

SPECIAL COMMISSION OF INQUIRY
INTO MATTERS RELATING TO THE POLICE INVESTIGATION OF
CERTAIN CHILD SEXUAL ABUSE ALLEGATIONS IN THE CATHOLIC
DIOCESE OF MAITLAND-NEWCASTLE

FORMAL OPENING OF THE INQUIRY

At John Maddison Tower, Court 8B
88 Goulburn Street, Sydney, New South Wales

On Wednesday, 13 February 2013 at 10.00am

Commissioner: Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC
Mr David Kell
Mr Warwick Hunt

1 THE COMMISSIONER: Good morning, ladies and gentlemen.
2 Welcome to the first mention and the formal opening of the
3 Special Commission of Inquiry into matters relating to the
4 Police investigation of certain child sexual abuse
5 allegations in the Catholic Diocese of Maitland-Newcastle.
6

7 The purpose of this morning's hearing is to make some
8 general remarks to indicate the terms of the Inquiry and
9 formally to open the Inquiry.
10

11 Also, it provides an opportunity for any party who may
12 be substantially and directly interested in any subject
13 matter of the Inquiry to indicate an interest in assisting
14 the Inquiry by seeking authorisation to appear at future
15 public hearings of the Inquiry. I will return to this
16 aspect shortly.
17

18 I begin by making some general remarks about the
19 genesis of this Inquiry.
20

21 This Inquiry arose following the broadcast of an
22 ABC television report on the Lateline program on 8 November
23 2012.
24

25 During that broadcast, a senior NSW Police officer,
26 Detective Chief Inspector Peter Fox, made certain
27 statements regarding alleged child sexual abuse by Catholic
28 priests, including Father Denis McAlinden and Father James
29 Fletcher, who are both now deceased, who had been
30 associated with the Maitland-Newcastle Diocese. Detective
31 Chief Inspector Fox referred to what he believed to be the
32 covering up of such conduct by the Catholic Church,
33 including the relocation of impugned priests and, in what
34 he suggested was an attempt to protect the good name of the
35 Church, the apparent hindering of associated Police
36 investigations into such alleged child sexual abuse.
37

38 During that same broadcast, Detective Chief Inspector
39 Fox also made certain statements to the effect that he had
40 been ordered by senior Police to cease investigating such
41 matters and had been directed to hand over his files in
42 relation to those matters.
43

44 Following the Lateline program, pursuant to Letters
45 Patent dated 21 November 2012 and 25 January 2013, issued
46 in the name of the Governor of New South Wales and in
47 accordance with the Special Commissions of Inquiry Act

1 1983, I have been commissioned to inquire into and report
2 on certain matters arising.

3
4 In particular, the Terms of Reference of the Inquiry
5 require me to inquire into and report upon the following
6 matters:

7
8 (1) the circumstances in which Detective Chief
9 Inspector Peter Fox was asked to cease investigating
10 relevant matters and whether it was appropriate to do so.
11 That can be conveniently described as the "First Term of
12 Reference"; and

13 (2) whether, and the extent to which, officials of
14 the Catholic Church facilitated, assisted or cooperated
15 with Police investigations of relevant matters, including
16 whether any investigation has been hindered or obstructed
17 by, amongst other things, the failure to report alleged
18 criminal offences, the discouraging of witnesses to come
19 forward, the alerting of alleged offenders to possible
20 Police actions or the destruction of evidence. That is the
21 "Second Term of Reference".
22

23 The following terms are defined in the Terms of
24 Reference:

25
26 "relevant matters" means any matter relating directly
27 or indirectly to alleged child sexual abuse involving
28 Father Denis McAlinden or Father James Fletcher, including
29 the responses to such allegations by officials of the
30 Catholic Church (and whether or not the matter involved, or
31 is alleged to have involved, criminal conduct).
32

33 The expression "Catholic Church" includes (without
34 limitation) the Church, a diocese of the Church, or an
35 organisation operated under the auspices of the Church or a
36 diocese of the Church.
37

38 The expression "official of the Catholic Church"
39 includes (without limitation):

40 (a) any person who acts as a representative of the
41 Catholic Church;

42 (b) any officer, staff member, lay assistant or
43 volunteer of the Catholic Church; and

44 (c) a member of the clergy or any religious order of
45 the Catholic Church.
46

47 It is convenient, at this point, to note some matters

1 of significance.

2
3 First, children are inherently vulnerable and
4 innocent. The sexual abuse of children is abhorrent. It
5 exploits their vulnerability, irreparably damages their
6 innocence and casts a shadow over their whole lives.
7 It can be very difficult for children to break their
8 silence about sexual abuse and, when they do, the
9 collective responsibility to take action weighs heavily on
10 all.

