



**Crown
Solicitor's
Office**

Your Ref:

My Ref: 201203450

T20 Emma Sullivan

Tel: (02) 9224-5029

Fax: (02) 8224-5355

Email: crownsol@agd.nsw.gov.au

19 June 2013

Dr Rodger Austin

By email

Dear Dr Austin

Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle ("Inquiry")

I refer to your recent communications and conferences with those assisting the Commissioner in relation to the above Inquiry.

As you know, Ms Margaret Cunneen SC has been appointed as Commissioner to inquire into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle.

The Commissioner has been appointed by Letters Patent issued under the *Special Commissions of Inquiry Act 1983* (NSW).

I would be pleased if, for the purposes of the Inquiry, you would prepare an expert report regarding the matters described below. The opinions stated in your report should be based on your specialist knowledge, training and expertise. In your report, please address the following matters:

Relationships between a Bishop and Priest of a Diocese

1. The relationship under Canon law between a Bishop and a Priest of a Diocese, including the extent to which the Bishop holds a position of authority in relation to the priest;

Interface between Canon Law and civil law

2. The interface between Canon law and civil law and, in particular (as relevant to the context of reporting of allegations of child sexual abuse committed by a priest), whether or not Canon law may override or displace any applicable civil law obligations;
3. (a) In concise terms, with respect to allegations of child sexual abuse committed by a priest the Canon law requirements for a Bishop to undertake an investigation of such allegations and the applicable procedures. Please summarise the position

- as at (i) 1956; (ii) 1976; (iii) 1983 to 1987; (iv) 1993 to 1995; and (v) the present time;
- (b) What are the Canon law requirements for documenting investigative steps (whether by the Bishop or person appointed by the Bishop to undertake an investigation) and for retaining any such documents?;
4. Whether Canon law imposes any (a) obligations or (b) restrictions upon a Bishop or priest in terms of reporting to Police of allegations of child sexual abuse committed by a priest and, if so, the nature of such obligations or restrictions (including any change in the position from 1950 onwards as per above);
5. In summary terms, a description of the evolution of any Church protocols or procedures (whether or not mandated by Canon law) relating to the reporting to Police of allegations of child sexual abuse. To the extent applicable, please include reference to any relevant directives or guidelines provided by the Congregation of the Doctrine of the Faith or the Vatican;

The "secret archive"

6. In concise terms, a description of the Canon law requirements for the establishment and maintenance of a "secret archive"(cf Can 489), including:
- (a) what is the nature of a secret archive?;
- (b) what type of documents should be stored in the secret archive, and why?;
- (c) should documents relating to allegations of child sexual abuse be stored in a secret archive?;
- (d) who has responsibility for and control of such secret archive and documents?;
- (e) which persons are permitted access to documents in such secret archive?;
- (f) what are the requirements for (i) retention, and (ii) destruction of documents held in the secret archive?
7. Can 489, sec 2 states that *"Each year documents of criminal cases concerning moral matters are to be destroyed whenever the guilty parties have died, or ten years have elapsed since a condemnatory sentence concluded the affair. A short summary of the facts is to be kept, together with the text of the definitive judgment."* In this respect:
- (a) Is a Bishop bound or expected to follow Can 489 sec 2 and destroy documents as contemplated by that canon? What consequences follow, under Canon law, if he does not do so?
- (b) Does Can 489, sec 2 have the effect that documents are required to be destroyed under Canon law 10 years after the perpetrator has died and which thus may not later be available to Police who later may be investigating allegations of concealment (by Church officials) of offences committed by the perpetrator?
- (c) How does the apparently mandatory language of Can 489, sec 2 co-exist with any civil law obligations that may exist regarding the retention of documents?

Laicisation and impediments to exercise of Ministry

8. What is meant by the laicisation of a priest (under Canon law) and whether or not it is the same as dismissal of a priest?;
9. What steps were required under Canon law to:
 - (a) remove a priest's faculties as at 1993?;
 - (b) Laicise a priest as at 1995?;
 - (c) If the process involved in either (a) or (b) above has since changed, please summarise the change and the basis thereof.
10. (a) To what extent did the letter dated 19 October 1995 from Bishop Leo Clarke to Fr. Denis McAlinden (copy attached) correctly set out the applicable Canon law process as at that date?
 - (b) Did the reference (in the letter dated 19 October 1995) to "*your good name will be protected...*" reflect an applicable Canon law requirement?

Expert Witness Code of Conduct

The *Uniform Civil Procedure Rules 2005* require all experts engaged by parties to agree to be bound by a Code of Conduct for Expert Witnesses. The Special Commission, rather than a party, is engaging you. However, the requirements of the Code should be regarded as applicable *mutatis mutandis*. I **enclose** a copy of this Code and ask that you read it carefully. In your report, please acknowledge that you have read the Code and that you agree to be bound by it.

I suggest you include the following form of words in the body of your report or any other document you prepare:

"I, [insert name] acknowledge for the purpose of Rule 31.23 of the *Uniform Civil Procedure Rules 2005* that I have read the expert witness code of conduct in Schedule 7 to the Rules and agree to be bound by it."

Curriculum vitae

Please annex a copy of your curriculum vitae to your report.

Timeframe for report

Public hearings regarding the Inquiry's second term of reference are being held in Newcastle from 1 July 2013 onwards. Provision of your report as to the matters noted above would be appreciated as soon as practicable and, in any event, no later than **Wednesday, 26 June 2013**. It is possible you may be called as an expert witness to opine on certain of the matters set out in your report.

Please address your report for the attention of the Commissioner, Ms Margaret Cunneen SC.

Please do not hesitate to contact Ms Sullivan of my Office on (02) 9224 5029 should you wish to discuss any aspect of the above.

Yours faithfully

Signed

Emma Sullivan
Special Counsel
for Crown Solicitor

Encl.