



Royal Commission
into Institutional Responses
to Child Sexual Abuse

Statement

Name Huw Baker
Address Level 20, 175 Liverpool Street Sydney NSW 2000
Occupation Crown Prosecutor
Date 21 March 2016

1. This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give to the Royal Commission into Institutional Responses to Child Sexual Abuse as a witness. The statement is true and correct to the best of my knowledge and belief.
2. I have provided a statement to the Royal Commission dated 9 March 2016 in relation to this case study.
3. On 18 March 2016 I received a copy of CDN's statement to the Royal Commission dated 7 March 2016. I make this supplementary statement to address some issues raised in paragraphs [36] and [40]-[41] of that statement.
4. CDN states at [36]:

"One week before the trial, I was informed that the DPP had decided to adjourn the matter to allow time to re-interview the children involved. No explanation was provided as to why the children had to be interviewed."

5. As outlined in my statement dated 9 March 2016 (at [31]), on 16 November 2011 I held a conference with CDN, together with my instructing solicitor Ms Derrig, for the purpose of explaining why the trial needed to be adjourned and to seek her consent to re-interview her daughter. I explained the difficulties with the recorded interview and asked for her consent for the police to re-interview her daughter. I explained that this course may still result in the

Signature:.....

Witness:.....

matters not going to trial and asked her to consider this possibility when deciding whether to consent.

6. File notes were kept of the conference and have been produced to this Royal Commission (STAT.0938.001.0041). Those notes indicate the following, which is consistent with my recollection:

- I explained my role as a Crown Prosecutor and that I had a duty to care for all the complainants;
- I told CDN that I needed to talk to her about the difficulties involved in the case. I then explained that due to the young age of CDO she hasn't given a lot of detail of the offence. I explained that I would be asking that CDO watch her earlier interview and then be re-interviewed;
- I explained that now that CDO was a little older she might be able to give more detail about what had occurred. By watching the video it might prompt her and she may now be able to give more detail;
- CDN told me that CDO had also told her that she had been taken into the shed and that she had not heard her say this before. I told CDN that if this was new information this should not come out for the first time in court, rather, it should come out in a supportive environment. Any new information may support or weaken our case;
- I also explained that there were difficulties due to the age of CDO. In some cases the prosecution can rely on injuries or eye witnesses but in this case we rely entirely on the testimony of CDO;
- I explained that I would be asking for the trial to be adjourned in order for this to occur. I told CDN that before CDO was re-interviewed I felt I needed her consent and that she didn't have to tell me immediately and could speak with her family including her partner. I also told her that it was my decision to adjourn but hers as to whether we re-interviewed CDO;
- I told CDN that the ultimate decision as to whether the charge would go to trial was for the Director of Public Prosecutions (DPP) but he will receive my advice and will want her thoughts/views. I explained that her views were important because of CDO's age;

Signature:.....

Witness:.....

- CDN said that she wanted to see it through but would take my advice. I told her she should consider what I have said and let me know but that it may be that it might still not proceed to trial;
 - CDN asked me about happens if the other parents don't want to go ahead with the re-interviews and I told her that she should think about what was best for CDO and her family;
 - I told CDN we would talk again after any re-interview. I explained that it may be that the DPP decides that there is no reasonable prospect of a conviction and the trial would not go ahead.
 - CDN said she wanted to go ahead but would speak to her husband and get back to us.
7. On 17 November 2011 CDN sent an e-mail to Ms Derrig, copied to me. Annexed hereto and marked "A" is a copy of that email chain.

8. She wrote:

"Thank you both for your time yesterday.

After speaking with both [my husband] and [CDO]'s councilor, we have decided that we will consent to having her interviewed again.

We feel confident that we will be able to manage any potential impact this may have on [CDO]."

9. CDN states at [40]-[41] of her statement:

"In April 2012, my husband and I attended a meeting with the Crown Prosecutor. We discussed the challenges in the case and the court process. The Crown Prosecutor explained that during the first couple of days of the trial, there would be an argument about whether the trials for all three victims would run together. He said that if the trials were separated, the DPP would have to re-evaluate CDO's case because it relied on evidence from the other victims and was not as strong on its own. I was shocked to hear this given that the police had lead me to believe it was an "open and shut case".

The new trial date was set for May 2012. About a week before the trial, the DPP called and told me that they had decided not to proceed with CDM's trial. I was heartbroken and extremely distressed."

10. At 10am on 2 April 2012 I met with CDN and her husband. I explained the details of my concern about the difficulties with the evidence and told them I would be referring the matter to

Signature:.....

Witness:.....

the DPP for his decision on whether the matter should proceed. I asked CDN and her husband to consider what I had said and to advise me of their views.

