‘keeping tabs on his conduct’. With respect to the numerous diary entries showing his contact with McAlinden, Wilson stated: ‘... my connection with him was all about organising for him to go to the doctor and organising for that process to take place’.<sup>387</sup> To similar effect was Wilson’s evidence that the various contacts were ‘... a matter of ensuring that he was – that all the arrangements that had to be made with the doctor were fulfilled’.<sup>388</sup>

### Archbishop Wilson’s view of his reporting obligations

- C4.188 Counsel assisting questioned Wilson about his view of his reporting obligations in connection with the events at Merriwa.
- C4.189 In relation to BA’s statement, Wilson agreed that the conduct of McAlinden as BA described it was of a serious nature, showing McAlinden’s interference with children.<sup>389</sup> As to whether he perceived any Diocesan duty to fall on him, as a representative of the bishop, to report the matter to the police, Wilson replied, ‘No, I consider it was my duty to report these matters to the Bishop’.<sup>390</sup> He also said he did not recall personal concerns during 1987, after the Merriwa matter had been drawn to his attention, about any legal obligation to report McAlinden to the police.<sup>391</sup>
- C4.190 Wilson agreed with counsel assisting’s proposition that reporting McAlinden to police would have been one way of stopping McAlinden from sexually abusing children. As to whether Wilson thought of that at the time of McAlinden’s psychiatric assessment, he stated:

It didn’t occur to me that that would be a possibility of action. Personally I might have considered that that was something that should be done, but given the circumstances at the time, it just seemed to me that the Bishop would get a psychiatric report and then act in such a way that he [McAlinden] would be prevented from behaving that way.<sup>392</sup>

<sup>383</sup> TOR 2, T59.13–33 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>384</sup> Letter from Clarke to Johns, dated 10 November 1987, conf ex PW B, tab 19, p 42.

<sup>385</sup> Diary entry by Wilson, dated 13 November 1987, conf ex PW B, tab 20, p 43.

<sup>386</sup> TOR 2, T60.11–61.34 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>387</sup> TOR 2, T57.6–8 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>388</sup> TOR 2, T57.20–25 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>389</sup> Handwritten statement of [BA], dated 6 August 1987, conf ex PW F; TOR 2, T19.21–31 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>390</sup> TOR 2, T21.3–4 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>391</sup> TOR 2, T35.11–15 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>392</sup> TOR 2, T26.10–23 (Wilson in camera, 20 June 2013, at 3.57pm).



C4.191 Later, when asked about what he did to satisfy himself that appropriate action had been taken in relation to McAlinden, Wilson replied, 'I think that I had left that in the area of the responsibility of the Bishop'.<sup>393</sup> Asked whether he thought he had a moral obligation to report in 1987, Wilson said, 'I think in 1987 I had come to the point where I thought that my responsibility ended when I – when I handed these matters over to the Bishop'.<sup>394</sup>

C4.192 There was also the following exchange about the advice Wilson told the Commission he gave Stanwell – that people should report complaints to the police:

Q. ... you measured your response based on what the law required or didn't require you to do in terms of reporting matters to the police?

A. I didn't think of that at all. I thought what I had to do was to go back to the bishop and get him to act on this.

Q. You see you said to Mr Stanwell: '*If there are complaints like that then people should go to the police?*'

A. Mmm.

Q. You're a person.

A. I know that.

Q. You were a person then, why didn't you go to the Police?

A. **I believed that at the time that my responsibility was to go to the Bishop and report to him and when I did that** I – I told him that I thought it would be really important to get legal advice about what we needed to do.<sup>395</sup> [emphasis added]

C4.193 The Commission's views about Wilson's approach to reporting McAlinden to the police are discussed below.

## Mr Hatton MP

C4.194 Mr John Hatton<sup>396</sup> was an independent member of the New South Wales Parliament in 1987 and played an important role in investigating and exposing corruption in various government bodies, among them the New South Wales Police Force.<sup>397</sup>

C4.195 On 11 May 1987 Hatton wrote to Archbishop Clancy about information he had received in relation to McAlinden (see para C4.75). He referred to having been told of instances of 'sexual misbehaviour' and said there existed 'a great deal of concern about McAlinden's access to young people'.<sup>398</sup>

C4.196 As noted, the documentary evidence shows that Hatton wrote again on 16 June 1987 about a further complaint relating to McAlinden, although Hatton was unable to recall this later letter.<sup>399</sup>

C4.197 As to the background circumstances relating to the letter of 11 May 1987, Hatton had some recollection that the complainant was a man in his early 40s or late 30s at the time he saw him

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<sup>393</sup> TOR 2, T27.45–28.35 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>394</sup> TOR 2, T35.11–30 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>395</sup> TOR 2, T26.45–27.35 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>396</sup> Mr John Hatton MP gave evidence in a private hearing before the Commission; the transcript of evidence from that hearing was subsequently tendered into evidence: private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V.

<sup>397</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T3.12–31.

<sup>398</sup> Letter from Hatton to Clancy, dated 11 May 1987, conf ex PW B, tab 2.

<sup>399</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T16.42–17.1. Nor was this letter produced to the Commission by any party, nor located during the Commission's investigations.

and that he had been a victim and was 'emotional and traumatised'.<sup>400</sup> He recalled that the person had neither the confidence nor the trust to take the matter to the Church.<sup>401</sup>

C4.198 Hatton was certain that the complaint concerned inappropriate touching. He also formed the impression that it was to do with a child who was under age<sup>402</sup> and thought that the allegations concerned a boy or boys.<sup>403</sup>

C4.199 Hatton gave evidence that his usual practice would have been to make a note of the visit.<sup>404</sup> Since his retirement from parliament, however, many of his records had been destroyed and he had been unable to find anything of relevance in the compactus he kept at his home.<sup>405</sup>

C4.200 In relation to the opening words of his letter of 11 May 1987 – 'I write in a very confidential way about an extremely delicate matter which has come my way and which I believe should be handled within the church' – Hatton explained why he thought the matter should remain confidential to the Church at that point:

... I find it very difficult to believe – of course, that has been disabused by a lot of events since then – that, in fact, anybody within the Catholic Church would be guilty of sexual abuse of children, and consequently – and I took the same view, even as late as the Wood Royal Commission, that the worst thing you can do and it's even worse than an accusation of murder, is to accuse somebody of paedophilia. Therefore, even at that stage, I handled paedophilia very, very carefully – allegations I mean.<sup>406</sup>

C4.201 He later said:

I would have expected, and I still do, that if something is really serious and it has been uncovered, they would then go to the necessary authorities, but I thought first cab off the rank has to be to refer it to the bishop, have it thoroughly investigated. In hindsight, in reading those responses, there isn't any concern expressed for the alleged victims in those responses.<sup>407</sup>

C4.202 Hatton confirmed that he had faith in the Church – 'there's no doubt about that, even though I wasn't a Catholic ...'<sup>408</sup> Hatton told the Commission he had 'every confidence that, at that time [the complaints] ... would be thoroughly investigated ...' by the Church.<sup>409</sup> In contrast, in 1987 Hatton said he was 'very suspicious' of the New South Wales Police Force.<sup>410</sup>

C4.203 He explained that, although he did not know a great deal about the hierarchy in the Catholic Church, he thought he would 'take it to the top' and thus sent the letter to Archbishop Clancy.<sup>411</sup>

C4.204 In relation to other contact with people from the Church, Hatton's recollection was that there was never any contact by phone and the matter was never discussed.<sup>412</sup>

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<sup>400</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T14.2–5.

<sup>401</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T13.30–43, T14.1–14, T15.8–14.

<sup>402</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T21.28–40.

<sup>403</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T22.5–15. Note that Mr Hatton is a not a 'church official' within the meaning of the Commission's terms of reference.

<sup>404</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T14.21–25.

<sup>405</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T12.8–16.

<sup>406</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T10.25–36.

<sup>407</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T10.47–11.7.

<sup>408</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T11.13–15.

<sup>409</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T9.1–13.

<sup>410</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T8.6–9.

<sup>411</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T10.7–18.

<sup>412</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T11.22–26. However, as is evident from Wilson's 1987 diary, there were in fact at least four phone calls between Wilson and Hatton during the months of May and June 1987: diary entry by Wilson, dated 26 May 1987, conf ex PW B, tab 3, p 5; diary entry by Wilson, dated 18 June 1987, conf ex PW B tab 5, p 12; diary entry by Wilson, dated 19 June 1987, tab 7, p 17; diary entry by Wilson, dated 4 June 1987, conf ex XX, p 6.

C4.205 As to action he thought should have been taken by the Church, Hatton stated that the person should have been taken 'out of circulation' and kept away from children if the allegations were true; he would also have hoped that there would be a report made to authorities.<sup>413</sup> In this regard, he noted that the allegations, if true, would have amounted to criminal conduct and were thus 'quite serious'.<sup>414</sup>

C4.206 Noting Wilson's 28 August 1987 letter to Hatton, which referred to the allegations of sexual assault of children as having been 'resolved' and the priest concerned as having left his parish for a 'full programme of psychiatric assessment and help', Hatton said he was:

... comforted by the fact that according to them [the Church], this person did have a psychiatric problem and therefore that was causing the – what I thought was an aberration of behaviour in the church.<sup>415</sup>

C4.207 Hatton said this letter from Wilson 'salved his conscience' because it meant that he would have believed the person in question was 'psychiatric' and therefore receiving the 'appropriate care and had been taken out of the system'.<sup>416</sup>

C4.208 As to whether he would have sought more information in view of the contents of Wilson's 28 August 1987 letter, Hatton stated:

I would have trusted that at the time. Okay, we have aberrant – my thought, absolutely clear in my mind: we've got a person suffering from a psychiatric problem and it has manifested itself in inappropriate sexual behaviour, or criminal sexual behaviour, and the church has uncovered that and this person is under psychiatric care.<sup>417</sup>

C4.209 He also told the Commission he would have accepted Wilson's assurance in the letter that no decision would be made to place any further children at risk. He said there was no doubt he would have otherwise pursued the matter, as was his nature.<sup>418</sup>

## Dr Johns

C4.210 In essence, Dr Derek Johns was unable to assist with any recollection of matters relating to his report of 5 November 1987.<sup>419</sup> He had no recollection of seeing McAlinden despite the fact that, with the exception of one other patient, McAlinden was the only suspected paedophile he had ever treated.<sup>420</sup>

C4.211 Johns gave evidence that he had been a full-time psychiatrist since 1968.<sup>421</sup> As at 1987, he had no expertise in the assessment or management of patients who had paedophilic tendencies.<sup>422</sup> Nor did he have any particular association with the Catholic Church<sup>423</sup> or experience in treating clergy for other psychiatric problems.<sup>424</sup>

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<sup>413</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T15.26–30.

<sup>414</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T15.32–36.

<sup>415</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T18.33–36.

<sup>416</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T16.28–36.

<sup>417</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T23.29–43.

<sup>418</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T24.14–17.

<sup>419</sup> Dr Derek Johns gave evidence at a private hearing before the Commission. The transcript of that evidence was tendered into evidence: private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W,

<sup>420</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T13.36–37; T14.25–39.

<sup>421</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T3.44–45.

<sup>422</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T4.4–7.

<sup>423</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T4.9–11.

<sup>424</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T14.47–15.2.

- C4.212 The 25 August 1987 letter to Johns from Wilson (as vicar general) about McAlinden did not prompt any recollection of the circumstances in which McAlinden was referred for assessment. Johns said, however, it did help him understand why he addressed his report to the bishop.<sup>425</sup>
- C4.213 Johns said that he could not recall any discussions with Wilson that led to the assessment.<sup>426</sup> He said he did not know Wilson in 1987.<sup>427</sup> Nor could he recall any contact with the Diocese.<sup>428</sup>
- C4.214 Johns said he always made notes during consultations,<sup>429</sup> but the clinical records from his practice in Sydney had been destroyed in a fire at his residence in 1997.<sup>430</sup>

## Conclusions

### *The Merriwa events: the facts*

- C4.215 The evidence associated with the events that took place at Merriwa in 1986 and 1987 is incomplete and in some respects unreliable. This is primarily because the events took place some 27 years ago and memories have been affected by the passing of time. The Commission can nonetheless be satisfied about a number of things on the basis of the objective evidence.
- C4.216 In April and May 1986 McAlinden sent letters to Clarke asking to move to a parish with a milder climate because of his health.<sup>431</sup> By letter dated 12 June 1986 the bishop confirmed McAlinden's new placement at Adamstown parish from 1 July 1986.<sup>432</sup>
- C4.217 At some time before or in about June 1986 Stanwell heard reports about inappropriate behaviour on the part of McAlinden and also witnessed an incident in the church, in which McAlinden had a young girl on his lap, which Stanwell thought 'wasn't right'. These events occurred while McAlinden was still at Merriwa parish, just before his departure at the end of June 1986 (as referred to in Stanwell's 1987 statement and supported by the contemporaneous correspondence between Clarke and McAlinden about McAlinden leaving Merriwa at the end of June).<sup>433</sup> Stanwell detailed these matters a year later in a typewritten statement dated 18 June 1987.<sup>434</sup> Wilson also recalled Stanwell telling him about an incident he had observed of a child sitting on McAlinden's knee in the church, something that caused Stanwell concern.<sup>435</sup>
- C4.218 Contemporaneous documents establish that Clarke knew of allegations about McAlinden's behaviour at least by the end of 1986 (as stated in a letter from McAlinden to Clarke dated 31 March 1988).<sup>436</sup>
- C4.219 Wilson's diary records that some months later, on 10 April 1987, there was telephone contact between Stanwell and Wilson, who was then the vicar general.<sup>437</sup> In view of Clarke's knowledge about McAlinden at the end of 1986 and Wilson's position as his vicar general, along with the communications that ensued, it is highly likely that this telephone contact related to McAlinden.