11
12 Further, the perpetrators of such child sexual abuse,
13 including in a clerical context, will often hold positions
14 of trust in relation to the child. When sexual abuse is
15 committed by those persons in trust and authority, it is
16 even more abhorrent. The commission of such acts of sexual
17 abuse always involves a reprehensible betrayal of the faith
18 and trust placed in that person by the child and the
19 child's family.

20
21 Secondly, the Diocese of Maitland-Newcastle has had a
22 very troubled history regarding issues of child protection
23 and the sexual abuse of children perpetrated by persons
24 associated with the Diocese, including certain priests.

25
26 Two of those priests were Father Denis McAlinden and
27 Father James Fletcher. Both of those persons are named in
28 the Commission's Terms of Reference. Each has been
29 recognised, including by the Diocese, as having committed
30 sexual abuse against children whilst serving in, or
31 incardinated to the Maitland-Newcastle Diocese.

32
33 Father Denis McAlinden is regarded by many as having
34 a history of sexual offending against children for over
35 four decades. Many persons identifying themselves as
36 victims of Father McAlinden have come forward over time.
37 Father McAlinden died in 2005. In June 2010,
38 Father McAlinden was publicly described by the then Bishop
39 of the Maitland-Newcastle Diocese as having been "a
40 predator" who should have been dealt with earlier.

41
42 Father James Fletcher was ultimately convicted and
43 sentenced in New South Wales in 2004 of having committed
44 nine offences relating to the sexual abuse of a minor who
45 had been an altar boy. The sentencing judge described
46 these offences as involving a "gross and inexcusable breach
47 of trust". Over time, a number of other victims of Father

1 Fletcher have come forward.

2
3 Following the conviction of Father Fletcher
4 in December 2004, the then bishop of the Maitland-Newcastle
5 Diocese issued an apology to the victims and the victims'
6 families for the pain and suffering caused by the criminal
7 actions of Father Fletcher. Father Fletcher died in gaol
8 in January 2006.

9
10 A third matter of importance should be noted. There
11 may be a number of persons identifying themselves as
12 victims of Father McAlinden or Father Fletcher, who may
13 have information that is relevant to the Inquiry and who
14 may now desire to come forward. This process has already
15 started to occur. I strongly encourage these people to
16 contact the Inquiry so that their voices may now be heard
17 so that steps can be taken to consider the information that
18 may be available. It has been rightly said that child
19 sexual abuse is no longer a crime in which the conspiracy
20 of silence continues to the grave.

21
22 I note also that the Commission's website, about which
23 I will comment further shortly, includes some contact
24 details for support services for victims of sexual assault
25 and their families.

26
27 Fourthly, this Inquiry will principally look at
28 matters that occurred in the past. In doing so, while
29 there are some important aspects that are regarded as
30 immutable, some care may need to be taken about necessarily
31 judging events of the past solely by today's knowledge and
32 standards.

33
34 Fifthly, this Inquiry is required to consider whether
35 church officials have, among other things, failed to
36 cooperate with or have hindered relevant Police
37 investigations. Such non-cooperation or hindrance, if it
38 occurred, need not have amounted to a criminal offence to
39 be of relevant interest to this Inquiry.

40
41 Sixthly, and flowing on from what I have just said,
42 this Inquiry provides an important opportunity for persons
43 who held relevant positions within the Catholic Church to
44 come forward and provide information to the Inquiry about
45 relevant matters that occurred in the past. Conceivably,
46 this may include information both as to the good and the
47 bad that occurred in the past, including, if it be so, an

1 acknowledgment that things could well have been handled
2 differently and better. I encourage any such persons who
3 may have relevant information also to come forward and
4 provide it to the Inquiry.
5

6 It is necessary also to mention the National Royal
7 Commission into Institutional Responses to Child Sexual
8 Abuse established by Letters Patent issued by the
9 Governor-General on 11 January 2013 under the Commonwealth
10 Royal Commissions Act 1902 and the relationship of that
11 National Royal Commission to the present Inquiry.
12

13 The Terms of Reference of the National Royal
14 Commission are broadly stated and that body is not required
15 to report until the end of 2015. Consistent with its
16 Terms of Reference the Royal Commission can look at, among
17 other things, any private or non-governmental organisation,
18 including a religious organisation such as a diocese, that
19 is or was in the past involved with children and to
20 consider the institutional responses to allegations and
21 incidents of child sexual abuse and related matters.
22

23 The present Inquiry is authorised by the further
24 Letters Patent issued on 25 January 2013 to establish
25 arrangements in relation to the National Royal Commission.
26 This will include arrangements for the referral and sharing
27 of evidence, information and matters coming to the
28 attention of the Inquiry which may fall outside the scope
29 of Terms of Reference which may be of relevance to the
30 National Royal Commission.
31

