

**ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL
ABUSE**

STATEMENT OF MARIA CLARKE

I, Maria Jane Clarke, of 2nd Floor, 31 Bartley Terrace, Devonport, Auckland, New Zealand, Solicitor and Barrister, declare as follows:

1. The Statement made by me accurately sets out the evidence that I am prepared to give to the Royal Commission into Institutional Responses to Child Sexual Abuse. This Statement is true and correct to the best of my knowledge and belief.
2. For the purposes of preparing this statement, I have had access to certain documents produced to the Royal Commission (being the documents contained in Schedule A to O-PU-CTH-39-12) which I understand include documents produced to the Royal Commission by Rigby Cooke. I have also had access to the documents and statements tendered to the Royal Commission as part of the Tennis NSW vignette. Given the limited time I have had available to me to prepare this statement I have not had the opportunity to review all of these documents in detail.
3. I have very little independent recollection of the detail of the investigation I carried out for Tennis NSW in relation to Mr Noel Callaghan. I have attempted to refresh my memory from the Rigby Cooke documents. Unfortunately, my review of the Rigby Cooke documents has provided me with little assistance in recalling the details of the investigation.
4. In 1999 I was known as Maria Shand, becoming Maria Clarke upon my marriage in January 2000.



Professional background

5. I graduated in 1990 from the University of Otago (New Zealand) with an LLB (Hons) and a Bachelor of Arts (Political Science).
6. I was admitted as a Barrister and Solicitor of the High Court of New Zealand in 1991.
7. I was also admitted to practice as a barrister and solicitor in Victoria in 1998.
8. I began my legal career at Brandon Brookfield working in family law. I appeared in the Family Court, District Court and the High Court in this role. At this time I was fortunate to work with a Partner who had an interest in sport, so I also assisted him in advising on legal issues for various sports organisations as he was their honorary solicitor.
9. After about three years working in family law, I moved into employment law, which at that time was changing significantly due to new employment law legislation introduced in New Zealand. I practised in the employment law team at Simpson Grierson (which by that time had merged with Brandon Brookfield) for about two years.
10. During this time I continued to advise sports clients on employment law and other sports law issues and gradually built up a small client base advising sports organisations. At this time, sports law was only beginning to emerge as a field of law.
11. In 1996 I moved to another firm (Martelli, McKegg, Wells & Cormack) in Auckland and headed their employment/sport law practice.
12. In 1998 I was offered a position working with Mr Ian Fullagar at Rigby Cooke in Melbourne. Mr Fullagar acted for a large number of national sporting organisations and with the Sydney Olympics looming, they needed extra support. At that time there were no other lawyers in New Zealand (and few in Australia) specialising in sports law. I accepted that offer and moved to Melbourne.
13. In 2000 I returned to New Zealand, and set up my own law firm, now called Maria Clarke Lawyers. Until recently it was the first and only exclusive sports law firm in



New Zealand. I built this practice up over time, to fit in with my young family, and by 2011 the firm comprised of myself, four lawyers, and administration support.

14. I have been an active member of the Australia and New Zealand Sports Law Association, since 1992 (one year after its foundation), including a period on its Executive Board from 1998 to 2000. In 2015, I was recognised by ANZLSA for my contribution to sports law as the recipient of the prestigious Denis Callinan Award.
15. From 2008 to 2011 I was a Board Member of the New Zealand Olympic Committee. I am currently a Member of the New Zealand Olympic Committee Integrity Commission (appointed March 2015). I previously held Board positions on Netball New Zealand Incorporated and the New Zealand Sports Assembly Incorporated.
16. I was a member of the International Olympic Committee Sports Law Commission from 2014 to 2015, at which time the Commission ceased to exist.
17. I currently hold several international positions in sport including:
 - a. Chair, Legal Commission of the International Association of Athletics Federations (IAAF) (appointed in March 2016)
 - b. Chair, Working Group on Governance Structure Reform, of the IAAF (appointed in March 2016)
 - c. Member, International Olympic Committee Marketing Commission (appointed in May 2015 and reappointed in March 2016)
 - d. Member, Association of National Olympic Committees (ANOC) Legal Commission (appointed in December 2013).

Rigby Cooke

18. As noted above, I moved to Melbourne in 1998 and began work as a senior associate under the supervision of Mr Ian Fullagar, then the partner in charge of the Sports Law team at Rigby Cooke.
19. The work I did at Rigby Cooke was exclusively sports-related. It included a wide variety of legal areas, including:



- a. selection policies and appeals;
- b. doping policies and disputes;
- c. constitution development and interpretation;
- d. legal structures including governance;
- e. coach and athlete contracts;
- f. sponsorship agreements;
- g. broadcasting agreements;
- h. sports event related agreements;
- i. disciplinary and judicial matters;
- j. development of policies, rules and regulations.

Investigations by sporting organisations into misconduct in 1999

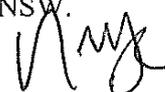
20. At around the time of the Tennis NSW investigation into Mr Noel Callaghan, sporting organisations in Australia and New Zealand were undergoing a process of transformation and professionalization.
21. Prior to this time many sporting organisations in Australia and New Zealand were not run in a businesslike manner. A number of them were still being run by volunteers with structures and processes that did not ensure the people with the right expertise and skills were appointed to positions of responsibility. This also included the management of disciplinary matters and disputes.
22. In the 1990s sporting organisations slowly recognised the need to revise their structure, and create codes of conduct and other policies that provided dispute resolution mechanisms tailored towards sports. The development of professional sport with paid athletes, which began in the mid-1990s, saw sports being challenged in their structures and processes.


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23. Bodies like the Australian Sports Commission started to develop guidance for sports and prepare policies to assist them to become more professional in their approach. One example was the development of a series of booklets by the Australian Sports Commission called the Harassment-Free Sport Guidelines (which were first published in 1998) and including Protecting Children from Abuse in Sport (which was published in 2000).
24. Rigby Cooke was, in the 1990s, one of the law firms recognised in both Australia and New Zealand as having particular expertise in the emerging field of sports law and it was commissioned by the Australian Sports Commission to assist in the development of policies to guide sports, including guidance on member protection policies. As at 1999, however, these efforts were very much in their infancy.

Investigation into Noel Callaghan

25. With the passage of time (17 years), I do not recall much of the detail of this investigation. My overriding memory, however, is that it was a difficult investigation and one that was very stressful for everyone involved. Part of the difficulty I experienced was that, on reflection, I didn't have the requisite investigation experience to be undertaking this type of investigation.
26. The investigation was, as I recall, an investigation by Rigby Cooke, on behalf of our client Tennis NSW, who was the employer of Mr Noel Callaghan. As such I viewed it as an employment investigation about alleged misconduct. This is consistent with the description on the nature of the investigation that I gave to Tennis NSW in paragraph 5 of the email I sent to Mr Watson on 10 August 1999 [TENN.0003.001.0087].
27. Because of the nature of the investigation I attempted to balance a number of competing interests. I had to provide my client with the factual material and legal advice necessary to enable it to determine how to respond to the complaint made by BXJ. I had to provide Mr Callaghan with the procedural fairness required to ensure that any decision ultimately made by Tennis NSW was legally sustainable. I also had to provide BXJ with the opportunity to tell her story and to make recommendations for her welfare and the welfare of other athletes under the purview of Tennis NSW.



28. In my previous employment law work, I had advised clients on managing complaints of misconduct by their employees, although I had not undertaken the investigation into the misconduct myself, nor had I dealt with sensitive or sexual related misconduct of the kind described by BXJ.
29. The initial complaint against Mr Callaghan related only to his conduct towards BXJ, and had been disclosed to Tennis NSW in a meeting with BXJ (and others, including her mother) prior to the appointment of Rigby Cooke. As a result of the first interview with BXJ on 16 August 1999, and the other interviews I undertook (including with Mr Callaghan), I recall from reading the documents there were a number of additional potential complaints that could be made about the conduct of Mr Callaghan. I was also informed about a number of factual matters which had not come up in the first interview or about which I had been told a different version of events. These included the derogatory remarks Mr Callaghan had made about BXJ (which were new facts) and also the denials and differences in evidence, especially between BXJ and Mr Callaghan.
30. In making an assessment of the veracity of the complaints made by BXJ it appears from the documents that I realised that the credibility of the witnesses (in particular BXJ and Mr Callaghan) was important. I therefore must have thought it was necessary to explore all of the discrepancies in their evidence so that I could put before the Board of Tennis NSW a report which addressed all of the competing factual versions of events. It seems that I endeavoured to do this by putting facts to each of the witnesses to give them the chance to respond.
31. My role was to report to the Tennis NSW Board with findings which I would have known may impact on Noel's continued employment or otherwise. It was therefore important that any differences in facts were tested, so if a view as to credibility was formed, it was clear how that view had been formed.
32. I turn now to the specific issues and questions that have arisen in the Commission's hearing which refer to my or Rigby Cooke's involvement.



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Discussions with Stephen Healy about "character"

33. I have read the filenote [TENN.0004.001.0022] of a conversation I had on 12 August 1999 with Mr Stephen Healy of Soloman Gardland Partners where the issue of "character" evidence is raised. The transcription of this filenote contains an error: the third last line should read "He says \neq relevant; only if contradicts evidence." I cannot recall why "character" evidence was raised, or what the "character" evidence was that was being discussed, or who first raised the issue, although my filenote suggests that it was raised by Mr Healy . The record shows that I followed this discussion up with a letter of the same date referring to "character" evidence [TENN.0003.001.0100_R]. As at the date of this conversation and letter I had not interviewed anybody, and I cannot now recall what information I may have had about Mr Callaghan that would have given rise to a discussion about "character" evidence. I do not now recall whether the reference to "character" evidence in these communications was a reference to Mr Callaghan's reputation, his disposition, or his credibility. However, I believe it was a reference to credibility.

Second interview with BXJ

34. A further interview was scheduled with BXJ for 1 September 1999.
35. According to the transcript of that interview Mr Wittaker and Mr Watson were in attendance. I do not now recall the reason for, or any discussions I had with Mr Wittaker or Mr Watson, in relation to their attendance at this interview. Nor do I recall any discussions that I had with Mr Fullager in relation to their attendance at the interview.
36. I have seen the email [TENN.0004.001.0265] which I sent to Mr Watson on 26 August 1999 asking him to be present at the meeting, but I cannot now recall why he was asked to be present. However, it is possible that I thought it was necessary for at least some members of the Executive Committee and the Board of Tennis NSW to make their own assessment of the credibility of each of Mr Callaghan and BXJ. This would enable them to inform the other members of the Executive Committee and the Board of their assessment of the credibility of the two principal witnesses, and



provide the Executive Committee and the Board with a basis upon which to act independently of my own assessment of the evidence. This is a matter which I addressed in paragraph 4.19 of my Report. This explanation is consistent with the fact that both Mr Wittaker and Mr Watson were also present at the interview with Mr Callaghan on 30 August 1999 (a matter which is referred to in the first paragraph of my email).

37. According to the transcript of the second interview Ms Kate Wood from Lane & Lane was also in attendance. I do not recall any discussions with Ms Wood prior to the meeting, but I assume she was in attendance as per the recommendation to seek legal advice contained in the letter of 10 August 1999 which Mr Watson sent to BXJ (which I expect Rigby Cooke had drafted) [IND.0304.001.008_E_R].
38. I do not recall her saying anything about the attendance of Mr Wittaker and Mr Watson at the interview and there is nothing about their attendance recorded in the transcript of the interview. It would appear from the last paragraph of my email to Mr Watson dated 26 August 1999 that I intended to inform BXJ (probably through BXB) that Mr Watson would be in attendance during the second interview. I have no recollection of doing so, but have no reason to doubt that I would have. According to Rigby Cooke's time records I spoke with BXB twice on 31 August 1999 [TENN.0004.001.0695]
39. In retrospect, I consider it would have been better for Mr Whittaker and Mr Watson not to have been present. I can also understand that their presence may have imposed an additional emotional and psychological burden upon BXJ in telling her story. As discussed below, I would not now conduct an interview with a complainant in a matter of this kind in the presence of others associated with the person the subject of the complaint.
40. If the presence of Mr Wittaker and Mr Watson at the second interview created any additional distress for BXJ then that is a matter which I deeply regret, and for which I sincerely apologise to BXJ.
41. I have seen the evidence the Royal Commission to the effect that BXJ was extremely distressed during this interview and could be heard from reception where BXB and her husband were sitting. I cannot recall the interview, but I would expect to be able



to remember it if BXJ had been extremely distressed. I would have appreciated the intensity of emotion that BXJ would have been feeling, but I would not have continued the interview if she was that distressed and hysterical. I do recall from reading the documents that there were times, in both interviews with her, when BXJ became upset as she recalled matters, which was to be expected. I stopped the tape when this happened or BXJ wanted to pause or take a break. I was at all times conscious of the difficulty and distress to BXJ in having to give her account of what had occurred.