<sup>425</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T4.40–45.

<sup>426</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T5.27–30.

<sup>427</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T15.7–8.

<sup>428</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T11.11–20.

<sup>429</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T7.5–8.

<sup>430</sup> Private hearing transcript of evidence of Johns, dated 12 April 2013, conf ex PW W, T7.10–15; see also summons 48(a) served on Johns, dated 25 January 2013 and related correspondence, conf ex PW CC and evidence concerning police enquiries into the fire at Johns' premises in June 1999 and related correspondence, conf ex PW DD.

<sup>431</sup> Letter from McAlinden to Bishop Clarke, dated 3 April 1986, ex 219, tab 126; letter from McAlinden to Clarke, dated 5 May 1986, ex 219, tab 127.

<sup>432</sup> Letter from Clarke to McAlinden, dated 12 June 1986, ex 219, tab 129.

<sup>433</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK; letter from Clarke to McAlinden, dated 12 June 1986, ex 219, tab 129.

<sup>434</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK.

<sup>435</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 27.

<sup>436</sup> Letter from McAlinden to Clarke, dated 31 March 1988, ex 219, tab 150, p 234.

<sup>437</sup> Diary entry by Wilson, dated 10 April 1987, conf ex XX, p 1.

- C4.220 At some time on or before 11 May 1987 John Hatton MP was informed of complaints about McAlinden’s behaviour with young children and of concerns about his (McAlinden’s) continued access to children.<sup>438</sup> The complainant(s) also expressed concern about possible repercussions if they complained directly to the Church.<sup>439</sup>
- C4.221 On 11 May 1987 Hatton sent a letter to Archbishop Clancy, Archbishop of Sydney, about allegations of sexual misbehaviour by McAlinden, who was then parish priest at Adamstown. That letter referred to a previous complaint relating to McAlinden in 1976 and to an investigation that led to McAlinden’s transfer out of the Diocese at the time. It also referred to ‘several’ (apparently new) complaints about McAlinden’s behaviour with young children and to a ‘great deal of concern at his continuing access to young people’. Further, it noted that there was concern on the part of the complainant(s) about ‘suppression or retaliatory action’ as a result of reporting the matter, and it was suggested that the matter should be handled by the Church in a particular way – namely, that the archbishop should send a personal envoy to make discreet inquiries and to provide an independent evaluation.<sup>440</sup>
- C4.222 Wilson accepted that this letter from Hatton ‘may well have been’ the prompt for the bishop to ask him to go to Merriwa to investigate.<sup>441</sup> The Commission finds that Hatton’s letter was in fact the impetus for Diocesan action concerning McAlinden’s behaviour.
- C4.223 On 26 May 1987 Wilson rang Hatton (as recorded in his diary).<sup>442</sup> In view of the timing of this call – 15 days after Hatton’s letter sent to Archbishop Clancy – it is highly likely that this conversation related to Hatton’s letter of 11 May 1987.
- C4.224 From at least 4 June 1987 Wilson made inquiries about suitable treatment options for McAlinden and tried to find a psychiatrist able to assess and treat him (as confirmed by Wilson’s handwritten notes of that date and his oral evidence).<sup>443</sup>
- C4.225 On 11 June 1987 Wilson visited Merriwa school (as recorded in his diary).<sup>444</sup> Wilson thought this might have been the occasion on which he received a parent’s complaint about McAlinden’s behaviour.<sup>445</sup> The Commission finds that in view of the timing of the visit and Wilson’s then position as vicar general, it is unlikely that it related to any matter other than concerns about McAlinden’s behaviour.
- C4.226 On 16 June 1987 Hatton sent a further letter of complaint about McAlinden; this was received by Wilson (as acknowledged in his letter of 20 July 1987).<sup>446</sup>
- C4.227 On 18 June 1987 Wilson telephoned Hatton (as noted in Wilson’s diary).<sup>447</sup> In all probability that telephone call was prompted by Hatton’s 16 June letter. Also on this day, Stanwell prepared a statement of events relating to McAlinden’s conduct while in Merriwa parish, before he moved to Adamstown on 1 July 1986.<sup>448</sup>

<sup>438</sup> Letter from Hatton to Clancy, dated 11 May 1987, conf ex PW B, tab 2.

<sup>439</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T13.30–39.

<sup>440</sup> Letter from Hatton to Clancy, dated 11 May 1987, conf ex PW B, tab 2, p 2.

<sup>441</sup> TOR 2, T6.13–34; T7.25–31 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>442</sup> Diary entry by Wilson, dated 26 May 1987, conf ex PW B, tab 3, p 5.

<sup>443</sup> Handwritten notes by Wilson, undated, conf ex PW B, tab 4, p 9; diary entry by Wilson, dated 4 August 1987, conf ex PW B, tab 9; TOR 2, T54.45–55.3 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>444</sup> Diary entry by Wilson, dated 11 June 1987, conf ex XX, p 5.

<sup>445</sup> TOR 2, T241.21–34 (Wilson in camera, 17 July 2013).

<sup>446</sup> Letter from Wilson to Hatton, dated 20 July 1987, conf ex PW B, tab 8, p 19.

<sup>447</sup> Diary entry by Wilson, dated 18 June 1987, conf ex PW B, tab 5, p 12.

<sup>448</sup> Statement of Stanwell, dated 18 June 1987, conf ex KK.

- C4.228 The following day Wilson spoke with McAlinden (as noted in Wilson’s diary). He then rang Hatton and later Stanwell.<sup>449</sup> Those telephone calls were obviously to do with McAlinden; Wilson himself agreed that the series of calls suggested he was following some kind of ‘process or discussion’ in relation to McAlinden.<sup>450</sup>
- C4.229 On 20 July 1987 Wilson wrote to Hatton, acknowledging receipt of Hatton’s letters of 11 May and 16 June 1987. Wilson assured Hatton that ‘both matters’ were receiving attention from Diocesan authorities, with a view to being ‘resolved in the very near future’. Wilson also noted regret that the people who brought the matter to Hatton’s attention could not approach the ‘appropriate authorities in the Diocese’.<sup>451</sup> In evidence, Wilson agreed that the reference to Hatton’s letter of 11 May 1987 suggested he had read that letter. The Commission finds that Wilson read Hatton’s letter prior to preparing his response to Hatton. From the contents of that letter, Wilson was on notice as to the 1976 complaint concerning allegations of ‘sexual misbehaviour’ by McAlinden, and that following investigation of that complaint McAlinden was transferred out of the Diocese.
- C4.230 On 3 August 1987 Stanwell telephoned Wilson. He reported ‘another case’ and said ‘people [were] willing to take action’ (as recorded in a note by Wilson of that date).<sup>452</sup>
- C4.231 On 4 August Wilson spoke separately by telephone with both McAlinden and Stanwell in relation to Stanwell’s further report (as recorded in Wilson’s diary).<sup>453</sup>
- C4.232 On or about 6 August 1987 Wilson went to Merriwa and met with at least one parent, BA, the mother of AD. The evidence of both Wilson and BA was unclear in connection with the circumstances of that meeting – Wilson recalling a disclosure in terms differing from those related by BA’s daughter and BA having no recollection of meeting Wilson or any Diocesan official in connection with McAlinden.<sup>454</sup> The Commission is, however, satisfied of the fact of the attendance on the basis of BA’s statement bearing the date 6 August 1987 and the inherent unlikelihood that the statement, in view of its subject matter, would have been given other than in person to Wilson.<sup>455</sup> BA accepted that the signature and certain handwriting on the statement were hers<sup>456</sup> and Wilson ultimately accepted that the writing in the text of the document was his.<sup>457</sup> The Commission finds that on or about 6 August 1987 Wilson obtained from BA a statement about McAlinden’s sexual abuse of her daughter, AD. Wilson’s recollection was also that the statement he obtained from a mother at Merriwa was typewritten and omitted her name in accordance with the parent’s request.<sup>458</sup> A typewritten document (see Figure C4.2) that replicates the handwritten version of the statement but omits BA’s name was obtained by the Commission<sup>459</sup> and is consistent with Wilson’s stated recollection in this respect.
- C4.233 BA’s statement recorded that her daughter, AD, had disclosed, without prompting, that McAlinden had ‘held her on his knee and lap, kissed her on the lips and touched her in a stroking manner between the legs’, an action AD had demonstrated to her mother. The statement

<sup>449</sup> Diary entry by Wilson, dated 19 June 1987, conf ex PW B, tab 7, p 17.

<sup>450</sup> TOR 2, T46.9–18 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>451</sup> Letter from Wilson to Hatton, dated 20 July 1987, conf ex PW B, tab 8, p 19.

<sup>452</sup> Handwritten note by Wilson, dated 3 August 1987, conf ex PW C.

<sup>453</sup> Diary entry by Wilson, dated 4 August 1987, conf ex PW B, tab 9, p 21.

<sup>454</sup> TOR 2, T.17.17–26 (Wilson in camera, 20 June 2013, at 3.57); statutory declaration of BA, dated 12 July 2013, conf ex PW Q, paras 37–38, 43.

<sup>455</sup> Handwritten statement of BA, dated 6 August 1987, conf ex PW F; typewritten statement of BA (produced with redactions), dated 6 August 1987, conf ex PW B, tab 10.

<sup>456</sup> Statutory declaration of BA, dated 12 July 2013, conf ex PW Q, para 35.

<sup>457</sup> TOR 2, T101.7–102.34 (Wilson in camera, 21 June 2013).

<sup>458</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 32–36; TOR 2, T.17.17–26 (Wilson in camera, 20 June 2013, at 3.57).

<sup>459</sup> Typewritten statement of BA (produced with redactions), dated 6 August 1987, conf ex PW B, tab 10.



further recorded that AD told her mother of an incident in the church involving McAlinden holding her on his lap in 'such a manner that she couldn't break away and kissing her on the lips'.<sup>460</sup> Wilson accepted that McAlinden's conduct, as described in BA's statement, was of a serious nature, demonstrating McAlinden's interference with children.<sup>461</sup>

- C4.234 During this visit or the earlier visit on 11 June 1987 Stanwell also told Wilson of the incident he had witnessed concerning McAlinden with a young girl on his lap.<sup>462</sup> During either this visit or the earlier one he also told Wilson of another complaint relating to an 8-year-old girl, AT, who had complained about the way McAlinden touched her bottom.<sup>463</sup> Stanwell's evidence was that he told Wilson AT's parents were not willing to come forward about the complaint.<sup>464</sup> Also during this visit or the earlier one Wilson told Stanwell to tell people with complaints to come and see him, that he would listen to their accounts and take the information and act on it (something both Stanwell and Wilson agreed was said).<sup>465</sup>
- C4.235 The Commission accepts Wilson's evidence that after his visits to Merriwa he told Clarke what he had learnt and that he had suspicions about McAlinden's behaviour being of a sexual nature.<sup>466</sup> Clarke and Wilson confronted McAlinden in Adamstown shortly after Wilson had obtained BA's statement.<sup>467</sup> The allegations in BA's statement were put to McAlinden, who denied them.<sup>468</sup> Clarke suspended McAlinden from pastoral activity, and McAlinden was moved out of Adamstown presbytery on or about 3 August 1987.<sup>469</sup>
- C4.236 On 12 and 13 August 1987 Wilson had contact with McAlinden (as noted in Wilson's diary).<sup>470</sup>
- C4.237 At some time before 25 August 1987 Wilson determined that consultant psychiatrist Dr Derek Johns was a suitable person to assess McAlinden. On 25 August he wrote to Johns, thanking him for agreeing to see McAlinden at 'such short notice'. His letter noted that 'serious allegations' had been made against McAlinden in relation to his 'behaviour with young girls in one of the parishes of this Diocese'.<sup>471</sup>
- C4.238 Some three days later Wilson wrote to Hatton, stating that the 'matter dealing with the sexual assault of children [had] been resolved' and noting that McAlinden had left the parish for a 'full programme of psychiatric assessment and help'. The letter concluded with an assurance that no decision would be made that placed 'any further children at risk'.<sup>472</sup> Hatton relied on this assurance and took no further steps in connection with the matter.<sup>473</sup>

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<sup>460</sup> Handwritten statement of BA, dated 6 August 1987, conf ex PW F; typewritten statement of BA (produced with redactions), dated 6 August 1987, conf ex PW B, tab 10.

<sup>461</sup> Handwritten statement of BA, dated 6 August 1987, conf ex PW F; typewritten statement of BA (produced with redactions), dated 6 August 1987, conf ex PW B, tab 10; TOR 2, T19.21–31 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>462</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 27; Statement of Stanwell, dated 18 June 1987, conf ex KK, p 14; TOR 2, T24.44–25.23 (Stanwell in camera, 25 July 2013).

<sup>463</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, paras 15–16; TOR 2, T86.27–42 (Stanwell in camera, 2 August 2013).

<sup>464</sup> NSW Police statement of Stanwell, dated 22 July 2010, conf ex LL, paras 13–16; TOR 2, T54.7–13 (Stanwell in camera, 25 July 2013).

<sup>465</sup> TOR 2, T16.31–36 (Wilson in camera, 20 June 2013, at 3.57pm); affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 29; TOR 2, T126.38–43 (Stanwell in camera, 2 August 2013).

<sup>466</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 37–41; TOR 2, T 19.37–42 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>467</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 44; TOR 2, T22.40–23.31 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>468</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 46; TOR 2, T23.33–36 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>469</sup> Letter from McAlinden to Clarke dated 13 July 1988, ex 219, tab 157.

<sup>470</sup> Diary entries by Wilson, dated 12 and 13 August 1987, conf ex PW B, tab 12, pp 24–25.

