

**Ian Lloyd QC**

**Trust Chambers  
10/287 Elizabeth street  
Sydney NSW 2000**

**EXPERT OPINION REPORT OF IAN LLOYD QC**

***Introduction***

1. I have been asked by the NSW Crown Solicitor to provide an expert opinion report on the thoroughness or otherwise of a NSW police investigation (codenamed Strike Force Lantle) into historic allegations of sexual assaults upon children by present and former members of the Roman Catholic clergy attached to the Maitland –Newcastle Diocese of the Roman Catholic Church (RCC) and allegations of the concealing of any such offences from the NSW Police by present and former RCC clergy and lay staff of the RCC during the period 1985-1999. Strike Force Lantle (SFL) conducted its investigations over a lengthy period from late 2010 to late 2012. I understand that this expert opinion report will be provided to the Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Hunter (Inquiry), and may be made public in due course.

2. In order to provide my expert opinion I have been provided by the NSW Crown Solicitor's Office with what I understand to be the full Brief of Evidence (BOE) prepared by members of SFL and a variety of other documents. Such BOE comprises hard copy documents (including voluminous witness statements, transcripts of ERISP interviews, written and email correspondence, investigators reports and notes, COPS reports and documents seized and/or obtained from the RCC) approaching 3000 pages in length contained in multiple box files, together with a comprehensive 255 page Covering Report to the BOE prepared by Detective Sergeant Jeff Little of the Newcastle City LAC. In the body of his Covering Report (entitled 'Police Submission') Det Sgt Little states his own opinion on the sufficiency of evidence gathered by SFL to support possible charges of the common law offence of misprision of felony and/or the statutory indictable offence of concealing a serious indictable offence (under s316(1) of the NSW Crimes Act 1900) against a number of present or former RCC clergy and/or lay staff of the RCC.

3. Det Sgt Little's covering report is directed through his superiors (including Assistant Commissioner York) to the NSW Director of Public Prosecutions (DPP). I understand that the DPP is yet to advise on the matters raised by Det Sgt Little in his Covering Report, pending the findings of the current Inquiry. In forming my opinion on the thoroughness of the investigation conducted by SFL, I make no comment and provide no opinion on the merits or otherwise of

the views expressed by Det Sgt Little on the sufficiency of evidence to support any criminal charges against any person/s mentioned in the Covering Report. Obviously, these are matters for the DPP to address at a more appropriate time in the future.

### ***Qualifications***

4. I graduated from the University of Sydney with an Honours degree in Law in 1977. I was admitted to the NSW Bar in June 1977. I was admitted to the English Bar (Grays Inn) in 1985, the Hong Kong Bar in 1985 and the New York Bar in 1986. I took silk in NSW in September 1989.

5. From 1977 until July 1980 I practised in the area of crime at the NSW Bar. From August 1980 until mid September 1988 I was employed as a Crown Counsel with the Hong Kong Government. Whilst employed as a prosecutor in Hong Kong I prosecuted many hundreds of criminal trials covering a broad spectrum of criminal offences including murders, drug importations and supplies, adult and child sexual assaults, ICAC corruption charges and serious fraud charges. I directly supervised a number of other local and expatriate prosecutors. On an almost daily basis I reviewed briefs of evidence prepared by police in order to give advice to investigating police as to the sufficiency of evidence to support the laying of criminal charges. In order to give such advice I reviewed the police covering reports and briefs of evidence with an eye to the thoroughness of those police investigations. If I was of the opinion that police investigations were in any way deficient I would raise requisitions for the investigating police to address.

6. From mid September 1988 until 1995, I was employed as a Crown Prosecutor working within the Office of the NSW DPP. During this time I was promoted to the position of the Senior Crown Prosecutor for NSW, having the responsibility of directly allocating and supervising the work of some 65 Crown Prosecutors and personally having the carriage of some of NSW's most heinous murder trials. I frequently appeared for the Crown in appellate proceedings in the NSW Court of Criminal Appeal. I was also seconded for a period of time as General Counsel for the NSW ICAC. As Senior Crown Prosecutor, on a daily basis I had cause to review the thoroughness of police investigations and briefs of evidence concerning allegations of major criminality. In 1995 I resigned from the position of Senior Crown Prosecutor and returned to private practice at both the NSW and Hong Kong Bars. Since then, apart from appearing for persons accused of committing serious criminal offences, I have continued to prosecute on fiat major criminal cases for both the Commonwealth and NSW Governments, as well as the Hong Kong Government. I have also held academic positions at the University of Technology, the Chinese University of Hong Kong, the University of Notre Dame and Newcastle University. I am a former Justice of the Fiji Court of Appeal.

