



## Director of Public Prosecutions

### Memorandum

To: Ian Press

From: Vanessa Burrows

Date: 14 October 2011

Subject: Answer Charge 8 November 2011

File:

I write to seek your instructions as to how to proceed in this matter, which is listed to answer the charge at the Christies Beach Magistrates Court on 8 November 2011.

In light of your instructions in your memo dated 15 July 2011, I asked police to attend to a number of matters. A number of declarations have been received in response to that request and I have flagged those new declarations on the brief. However, a number of important enquiries remain outstanding. I have asked that all materials be submitted no later than 25 October 2011 (see attached).

The most important matters that remain unaddressed are the investigations into the person referred to as **REDACTED** and the information about the complaints made in relation to the previous bus driver, **REDACTED**.

In preparing this memo I have assumed that each parent is willing to have their child give evidence. I take it from my communications with the families since our last meeting that this is so but I have not yet had formal confirmation, except from the **REDACTED**. I have asked Fabiana Vielle to contact all of the families to confirm.

#### THE NEW STATEMENTS

##### Opportunity

There are some additional declarations that deal with this issue, but not in any great detail<sup>1</sup>. In my view we are no further on this topic than we were previously. The most that could be said is that the bus would occasionally arrive 10 - 15 minutes late. Even the accused's invoices do not show much more than this (although it is not clear whether he filled these out himself - to be clarified).

##### The Lecture about Sexual Abuse of Disabled Children

Frida BRIGGS confirms that the lecture was held on the morning of 8 November 2011.

<sup>1</sup> See the statements of **REDACTED**; **REDACTED**; and the invoices attached to the statement of **REDACTED**.

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### The Disclosures about the Charged Acts

Addendum declarations have been obtained from CEO [redacted] and CEI [redacted] about the detail of the disclosures made to them, which are the subject of the two charges alleged. CEO [redacted] offers more detail about the lead-up to the conversation and the bruising and bite marks she observed on CEN [redacted]. CEI [redacted] states that she did not make any notes of the disclosure by CEH [redacted] that the accused had put his penis in CEN [redacted]'s mouth because she was only documenting things that happened to CEH [redacted], but that she told REDACTED [redacted] what CEH [redacted] had said.

### The Psychologist

Dr REDACTED [redacted] has provided a statement, albeit a not very detailed statement. However, we have been provided with his notes and with the drawings that he showed to the children. In my view, it is significant that each of the complainant's respective mothers were present during the sessions with Dr REDACTED [redacted]. This is particularly so in a matter where we are relying entirely on what the mothers will say their child has said about the charged acts.

It appears from the notes that at both consultations with CEN [redacted] CEO [redacted] told the psychologist that she believed the accused had put his penis into CEN [redacted]'s mouth. It does not appear that CEN [redacted] confirmed or denied this.

### **CONCLUSION**

In my view, despite the new declarations received, the Crown case has not advanced. The case against the accused for the two charged acts remains:

- The comments made to CEO [redacted] and CEI [redacted] in response to questioning about the children's mouths (and in the case of CEH [redacted], questioning specifically on the topic of 'willy'), which would need to be lead pursuant to section 34CA of the *Evidence Act 1929* (SA).
- Evidence of the unnatural relationship between the accused and the children on the bus
- Evidence of opportunity (although this remains no more specific than the bus would be late, up to 10 to 15 minutes, but no specific dates or times)

The statement of the psychologist is not helpful and is likely to have some effect on anything said in Court by either CEN [redacted] or CEH [redacted]. However, given that these consultations were subsequent to the relevant disclosures, I do not believe that it is fatal to the reasonable prospects of conviction.

I agree with the comments in your memo dated 15 July 2011, that a jury could be satisfied beyond reasonable doubt that the accused has done something criminal to someone. I am simply uncertain as to whether there is a reasonable prospect of conviction for the charged acts.

Please do not hesitate to contact me if you have any queries.

Kind regards

REDACTED [redacted]

**Vanessa Burrows**