<sup>471</sup> Letter from Wilson to Johns, dated 25 August 1987, conf ex PW B, tab 13, p 30.

<sup>472</sup> Letter from Wilson to Hatton, dated 28 August 1987, conf ex PW B, tab 15.

<sup>473</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T18.10–36.

- C4.239 After his removal from Adamstown on or about 3 August 1987 McAlinden spent time in Nelson Bay (six weeks), St Joseph's Home at Sandgate (11 weeks)<sup>474</sup> and Ireland (from 14 July to 8 September 1988).<sup>475</sup> By November 1988 he was working as a priest in Bunbury Diocese, Western Australia, with the approval of Clarke.<sup>476</sup>
- C4.240 In summary, the evidence establishes that by at least mid-1987 Wilson had further information – in addition to AD's disclosure about McAlinden's abuse of her – concerning McAlinden's propensity to sexually abuse children and the continuing risk he presented to young children. Despite this knowledge, neither Wilson nor Clarke took steps to report McAlinden to the police.

### ***Archbishop Wilson's correspondence with Mr John Hatton MP***

- C4.241 Hatton could not remember much of the background concerning his letters of 11 May and 16 June 1987.<sup>477</sup> He told the Commission he had faith in the Catholic Church to deal with the matter.<sup>478</sup> This was in contrast with his suspicions about the New South Wales Police Force at the time.<sup>479</sup> He expected and had confidence that the Catholic Church would thoroughly investigate the complaint.<sup>480</sup> He said he hoped that, if established as true, the allegations would be reported to the authorities because they amounted to criminal conduct.<sup>481</sup> The Commission accepts Hatton's evidence as a candid account given to the best of his recollection.
- C4.242 Wilson's initial evidence was that he was 'absolutely sure' he had not seen Hatton's letter of 11 May 1987 before it was shown to him by his (Wilson's) lawyers. Nor did he recall corresponding with Hatton in relation to the matters discussed in the letter. He said he thought he would remember that in view of Hatton's high profile at the time and the significance of the matter generally.<sup>482</sup>
- C4.243 The Commission rejects Wilson's evidence that he simply 'forgot' about his correspondence with Hatton. His assertion that his memory of the correspondence had been 'reactivated' on being shown the letters, which had otherwise 'just gone out of his mind', was improbable. A number of factors associated with the correspondence with Hatton make it memorable. First, Hatton had a very prominent public profile as an anti-corruption crusader at the time in question. Any correspondence with him would have been of moment – but particularly correspondence of such sensitivity, concerning as it did child sexual abuse allegations in connection with a clergyman. Second, the allegations concerned a priest of the Diocese whom Wilson knew to have abused AJ, a friend of his – AJ having previously told Wilson of this before the Merriwa events, as the Commission finds in at paragraphs C4.37 and C4.38. AJ was someone Wilson both trusted and believed.<sup>483</sup> Third, Wilson would have known from Hatton's letter (which the Commission has found that Wilson read) that there had been a complaint about McAlinden in 1976 and that he had been 'moved on' then.<sup>484</sup> The repeated nature of McAlinden's offending should have been apparent to Wilson. Although Wilson told the Commission he had also forgotten about the AJ matter, he agreed that it seemed 'extraordinary' that it had escaped his mind.<sup>485</sup> He also agreed that a previous similar accusation was significant.<sup>486</sup> Fourth, Wilson's

<sup>474</sup> Letter from McAlinden to Clarke, dated 13 July 1988, ex 219, tab 157.

<sup>475</sup> 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.

<sup>476</sup> Letter from Clarke to McAlinden, dated 7 October 1988, ex 219, tab 164.

<sup>477</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T11.17–20.

<sup>478</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T11.9–15.

<sup>479</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T8.3–9.

<sup>480</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T9.1–14.

<sup>481</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T10.43–11.7.

<sup>482</sup> TOR 2, T7.46–8.11 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>483</sup> TOR 2, T144.38–45 (Wilson in camera, 27 June 2013).

<sup>484</sup> TOR 2, T47.41–47 (Wilson in camera, 20 June 2013, at 3.57pm); letter from Hatton to Clancy, dated 11 May 1987, conf ex PW B, tab 2; letter from Wilson to Hatton, dated 20 July 1987, conf ex PW B, tab 8.

<sup>485</sup> TOR 2, T48.2–18 (Wilson in camera, 20 June 2013, at 3.57pm).



diary records telephone contact with Hatton on four occasions between 26 May and 19 June 1987 and that he sent Hatton two letters, on 20 July and 28 August 1987. The contact had therefore been far from fleeting.

- C4.244 The Commission finds that Wilson's initial evidence, which contained no reference to any involvement with Hatton, was offered in an attempt to minimise the nature and extent of his involvement with McAlinden, including the knowledge he had accumulated about McAlinden's reported offending history and the risk he posed to children.
- C4.245 In his 28 August 1987 letter to Hatton Wilson provided an unqualified assurance that no decision would be made that would place any further children at risk. He also said the allegations relating to the sexual assault of children had been 'resolved'. Although Wilson denied intending to mislead Hatton, he conceded that his statement that the matter of the sexual abuse of children had been resolved was untrue.<sup>487</sup> He also conceded that it was not his place to provide an assurance that no further children would be placed at risk since he was not McAlinden's bishop.<sup>488</sup> The Commission finds that Wilson's letter to Hatton was misleading. At the time of the letter, the allegations relating to the sexual assault of children by McAlinden had not been resolved. Further, Johns' report was still to be received.
- C4.246 Additionally, the unqualified assurance by the Diocese, through Wilson, that no decision would be made that would place any further children at risk, was intended to give Hatton comfort that there was no need for any further involvement or inquiry on his part. This is consistent with an intention that the matter be dealt with 'in house' by the Church and without continuing scrutiny by church outsiders, as is apparent from Wilson's letter of 20 July 1987 to Hatton: 'It is regretted that the people who brought these matters to your attention felt that they could not approach the appropriate authorities in the Diocese'.<sup>489</sup>
- C4.247 Hatton told the Commission there was 'no doubt' he would have accepted Wilson's assurance about the safety of children. He said he would otherwise have pursued the matter, as was his nature.<sup>490</sup> The Commission accepts that evidence.<sup>491</sup>

### ***Archbishop Wilson's involvement with Dr Johns***

- C4.248 Wilson's initial evidence was that, after the confrontation with McAlinden about the Merriwa events, matters relating to McAlinden were a 'closed book' to him.<sup>492</sup> The objective evidence confirms, however, Wilson's considerable involvement in making inquiries about a psychiatrist to assess and treat McAlinden, from at least 4 June to 25 August 1987, when Wilson sent an introductory letter to consultant psychiatrist Dr Johns.<sup>493</sup> Wilson was reluctant to accept but ultimately conceded that certain parts of handwritten notes relating to inquiries about psychiatric treatment options and arrangements for McAlinden were in his handwriting.
- C4.249 Wilson agreed that his diary – specifically, entries on 4, 12, 13 and 26 August 1987 – confirmed the active role he was playing in discussing McAlinden's ministry in the light of events that had

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<sup>486</sup> TOR 2, T58.24–26 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>487</sup> TOR 2, T51.21–34 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>488</sup> TOR 2, T300.43–47 (Wilson in camera, 27 June 2013).

<sup>489</sup> Letter from Wilson to Hatton, dated 20 July 1987, conf ex PW B, tab 8.

<sup>490</sup> Private hearing transcript of evidence of Hatton, dated 15 February 2013, conf ex PW V, T24.14–17.

<sup>491</sup> The Commission notes that in fact McAlinden continued to sexually abuse children – in the 1980s and into the 1990s. Reported instances are set out in Chapter 11.

<sup>492</sup> TOR 2, T29.29–30 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>493</sup> Letter from Wilson to Johns, dated 25 August 1987, conf ex PW B, tab 13, p 30.

occurred at Merriwa.<sup>494</sup> He also thought the 12 August entry was likely to have related to the arrangements he was making to have McAlinden assessed by the psychiatrist.<sup>495</sup>

- C4.250 The evidence also confirms that Wilson had ongoing contact with Johns after that time, his diary noting telephone contact between the two on 28 August, 25 September and 9 October 1987. Wilson also had telephone contact with McAlinden on 9, 12 and 22 October,<sup>496</sup> in November 1987<sup>497</sup> and on 2 February 1988.<sup>498</sup>
- C4.251 Wilson's evidence that he had 'honestly forgotten' about having had a more involved role with McAlinden and liaising with the psychiatrist in order to have McAlinden assessed was implausible. The evidence confirms that Wilson's involvement in these matters was not peripheral: rather, he had a central role in researching treatment and assessment options for McAlinden, making such arrangements, and liaising with both the psychiatrist and McAlinden.
- C4.252 Both the engagement of Johns and his subsequent report raise the question of why Johns was chosen to review McAlinden in 1987: he had no expertise or experience in the assessment or treatment of paedophilia. Neither Johns, who gave oral evidence before the Commission, nor Wilson was able to assist the Commission in this regard.
- C4.253 Wilson told the Commission he had no recollection of having read the Johns report. He did, however, agree that, in view of his detailed involvement during the period leading up to provision of the report to Bishop Clarke, it was in fact 'most unlikely' that he would not have read the report at the time.
- C4.254 The Commission considers it improbable – bearing in mind Wilson's role in liaising with both Johns and McAlinden and his involvement in investigating the events at Merriwa – that Wilson would not have read the Johns report. Wilson accepted it was most unlikely that he would not have read the report, and the Commission finds that he did read the report. The information in the report would have been directly relevant to Wilson's role as vicar general and his having been charged with management of matters relating to the complaints about McAlinden. It also seems probable that Wilson and Clarke would have discussed the contents and implications of the report. Wilson's diary records a telephone call with McAlinden on 13 November 1987, three days after the Diocese received the report. Given the timing, the Commission infers that the recorded telephone contact related to Johns' report.
- C4.255 Wilson's evidence that he did not read the Johns report is a further example of Wilson trying to distance himself from the appearance of having had a central involvement in matters pertaining to McAlinden – as was his position in relation to the correspondence with Hatton and his direct involvement in obtaining a psychiatrist to assess McAlinden.

### ***Archbishop Wilson's reporting obligations***

- C4.256 Regardless of the content of the Johns report, Wilson said he had made his own assumption that 'anybody who was like that' was psychiatrically disturbed.<sup>499</sup> He agreed that McAlinden posed a danger to children.<sup>500</sup>
- C4.257 Wilson's evidence was that, despite the serious nature of McAlinden's conduct in connection with children, he did not consider he had any duty, as a Diocesan official and representative of

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<sup>494</sup> TOR 2, T240.37–41 (Wilson in camera, 17 July 2013).

<sup>495</sup> TOR 2, T54.20–30 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>496</sup> Diary entries by Wilson, dated 9, 12 and 22 October 1987, conf ex PW B, tab 17, pp 36–38.

<sup>497</sup> Diary entry by Wilson, dated 13 November 1987, conf ex PW B, tab 20, p 43.

<sup>498</sup> TOR 2, T56.26–36; 60.29–40 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>499</sup> TOR 2, T59.23–45 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>500</sup> TOR 2, T25.36–38 (Wilson in camera, 20 June 2013, at 3.57pm).

the bishop, to report the matter to the police. In effect, he thought his responsibility ended with reporting the matter to the bishop. He also urged the bishop to obtain legal advice, but he did not know whether the bishop in fact did so.<sup>501</sup> Wilson told the Commission he did not think of what the legal requirements were in terms of reporting to police: he just had to 'go back to the bishop and get him to act'.<sup>502</sup>

- C4.258 The note in Wilson's 1987 diary (in his own handwriting) setting out the main elements of the common law offence of misprision of felony – described in the note as 'obligation on anyone aware of (criminal act) felony must report it' – contradicts Wilson's evidence that he did not turn his mind to the question of the potential criminal liability associated with his possession of information about McAlinden's offending. He was unable to remember why he had recorded the elements of misprision of felony or where that information came from. He denied that he was concerned about being party to matters that could constitute a misprision if he did not report to police. The Commission does not accept that evidence. Wilson was unable to offer an explanation for the 'misprision note'. In view of the existence of this note – it being objective and contemporaneous evidence, contained as it was in Wilson's 1987 diary – the Commission is satisfied that Wilson was concerned to understand any potential criminal liability in relation to the offence of misprision of felony in connection with his knowledge of the events at Merriwa involving McAlinden. As a consequence of his 'research', he was also cognisant of the legal requirement to report what he knew about McAlinden to police.
- C4.259 Moreover, Wilson's evidence before the Commission demonstrated his awareness that the complaints about McAlinden's conduct at Merriwa would be of interest to police and should have been reported. In this regard, Wilson told the Commission he specifically recalled saying to the parent whose complaint he took (whom the Commission finds to be BA) that she ought to take her allegations to the police or to 'feel free to go to the police'.<sup>503</sup> Similarly, by his own account, he told Stanwell that 'if there are complaints like that then people should go to the police'.<sup>504</sup> But Wilson never sought to obtain from Stanwell a statement about the incident involving McAlinden he (Stanwell) had witnessed, and nor did he ask Stanwell whether he was prepared to take the matter to the police. Stanwell's evidence was that he was prepared to go to the police, although he had not given that aspect much thought because of the 'great faith' he placed in the Church to deal with the matter appropriately.
- C4.260 Although in 1987 there was no police investigation afoot in connection with McAlinden, what Wilson knew at that time – that McAlinden had abused AJ; that there had been a complaint about his conduct in 1976 (as referred to in Hatton's letter of 11 May 1987), as a result of which he was transferred out of the Diocese;<sup>505</sup> and that he had continued to sexually abuse children in Merriwa parish<sup>506</sup> – would unquestionably have been of interest to the police. It was information that would have facilitated and assisted in the initiation of a police investigation into McAlinden.
- C4.261 It is not apparent from Wilson's evidence that in his role as vicar general he encouraged the bishop to report matters relating to McAlinden to the police or even ensured that the bishop obtained legal advice about his responsibilities in that regard: Wilson's evidence was that he did not know whether Clarke had obtained such advice.<sup>507</sup>

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<sup>501</sup> TOR 2, T26.45–27.35 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>502</sup> TOR 2, T27.7–12 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>503</sup> TOR 2, T20.28–45 (Wilson in camera, 20 June 2013, at 3.57pm); T243.18–25 (Wilson in camera, 17 July 2013).