## **Code of Conduct for Expert Witnesses**

7. I acknowledge for the purposes 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.

### **Scope of the investigation conducted by Strike Force Lantle**

8. The subject matter of the investigation conducted by SFL is set out in two undated Terms of Reference (TOR) documents. In short, the TOR of SFL were to:

*"Investigate allegations of concealing offences by clergy formerly and currently attached to the Maitland-Newcastle Diocese of the Catholic Church during the period 1985-1999, stemming from complaints made by [four named alleged victims of sexual assaults]"*.

9. Over different periods of time a number of police officers were assigned to the investigation, these officers having to report to more senior police. Det Sgt Jeff Little became the OIC of SFL. Det Insp Graeme Parker of the Newcastle City LAC assumed command of SFL and the role of reviewer. Det Insp Paul Jacob of the NSW Police State Crime Command, Sex Crimes Squad, provided expert consultation to SFL as to the investigation of sexual assaults. From the time of its commencement in late 2010, members of SFL had available to them various earlier prepared reports authored by senior police officers concerning historical allegations of sexual assaults upon young persons by present and former clergy of the Maitland-Newcastle Diocese of the RCC. The original allegations of sexual assaults upon young persons by clergy of the RCC centered upon two persons, Father James Fletcher and Father Dennis McAlinden (both now deceased). The allegations of concealing the commission of the sexual assaults that had allegedly taken place centered upon a now deceased former RCC Bishop Leo Clarke and a current serving senior member of the RCC, although other senior clergy formerly and currently attached to the Maitland-Newcastle Diocese of the RCC were also investigated.

10. By mid 2011 SFL had encountered allegations of sexual assault at the hands of current or former RCC clergy upon persons other than the four complainants the subject of SFL's TOR. Likewise, additional allegations had been made concerning the overall management by the RCC of allegations of sexual assaults perpetrated by former and present RCC clergy. In order to avoid 'mission creep' and in an effort to complete the investigation in a timely manner it was decided that SFL would focus upon the original allegations the subject of the TOR. Any additional victims who came forward would have their allegations managed under existing police channels of investigation. The manner in which the RCC managed allegations of sexual assaults by RCC clergy was not to form part of the investigation. It was determined that the police investigation would focus on whether or not there was evidence to support criminal charges, and not upon any perceived deficiencies in the way

the RCC managed issues of allegations of sexual assaults upon young persons at the hands of RCC clergy.

### ***Methodology of the investigation***

11. At an early stage of the investigation Det Sgt Little prepared a comprehensive Investigation Plan (IP) for the conduct of the investigation by SFL. The IP appropriately identified the details of the allegations to be investigated (the mission), existing COPS intelligence, resources needed by SFL, documents and exhibits to be identified and seized, criminal offences to be explored, persons of interest, known victims, sources of information, previous police investigations into the subject matter, execution strategies and details of many other facets of the investigation. In executing the IP, in the early stages of the investigation, members of SFL obtained and reviewed earlier prepared internal police reports, COPS intelligence reports, witness statements and exhibits the subject of existing police files and holdings concerning the subject matter the subject of the TOR. The material obtained and reviewed included a variety of reports and files compiled by Det Insp Fox of the NSW Police. At different times, members of SFL sought clarification from Det Insp Fox on a variety of matters arising from his earlier reports.

12. Some of the complainants the subject of the TOR had signed witness statements and/or affidavits prior to the investigation of SFL commencing. It was decided that all complainants would be re-interviewed by members of SFL and that this would be by way of recorded electronic interviews in order for there to be an accurate account of the interview process. Identified suspects and/or persons of interest would also be interviewed electronically and, where necessary, by way of ERISP interview.

13. Efforts were made to obtain all relevant documentation held by the RCC, including by the use of search warrant. Documentation relating to the subject matter of the TOR was also obtained from the Ombudsman and the Wood Royal Commission archives. Material was obtained from a number of media outlets including the Newcastle Herald and the ABC. Any persons able to corroborate or support the complainants' allegations were interviewed in person or, on occasion, by telephone interview.

### ***Thoroughness of the investigation conducted by SFL***

14. I have reviewed the full BOE and accompanying 255 page Covering Report prepared by Det Sgt Little in late 2012 for submission to the DPP for advice as to the sufficiency of evidence for the laying of criminal charges against identified persons. In my opinion, the BOE prepared by Det Sgt Little is of an excellent standard. The investigation conducted by SFL was both thorough and rigorous.

