

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES
TO CHILD SEXUAL ABUSE

AT SYDNEY

**PUBLIC INQUIRY INTO
CHILDREN WITH PROBLEMATIC OR HARMFUL SEXUAL BEHAVIOURS
IN SCHOOLS**

– SHALOM CHRISTIAN COLLEGE –

FURTHER SUBMISSIONS IN RESPONSE ON BEHALF OF EAL AND EAM

INTRODUCTION

1. This response is further and in addition to the submissions of EAL and EAM dated 17 January 2017.
2. EAL and EAM have read and considered the submissions of the Uniting Church in Australia Property Trust for Shalom Christian College ('Shalom') and those of Mr Christopher Shirley, and wish to make the following response.

SUBMISSIONS OF THE UNITING CHURCH

3. Submissions were filed on behalf of the Uniting Church in Australia Property Trust, the current owner and operator of Shalom, Mr Christopher England, Ms Elaine Rae, Ms Cassandra Hindmarsh and Ms Amy Bridson. For ease of reference, EAL and EAM will adhere to the preference raised in those submissions that they be collectively referred to as those of the Uniting Church.
4. In response to paragraph [10] of the submissions of the Uniting Church, EAL and EAM submit that the Uniting Church is incorrect in suggesting that CLF was enrolled at Shalom from Term 4 of 2005. Rather, the Uniting Church refers to the application form of CLF, which appears to have been submitted whilst she was enrolled in Year 9 at her previous school.¹ This is consistent with the evidence of her parents that in late 2005, she expressed an interest in attending Shalom.² However, the evidence of both EAL and EAM was that

¹ Ex 45-050 Shalom Tender Bundle, Tab 10: Student Application Form – CLF, SCC.001.0002_R.

² Transcript of EAL, C22648:21-22 (Day C223); Transcript of EAM, C22665:31-34 (Day C223).

she commenced at Shalom at the beginning of 2006, having flown to Townsville with her mother in late January of that year.³

5. The proposition that CLF commenced her studies in the final term of 2005, rather than at the beginning of the 2006 school year, is inherently improbable and was never put to EAL or EAM. No evidence supports it. The earliest documentary record of CLF's activities at the school is her presentation at the Health and Wellbeing Centre on 15 February 2006.⁴ Mr Shirley's evidence was that he believed that CLF had started at Shalom at the beginning of that year.⁵
6. As EAL and EAM have submitted previously, the short time that CLF had been amongst her new peers at Shalom was an important context for assessing the school's response to her presentation with symptoms of acute stress, and her statements that she felt unsafe. In that context, it is submitted that it was unreasonable for school staff to form the view that CLF was an 'instigator' of bullying.
7. In response to paragraph [12] of the submissions of the Uniting Church, where it is submitted that the evidence of EAL and EAM could be accepted '*as their recollection* of the incidents involving CLF, some 10 years on' (emphasis added), EAL and EAM do not accept this restriction on the accuracy and reliability of their evidence. Whilst the incidents in question occurred over 10 years ago, the unusual and traumatic nature of them (in their own lives) is likely to make their recollection of them more vivid. Their evidence was largely corroborative of each other's, allowing for the expected variation in the way individuals will perceive a situation or recollect different details at the time. EAL and EAM endorse the submission of Counsel Assisting and their own previous submissions that their evidence should be accepted as an accurate and reliable account of events and should assist the Royal Commission in make findings on the facts as they occurred.
8. To the extent that the accuracy of the evidence of EAL and EAM is contrasted with that of Ms Bridson's evidence, it is noted that Ms Bridson had difficulty independently recollecting conversations with CLF and agreed in evidence that in preparing her statements and giving her evidence she was relying on her notes. The relevant parts of those written statements reproduce the content of the notes without significant elaboration, though Ms Bridson gave evidence that she had some recollections of the meetings with CLF and with EAL and EAM.⁶

³ Transcript of EAL, C22648:34-46 (Day C223); Transcript of EAM, C22666:4-5 (Day C223).

⁴ Exhibit 45-050 Shalom Tender Bundle, Tab 15: Health & Wellbeing Centre – Medical Attendances (no appointment) – CLF from 15 February to 24 March 2006, SCC.006.001.0027_R.

⁵ Ex 45-051 Statement of Christopher Shirley, STAT.1222.001.0001_R at [51].

⁶ Transcript of A Bridson, C22718:17-41 (Day C223) and C22722:2-8 (C223).

9. In relation to paragraphs [20] – [24] of the submissions of the Uniting Church, EAL and EAM submit as follows:
- a. There is no reason to qualify Available Finding 17 in the way set out by the Uniting Church at paragraph [21] of its submissions. As the Church itself submits at paragraphs [38] – [40], there is evidence that extensive searches were made to locate documents at Shalom relevant to CLF. No notes of the kind which Mr Shirley said he would have made in relation to the Child Protection incident report of 1 March 2006 were located. Importantly, Shalom’s document searches located the Child Protection form marked ‘forwarded to principal 1/3’,⁷ but did not locate a version of the same document bearing any handwritten notation by Mr Shirley.
 - b. Mr Shirley’s evidence was that he ‘would have’ made such a notation when he reported an incident to the Child Safety Office. He said that making such a report was what he ‘would normally do’.⁸ At its highest, that was evidence of a general practice, and was not evidence that he made either a report to the Child Safety Office, or a notation on the forwarded Child Protection form, on this occasion. Importantly, it is submitted that there is no evidence that any notation would have been made in the event that the incident was not reported to the Child Safety Office.
 - c. There is also no evidence that any report or notification was received by the Child Safety Office. It should be found that no notification of this incident was made. This appears to be a consequence of its re-classification – after Ms Binsiar’s report was provided to Mr Shirley’s office – as an incident of ‘inappropriate behaviour’.
 - d. EAL and EAM agree with the Uniting Church’s conclusion at paragraph [24] of its submission, though they would further submit that there is insufficient evidence for any finding as to why the incident was re-classified; and, in particular, whether bad faith was involved.
10. EAL and EAM disagree with the Uniting Church’s submissions at [26] – [37] that there was no reporting obligation applicable to Shalom, and to Mr Shirley in particular, at the time of the 23 February 2006 incident. The relevant Queensland legislation is the *Education (Accreditation of Non-State Schools) Regulation 2001*.
11. Clause 3 of that Regulation defined “‘harm”, caused to a student under 18 years’ as:

⁷ Exhibit 45-050 Shalom Tender Bundle, Tab 25: Shalom Christian College Child Protection Incident Register, SCC.501.001.069_R.

⁸ Transcript of C Shirley, C22743:32-C22744:4 (Day C224).

‘any detrimental effect of a significant nature on the student’s physical, psychological or emotional wellbeing.’

Sub-clauses (b) and (c) of that clause specified that it was immaterial how the harm is caused, and provided that harm (for the purposes of the Regulation) could be caused by physical, psychological or emotional abuse of neglect, or sexual abuse or exploitation.

12. On 23 February 2006, CLF was sexually assaulted by being touched on the breasts and genitalia. The sexual assault, and the context of peer awareness, made CLF feel uncomfortable, scared and ashamed. It is submitted that harm was caused to her, within the meaning of clause 3 of the *Education (Accreditation of Non-State Schools) Regulation 2001*.
13. The definition of ‘harm’ in the Regulation operates upon clause 10, which is referred to in the submissions of the Uniting Church. That clause – in particular, sub-clause (5)(b) – required every independent Queensland school to have certain ‘written processes about the appropriate conduct of its staff *and students*’ (emphasis added). Those processes were required to include:

‘a process for the reporting, of the harm or suspected harm, by the principal or other person to a relevant State authority, if the principal or other person also is aware of the harm having been caused or reasonably suspects the harm to have been caused’.

As harm had been caused to CLF by sexual abuse, and Mr Shirley was aware (through Ms Binsiar’s report) of the harm having been caused to her, he was required to notify the Child Safety Office. That did not occur.