<sup>504</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 31.

<sup>505</sup> Letter from Hatton to Clancy, dated 11 May 1987, conf ex PW B, tab 2.

<sup>506</sup> In addition to the reference in the Johns report of a complaint in 1954.

<sup>507</sup> TOR 2, T27.31–35 (Wilson in camera, 20 June 2013, at 3.57pm).

- C4.262 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 Commission considers it was nonetheless incumbent on church officials to explore with parents and others concerned (such as Stanwell) their willingness to report to the police and, indeed, to encourage them to have contact with the police. With the support of the Church – considering the importance of that institution to the lives of parishioners at that time – it is quite likely that those affected would have been willing to speak to police about McAlinden’s conduct. Such was the evidence of AJ, as noted in Chapter 12 of the public volume of this report.
- C4.263 On the contrary, it appears that Wilson’s view in 1987 was that the Diocese was the appropriate authority to deal with such matters. He seems to have considered that once he had passed information about the complaints on to the bishop his responsibility was concluded. He held this view notwithstanding his awareness of the continuing danger McAlinden presented to children.<sup>508</sup> Further, he told the Commission he thought he did everything he could to deal with the problems McAlinden created and that he felt a ‘big sense of responsibility’ to organise things in such a way that McAlinden would be stopped.<sup>509</sup> An obvious way of trying to achieve this objective would have been to report McAlinden to the police. Wilson did not do so; nor did he consider he had any responsibility to do so, despite his awareness of serious complaints about McAlinden’s offending in 1987 and that abuse by McAlinden had taken place over some decades.
- C4.264 Wilson’s attitude suggested that as a clergyman he was in some way ‘carved out’ from any personal obligation to report criminal conduct to civil authorities. He should have been aware, though, from his research into the common law offence of misprision, that the criminal law makes no such blanket exclusion for clergymen.

### **No discussions between Archbishop Wilson and Bishop Clarke, January 1987 to August 1990**

- C4.265 Wilson served as vicar general from 1 January 1987 to 22 August 1990.<sup>510</sup> He described the role thus:

The role of Vicar-General is a technical one in the church administration in that the Vicar-General is the closest collaborator with the Bishop in the administration of the Diocese. He is responsible for the general administration of the Diocese, co-ordinates activities and so on, at the behest of the Bishop. The Vicar-General, acting on the delegated authority of the Bishop, is responsible for the general administration of the Diocese as a whole.<sup>511</sup>

- C4.266 As a result of his appointment as vicar general, Wilson was also appointed a Diocesan consultor and was on the Diocese’s Board of Financial Administration until August 1990.<sup>512</sup>
- C4.267 When giving evidence about discussions between himself and Clarke after the Merriwa events, Wilson said that although he discussed Diocesan business with Clarke on many occasions between August 1987 and mid-August 1990 they never again spoke about McAlinden or the Merriwa events.<sup>513</sup> Although, as vicar general, he could have inspected documents about McAlinden to satisfy himself about where McAlinden was and whether he had access to

<sup>508</sup> TOR 2, T25.31.45 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>509</sup> TOR 2, T259.8–11 (Wilson in camera, 17 July 2013).

<sup>510</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 14.

<sup>511</sup> *ibid*, para 15.

<sup>512</sup> *ibid*, para 16.

<sup>513</sup> TOR 2, T28.37–29.8 (Wilson in camera, 20 June 2013, at 3.57pm).

children, Wilson said, 'I didn't really have the opportunity to do that'. When asked why not, he responded, 'It just didn't occur'.<sup>514</sup>

C4.268 As noted in paragraph C4.166, Wilson also gave evidence that he was unaware Clarke had given McAlinden permission to go to Western Australia to work as a priest. Wilson said he would have objected to this course had he known about it.<sup>515</sup>

C4.269 In view of Wilson's seniority as vicar general and a consultor until August 1990<sup>516</sup> and his central involvement in dealing with the Merriwa allegations – along with his awareness of the danger McAlinden presented – the Commission considers it highly improbable that Wilson and Clarke never again discussed McAlinden. Even if the Commission were to accept Wilson's evidence in this regard, which it does not, it would be of grave concern that neither Wilson nor Clarke, the two most senior Diocesan officials, thought it necessary to raise the matter again in order to ascertain whether McAlinden continued to present a risk to children at any time during this period.<sup>517</sup> This is particularly the case in the light of the report from Dr Johns, which was found to be 'not very helpful',<sup>518</sup> and suggested that McAlinden showed little insight into his condition. In addition, Wilson's firm position was that anyone who behaved as McAlinden was reported to have done must have been psychiatrically disturbed.<sup>519</sup>

C4.270 The Commission also considers it improbable that, in view of Wilson's seniority in the Diocese as vicar general and a consultor until August 1990, he was unaware that Clarke had approved McAlinden's working in Western Australia as a priest from October to November 1988 and that McAlinden had received a placement interstate.<sup>520</sup> The Commission finds that Wilson was so aware. Further, the Commission does not accept Wilson's evidence that if he had known McAlinden had been sent to another diocese as a priest he would have raised an objection with the bishop.

## A handover to Monsignor Hart in 1990?

### *Archbishop Wilson's evidence*

C4.271 Monsignor Allan Hart became vicar general after Wilson. Wilson told the Commission there was no 'handover' to Hart in 1990 of matters relating to the role of vicar general. Wilson said:

... My role as vicar general came to an end when I left to go to America and, in fact, Monsignor Hart was appointed to vicar general some time after I had gone. So there wasn't any discussion between myself and him that would have been classified as a handing over or a transferral of issues and information.<sup>521</sup>

C4.272 Wilson left the Diocese for Washington DC on or about 22 August 1990.<sup>522</sup>

C4.273 More generally, Wilson told the Commission he had no recollection of having discussions with Hart about McAlinden, although he conceded that he might have had informal discussions.<sup>523</sup> He

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<sup>514</sup> TOR 2, TT29.32–37 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>515</sup> TOR 2, T258.28–41 (Wilson in camera, 17 July 2013).

<sup>516</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 14.

<sup>517</sup> TOR 2, T28.42–29.8 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>518</sup> TOR 2, T32.21–46 (Wilson in camera, 20 June 2013, at 3.57pm); affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 51; Report by Johns to Clark, dated 5 November 1987, ex 59.

<sup>519</sup> TOR 2, T59.44–45 (Wilson in camera, 20 June 2013, at 3.57pm).

<sup>520</sup> TOR 2, T258.28–35 (Wilson in camera, 17 July 2013).

<sup>521</sup> TOR 2, T216.15–25 (Wilson in camera, 17 July 2013).

<sup>522</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 17.

<sup>523</sup> TOR 2, T216.27–35 (Wilson in camera, 17 July 2013).

could, however, recall discussions in 1995 that focused on the task of ‘dealing canonically with the issues about Father McAlinden’ (as discussed below).<sup>524</sup>

### ***Monsignor Hart’s evidence***

- C4.274 Hart gave evidence to the effect that during a handover from Wilson in September 1990 when Wilson was to travel overseas to study, Wilson told him about Cassilis, ‘a little outreach place at Merriwa’,<sup>525</sup> and said the bishop had asked him to go there because there had been a few complaints about McAlinden.<sup>526</sup> Hart said this was the first time he had had a conversation with Wilson about these matters.<sup>527</sup> He gained the impression that the visit to Cassilis and Merriwa had happened in the year leading up to when he (Hart) took over as vicar general.<sup>528</sup> Hart was appointed vicar general on 23 September 1990.<sup>529</sup>
- C4.275 Hart said he was given a very brief summary. He did not recall Wilson telling him whether he went to see more than one person in Cassilis or Merriwa but did recall Wilson saying it had been very difficult because ‘no-one wanted to open up’.<sup>530</sup> Wilson did not mention any particular school or any person’s house; nor did he say whether there was more than one alleged victim of McAlinden.<sup>531</sup> Hart recalled Wilson communicating he was frustrated because he had received no cooperation from the people.<sup>532</sup> He was left with the feeling that Wilson did not get far at all.<sup>533</sup> Hart told the Commission there was no other occasion after this conversation in September 1990 when Wilson said anything to him that suggested he knew of other allegations about McAlinden.<sup>534</sup>

### ***Conclusion***

- C4.276 The Commission accepts Hart’s evidence of a handover at which McAlinden was discussed at some time before September 1990 – accepting Wilson’s evidence that he left the Diocese to travel overseas on or about 22 August 1990, such that Hart must be mistaken about the handover occurring in September 1990.<sup>535</sup> Hart’s evidence in this regard is against interest in that it tends to confirm his knowledge of McAlinden’s propensity for sexually abusing children before Hart received AJ’s complaint in early 1993. In assuming the role of vicar general, Hart would need to be apprised of this since McAlinden remained a priest incardinated into the Diocese.

## **AJ, Archbishop Wilson and AJ’s complaint to the Diocese, 1993**

- C4.277 As noted in paragraph C4.43, the Commission accepts AJ’s evidence that she telephoned Wilson in the first half of 1993 while he was in Washington DC and told him of the steps she was taking with Hart in relation to McAlinden and that she had complained to the bishop. This finding is consistent with AJ’s evidence on the subject and was not contradicted by Wilson’s evidence.
- C4.278 This is a contextual matter that should be borne in mind when considering the steps Wilson took in 1995, as discussed below.

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<sup>524</sup> TOR 2, T216.37–44 (Wilson in camera, 17 July 2013).

<sup>525</sup> TOR 2, T3.29–5.30 (Hart, in camera, 14 August 2013).

<sup>526</sup> TOR 2, T4.4–4.10 (Hart in camera, 14 August 2013).

<sup>527</sup> TOR 2, T4.42–5.12 (Hart in camera, 14 August 2013).

<sup>528</sup> TOR 2, T5.32–45 (Hart in camera, 14 August 2013).

<sup>529</sup> Diocese of Maitland clergy appointment document of Hart, undated, ex 119.

<sup>530</sup> TOR 2, T6.4–28 (Hart in camera, 14 August 2013).

<sup>531</sup> TOR 2, T6.18–28 (Hart in camera, 14 August 2013).

<sup>532</sup> TOR 2, T6.30–40 (Hart in camera, 14 August 2013).

<sup>533</sup> TOR 2, T6.42–7.1 (Hart in camera, 14 August 2013).

<sup>534</sup> TOR 2, T8.3–7 (Hart in camera, 14 August 2013).

<sup>535</sup> TOR 2, T5.4–12 (Hart, in camera, 14 August 2013); affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 17.

## Archbishop Wilson's return to the Diocese, June 1993

C4.279 Wilson gave evidence that on returning to the Diocese in June 1993 he did not ask the bishop about what was happening with McAlinden:

Q. You asked no questions, even though a friend of yours, [AJ], had told you that she had taken some action to terms of consulting the bishop about her own case of sexual abuse at the hands of McAlinden?

A. That's right.

Q. **Your concern about McAlinden accessing children and being dangerous to children had dissipated, had it?**

A. **No, it had not.**

Q. But you still asked no questions of the bishop or anyone at the diocese about where McAlinden was or what he was doing?

A. No, that's right.

Q. But it does make your concern regarding McAlinden's dangerousness to children sound a little hollow, would you agree?

A. **No. I presumed that the bishop was the one who was responsible for dealing with those matters.**

Q. But weren't you interested to find out where he was and what he was doing so that you could know whether the children of the diocese were safe from his behaviour?

A. I – no, I wouldn't say that I wasn't interested, but I just didn't do that.<sup>536</sup> [emphasis added]

C4.280 Wilson also told the Commission no one informed him that McAlinden's faculties had been removed in February 1993.<sup>537</sup> He said he did not know of Father Brian Lucas's involvement in matters relating to McAlinden or of any admissions McAlinden made to Lucas in 1993 in relation to interfering with children. Wilson said it was only through the Commission's processes that he had become aware of Lucas's involvement in interviewing McAlinden.<sup>538</sup>

## The initiation of formal canonical processes against McAlinden, October 1995

### *Archbishop Wilson's evidence*

C4.281 Wilson's evidence was to the effect that he had no further discussions about McAlinden with anyone until Hart asked him to initiate a canonical process in 1995. He said:

My understanding was that there had been the process after the events in 1987, and then I really didn't know anything more about what happened until Monsignor Hart rang me and told me.<sup>539</sup>

C4.282 This evidence is contradicted by the Commission's findings in connection with the handover discussion with Hart before Wilson's departure overseas in 1990 and his telephone discussion with AJ in early 1993 concerning her complaint to the bishop about McAlinden while Wilson was still in Washington.

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<sup>536</sup> TOR 2, T150.24–151.17 (Wilson in camera, 27 June 2013).

<sup>537</sup> TOR 2, T95.3–96.9 (Wilson in camera, 21 June 2013).

<sup>538</sup> TOR 2, T164.14–33 (Wilson, 27 June 2013).

<sup>539</sup> TOR 2, T95.3.6 (Wilson in camera, 21 June 2013).