11. Ms Derrig kept file notes of the conference. Those notes have been produced to the Royal Commission (STAT.0938.001.0033). Those notes indicate the following, which is consistent with my recollection:

- I explained that the issues that existed prior to the second interview still existed and that the matter now needs to go to the DPP for his consideration as to whether the matter should proceed to trial;
- I explained that the purpose of meeting them was to keep them informed and seek their views so they could be put before the DPP. I also wanted to know how CDO was going;
- CDN explained that CDO has been acting out lately and that she saw a shift in her behaviour after an incident at school. I asked if there was a reaction after the second interview. CDN said that there was no significant reaction. Her behaviour started changing only after the incident at school. CDO didn't talk after the second interview, only said that "Sandy was nice";
- I explained that we can't overcome the fact that CDO cannot give a sufficient description of what happened and there is concern that she will not be able to maintain what happened during cross-examination;
- I asked CDN and her husband to think about whether they want the matter to proceed. CDN said that "if challenged CDO will fight back". CDN said that she is concerned that CDO will be further traumatised if the matter goes to trial.

12. On 3 April 2012 CDN sent Ms Derrig an email that read:

"Thank you for your time yesterday. I appreciate how difficult your job must be at times.

[My husband] and I have decided that although we are anticipating that the decision to not continue with the trial will be made, we do not want to be responsible for making it.

If, on the off chance the matter was to go ahead we would continue to participate."

13. Ms Derrig sent an email in reply to CDN in which Ms Derrig said:

Signature:.....



Witness:.....



"Thank you for letting me know. I will make sure that the Director is aware of your position. I estimate that we won't receive a final decision for at least three weeks. As soon as I hear anything I will let you know."

14. Annexed hereto and marked "B" are copies of those emails.
15. On Wednesday 2 May 2012 the Deputy Director made the decision not to proceed with the trial.
16. On Monday 7 May 2012 Ms Derrig and I spoke to CDN by telephone and informed her of the decision. This conversation is referred to in the notes of the Witness Assistance Service (NSW.0115.001.0129). I told CDN that the police officer in charge would call her to discuss any issue and the role of the Ombudsman's Office.

Signed: 

Date: 21 March 2016

Witness: 

Date: 21 March 2016

Signature:.....

Witness:.....

Baker, Huw

'A'

This is the document referred to as
Annexure 'A' in my statement dated
21 March 2016

From: Derrig, Erin
Sent: Thursday, 17 November 2011 12:54 PM
To: [CDN]
Cc: Baker, Huw
Subject: RE: [CDM] Trial: 201016539

Huw
 (witness)

Hi [CDN]

Thank you for your email and for taking time to consider the position of [CDO] and your family.

The matter will be mentioned in court tomorrow and we will hopefully obtain a new trial date. I will send you an email tomorrow afternoon to let you know the new date.

Please feel free to call at any time if you have any other questions or concerns.

Kind regards,

Erin Derrig
 Solicitor, Group 1
 Office of the Director of Public Prosecutions (NSW)
 Telephone (02) 9285 8886
 Facsimile (02) 9285 8700

From: [CDN]
Sent: Thursday, 17 November 2011 9:39 AM
To: Derrig, Erin
Cc: Baker, Huw
Subject: RE: [CDM] Trial: 201016539

Hi Erin and Huw

Thank you both for your time yesterday.

After speaking with both [REDACTED] and [CDO]'s councilor, we have decided that we will consent to having her interviewed again.

We feel confident that we will be able to manage any potential impact this may have on [CDO].

Regards,

[CDN]

REDACTED

'B'

This is the document referred to
as Annexure B in my statement
dated 21 March 2012

Baker, Huw

From: Derrig, Erin
Sent: Tuesday, 3 April 2012 1:45 PM
To:
Cc: cases
Subject: RE: Conference ODPP: 201016539

[Handwritten signature]
[Handwritten signature] (witness)

Hi

Thank you for your letting me know. I will make sure that the Director is aware of your position. I estimate that we won't receive a final decision for at least three weeks. As soon as I hear anything I will let you know.

Until then, I hope you and your family have a happy and restful Easter.

Kind regards,

Erin Derrig
 Solicitor, Group 1
 Office of the Director of Public Prosecutions (NSW) Telephone (02) 9285 8886 Facsimile (02) 9285 8700

-----Original Message-----

From:
Sent: Tuesday, 3 April 2012 12:40 PM
To: Derrig, Erin
Subject: RE: Conference ODPP: 201016539

Hi Erin

Thank you for your time yesterday. I appreciate how difficult your job must be at times.

REDACTED and I have decided that although we are anticipating that the decision to not continue with the trial will be made, we do not want to be responsible for making it.

If, on the off chance the matter was to go ahead, we would continue to participate.

Thank you

REDACTED

-----Original Message-----

From: Derrig, Erin [mailto:EDerrig@odpp.nsw.gov.au]
Sent: Friday, March 30, 2012 10:12 AM
To:
Cc: cases
Subject: RE: Conference ODPP: 201016539

Thanks