

Our Ref: BC:2T.L35/1054  
David Ford

21 March, 2001

Mr J E Mills  
Chairman of Council  
Trinity Grammar School

COPY

Dear Jim,

**Boarding House Incident**

I refer to my attendance at the School Council Meeting on 19<sup>th</sup> February 2001 and, in particular, to the questions I was asked in relation to the powers of the Department of Community Services (DoCS) to direct that no communication with parents should occur. I respond as follows.

**The facts**

The relevant facts which give rise to the question from Council are, as I understand them:

1. On 11<sup>th</sup> August 2000, CLB [REDACTED] was assaulted by three other boys. Later that day, CLB [REDACTED] were advised of the incident both by telephone and subsequently in person at School.
2. Investigation of this incident led to enquiries being made about other incidents in the Boarding House. When Kate Pearce presented her findings to the Head Master, he asked her and Paull Mayne to notify DoCS. This was done by telephone call and letter on 7<sup>th</sup> September 2000. In the course of that telephone call, Paull Mayne asked Paul Sweeney of DoCS who was to contact the parents, given that it was customary in his experience for DoCS to do that. Paul Sweeney said that the School was not to pursue the matter further until DoCS had decided whether or not to investigate and that he would let them know then who was to contact the parents.
3. 8<sup>th</sup> September 2000 was the last day of the school term. The long "Olympic" holidays followed.
4. On 25<sup>th</sup> September 2000, Kate Pearce telephoned Paul Sweeney of DoCS at Strathfield to make sure he had received her letter posted on 7<sup>th</sup> September. Paul Sweeney replied that he had but had not read its contents.
5. On 4<sup>th</sup> October 2000, Kate Pearce rang Paul Sweeney again and was told that he was having a discussion with his supervisor.

-2-

6. On 5<sup>th</sup> October 2000, Paul Mayne spoke to Paul Sweeney who said that the matter had been referred to the Joint Investigation Team (JIT) at Ashfield. Paul Sweeney advised Paul Mayne that:
  - (a) JIT personnel would contact the victims' families;
  - (b) there were two perpetrators who were seen as a risk to other boys.
7. Paul Mayne therefore arranged the removal of those two boys to Bishop Chambers House.
8. On 6<sup>th</sup> October 2000, Cheryl McDuff of JIT advised Peter Green that the arrangements for the two perpetrators to be at Bishop Chambers House were inappropriate and so the boys' parents were notified. Both boys had been collected by their parents by 10.00pm that day.
9. The School believes that DoCS/JIT personnel notified the parents/grandparents of the victims on 6<sup>th</sup> October 2000. From that point on, Kate Pearce was in frequent contact with the families of both victims to provide them with support. She had been assigned to them while Paul Mayne had been assigned to support the perpetrators and their families.
10. Late on 6<sup>th</sup> October 2000, Mr <sup>EAA</sup> left a message with Mrs Xuereb for Peter Green to ring him. Before Mr Green could do this, Mr <sup>EAA</sup> arrived at the School where he was seen by Mr Green. Mr <sup>EAA</sup> was concerned because DoCS rather than the School had told him what was alleged to have happened to <sup>CLA</sup>.
11. We were first contacted by the School on 9<sup>th</sup> October 2000.

#### The Law in 2000

The applicable law in 2000 was the *Children (Care and Protection) Act 1987* ("the Act"). Under section 22(3), a person who in the course of following a prescribed profession had reasonable grounds to suspect that a child under the age of 16 had been sexually assaulted was obliged to notify DoCS. The following professions were prescribed by the regulations:

- teaching (at a school);
- counselling (at a school);
- social work (at a school);
- early childhood teaching (at a school);
- School Principals and Deputy Principals.

The Head Master acted correctly in causing DoCS to be notified.

Once DoCS has been notified, it must promptly investigate the matters notified (section 22(7)). Section 117 states:

*A person who wilfully hinders, obstructs, delays, assaults or threatens with violence any person in the exercise of that person's functions under this Act is guilty of an offence.*

-3-

While the Act does not give DoCS officers power to direct teachers or schools not to contact parents or caregivers once a notification has been made, clearly DoCS officers may make such a request. The officer investigating is carrying out a function under the Act and a teacher who fails to heed a request risks being guilty of an offence under section 117. Accordingly, the School's staff who heeded the request not to contact the victims' parents or caregivers acted quite properly.