C4.283 Wilson explained that in 1995 the vicar general, Hart, approached him about establishing a canonical procedure to deal with McAlinden:

He spoke to me about the fact that there were these two women who'd made complaints, that they said that they wouldn't go to the police. The bishop – and he wanted some process to take place to deal with it canonically and so he – they asked my advice and I said that, at the current state of the law, I thought that the best thing would be to establish a process under canon 1044 of the 1983 code.<sup>540</sup>

C4.284 The two women whom Wilson stated in his affidavit would not go to the police while their mother was alive were AK and AL.<sup>541</sup> He recalled a conversation with Hart:

[Hart] said to me that they need to do something canonically to remove him from ministry. He said to me words to the effect: "We've got to try and do something about dealing with these issues".<sup>542</sup>

C4.285 By this time Wilson had a degree in canon law and was qualified to deal with such matters.<sup>543</sup> He agreed that, because of his expertise in canon law, he was being asked to obtain material and devise a process for dealing with McAlinden.<sup>544</sup>

C4.286 Wilson said that during his discussions with Hart about this he (Wilson) did not refer to his knowledge of other instances of allegations of sexual abuse relating to McAlinden – for example, AJ and the Merriwa events – stating, 'I was specifically asked about this particular matter, to intervene and do this work'.<sup>545</sup> He said he would have presumed that Hart knew of the other matters because he was working 'so closely with the bishop in these areas'.<sup>546</sup> Wilson later conceded, however, that since Clarke had failed to tell him (while Wilson was vicar general) of other instances of McAlinden abusing children, it was not a reasonable expectation to think that Clarke would tell Hart of these things.<sup>547</sup>

C4.287 Wilson also said he did not discuss with Hart what had happened in relation to AJ's complaint to the Diocese, despite the fact that he knew she had reported McAlinden's sexual abuse to the bishop.<sup>548</sup> He said he did not think it was relevant to find out what had happened in AJ's case.<sup>549</sup>

### ***Archbishop Wilson's choice of a canon 1044 process***

C4.288 Wilson formed the view that a canon 1044 process would be the best option for dealing with McAlinden. He said it was the 'current thinking in America at the time' to use this process to impede the exercise of orders on the basis of psychiatric disabilities.<sup>550</sup> If this process were pursued, McAlinden could not exercise his orders and could not 'act in a priestly way'.<sup>551</sup> Wilson stated in his affidavit, 'Having spoken to Fr McAlinden and heard his denials, I was of the view that he would not request laicisation ...'<sup>552</sup> At this time laicisation was granted only at the

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<sup>540</sup> TOR 2, T78.30–37 (Wilson in camera, 21 June 2013).

<sup>541</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 70.

<sup>542</sup> *ibid*, para 72.

<sup>543</sup> *ibid*, para 71.

<sup>544</sup> TOR 2, T191.18–38 (Wilson in camera, 27 June 2013).

<sup>545</sup> TOR 2, T78.39–79 (Wilson in camera, 21 June 2013).

<sup>546</sup> TOR 2, T79.16–23 (Wilson in camera, 21 June 2013).

<sup>547</sup> TOR 2, T79.20–45 (Wilson in camera, 21 June 2013).

<sup>548</sup> TOR 2, T87.7–27; T88.43–89.18 (Wilson in camera, 21 June 2013).

<sup>549</sup> TOR 2, T87.46–88.2 (Wilson in camera, 21 June 2013).

<sup>550</sup> TOR 2, T270.1–5 (Wilson in camera, 17 July 2013).

<sup>551</sup> TOR 2, T98.6–9 (Wilson in camera, 21 June 2013).

<sup>552</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 74.



request of the priest.<sup>553</sup> The canon 1044 process, however, did not require the consent of the priest.<sup>554</sup>

- C4.289 On 12 October 1995 Clarke appointed Wilson to act as the ‘notary’ in the ‘McAlinden Impediment to Exercise Orders Case’ in the canon 1044 process.<sup>555</sup> Wilson explained his role as ‘notary’ as involving taking the evidence, which he was then to countersign to ensure its status as a legal document.<sup>556</sup>
- C4.290 Wilson’s role in the canonical process also entailed preparing a ‘chronology of canon 1044 process’, describing the phases of the process and setting out ‘points to remember’, which included consultation with a psychological expert.<sup>557</sup> In addition, Wilson provided a draft decree (dated 19 October 1995) for Clarke to issue, declaring that McAlinden ‘labour[ed] under the impediment of the exercise of Orders established in Canon 1044,2,2’.<sup>558</sup> The decree was drawn from a template in a *Clergy Procedural Handbook*.<sup>559</sup> It was stated to be based in part on the ‘sworn testimony of several witnesses of the behaviour on the part of ... McAlinden which [had] been deeply injurious to others, created disturbance and scandal’.<sup>560</sup>

### **Statements by AL and AK**

- C4.291 In his affidavit Wilson stated that Hart had asked him to take evidence from AL and AK and prepare the material for the case. He said arrangements were then made for the ‘two witnesses to come to the Tribunal to be interviewed’ and that he did the interviews ‘probably on 13 October 1995’.<sup>561</sup> He recalled that AL and AK arrived together but that he interviewed them separately. They were in their mid-40s at the time.<sup>562</sup>
- C4.292 Wilson took and notarised statements, both dated 13 October 1995, from AL and AK.<sup>563</sup> Both statements described sexual abuse by McAlinden. AL described the abuse as occurring from when she was aged 8 to 11 or 12 years. She said McAlinden would touch her breasts or put his hands inside her bathers while they were in the water at the beach; he also exposed his penis to her and rewarded her with chocolate for touching it. On one occasion, she stated, McAlinden fondled her between the legs during confession.<sup>564</sup> AK’s statement recounted an incident when she was about 11 years old; she was lying in bed next to McAlinden and he pushed himself next to her. She also stated that on holidays when they were in the swimming pool he ‘would pick you up and touch you between the legs’.<sup>565</sup>
- C4.293 Wilson told the Commission there was no discussion with AL and AK about going to the police: ‘They did not ask me to go to police and I did not tell them that I would go to the police’.<sup>566</sup> After AL and AK signed their statements Wilson thanked them for coming and said he would immediately provide the material to the bishop for his action.

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<sup>553</sup> *ibid.*

<sup>554</sup> TOR 2, T270.20–22 (Wilson in camera, 17 July 2013).

<sup>555</sup> Act of Authorisation, dated 12 October 1995, conf ex PW A, tab 18, p 24.

<sup>556</sup> TOR 2, T272.4–10 (Wilson in camera, 17 July 2013).

<sup>557</sup> Chronology of canon 1044 process, undated, conf ex PW A, tab 21.

<sup>558</sup> TOR 2, T193.25–194.28 (Wilson in camera, 27 June 2013); A decree of Most Reverend L M Clarke, DD, Bishop of Maitland–Newcastle, dated 19 October 1995, conf ex PW A, tab 18, p 25.

<sup>559</sup> TOR 2, T193.25–30 (Wilson in camera, 27 June 2013); Randolph R Calvo & Nevin J Klinger (eds), *Clergy Procedural Handbook* (1992), chapter 10, conf ex PW K, pp 202–203.

<sup>560</sup> A decree of Most Reverend LM Clarke, DD, Bishop of Maitland–Newcastle, dated 19 October 1995, conf ex PW A, tab 18, p 25.

<sup>561</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 75–76.

<sup>562</sup> *ibid.*, para 77.

<sup>563</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 76; TOR 2, T213.7–8 (Wilson in camera, 17 July 2013).

<sup>564</sup> Statement of AL, dated 13 October 1995, conf ex PW B, tab 19.

<sup>565</sup> Statement of AK, dated 13 October 1995, conf ex PW B, tab 20.

<sup>566</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 81.

- C4.294 The statements were placed in a manila envelope, Wilson said, and he then took them straight over to the bishop's office, telling the secretary the envelope contained 'information that the Bishop needs to be given straight away and tell him to use it in the process.'<sup>567</sup>
- C4.295 Wilson conceded that when he took AL's statement in 1995 he was aware that the conduct she described was criminal conduct. He did not, however, discuss it with the Diocese's lawyers. He said it did not occur to him that the fact of McAlinden having engaged in criminal conduct should be referred to police.<sup>568</sup> Nor did he tell Hart that McAlinden should be referred to the police in view of the criminal conduct described in the statement. He similarly agreed that he knew the conduct AK described was criminal but did not at the time consider it was conduct that should be reported to the police.<sup>569</sup>

### ***The 'Father Denis McAlinden: impediment to exercise orders C1044 summary of evidence' document***

- C4.296 A document in Wilson's handwriting and entitled 'Father Denis McAlinden: impediment to exercise orders C1044 summary of evidence' set out the evidence Wilson had obtained and referred to the veracity of the testimony of both AK and AL. It also referred to 'many reports' relating to McAlinden. Wilson's document stated:

This process is based on the evidence of two witnesses who gave testimony under oath. They spoke of events that occurred to them.

Both parties were able to identify Fr Denis McAlinden as the person who assaulted them. They described actions of a sexual nature – involving having their bodies touched, and in one case touching Fr McAlinden's penis. Both described these events in a sober and undramatic fashion. In both cases they continued over a lengthy period of time.

**The veracity of this testimony is added to by its consistency with the many reports of Fr McAlinden's behaviour by other people.** These two persons are only representative of **many others who would, if asked, come forward to give testimony under oath.** The sworn statements are available for inspection to Fr McAlinden and/or his canonical advisor at the Chancery of the Diocese of Maitland-Newcastle.<sup>570</sup> [emphasis added]

- C4.297 When asked about the reference to 'many reports' Wilson said:

I think that, apart from the evidence that these two people gave, that they also spoke about other members of their family and I have a recollection that Monsignor Hart may have told me about other people too.<sup>571</sup>

- C4.298 Wilson also acknowledged that he himself had personal knowledge of a number of other McAlinden abuse victims. Specifically, he acknowledged that he knew about the events at Merriwa, the report from 1954 mentioned in Dr Johns' report, and that something had happened in 1976; he agreed that these instances together would count as 'many others'.<sup>572</sup>

- C4.299 Wilson conceded that at the time of his involvement with the canonical process in 1995 he knew Clarke had not reported McAlinden to the police (including the Merriwa matters from 1987). Wilson accordingly agreed with the proposition that by that time he had no basis to believe that

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<sup>567</sup> *ibid*, para 83.

<sup>568</sup> TOR 2, T84.17–20, (Wilson in camera, 21 June 2013). Transcript correction "priest" to "police".

<sup>569</sup> TOR 2, T84.17–46, (Wilson in camera, 21 June 2013). In terms of s. 10 of the *Special Commissions of Inquiry Act 1983*, the Commission does not consider there is sufficient evidence to warrant the prosecution of Wilson in relation to his failure to report AL's and AK's disclosures to the police. In this respect, there is no evidence likely to be admissible in criminal proceedings as to the details of the offences McAlinden committed on AL and AK. Further, on the material available, Wilson would probably be 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.

<sup>570</sup> 'Fr Denis McAlinden: Impediment to exercise Orders of Canon 1044', Summary of evidence – conf ex PW A, tab 17, p 22.

<sup>571</sup> TOR 2, T85.31–34 (Wilson in camera, 21 June 2013).

<sup>572</sup> TOR 2, T85.18–42; 86.19–30 (Wilson in camera, 21 June 2013).

Clarke had any intention of reporting McAlinden to the police.<sup>573</sup> Nonetheless, Wilson told the Commission:

My responsibility was to take evidence from these two people about the circumstances in which they made the claim that they had been abused by Father McAlinden. It was seen by me, at that stage, as being something that was self-contained and centred on these two people.<sup>574</sup>

- C4.300 To similar effect was Wilson's evidence that his responsibility was to 'take the evidence from these two victims and to present that to the bishop for him then to go forward with the procedure'.<sup>575</sup>
- C4.301 Wilson left the Diocese on 25 October 1995 and travelled overseas, returning to Australia in April 1996 to take up the position of Bishop of Wollongong.<sup>576</sup> After this, he said, he did not consider he had an ongoing retainer with the Diocese to continue advising them about McAlinden: he expected they would continue the canonical process without his involvement.<sup>577</sup>

### ***Monsignor Hart's evidence***

- C4.302 Hart did not recall any discussion with Wilson about canon 1044 or its use or application in relation to McAlinden.<sup>578</sup> He told the Commission he did not have any general discussion with Wilson about this because Wilson was taking his orders from the bishop.<sup>579</sup> Hart said he had seen the 1995 papers dealing with the 1044 canon law procedure only in the context of the Commission.<sup>580</sup>
- C4.303 He gave evidence that he spoke to Wilson about how to advance the bishop's wish to have McAlinden laicised<sup>581</sup> and said that after the steps he took in mid-October 1995 he had no further involvement in the process.<sup>582</sup>

### ***Bishop Clarke's letter of 19 October 1995***

- C4.304 Wilson said he did not prepare the unsigned letter from Bishop Clarke to McAlinden dated 19 October 1995 (which referred to admissions having been made by McAlinden to Lucas). He emphasised that the course outlined in that letter (requesting that McAlinden petition the Holy See for a rescript of laicisation) was contrary to his views about how the process should be managed and specifically his recommendation that a canon 1044 process be pursued.<sup>583</sup>

### ***Conclusions***

- C4.305 Wilson's evidence was that on his return to the Diocese in June 1993, and before the beginning of the canonical process with which he assisted in 1995, he had not sought to discover what had happened with McAlinden in the intervening years. This is improbable – particularly so since he gave evidence that his concern about the danger McAlinden posed to children had not dissipated.<sup>584</sup> The status of matters to do with McAlinden would also have been of personal relevance to Wilson because his close friend AJ had told him in a telephone call just months

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<sup>573</sup> TOR 2, T90.19–35 (Wilson in camera, 21 June 2013).