42. Again, any distress experienced by BXJ is something that I deeply regret.

BXJ's prior relationships

43. I have read the transcript of the Second Interview, and in particular the part of the transcript commencing at page 440 where I questioned BXJ about her relationships with boys.
44. I do not now recall whether or not I had specific instructions from Tennis NSW to ask questions in relation to these matters. I do not now recall specifically why I thought the questions I asked in relation to those matters were relevant to my investigation. I was aware, as I have noted at paragraph 4.9 in my Report, that BXJ's prior relationship with boys was a matter which some of the people I interviewed regarded as a basis for not believing BXJ.
45. It may be that in the interests of my report addressing all of the issues that I thought would be raised in the Executive Committee and the Board of Tennis NSW, at the time of the interview I thought it would be preferable to give BXJ the opportunity to respond to these allegation, and to assess BXJ's credibility in the sense of her preparedness to acknowledge the truth of factual allegations (not their characterisation) that had been made about her by Mr Callaghan. It may also be that I thought that BXJ's answers to these questions might adversely bear upon the credibility of Mr Callaghan.



46. In responding to inquiries about the purpose of these questions from both BXJ and Ms Wood, I have at some points explained that purpose by using the word “character”. In doing so, I believe I would not have been seeking to convey that I was investigating her character (as in her reputation) nor intending to suggest that her character (as in reputation) would affect my assessment of her truthfulness. As explained above, doing the best I could, I believe that what I was seeking to do was to assess BXJ’s credibility, but not her character. In so doing, from reviewing the documents, I was also testing Mr Callaghan’s credibility. I accept, however, that this is not how I have expressed myself in the words used.
47. Ultimately, as I discussed in my Report at 4.9 and 4.10, I did not regard these issues as being relevant to my assessment of the credibility of BXJ.
48. In retrospect, it would have been preferable for me to have made my assessment of their lack of relevance prior to the Second Interview, and not asked those questions of BXJ.
49. Having read the transcript of the second Interview I acknowledge that the questions that were asked, and the manner in which they were asked, were inappropriate. Ultimately, as explained in paragraph 4.10 of my Report, I did not regard her prior relationships as being relevant. I also accept that they were distressing for BXJ, and that is a matter which I deeply regret, and for which I sincerely apologise.

Subsequent investigations

50. The investigation into the conduct of Mr Callaghan was the first time I had conducted an investigation into complaints of that kind. In retrospect, I do not think I had sufficient skills or experience to have been conducting the investigation, and in particular to have interviewed BXJ.
51. I have not conducted a similar investigation since. Whenever I have subsequently been asked by a sporting organisation to provide advice in relation to similar complaints of misconduct I have referred the organisation to professionals who have the appropriate experience and training to conduct the investigation phase of the process.



Final Comments

52. At all times throughout the process I was doing my best to conduct a fair and proper investigation given the skills and experience I had at that time.
53. I do recall being very disappointed that Tennis NSW did not agree with the conclusions I had reached given the scope and nature of the investigations. The effect of this was that BXJ did not see the outcomes of my investigation which from reading the transcript of BXB's evidence to the Royal Commission, had a profound effect on BXJ for a very long time. In particular, I was disappointed that Tennis NSW did not take any action against Mr Callaghan, and to my knowledge did not implement my recommendations relating to member protection more generally. This disappointment is all the more so because BXJ's disclosure of her experience with Mr Callaghan was the very purpose of preventing similar things from happening to other athletes. I do not now recall whether I was aware at the time that BXJ had not been provided with appropriate support as recommended in paragraph 6.11 of my Report, but I was disappointed to learn through reading the transcript of the Royal Commission that this had not occurred. I knew the importance of BXJ seeking support as I mentioned this to her in the first interview with her [TENN.0004.001.0069_R].
54. I am also disappointed that BXJ was not told of the outcome of my investigation. I don't now recall but it appears from Rigby Cooke's time records that I was not the one who drafted the letters provided to Tennis NSW by which Tennis NSW informed the various interested parties of the outcome of the investigation.
55. Finally, I wish to conclude by recording my sincere apology to BXJ, her family and the others who supported her in coming forward, for any distress and adverse consequences (although unintended) my conduct of the investigation had on them. I learned a lot from this experience and have taken that learning with me throughout the rest of my career, and to that extent BXJ's bravery in disclosing her abuse has hopefully been of some benefit to other athletes. I only wish that more had been done in 1999 to assist BXJ.



SIGNED at Devonport)
in New Zealand)
on 15 April 2016)
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(Witness to sign)



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Maria Clarke

JOHN GRAHAM TURRILL
.....
(Print name of witness)