32 The Inquiry has set up a website which can be accessed
33 via www.lawlink.nsw.gov.au from which the precise Terms of
34 Reference for this Inquiry and other relevant information
35 can be obtained.
36

37 Since the establishment of the Inquiry on 21 November
38 2012, extensive investigative work has been undertaken by
39 this Commission to date, including the compulsory
40 acquisition of documentary evidence and the identification
41 and interviewing of potential witnesses. The Commission
42 has already issued a large number of summonses compelling
43 the production of documents from relevant persons and
44 organisations.
45

46 The Inquiry has commenced reviewing that material.
47 Further summonses for production are likely to be issued.

1 Further, the Commission is empowered to conduct private
2 hearings with relevant persons, including prior to the
3 holding of any public hearings. The Commission will
4 continue to use its powers in this regard as appropriate.
5

6 I turn now to say a few words about the processes
7 expected to be followed in relation to the Inquiry as we
8 proceed. The Inquiry, including its Amended Terms of
9 Reference, has been widely advertised in major state and
10 regional newspapers including during the past fortnight.
11 The Inquiry has invited written submissions from any
12 interested persons in relation to matters arising under its
13 Terms of Reference. The date for the provision of such
14 written submissions has been extended until 4pm on 1 March
15 2013.
16

17 I have already referred to the Terms of Reference
18 governing the present Inquiry. The Terms of Reference deal
19 with two enumerated matters that are substantially, if not
20 wholly, distinct. As I have said, what I have described as
21 the First Term of Reference relates to the circumstances in
22 which Detective Chief Inspector Fox was asked to cease
23 investigating relevant matters and whether it was
24 appropriate to do so.
25

26 The Second Term of Reference relates to whether and
27 the extent to which officials of the Catholic Church
28 facilitated, assisted or cooperated with Police
29 investigations of relevant matters, including whether any
30 investigation may have been hindered or obstructed by such
31 officials.
32

33 The Commission will hold separate public hearings in
34 relation to the First Term of Reference and the Second Term
35 of Reference. Dates have been fixed for the public
36 hearings in May and June of this year.
37

38 Ms Lonergan?

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40 MS LONERGAN: Thank you, Commissioner. I appear with
41 Mr Kell and Mr Hunt to assist you in this Inquiry.
42 Ms Sullivan, Special Counsel of the Crown Solicitor's
43 Office, is the principal solicitor to assist you,
44 Commissioner, and she is a key contact point for persons
45 wishing to approach the Commission. Ms Sullivan's contact
46 details are set out on the Commission's website.
47

1 Commissioner, given the distinct nature of the two
2 Terms of Reference, it may be expected that in most cases a
3 person authorised to appear at a public hearing will be
4 authorised to appear only insofar as the public hearing
5 relates to either the First Term of Reference or the Second
6 Term of Reference.

7
8 The Commission will hold public hearings in Newcastle
9 in respect of the First Term of Reference during the
10 fortnight commencing Monday, 6 May 2013. The Commission
11 will also hold public hearings in Newcastle in respect of
12 the Second Term of Reference during the three-week period
13 commencing Monday 24 June 2013 or such lesser period as may
14 be required.

15
16 The Commission has already issued a practice note
17 dealing with authorisation to appear at public hearings.
18 The Commission will issue a further practice note dealing
19 with the conduct of the anticipated public hearings and
20 related issues and this will be published on the
21 Commission's website by the end of this week. I understand
22 other persons at the Bar table may wish to seek to indicate
23 an interest on behalf of their clients; or alternatively,
24 formally seek leave to appear.

25
26 THE COMMISSIONER: Thank you, Ms Lonergan.

27
28 Mr Cohen?

29
30 MR M COHEN: Thank you, Commissioner. My name is
31 Mark Cohen. I appear in the interests of Detective Chief
32 Inspector Peter Fox and seek from you, Commissioner, leave
33 for Detective Chief Inspector Fox to appear before the
34 Commission to give evidence and in the interests of both
35 Term 1 and Term 2 of the Terms of Reference as published.

36
37 THE COMMISSIONER: Thank you, Mr Cohen. Leave is granted
38 for Detective Chief Inspector Peter Fox to appear at the
39 public hearings of the Inquiry in relation to both the
40 First and Second Terms of Reference.

41
42 MR COHEN: Thank you, Commissioner. Might I indicate that
43 I am instructed by Mr Greg Willis, a solicitor.

44
45 THE COMMISSIONER: I should reaffirm in respect of
46 authorisation to appear that is granted to any person.
47 Such authorisation is subject to the matters set out in

1 Practice Note Number 1 issued by the Commission.

2

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Mr Roser?

4

5 MR W ROSER SC: Thank you, Commissioner. I appear in
6 relation to Reference 1 and I appear with my learned friend
7 Mr Saidi for the NSW Police Service and we seek leave to
8 appear in relation to that Term 1.

9

10 THE COMMISSIONER: Thank you, Mr Roser. Leave is granted
11 for the NSW Police Force to appear at the public hearings
12 of the Inquiry and to be represented by senior and junior
13 counsel and solicitor in relation to the First and Second
14 Terms of Reference.

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16 MR ROSER: Thank you, Commissioner. We are instructed by
17 Henry Davis York.

18

19 THE COMMISSIONER: Thank you, Mr Roser.

20

21

Ms Needham?

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23 MS J NEEDHAM SC: Thank you, Commissioner. I seek leave
24 or authorisation to appear for Archbishop Philip Wilson.
25 He is a person who has been served with a summons both to
26 give evidence and to produce documents, and I appear with
27 my learned friend Mr Doherty of counsel, instructed by
28 Mr Agresta of Iles Selley.

29

30 THE COMMISSIONER: Thank you, Ms Needham. Leave is
31 granted for Archbishop Philip Wilson to appear at the
32 public hearings of the Inquiry and to be represented by
33 senior and junior counsel and/or solicitor in relation to
34 the Second Term of Reference. Thank you, Ms Needham.

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36

Mr Harben?

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38 MR S HARBEN SC: Thank you, Commissioner. I seek leave to
39 appear for Bishop Michael Malone, former Bishop of the
40 Diocese of Maitland and Newcastle. I am instructed by
41 Carroll & O'Dea, and Mr Jones from that firm seeks to
42 appear in relation to Term of Reference 2.

43

44 THE COMMISSIONER: Thank you, Mr Harben. Leave is granted
45 for Bishop Michael Malone to appear at the public hearings
46 of the Inquiry and to be represented by counsel or
47 solicitor in relation to the Second Term of Reference.

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Mr Skinner?

MR P SKINNER: May it please the Commissioner, I seek leave to appear for Father Brian Lucas. With me is Adrian Williams of counsel instructed by Carroll & O'Dea. I seek leave to appear in relation to both Terms of Reference. The relevant matters referred to in Term 1 include responses to allegations by officials of the Catholic Church. I am instructed by Carroll & O'Dea.

THE COMMISSIONER: Thank you, Mr Skinner. Leave is granted for Father Brian Lucas to appear at the public hearings of the Inquiry and to be represented by counsel/solicitor in relation to the First and Second Terms of Reference.

Ms Evans?

MS V EVANS: I seek leave to appear on behalf of Helen Keevers. I will be instructing Peggy Dwyer of counsel, and I believe it is mainly in relation to the Second Term of Reference.

THE COMMISSIONER: Leave is granted for Ms Helen Keevers to appear at the public hearings of the Inquiry and to be represented by counsel or solicitor in relation to the Second Term of Reference.

THE COMMISSIONER: Are there any other appearances?

MR A KOHN: My name is Kohn. I act for the Catholic Diocese of Maitland-Newcastle and we seek leave to appear in relation to both Terms 1 and 2 with counsel yet to be retained.

THE COMMISSIONER: Thank you, Mr Kohn. Leave is granted for the Catholic Diocese of Maitland-Newcastle to appear at the public hearings of the Inquiry and to be represented by counsel or solicitor in relation to the First and Second Terms of Reference. Thank you, Mr Kohn.

Are there any other appearances to be noted?

MS LONERGAN: I note that two parties that appear to be significantly relevant to Term of Reference 2 have also sought leave to appear in relation to Term of Reference 1.

1 Those parties are the Catholic Diocese of
2 Maitland-Newcastle and the second was Father Brian Lucas.
3 Commissioner. At this stage, it is not clearly apparent to
4 those assisting you the basis of that additional leave to
5 appear in relation to that First Term of Reference.
6

7 Commissioner, at this stage, if that leave to both
8 those parties in relation to Term of Reference 1 could be
9 provisional and I will have further discussion with those
10 legal representatives and clarify the particular matters
11 about which they have asserted an interest under Term of
12 Reference 1.
13

14 THE COMMISSIONER: Thank you, Ms Lonergan.
15

16 MR SKINNER: I am content with that, Commissioner.
17

18 THE COMMISSIONER: Mr Kohn?
19

20 MR KOHN: Yes.
21

22 THE COMMISSIONER: That leave for the time being in
23 relation to Terms of Reference 1 for those two parties will
24 be on a provisional basis to be assessed at a later time.
25

26 Is there anything else, Ms Lonergan?
27

28 MS LONERGAN: No, there isn't, Commissioner.
29

30 THE COMMISSIONER: I will adjourn now.
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32 AT 10.30AM THE COMMISSION WAS ADJOURNED ACCORDINGLY
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