<sup>574</sup> TOR 2, T81.44–82.1 (Wilson in camera, 21 June 2013).

<sup>575</sup> TOR 2, T81.24–27 (Wilson in camera, 21 June 2013).

<sup>576</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, paras 20, 97.

<sup>577</sup> TOR 2, T99.36–47 (Wilson in camera, 21 June 2013).

<sup>578</sup> TOR 2, T30.45–31.4 (Hart in camera, 14 August 2013).

<sup>579</sup> TOR 2, T28.13–23 (Hart in camera, 14 August 2013).

<sup>580</sup> TOR 2, T30.37–31.24 (Hart in camera, 14 August 2013).

<sup>581</sup> TOR 2, T17.43–19.6 (Hart in camera, 14 August 2013).

<sup>582</sup> TOR 2, T51.39–45 (Hart in camera, 14 August 2013).

<sup>583</sup> Affidavit of Wilson, dated 14 March 2013, conf ex PW I, para 93.

<sup>584</sup> TOR 2, T150.45–47 (Wilson in camera, 27 June 2013).

before his return in 1993 that she had complained to the bishop of her abuse by McAlinden (a matter agreed to in Wilson's evidence). The Commission does not accept Wilson's evidence that he made no inquiries and sought no further information about McAlinden's status after returning to the Diocese.

- C4.306 Having recommended to Hart the particular canonical process for dealing with McAlinden, Wilson took statements from both AK and AL on or about 13 October 1995. Wilson accepted that what AK and AL described amounted to criminal conduct. He also accepted the veracity of the accounts given in a 'sober and undramatic fashion' – not least because of the 'many reports' by others about McAlinden's behaviour. Despite this, Wilson told the Commission it did not occur to him that McAlinden should be referred to the police in view of his criminal acts. Nor did Wilson talk to Hart about reporting him to the police.
- C4.307 Wilson said he did not explore with AK and AL whether they were prepared to report their complaints to the police: his evidence was that they did not ask him to go to the police and he did not tell them he would do so. Some evidence before the Commission does, however, suggest that AK and AL were unwilling to report McAlinden to police because they were concerned about the impact of doing so on their families. It might well have been, therefore, that, on inquiry, AK and AL were not prepared to engage with the civil authorities and could not be dissuaded from their view. But Wilson could have known of their attitude only if he had made such inquiries, and he did not do so. He should have done. This was particularly so because he was acutely aware of the level of McAlinden's offending, extending over decades, and the fact that in 1995 McAlinden was still at large and potentially had unsupervised access to children. It was also incumbent on Wilson to make such inquiries because, as he acknowledged, it was clear by this time that Clarke had no intention of reporting McAlinden.<sup>585</sup> In view of that fact, Wilson's evidence that he did not report McAlinden to the police because he did not consider he had any responsibility to do so, because he 'didn't think of it', or because it was the bishop's responsibility to do so is unsatisfactory.
- C4.308 By October 1995 Wilson had accumulated personal knowledge of a number of accounts of McAlinden's offending, including AJ's disclosure and the events at Merriwa); he also knew of the complaint from 1954 referred to in Dr Johns' report and the 1976 incident that had led to McAlinden leaving the Diocese (as noted in Hatton's letter of 11 May 1987). Since 1987 Wilson had also been aware that the central element of the offence of misprision of felony was a failure to report to the police. Even if there had been difficulties in relation to AK and AL being unwilling to report McAlinden to the police, Wilson could have provided to police 'intelligence'<sup>586</sup> based on his own experiences (without the need to specifically identify AK or AL or make a formal complaint on their behalf), so that investigations into McAlinden's offending behaviour could have been carried out. Wilson's explanation for not reporting to police was inadequate. His failure to report McAlinden cannot be justified, and it amounted to a lack of assistance in or facilitation of police investigations.
- C4.309 The Commission accepts Wilson's evidence that he did not prepare the letter of 19 October 1995 from Clarke to McAlinden. The process Wilson had recommended, based on canon 1044, appears to have become confused in that letter. It is unlikely that Wilson would have conflated the canon 1044 and laicisation processes, as evidently was the case in the 19 October 1995 letter.

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<sup>585</sup> TOR 2, T90.19–35 (Wilson in camera, 21 June 2013).

<sup>586</sup> See Chapter 12, paras 12.273 and following and 12.290 and following. See also TOR 2, TOR 2, T1981.43–1982.36; T2011.6–22 (Davoren).

## Archbishop Wilson and sexual abuse complaints in the Diocese of Wollongong, 1996

C4.310 In 1996 Wilson became Bishop of the Diocese of Wollongong.<sup>587</sup> When he was giving evidence before the Commission he was shown a document entitled ‘Draft statement on Royal Commission Report’ on child sexual abuse.<sup>588</sup> He said the document would have been prepared under his supervision.<sup>589</sup> It stated, ‘... concealing the truth is unjust to victims, a disservice to offenders and damaging to the whole community’.<sup>590</sup> Wilson said that he ‘of course’ agreed with that sentiment.<sup>591</sup> He also agreed that ‘any form of sexual behaviour with a minor, whether child or adolescent is always sexual abuse. It is both immoral and criminal’.<sup>592</sup>

This was his position in 1997, and Wilson confirmed that it had caused him to reflect on what had been done about the criminal conduct of McAlinden.<sup>593</sup> Nevertheless, Wilson said he took no action at that time to ensure that McAlinden was reported to the police (notwithstanding that he said he would have reported a priest who engaged in the same conduct as McAlinden to the police if it occurred in Wollongong Diocese). Wilson said his responsibilities were to the Diocese of Wollongong, and McAlinden was the responsibility of the Bishop of Maitland–Newcastle. Although Wilson was aware that the Bishop of Maitland–Newcastle had not acted in relation to the complaints concerning McAlinden which he (Wilson) had assessed to be true, Wilson stated that he had no responsibility to report McAlinden to the police.<sup>594</sup>

C4.311 In his affidavit Wilson stated that in late 1996 or early 1997 he saw Bishop Michael Malone at a Professional Standards Committee meeting relating to sexual abuse by clergy.<sup>595</sup> He said he asked Malone about McAlinden in words to the effect of ‘What have you done about the Father McAlinden matter because that’s very important and needs to be dealt with’.<sup>596</sup> Wilson told the Commission he could not recall Malone’s response or whether it satisfied him that McAlinden was no longer a danger to children.<sup>597</sup>

C4.312 For his part, Malone did not recall Wilson asking him whether he had ‘finalised the McAlinden business’ but did not deny that it could have happened.<sup>598</sup>

### Conclusions

C4.313 By the time Wilson assumed his episcopacy in Wollongong in 1996 he had personal knowledge of a number of complaints connected with McAlinden. As stated, he knew of AJ’s report of abuse at the hands of McAlinden; he was aware of the 1954 complaint referred to in Dr Johns’ report; he knew of the incident in 1976 that had led to McAlinden leaving the Diocese; and he had personally investigated events at Merriwa and taken the statement from BA that confirmed McAlinden’s sexual abuse of a child there. He had also received a report of inappropriate behaviour from Stanwell, the school principal. Finally, he had designed a canonical process with a view to dealing with McAlinden and, to this end, had taken from AK and AL statements about their abuse by McAlinden, which outlined criminal conduct on McAlinden’s part. Wilson had formed the view in 1987 that McAlinden was suffering from a psychiatric condition and believed

<sup>587</sup> Diocese of Maitland clergy appointment document of Wilson, dated 23 August 1975, conf ex PW A, tab 1, pp 1–2.

<sup>588</sup> TOR 2, T106.41–107.7 (Wilson in camera, 21 June 2013); ‘Draft statement on Royal Commission report’, Diocese of Wollongong (facsimile date of 21 August 1997), conf ex PW A, tab 25, p 53.

<sup>589</sup> TOR 2, T107.37–38 (Wilson in camera, 21 June 2013).

<sup>590</sup> Diocese of Wollongong draft statement on Royal Commission report, dated 21 August 1997, conf ex PW A, tab 25, p 53.

<sup>591</sup> TOR 2, T107.24–33 (Wilson in camera, 21 June 2013).

<sup>592</sup> TOR 2, T111.27–37 (Wilson in camera, 21 June 2013); Diocese of Wollongong draft statement on Royal Commission report, dated 21 August 1997, conf ex PW A, tab 25, p 54.

<sup>593</sup> TOR 2, T111.39–43 (Wilson in camera, 21 June 2013).

<sup>594</sup> TOR 2, T111.39–112.32 (Wilson in camera, 21 June 2013).

<sup>595</sup> TOR 2, T171.21–29 (Wilson in camera, 27 June 2013); affidavit Wilson, dated 14 March 2013, ex PW I, para 98.

<sup>596</sup> Affidavit of Wilson, dated 14 March 2013, ex PW I, para 98.

<sup>597</sup> TOR 2, T151.24–38 (Wilson in camera, 27 June 2013).

<sup>598</sup> TOR 2, T37.8–27 (Malone in camera, 12 July 2013, at 12.36pm).

he posed a continuing risk to children. He also agreed that on his return to the Diocese in 1993 the danger McAlinden posed had not dissipated.

- C4.314 Wilson's evidence was that in his role as the Bishop of Wollongong he would have referred a priest who engaged in conduct such as that of McAlinden to the police. But, despite the catalogue of information he possessed about a dangerous paedophile, Wilson considered it was the responsibility of the Bishop of Maitland–Newcastle Diocese (in 1996 Malone) to report McAlinden to the police. He said it was not his responsibility. This was consistent with his position, evident from at least the time of his investigation of the Merriwa complaints in 1987, of purporting to abdicate any personal responsibility for reporting McAlinden to the police – notwithstanding his (Wilson's) awareness that criminal liability could flow from a failure to report serious criminal conduct, as revealed by the misprision note in his 1987 diary.
- C4.315 Wilson's evidence that he approached Malone in 1996 or 1997 and asked about the 'important matter' of McAlinden that needed to be dealt with was self-serving. The Commission considers it highly unlikely (if that question had been asked in the terms asserted), given the stated importance of the matter according to Wilson's evidence, that he would be unable to recall Malone's response to the query about McAlinden. That information would have been of particular interest to Wilson in view of his personal involvement in matters relating to McAlinden starting from the time of the initial disclosure by AJ. Wilson's interest in McAlinden's status in 1996 or 1997 is also at odds with his evidence that, on his return to the Diocese in June 1993, he did not make inquiries about what had happened with McAlinden in his absence, despite AJ telling him she had complained to the bishop some months before. It is also significant that Wilson did not counsel Malone to report McAlinden to the police, knowing as he did that Clarke had not done so.
- C4.316 Moreover, it was open to Wilson to report McAlinden to the police himself at that time (1996 or 1997), as it had been since 1987. His personal knowledge of McAlinden's offending history meant that Wilson was in fact better placed than Malone to make such a report. Wilson could also have availed himself of the services of the Professional Standards Committee to arrange for a 'blind report' to be made about McAlinden.<sup>599</sup>
- C4.317 Wilson did not do this; nor did he take any steps to report McAlinden to the police in any way – contrary to his public statements about concealment once he became Bishop of Wollongong. There is no satisfactory explanation for Wilson's failure to report the conduct of McAlinden to police. His failure to report what he knew about McAlinden constitutes a failure to facilitate a police investigation of McAlinden.

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<sup>599</sup> See Chapter 12, paras 12.271 and 12.290. See also TOR 2, TOR 2, T1981.43–1982.36; T2011.6–22 (Davoren).

# C5 Credibility issues: Bishop Malone and Archbishop Wilson

## Contents

Bishop Malone .....	173
Archbishop Wilson .....	175

## Bishop Malone

- C5.1 The Commission formed the view that Bishop Michael Malone gave evidence that was unsatisfactory, and untruthful in certain respects.
- C5.2 Malone gave evidence to the Commission that was implausible. AM's letter to him, dated 29 July 2010, raised the clear prospect, if true, that (then) Father Philip Wilson (from 2001 an archbishop) had since 1976 concealed child sexual assault committed by Father James Fletcher. Malone told the Commission, however, that when he first read AM's letter the mention of Wilson did not 'leap out' out at him and that he 'hadn't considered the ramifications of [Wilson's] name being mentioned in the letter'. This was despite Malone's evidence that when he first read AM's letter and saw that he had spoken with Wilson in 1976 his thoughts were, 'I wonder if that ever went anywhere? Did Wilson act on that? Did he speak to Bishop Clarke about it? Did he speak to anybody about it?' It is improbable that the highly significant information relating to Wilson could, in reality, have been overlooked in the manner Malone suggested.
- C5.3 Particular background circumstances would have further highlighted to Malone the aspect that related to Wilson when he (Malone) received AM's letter in August 2010. In May 2010 Mr Peter Gogarty had made claims on ABC Television's *Lateline* program to the effect that Wilson should have known he (Gogarty) had been abused by Fletcher in the 1970s. Press and television coverage ensued in what Malone described as a 'a real media fest ...' In June 2010 Malone appeared on a *Lateline* program entitled 'Bishop demands clarity in paedophile case' (relating primarily to Wilson's knowledge of McAlinden's offending). Malone agreed that, at that time at least, the question of Wilson's knowledge of child sexual abuse allegations was something that was on his mind. Further, on 16 June 2010 Wilson sent Malone a letter threatening legal action against one of Malone's senior staff (Mr Sean Tynan) for forwarding to other Diocesan staff an article relating to the May *Lateline* story. Malone agreed that in that correspondence, which he described as angry, arrogant and patronising, Wilson was 'taking the moral high ground' in relation to the allegation that he knew or should have known Fletcher was a paedophile. Against that background, AM's letter, received some six weeks later, suggested that Wilson did in fact know of Fletcher's propensity for the sexual abuse of boys. Malone's insistence that the allegations against Wilson in AM's letter of complaint did not 'leap out' at him, is in all the circumstances wholly improbable.
- C5.4 It was similarly implausible that Malone could have forgotten or overlooked AM during his interview with Strike Force Lantle investigators in November 2011 when squarely asked the question 'Are you aware of any other victims by Fletcher, child victims?' By that time AM was the most recent victim of Fletcher to have come forward. In August 2010 Malone had travelled to AM's home and met with him for more than an hour; he was impressed by AM and believed



his account. He sent AM a letter of reply in September 2010. At that time only three victims of Fletcher were known to the Diocese, AH, AB and Gogarty. The nature of AM's allegations against Wilson also meant that he was a victim with a highly contentious dimension to his claim – namely, assertions that a current archbishop had concealed child sexual abuse some 30 years ago when a priest of the Diocese. Given those factors, it is not credible for Malone to assert that he 'could not think of AM offhand' during the interview. AM would have been at the forefront of Malone's mind when he was questioned directly about other Fletcher victims in the manner noted. The Commission formed the view that Malone's failure to mention AM during the interview was deliberate. His evidence about this matter was considered untruthful.

- C5.5 Some of Malone's evidence was also contradictory. His evidence about his appreciation of the aspect of AM's letter relating to Wilson was internally inconsistent. Although maintaining that the mention of Wilson did not 'leap out' at him, he also gave evidence of reflecting on what had occurred with the complaint from AM to Wilson in 1976 (as noted). Malone's evidence about what occurred at the Towards Healing Consultative Panel meeting on 19 August 2010 (after receipt of AM's letter) was also contradictory. Initially he told the Commission he did not really remember the meeting. He later said he would have spoken about the contents of AM's letter at the meeting and, in accordance with his usual practice, 'would have said that [AM] had reported ... in 1976 to Archbishop Wilson'; shortly thereafter, however, Malone conceded that he might not in fact have mentioned Wilson. Similarly, in his sworn statement of June 2013 Malone stated that, after sending Tynan AM's letter and Malone's reply, he could not recall speaking with Tynan about the matter; in oral evidence, however, he said he was sure he spoke with Tynan the following week to ensure he had received the letter. The Commission rejected Malone's evidence on these matters as unreliable in view of the conflicting accounts put forward.
- C5.6 Some of the evidence Malone gave was untruthful. In a statement adopted during his evidence he asserted that, after the allegations about Fletcher arose, he had a conversation with Mr William Callinan, the principal of Branxton primary school, on 20 June 2002, warning him that Fletcher 'shouldn't be alone with kids and should stay away from the school' and urging him to be vigilant in his supervision of Fletcher. Callinan firmly denied that any such conversation had occurred: any contact with the bishop was a 'very significant event' and highly memorable, he said, and he could not recall the conversation with Malone. In evidence, Malone agreed there was an inconsistency in his asserted position of having told Callinan to exercise greater vigilance about Fletcher but having also extended Fletcher's parish to include Lochinvar and having failed to tell the primary school principal there to exercise the same caution. The Commission rejected Malone's evidence about his asserted discussion with Callinan. It considers that Malone's evidence on this was in effect an attempt to disperse responsibility for his decision not to stand Fletcher down in June 2002 after becoming aware that the police were investigating him for child sexual abuse.
- C5.7 As a corollary to its finding that Malone did not meet with Callinan on 20 June 2002, the Commission formed the view that Malone had at some later time added the words '+ Will C' to an 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. That Malone would falsify documentation in this way reflects poorly upon his credibility.
- C5.8 Malone also gave untruthful evidence about his knowledge of whether Archbishop Wilson was a person of interest to the Strike Force Lantle investigation. In response to a question about whether he understood Wilson to be one of the individuals the police were investigating, Malone replied, 'Not exactly, no. I wasn't sure who they were investigating'. Malone knew Gogarty was a complainant in the Lantle investigation and that Gogarty's complaint related to Wilson. A memorandum from Tynan to Malone dated 1 June 2011 noted that Wilson had been identified as a person of interest; after execution of the search warrant by police, Malone unsuccessfully tried to contact Wilson and instead conveyed a message through Monsignor

Cappo (Wilson's vicar general) to the effect that Wilson had been 'named on a search warrant issued by the police for an investigation surrounding historical child abuse offences'. The search warrant itself named Wilson as a person of interest, as did a letter dated 17 May 2011 from Detective Senior Constable Jason Freney, which Tynan said he discussed with Malone the following day, 18 May. The fact of Archbishop Wilson being a person of interest to the Lantle investigators had also received considerable media coverage. Against this background, it was not truthful for Malone to state he was unaware that Wilson was under investigation by police.

- C5.9 The Commission formed the view that Malone's evidence on contentious matters should be regarded with caution – except where it involved an admission against interest or was otherwise corroborated by reliable evidence or contemporaneous documents.

## Archbishop Wilson

- C5.10 The Commission formed the view that Archbishop Philip Wilson was an unsatisfactory and unimpressive witness in various respects. Moreover, he gave certain evidence that the Commission considered to be untruthful.
- C5.11 Wilson gave evidence the Commission considered untruthful regarding AM's complaint. The Commission's view was that AM's evidence about his disclosure to Wilson in East Maitland in 1976 of Fletcher's sexual abuse of him was compelling. The events AM described were believable, and AM was a reliable and truthful witness. The Commission accepts that AM disclosed Fletcher's abuse of him to Wilson in 1976 and that some six months later AM inquired of Wilson what was happening in connection with his earlier disclosure. Wilson's initial evidence, given before AM was called to give evidence, was that if a young man had come to him and related to him the particulars of sexual abuse inflicted on him by Fletcher he would 'of course' have remembered that. Wilson firmly denied that there had been such a disclosure and said, 'If I was told something like that, I'm sure that there would be no way that I'd forget that'. Wilson said his first awareness of reports about allegations of child sexual abuse against Fletcher came after Fletcher's arrest in 2003. He otherwise told the Commission he had heard no earlier report, complaint or suspicion about Fletcher. His evidence was unequivocal in this regard. Wilson said his first experience of paedophiles occurred when dealing with Father Denis McAlinden and the complaints relating to Merriwa parish in the mid-1980s.
- C5.12 After AM gave evidence of his disclosure to Wilson in 1976, Wilson's resolute position on the subject changed. He told the Commission:
- What I have is this big gap in my memory and, in the middle of that gap is a gnawing thought that, somehow or other, there was something that happened, but I really honestly cannot remember that. Since hearing his [AM's] evidence and being so deeply affected by that, I've gone over it and over it in my mind and I still can't get a picture of that.
- C5.13 Wilson's account of a 'gnawing thought' that something had happened cannot be reconciled with his own initial evidence that, in theory, a disclosure such as AM's would be unforgettable. The Commission formed the view that Wilson deliberately told untruths in relation to his actual knowledge of Fletcher's propensity to abuse children and his first awareness of paedophiles until he witnessed AM's evidence. AM was a 15-year-old boy and he cried when he told Wilson some of the details of Fletcher's abuse of him. The conversation lasted 30 to 40 minutes. Wilson was a newly ordained priest, with a professed lack of experience in such matters. The Commission does not accept that AM's disclosure to Wilson in 1976 is something Wilson could have forgotten. Wilson's evidence of a 'gnawing thought that ... there was something that happened' was an attempt to accommodate AM's credible account. Having failed to give a truthful account in relation to the AM matter, aspects of Wilson's subsequent evidence on contentious matters cannot be accepted. For example, Wilson gave evidence that the Merriwa incident was '... the

first time I had ever confronted an issue like this. I didn't know that people behaved like this and treated children that way'. The Commission rejects that evidence.

- C5.14 On a number of occasions Wilson's evidence was in the nature of 'motherhood statements' about the importance of child protection. He told the Commission, '... anything that involved a child and their possible abuse would seem to me to be an issue of the highest order that needed to be dealt with'. To similar effect was his evidence that his 'awareness was always very strong about the need to protect children and deal with any issues that involved their abuse'. In the light of its findings in relation to AM, the Commission accords such statements limited, if any, weight.
- C5.15 Aspects of Wilson's evidence unconnected with AM were also unsatisfactory. In connection with his investigations at Merriwa in 1987, the Commission observed that he sought to minimise the true extent of his involvement. He gave evidence that he had forgotten a number of communications relating to McAlinden – specifically, two letters and four telephone calls – with John Hatton MP, who in the 1980s was a high profile anti-corruption crusader. On being shown Hatton's initial letter of complaint dated 11 May 1987, Wilson said, 'it flames my thoughts and memory of it ...' With respect to his letter to Hatton of 20 July 1987, Wilson said, '... my memory has been reactivated ... I do remember these things now. I'd forgotten completely about it'. By letter dated 28 August 1987 Wilson gave Hatton an assurance that the problem relating to child sexual abuse had been 'resolved'. Although there are times when a witness might legitimately have their memory refreshed by access to documents, this was not such a circumstance: indeed, Wilson agreed it seemed extraordinary that the correspondence had escaped his mind. For the reasons noted in paragraph C4.243 of this confidential volume, the Commission does not accept that Wilson could have forgotten about the communications with Hatton.
- C5.16 Wilson also gave evidence that was untrue in his affidavit, when he stated that after he and the bishop had confronted McAlinden in relation to the allegations arising at Merriwa parish he (Wilson) 'had nothing more to do with ... McAlinden'. He maintained that position in his oral evidence: 'The issues about Fr McAlinden were, after that period of time [following the confrontation], a closed book to me'. Wilson was, however, shown documentation confirming his central role in researching psychiatric treatment and assessment options for McAlinden; he ultimately arranged for a psychiatrist, Dr Johns, to review McAlinden. Wilson denied reading the report Dr Johns produced. He did, however, agree that, in view of his detailed involvement in events leading up to the provision of the report, it would have been 'most unlikely' that he would not have read it. The objective evidence also disclosed that Wilson had contact with McAlinden after the confrontation; it indicates numerous personal appointments and telephone conversations in August, October and November 1987 and further telephone contact in February 1988.
- C5.17 Wilson resisted an acceptance that particular handwriting on documentation in evidence before the Commission was in fact his. This was the case with BA's statement of 6 August 1987 (signed and dated by Wilson, with the body of the document ostensibly in his handwriting) and some handwritten notes concerning inquiries Wilson was making from at least early June 1987 (in relation to psychiatric treatment and assessment options for McAlinden). On 17 July 2013 Wilson conceded that the contested parts of the notes were in his handwriting, having initially denied this in evidence on 20, 21 and 27 June 2013. Wilson said the change in position came about because of his 'own reflection and thinking about it' and not because he was aware that a handwriting expert retained by the Commission had formed the view that some of the contested handwriting was Wilson's. His denials about the handwriting led the Commission to form the view that Wilson was unwilling to volunteer information about the true nature of his involvement in matters relating to the Merriwa incident until faced with incontrovertible evidence.

- C5.18 Wilson gave other evidence that the Commission considered to be self-serving and implausible. He asserted that there was a discussion with Bishop Malone at a Professional Standards Committee meeting in 1996 when Wilson said to Malone, 'What have you done about the Father McAlinden matter because that's very important and needs to be dealt with?' Wilson told the Commission he was unable to recall Malone's answer. The Commission found Wilson's evidence of having asked such a question implausible. The assertion that he could not recall Malone's response – notwithstanding the importance of the McAlinden matter, on Wilson's own account – supports this view.
- C5.19 The Commission formed the view that Wilson's evidence on contentious matters should be regarded with caution – except where it involved an admission against interest or was otherwise corroborated by reliable evidence or contemporaneous documents.



## C6 Cooperation and assistance provided to Strike Force Lantle

- C6.1 Some evidence of cooperation and assistance provided to the Strike Force Lantle investigation by various church officials was before the Commission.
- C6.2 Despite there being no power to compel a person to attend for a police interview, Bishop Michael Malone, Fathers William Burston and Brian Lucas, Monsignor Allan Hart, Sister Paula Redgrove, and Mr John Davoren of the Professional Standards Office each agreed to attend interviews conducted by the Strike Force Lantle investigators. Voluntary attendance for an interview was a form of cooperation with the investigation.
- C6.3 In addition, Malone gave evidence about his ‘open access’ policy relating to documents in the Diocesan holdings during his term of office, such that police could have access to any material they requested.<sup>1</sup> The existence of Malone’s policy in this regard was supported by evidence from his personal assistant, Ms Elizabeth Doyle.<sup>2</sup> Similarly, Bishop William Wright told the Commission he had sought to provide assistance to Strike Force Lantle.<sup>3</sup> Doyle also confirmed that when Bishop Wright assumed office he instructed her to assist the police with whatever they asked for.<sup>4</sup>
- C6.4 Mr Sean Tynan, Manager of Zimmerman Services, also provided assistance to the investigators by facilitating the attendance of Diocesan personnel for interviews and responding to requests for information, including preparing a briefing note describing the structure of the Catholic Church.<sup>5</sup> Both Mr Tynan and Mr David Muxlow also sought to assist the Lantle investigation by providing to the investigators a document they thought might be important – namely, a letter from Father Philip Wilson to Mr John Hatton dated 27 August 1987.<sup>6</sup>

### Conclusion

- C6.5 The Commission considers that the aforementioned church officials cooperated with or provided assistance to the Strike Force Lantle investigation as noted above.

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<sup>1</sup> TOR 2, T66.10–16 (Malone in camera, 22 November 2013). As noted in para C3.29, the Commission accepts this evidence of Malone.

<sup>2</sup> Statement of Doyle, dated 2 July 2013, ex 167, para 34.

<sup>3</sup> TOR 2, T16.12–20 (Wright in camera, 12 August 2013).