15. In my opinion, the investigative techniques deployed by the members of SFL in gathering evidence and information were appropriate to the task at hand. Given the sensitivity of the subject matter of the investigation, and the

obvious trauma that had been inflicted on the identified victims of child sexual assaults many years ago, it was entirely sensible to keep the number of investigators to a minimum, and keep details of the inquiries being conducted in strict confidence given previous adverse media publicity.

16. The decision was made to interview important witnesses (including victims), persons of interest and suspects by way of electronically recorded Q & A interviews. A perusal of just some of the transcripts of the recorded interviews shows that the interviews were both thorough and fair to the interviewee. Given the historical nature of the subject matter, that decision was entirely appropriate, it being the fairest and best way of obtaining an accurate account of a person's evidence and recollections of long ago events.

17. In my opinion appropriate measures were undertaken to safeguard the integrity of the investigation and the confidentiality of the evidence and information gathered during the course of the investigation. In my opinion, considering the TOR of SFL, all appropriate leads and lines of inquiry were pursued by members of the task force. Likewise, every effort was made to obtain all relevant historical and contemporary documents and records from the RCC. It is worth noting that Det Sgt Little managed to interview all but one of the still living and identified persons of interest and/or suspects. The one exception, a still serving senior member of the RCC clergy, exercised his legal right to refuse to be questioned by police. The comprehensive 255 page Covering Report to the BOE prepared by Det Sgt Little shows him to be a highly competent investigator.

18. I note that the investigation conducted by SFL spanned some 22 months from late 2010 to late 2012. Given the undoubted sensitivity of the matters being investigated and the historical nature of the allegations being investigated, and taking into account the relatively small size of SFL, in my opinion the length of time taken to investigate, prepare the BOE and comprehensive Covering Report was not unreasonable.

Signed

Ian Lloyd QC

7 May 2013



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**COPY**

1 May 2013

Mr Ian Lloyd QC  
Trust Chambers  
10/287 Elizabeth Street  
SYDNEY NSW 2000

**By Courier**

Dear Mr Lloyd QC

**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 discussions and correspondence with Ms Wardle, of my Office, and your conference with Ms Lonergan SC, David Kell and Warwick Hunt of Counsel, Ms Sullivan and Ms Wardle today.

As you may now be aware, 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).

Ms Julia Lonergan SC, Mr David Kell and Mr Warwick Hunt of Counsel and the Crown Solicitor assist the Commissioner.

*Inquiry's terms of reference*

Pursuant to Letters Patent dated 21 November 2012 and 25 January 2013, the Commissioner is to inquire into and report on:

1. the circumstances in which Detective Chief Inspector Peter Fox was asked to cease investigating relevant matters and whether it was appropriate to do so; and
2. 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,

"**relevant matters**" means any matter relating directly or indirectly to alleged child sexual abuse involving Father Denis McAlinden or Father James Fletcher, including the responses to such allegations by officials of the Catholic Church (and whether or not the matter involved, or is alleged to have involved, criminal conduct).

### **Background**

The Lantle investigation was, for relevant purposes, conducted over about a 22 month period from about late December 2010 to about October 2012.

I understand that in April 2010, documents were provided by a journalist to the Lake Macquarie Local Area Command with a view to investigations being undertaken. Internal correspondence indicates that there were discussions after this time, including by the Northern Region Commander, regarding which Local Area Command would have ultimate carriage of the investigation.

On or around September 2010, Strike Force Lantle was established. The officers who were originally allocated the investigation went off on sick leave by December 2010.

From about late December 2010, the Officer in Charge of the investigation was Detective Sergeant Jeff Little of the Newcastle City LAC. Initially, the investigation was undertaken pursuant to the direction of Detective Chief Inspector Wayne Humphrey. From approximately March 2011 onwards, Detective Inspector Graeme Parker held the position of Crime Manager at Newcastle City LAC and oversaw the investigation.

Expert consultation was provided from time to time by Detective Inspector Paul Jacob of the Sex Crimes Squad, State Crime Command.

The (final) Terms of Reference for the Lantle investigation were:

"To investigate allegations of concealing offences by clergy formerly and currently attached to the Maitland-Newcastle Diocese of the Catholic Church during the period 1985-1999, stemming from complaints made by AK, AL, Peter Gogarty, AJ<sup>1</sup>

During the course of the investigations at least 75 electronically recorded interviews were conducted with witnesses and certain persons of interest, and at least 25 signed witness statements were obtained.

On 8 October 2012, the Lantle brief was forwarded by NSWPF to the Director of Public Prosecutions ("the DPP") for the purpose of advising as to the sufficiency of evidence to prosecute certain members of the Catholic Church for offences related to the concealment of child sexual assault offences.

The Lantle brief comprised some 12 volumes of documents, in excess of 2,500 pages. Volume 1 comprised a submission to the DPP dated 13 August 2012 prepared by Detective Sergeant Little. It provides a useful summary of much of the material included in volumes 2 to 11.

### **Documents briefed**

You are briefed with copies of the following documents:

<sup>1</sup> Lantle brief, volume 1, p 22.

1. The Lantle brief of evidence that was provided by NSWPF to the DPP in about October 2012 for the purposes of advising (12 volumes) (previously provided Volume 1 on 30 April 2013);
2. Supplementary documents to the Lantle brief of evidence (3 volumes);
3. Statement of Detective Sergeant Jeff Little dated 7 March 2013;
4. Second statement of Detective Sergeant Jeff Little dated 15 March 2013;
5. Four folders of documents comprising the exhibits A to C and E<sup>2</sup> to the second statement of Detective Sergeant Little, namely:
  - (i) "Investigation Plan" for Strike Force Lantle (document marked exhibit "A" and "Addendum 1");
  - (ii) Investigation "Chronology" (document marked exhibit "B" and "Addendum 2");
  - (iii) "Status Reports" for the period from 30 December 2010 to 21 May 2012 (documents marked exhibit "C" and "Addendum 3"); and
  - (iv) Three volumes of volumes of supplementary Lantle documents - comprising various investigation documents which did not form part of the Lantle brief that was provided to the DPP (documents marked exhibit "E" and "Supplementary Documents").
6. Second statement of Detective Inspector Graeme Parker dated 18 March 2013;
7. Statement of Detective Inspector Paul Jacob dated 9 April 2013; and
8. Statement of Detective Superintendent John Kerlatec dated 8 April 2013.

The statements referred to at (3) to (4) and (6) to (7) above were each prepared for the purposes of the Inquiry.

The statements of Detective Inspector Jacob and Detective Superintendent Kerlatec, each being officers attached to the Sex Crimes Unit, State Crime Command, include statements of opinion regarding the competence and thoroughness of Detective Sergeant Little and the Lantle investigation.<sup>3</sup>

### **Request for opinion**

Please review the above documents for the purpose of providing your opinion on the matters specified below based on your experience, training and expertise as an experienced senior Crown prosecutor over many years, including your experience in evaluating briefs of evidence prepared by Police for the DPP and in assessing the apparent thoroughness or otherwise of Police investigations underpinning such briefs.

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<sup>2</sup> Exhibit D to the second statement of Det Sgt Little is a copy of the Police submission that is otherwise contained in volume 1 of the Lantle brief.

<sup>3</sup> Jacob 9.4.13 at [29]-[33], [47]; Kerlatec 8.4.13 at [18].



Having regard to the matters outlined above, together with the enclosed material, please prepare a report that, based on your specialist knowledge, training and expertise, addresses the matters noted below:

1. Your opinion as to the apparent quality and thoroughness (or lack thereof) of the Lantle brief and investigation as revealed by the documents briefed.
2. Without intending to limit the matters on which your opinion in paragraph 1 is based, your view as to the following matters:
  - (i) whether appropriate investigative techniques were deployed for the purpose of gathering information and evidence for the purposes of the investigation, including electronic recording of interviews (of witnesses including victims) and obtaining of witness statements;
  - (ii) whether appropriate measures were undertaken to safeguard the integrity of the investigation (including by restricting the number of persons involved in interviewing witnesses dealing with sensitive matters, so that such interviews were intended to be undertaken only by Detective Sergeant Little and/or Detective Inspector Parker<sup>4</sup>);
  - (iii) whether, having regard to the parameters of the investigation, appropriate leads were pursued, and efforts made to obtain relevant information;
  - (iv) the competence and thoroughness (or lack thereof) displayed by Detective Sergeant Little in respect of the investigation, including in terms of ERISP methodology and technique; and
  - (v) whether the time frame for completion of the investigation, as undertaken, was reasonable in the circumstances.
3. Any further matter that you regard as relevant to your opinion.

Please note that you are not asked to advise on the prospect of success of any prosecution based on the Lantle brief.

### **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. 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 also annex a copy of your curriculum vitae to your report.

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<sup>4</sup> See eg Parker 7.3.13 at [30].

**Timeframe for report**


Provision of your concise report as to the matters noted above would be appreciated as a matter of urgency, given that public hearings for the Inquiry commence on 6 May 2013. In this respect, I note that you intend to provide your report by Wednesday, 8 May 2013.

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.