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From: REDACTED
Sent: Monday, 16 February 2004 14:56
To: REDACTED
Cc:
Subject: FILE NOTE - Phone discussion with Raffaello (?) Marcelino (?) Principal, Australian Institute of Music (AIM)

I phoned Mr Marcelino at about 1.55pm in response to a voice mail message he left. His stated concern was that he had received advice from the police, from DoCS and from us indicating the appropriateness of 'suspending' the staff member who self-reported allegations made against him regarding his alleged sexual abuse of a child who is a student of the AIM.

Mr Marcelino's concern was that he and the Director of the AIM were concerned about the possibility of civil proceedings arising from any 'suspension' of the staff member concerned. He also noted that, although he had received oral advice from all three agencies, no-one was willing to put their advice in writing.

I noted that Mr Marcelino was on relatively firm ground because the SOA had reported the allegation, and I contrasted this with a hypothetical situation where he may only have received hearsay or second hand information from someone not directly involved. As the SOA had reported the allegation, Mr Marcellino could justifiably conclude that the allegation itself had actually been made and could therefore take reasonable steps to protect the child, the SOA and AIM based on an assessment of the risks involved.

I emphasised to Mr Marcelino that there were a variety of risks to be considered, giving the example that, even if this matter was found to be baseless, parents of other children might well express concern that their children were taught in private and unsupervised locations by the SOA when the school knew about allegations against him and those allegations were yet uninvestigated. Mr Marcelino conceded the validity of my hypothetical example.

I pointed out to Mr Marcelino that while there were specific statutory powers to 'suspend' public sector employees, I believed that there was no such power in respect of private sector employees. Nevertheless, I expressed the view that AIM would have no liability if it took protective action that could not be seen to be punitive in nature. Interfering with an employee's employment which had the effect of depriving the employee of his normal income would certainly appear punitive. Providing the employee's normal income would go a long way to removing the appearance of punitive intent.

I also noted that there were alternative bases to managing the risks by keeping the employee away from child students. I suggested that he consider directing the SOA to take leave, to work from home on special projects or even to be regarded as being on sick leave. I said that the actual mechanism would have to be selected by him, as the employer had the best knowledge of what would be practical and effective in the circumstances of the particular organisation.

Mr Marcelino said that he had considered suggestions such as putting someone in the SOA's teaching room, but had been advised that the 'supervisor' would have to know the purpose of the placement and that this would breach the confidentiality that he was trying to retain.

Mr Marcelino then noted that AIM has a tertiary stream and he asked whether there would be risks involved in the SOA only teaching adult (over 18) students. I explained that such students would be out of our jurisdiction and would not be subject to the consent issues facing children under 16 in general and also would avoid the raised consent requirements applying in respect of children 'under special authority'. I expressed the view that limiting the SOA's teaching contacts to over 18 year olds might be a viable solution.

Mr Marcelino said that the SOA had no 'scheduled' sessions with children until the weekend. When I asked about the possibility of 'unscheduled' sessions, Mr Marcelino said that the SOA, like other head teachers, had the authority to arrange for unscheduled sessions. When I suggested that Mr Marcelino would have to direct the SOA not to arrange any such session he said that this would be the equivalent of taking the SOA away from lessons, I answered that it was only preventing him from making certain arrangements. At that point Mr Marcelino said that he thought it would be better if AIM's lawyers spoke to me. I said that I would be happy to do so and we closed the call at that point.

One basic issue that I did not discuss with Mr Marcelino was the voluntariness of any limitation on the SOA. If the need for any protective measure is properly explained to the SOA and he then agrees to it, I cannot see how any possible liability could arise, particularly if no financial loss to the SOA is entailed. I will be sure to explore this issue with AIM's when/if they call.

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