<sup>4</sup> TOR 2, T1964.17.24 (Doyle); statement of Doyle, dated 2 July 2013, ex 167, para 35. Consistent with this approach is some evidence before the Commission of assistance provided to Strike Force Lantle at the direction of Bishop Wright in terms of dealing with requests for specific information. By way of example, on 18 January 2012, Doyle sent to Detective Sergeant Jeffrey Little a bundle of documents relating to the purchase of a flight for McAlinden to the United Kingdom in 1993. Those documents refer to apparently detailed searches having been carried out with a view to locating the relevant information to assist the investigation: email from Doyle to Little attaching documents associated with the search for documents relevant to alleged purchase of airline ticket for McAlinden in 1993 following request from Little, dated 18 January 2012, ex 169; see in particular, the email from Doyle to Sean Scanlon dated 15 December 2011, p 414. In addition, Wright also facilitated Strike Force Lantle investigators’ access to the Bishop’s House in Maitland in or around April 2012.

<sup>5</sup> Statutory declaration of Tynan, declared 27 July 2013, conf ex KKK, para 60.

<sup>6</sup> TOR 2, T67.4–14 (Muxlow in camera); T3.13–4.24 (Tynan in camera, 13 August 2013).





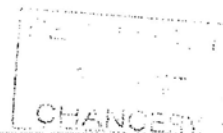
## **Part F Appendixes**



## Appendix CA Letter from AM to Malone, 29 July 2010

26.8.10

29<sup>th</sup> July, 2010



Most Rev. Michael Malone  
Bishop of Maitland – Newcastle  
P O Box 780  
Newcastle, NSW 2300

Dear Bishop Michael,

My name is **AM**, formerly of East Maitland but now residing at Redacted. I am writing to you after long deliberation to bring to your attention the case of sexual abuse that was inflicted on me and the subsequent cover up that started 40 years ago.

I was sexually abused on many occasions back in 1970 by Fr James Fletcher who was a priest at our parish at the time. I was an altar boy back then and the majority of the offences took place after early morning mass or after special ceremonies that were held in the church. The room immediately behind the altar there at St Joseph's was where the altar boys got changed and was the place that most assaults took place when Fletcher had me stay back to do things.

This behaviour went on for months and I was physically and verbally threatened not to say a word as my family and I would be disgraced as they would not believe me. It got so bad that I began avoiding my rostered morning altar duty by staying the 30-40 minutes in the local newsagency reading comics whilst mass was on then going home. I was scared, frightened and lonely but did not know what to do.

Over the years I have tried to live with these terrible events pushed to the back of my mind. I have come close on many occasions to step forward and tell my story but I lacked the courage but through prayer and the faith and courage shown by Our **AM** Mother Mary, I now step forward. I did not want to shame my parents, Father of (dec) and Mother of **AM** devout Catholics and highly respected in the community. I also have 2 loving aunts who are Sisters in the order of St Joseph's at Lochinvar and I did not know how they would react or what effect it would have on them.

My long silence has come to an end and you might well ask, why now? Your worship, I am not coming forward to get on the back of any so called 'bandwagon' so to speak as revelations of other cases come to light. I am doing this to help lift the burden I have carried for 40 years and it was not getting any lighter. I broke the news to my family last year which was the first step in the process. The abuse was bad enough to live with but it was the hint of a cover up or lack of action some years later that really hurts. In 1976 I told Fr Phillip Wilson, who had come to our parish as a young priest under Fr John Newton who was Parish Priest at the time, of what had occurred with Fr Fletcher back in 1970. Fr Wilson was someone I had grown to like and trust through his involvement with the youth group in the parish. He said at the time he couldn't believe Fletcher would do such things but would pass on the information and get it looked into. To this day I do not know if anything was done at the time, who he

spoke to (if anyone) or what. Both Fr Newton and Bishop Leo Clarke have passed on but the guilt I have to carry is that if something was done at the time then most of the other crimes committed by Fletcher could have been prevented in the years to follow. This has been a difficult thing to live with over the years as more and more cases were revealed.

Bishop Michael, it has been a long time and the whole sad saga has had an enormous affect on my life. I find it difficult to become close to people and put my trust in them. I push people away. This has already cost me my marriage of 15 years and my relationships with my parents, family and friends have been extremely uneasy at times over the years as I tried to cope with issues on my own. I don't want to do that any more.

My health has continued to pay the price of my years of torment and stress. Over the past 10 years I have battled with depression, alcohol and suicidal tendencies to 'numb' the hurt. My body is straining to handle the pressure I feel under and I know I will be better off after off loading this burden that I have been carrying.

Your worship, I sit here with tears rolling down my cheeks as this has been the most difficult thing to do. I do not blame the Church as a whole for what took place but I do lay blame on the systems and culture that the Church allowed to be in place at the time that led to such crimes being committed and then being covered up. For us victims of sexual abuse our lives will not be the same again, we have been mentally and in some cases physically scarred for life, that is the sad part. Getting on with our lives is the difficult part.

I admire your efforts Bishop Michael in trying to right the wrongs and bring about justice and I sincerely hope your persistence will bring about positive results for all victims of sexual abuse by the clergy. I would like the opportunity to discuss with you personally the information I have brought forward in this letter if you could phone to arrange an appointment.

Yours sincerely,

**AM**

Ph: Redacted or Redacted

left message on 13.8.10 at 10.05 A.M. (his mobile)

# Appendix CB Letter from Malone to AM, 2 September 2010



## DIOCESE OF MAITLAND-NEWCASTLE

### CHANCERY OFFICE

841 HUNTER STREET, NEWCASTLE WEST • P.O. BOX 780 NEWCASTLE NSW 2300 AUSTRALIA

Telephone: (02) 4979 1111 Fax: (02) 4979 1119

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ABN: 91 605 046 457

Thursday, 2<sup>nd</sup> September, 2010

AM

Dear AM

It is with thanks that I acknowledge receipt of your letter of late July 2010 and our personal meeting on 26<sup>th</sup> August, 2010. While I regretted the circumstances surrounding our meeting I am appreciative of your courage in coming forward and your honesty in describing the effects on you of Jim Fletcher's abuse.

I reiterate what I said to you – I accept your sad account of abuse and I believe you.

What happens next is of considerable importance. Now that you have spoken to members of your family and you have written to and spoken with me, it is necessary to process the effects of abuse on you personally and on your life in relationship with others.

You will need some personal support for all this. May I suggest the following:

1. The Child Protection Agency for the Diocese, Zimmerman House (based at Carrington) is able to offer personal support. One of the Staff, Maureen O'Hearn, is designated as a support person for people who have experienced abuse.

Zimmerman House also provides group support. There is a men's group which meets fairly regularly. These are men who have experienced abuse – their meeting is designed to journey with them on their road to recovery.

The contact details for Zimmerman House are ph: 4940 8091; fax: 4940 8087; email: [dcppcu@mn.catholic.org.au](mailto:dcppcu@mn.catholic.org.au)

2. You are entitled to make a formal complaint through the "Towards Healing" process. I enclose a copy of the protocol for your information. The contact details for the NSW Resource Group are ph: 9287 1542; fax: 9287 1569; email: [psoc@cathprofstandards.com](mailto:psoc@cathprofstandards.com)

cont'd.../2

AM

.../2

3. In the course of our conversation I offered you 10 sessions with your Psychologist should you wish to continue with him/her. The Diocese will cover the cost.
4. On consideration, you may wish to pursue damages against the Diocese. You will need to think about this and speak further with either a Solicitor or as part of your formal complaint to "Towards Healing".

All of the above are suggested to you as part of a process of healing. The Diocese and I are prepared to assist, but you need to assume some control over how that process evolves. I cannot and will not tell you what to do – your own wishes need to be respected.

AM I repeat my profound apology to you at Jim Fletcher's abominable behaviour towards you. As a priest he abused the trust that should have existed. Please accept my deep regret.

I remain,

Yours sincerely



Most Reverend Michael Malone  
**Bishop of Maitland-Newcastle**

+MM/ed

cc: Sean Tynan, Manager, Zimmerman House

encl: "Towards Healing" document  
"Towards Healing" brochure  
Zimmerman House information

## Dramatis Personae

AB	Victim of Fletcher from 1982 to 1984 in Maitland
ABG	Sister of AD
AD	Victim of McAlinden in 1986
AH	Victim of Fletcher from 1989 to 1994 in Dungog
AJ	Victim of McAlinden in 1960 or 1961 in Singleton
AK	Victim of McAlinden from 1961 to October 1962
AL	Victim of McAlinden from 1961 to October 1962
AM	Victim of Fletcher in 1971
AT	Victim of McAlinden (twin of AU)
AU	Victim of McAlinden (twin of AT)
BAA	Sister of AB
BA	Mother of AD
BG	Sister of AB
BS	Ex-husband of AJ
Burston, Father William (Bill)	Priest of the Maitland–Newcastle Diocese from 1970; Vicar General from 1996 to 2001
Clancy, Cardinal Edward	Archbishop of Sydney from 1983 to 2001
Clarke, Bishop Leo	Bishop of the Maitland–Newcastle Diocese from 1976 to 1995; died 3 June 2006
Coolahan, Monsignor Frank	Priest of the Maitland–Newcastle Diocese; Director of Catholic Education at Catholic Schools office in 1976; died 27 August 2000
Cotter, Monsignor Patrick	Vicar Capitular of the Maitland–Newcastle Diocese from September 1975; Vicar General of the Maitland–Newcastle Diocese from June 1976; died 28 July 2007
Doyle, Elizabeth	Employee of the Maitland–Newcastle Diocese from 1993; secretary to Bishop Leo Clarke; personal assistant to Bishop Malone and current Bishop Wright
Faber, Detective Sergeant Kristi	Attached to Lake Macquarie Local Area Command; supervisor of Strike Force Georgiana since April 2008
Fletcher, Father James	Priest of the Maitland–Newcastle Diocese; convicted of nine offences of sexual abuse of AH and sentenced to ten years imprisonment on 6 December 2004; died 7 January 2006
Fox, Detective Chief Inspector Peter	Attached to Port Stephen Local Area Command as Crime Manager; on leave from duties since June 2012
Freney, Detective Senior Constable Jason	Attached to Newcastle City Local Area Command since June 2010; assigned to Strike Force Lantle from November 2010 to October 2011
Gogarty, Peter	Victim of Fletcher from 1974 to 1978 in Maitland

Harrigan, Father Desmond	Priest of the Maitland–Newcastle Diocese since 1968; parish priest at Lochinvar from January 1995 to August 2002
Hart, Monsignor Allan	Priest of the Maitland–Newcastle Diocese since 1966; Vicar General from 1993 to 1995
Hatton MP, John	Independent member of the New South Wales Legislative Assembly and South Coast from 1973 to 1995
Hickey, Archbishop Barry	Archbishop of Perth from 1991 to 2012
Hughes, Father Harry	East Maitland assistant priest of Maitland–Newcastle Diocese in 1975
Johns, Dr Derek	Psychiatrist who assessed Denis McAlinden in 1987
Keevers, Helen	Manager of the Child Protection and Professional Conduct Unit of the Maitland–Newcastle Diocese (Zimmerman Services) between 1999 and June 2009
Little, Detective Sergeant Jeffrey	Attached to Newcastle City Local Area Command since 2010; appointed lead investigator of Strike Force Lantle on 30 December 2010
Lucas, Father Brian	Member of the Special Issues Committee from 1989; Secretary to Archdiocese of Sydney in 1993; General Secretary of the Australian Catholic Bishops Conference
McAlinden, Father Denis	Priest of the Maitland–Newcastle diocese with a history of child sexual abuse that spanned five decades; died 30 November 2005
Mackie, Father Gerard	Priest of the Maitland–Newcastle Diocese from 1979 to date
Malone, Bishop Michael	Bishop of the Maitland–Newcastle Diocese from 1995 to June 2011; Coadjutor Bishop to Bishop Clarke from November 1994 to 1995
Muxlow, David	Employee of Zimmerman Services since October 2010, senior investigator of complaints; former police officer with the NSW Police Force
Newton, Father John	Parish priest in Maitland–Newcastle Diocese in 1975; died 6 July 1979
O’Hearn, Maureen	Coordinator of Healing and Support, Zimmerman Services, Diocese of Maitland–Newcastle since December 2007
Redgrove, Sister Paula	Retired member of the Order known as the Institute of the Sisters of Mercy of Australia
Ryan, Father Vincent	Priest of the Maitland–Newcastle Diocese convicted of multiple child sexual assault offences in 1997
Stanwell, Michael	Principal of St Joseph’s Primary School in Merriwa from 1986 to 1989
Steel, Former Detective Sergeant Kirren	Formerly attached to Newcastle City Local Area Command, officer in charge of Strike Force Lantle from October to December 2010
Toohy, Bishop John	Bishop of the Maitland–Newcastle Diocese (formerly known as the Diocese of East Maitland) from 1956 to 1975; Coadjutor Bishop to Bishop Gleeson from 1948 to 1956; died 24 September 1975
Tynan, Sean	Manager of Maitland–Newcastle Diocese child protection and healing services unit, Zimmerman Services since 2009
Walsh, Father Glen	Priest of the Maitland–Newcastle Diocese from 1996



Wilson, Archbishop Philip	Archbishop of Adelaide since 2001; priest in Maitland–Newcastle Diocese from 1975 to 1996; Bishop of Wollongong from 1996 to 2001; Vicar General in Maitland–Newcastle Diocese from 1987 to 1990
Wollschlager, Lisa	Employee (investigator) of Zimmerman Services from November 2009; investigator of complaints
Wright, Bishop William	Bishop of the Maitland–Newcastle Diocese from June 2011



# 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