One must also bear in mind the following:

- (a) Teachers are operating in an environment where there is considerable sensitivity in relation to child abuse. Last year, they were acutely aware of the raft of new legislation which followed the final report in 1997 of the Royal Commission into the New South Wales Police Service. The Royal Commission found that teachers and schools had been aware of abuse of children and had not taken appropriate action. The report stated that, within schools, "paedophilia was generally a subject best not spoken about; and if forced to be confronted, it was dealt with in a way that was based upon denial and protection of institutional reputation rather than regard for the welfare of children" (Final Report, Volume IV, page 562). One of the findings of the Commission was that mandatory reporting of suspicions of child abuse had been "largely ignored by teachers and school principals" (Final Report, Volume IV, page 958). The Commission explained this by pointing to corruption, neglect, maladministration and systemic failure. The Commission recommended that new accountability measures be introduced to ensure the integrity of the system for identifying and investigating child abuse. To suggest after the event that teachers ought not to have agreed to DoCS' request is quite unrealistic. No teacher would want to appear even slightly to be hindering an investigation into alleged child abuse.
- (b) Even though DoCS has no statutory power to direct teachers not to contact parents of victims of alleged child abuse, teachers generally had for many years been advised that it was DoCS' role and not theirs to contact parents in this situation. For example, in the Department of School Education booklet, *Child Protection: Procedures for Recognising and Notifying Child Abuse and Neglect*, issued on 10 March 1997, teachers were advised:

*In carrying out their responsibility to investigate suspected child abuse or neglect, officers of the Department of Community Services or the Police Service will advise parents or caregivers that a notification has been made. The principal MUST NOT inform parents or caregivers.*

*Officers from the Department of Community Services or the Police Service will also inform the student's parents or caregivers when an interview has taken place at school. If parents or caregivers have not attended the interview, these officers should be asked to contact the parent or caregiver as soon as possible after the initial interview.*

*Any person making an enquiry or complaint concerning a notification or an*



-4-

*interview with a student by officers of the Department of Community Services or the Police Service must be referred to the Department of Community Services or the Police Service. The principal should not otherwise respond to an enquiry or complaint.*

The Child Protection Guidelines of the Catholic Education Office were to similar effect:

*It is the role of DoCS to investigate notifications and inform parents or caregivers that a notification has been made. The Principal must not make any contact with parents or caregivers regarding the notification.*

- (c) There are good reasons for DoCS to request the School not to contact the parents or caregivers of children involved in incidents like those which took place at the School last year. It is important for the sake of all involved that the allegations are investigated properly. Justice demands that the evidence which children give about such matters not be corrupted in any way. It is well known that the more times a child recounts what happened the less reliable is his recollection. It is also well known that adults (particularly parents) questioning a child about what has happened can easily lead the child into giving answers that the adult wants to hear.

#### **The Law in 2001**

The applicable law today is the *Children and Young Persons (Care and Protection) Act 1998*. The position in relation to the powers of DoCS officers is the same as set out above. Section 117 in the old Act is now section 251.

If the School decides that it wants its staff in future to ignore requests from DoCS officers not to contact the parents or caregivers of a child after a notification has been made, we suggest that the Council ought to so resolve in clear terms and then ask the Head Master to advise his staff of this resolution. However, such action ought in our opinion to be taken only after the most careful thought about:

- the consequences for the alleged perpetrators and victims;
- the consequences for the School's reputation; and
- the industrial relations consequences.

It is our view that the Council would be unwise to pass such a resolution. We believe that each situation ought to be considered as it arises. While it is unlikely in most cases, there may be situations in future where a request from DoCS would be ignored. We would be available to consult with the Head Master and staff if they are in doubt as to how to respond.

Yours faithfully,  
**EMIL FORD & CO.**

Per: