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MEMORANDUM OF ADVICE

the primary school

ABUSE ALLEGATIONS AGAINST GERARD BYRNES

This memorandum is to summarize the advice which I gave in conference on 6 February 2009 with Ms Yates and Mr Moore. The essential features of that advice were as follows:

1. The Principal of the primary school Terry Hayes, who was on stress leave, should be formally suspended from duty on full pay pending a determination of his future with the Toowoomba Catholic Education Office.
2. No action should be taken against Cathy Long, the Student Protection Officer at the primary unless further information, adverse to her, comes to hand. **RE**
3. Christopher Fry, Senior Education Officer from Toowoomba Catholic Education Office, should be interviewed by a solicitor from Thynne and Macartney to enable a thorough investigation of his apparent lack of action to report, or see that there was a report, to police in relation to Byrnes activities.
4. Ian Hunter, Senior Education Office from Toowoomba Catholic Education Office, should be interviewed by a solicitor from Thynne and Macartney to enable a thorough investigation of his apparent lack of action to report,, or see that there was a report to police in relation to Byrnes activities.
5. Write to the Queensland Police Service to advise them of the intention to have Thynne and Macartney interview persons in the school community; enquiring when their investigations will be completed and seeking an end to the QPS request that the Catholic Education Office not interview persons in the school.
6. When the impediments to interviewing persons in the school have been removed, complete the interviews of personnel in the school and institute disciplinary

procedures against Terry Hayes. The material to hand suggests on a prima-facie basis that he was in possession of information (among other things, that Byrnes had put his hand up the skirt of a primary school girl) which triggered his obligations to report the matter to the police¹. However, he is entitled to an opportunity to defend or explain his conduct and he should be afforded that opportunity. Absent a defence or thorough explanation, his failure to report to police is extremely serious and prima-facie termination of employment appears the appropriate disciplinary action.

7. I note that Mr Hayes reported the matter to Fry and Hunter, but the material on the brief suggests that he did not report all of the details which are recorded in Cathy Longs notes.
8. So far as Fry and Hunter are concerned, it appears that they were copied in on the correspondence between Hayes and Byrnes and thereby were at the very least acquainted with the following details of Byrnes conduct:
 - Kissing a girl on the cheek;
 - Placing your hand around a girl and through the buttoned part of the sports uniform skirt which made her uncomfortable;
 - Placing your hand on the upper leg of the same girl, that made this girl uncomfortable;
 - Frequently on the verge of using in appropriate and unacceptable language.
9. Although further investigation and interview is required in the case of Fry and Hunter, there is an urgent need to require them to explain why they did not insist that the matter be reported to police.
10. If others within Toowoomba Catholic Education Office had knowledge of the conduct of Byrnes, there will be a need to investigate what that knowledge was, when they became aware of the relevant facts and the explanation, if any for their failure to act.
11. To create the right environment for you to conduct an investigation within the school community, I suggest the appointment of a strong female acting principal from outside the school community.
12. My view that the interviews in the school community ought not take place until the police have revoked their request to you to defer taking statements from staff at the primary until their enquires are complete, stems from my concern that if there be other people in the school community who are criminally liable, it would be quite inappropriate for your investigations to cut across, and potentially impede, police investigations.
13. In respect of matters generally, I was concerned that following investigations by the Department of Education there may be a prosecution of the senior officer in Toowoomba Catholic Education or indeed the Bishop. I cannot of course preempt

¹ The Education (General Provisions) Act 2006

the results of inquiries. However, having regard to the multiple serious criminal charges against Byrnes, affecting several primary school girls, there is likely to be a searching investigation of the apparent inactivity in reporting the matter.

14. In order to ameliorate the position of our client, I suggest that instructions be sought to write to the Minister for Education Training and the Arts offering full cooperation on the part of Toowoomba Catholic Education Office. It would follow that offer should be coordinated by your firm and that it should be sincerely followed up.
15. Kindly advise if I can assist further in this matter.

With compliments

J E MURDOCH SC

Chambers, 17 February 2009