14. The Regulation is also explicitly concerned to ensure that a school is ‘implementing’ the processes that it mandates: see sub-clause (7).
15. The purpose of the Regulation was clearly to avoid the kind of process failure that occurred following the sexual assault of CLF on 23 February 2006.
16. EAL and EAM therefore disagree with the conclusion reached at paragraph [37] of the submissions on behalf of the Uniting Church. They recommend their previous submissions amplifying Available Finding 17, which should state that Mr Shirley’s failure to report the 23 February 2006 incident was in contravention of his reporting obligations under Queensland law.
17. In relation to paragraphs [55] – [63] of the Uniting Church’s submissions, EAL and EAM note the array of information that was available to staff working at the Health and Wellbeing Centre, or would have been so available had there been an effective process at Shalom for exchange of information relevant to student welfare. It is accepted that Health and Wellbeing staff and external service providers were unaware of the report that CLF had been sexually assaulted on 23 February 2006. It should also be noted, contrary to

paragraph [57] of the Uniting Church's submissions, that the evidence does not appear to be that CLF disclosed to Rose Gordon at the Sexual Health Clinic on 24 March 2006 that she had been sexually assaulted the previous day. On a fair reading of Ms Bridson's Record of Telephone Interview, CLF did not explicitly disclose any recent sexual activity to Ms Gordon.⁹

18. However, Health and Wellbeing Centre staff were aware that on 24 March 2006, CLF had presented at the Sexual Health Clinic and had separately told a teacher that she did not feel safe at school. There was also a concern that there was a psychological origin for the various somatic complaints with which CLF had presented since mid-February.

19. In this context, EAL and EAM strongly take issue with the submission on behalf of the Uniting Church (at paragraph [60]) that CLF's 'main concern' at the time of her interview with Ms Bridson on 27 March 2006 was her weight. It is obvious that her main concerns were her safety from her peers, the two incidents of sexual assault to which she had been subject, and the awareness by her peers of those incidents. As EAL and EAM have submitted previously, this interview was a missed opportunity to engage with a vulnerable student and to identify the reasons for her feelings of unsafety at the school. The interviewer, though counselling CLF for the first time, had previously formed the view that she was at fault for 'contributing to' bullying incidents.¹⁰ The fact that the interview notes record that CLF's main concern was her weight is evidence only that Ms Bridson identified this as the main concern expressed in the interview process – a process which was influenced by the absence of rapport between the parties and by the preconceptions of the adult interviewer, who also made the only available notes.¹¹ The notes are a tenuous basis for an inference as to CLF's actual state of mind. The evidence is that CLF, at this time, was in significant distress in a peer environment that she had been introduced to only two months earlier. She indicated to a teacher the day following the interview that she was being bullied.¹² CLF may have been reluctant to disclose that she had been sexually assaulted, but the Uniting Church should not trivialise CLF's concerns or her situation in the days leading up to her disclosure of 28 March 2006.

20. In relation to paragraph [74] of the submissions of the Uniting Church, EAL and EAM note that the defence that there was no evidence of the availability of culturally appropriate services is somewhat contradictory with their submissions at paragraph [54], to the effect that Ms Bridson utilised the cultural expertise of Community Liaison Officers throughout the period 2000-

⁹ Exhibit 45-050 Shalom Tender Bundle, Tab 21: Health & Wellbeing Centre – Record of Telephone Interview – Amy Bridson and Rose Gordon (Sexual Health staff member), SCC.006.001.0035_R.

¹⁰ Transcript of A Bridson, C22724:2-8 (Day C223).

¹¹ Exhibit 45-050 Shalom Tender Bundle, Tab 17: Health and Wellbeing Centre Record of Interview – CLF, SCC.006.001.0030_R.

¹² Exhibit 45-050 Shalom Tender Bundle, Tab 19: Behaviour Communication Form by P WALLACE in relation to CLF, SCC.006.001.0010_R.

2008. The Uniting Church cannot both present Shalom as having a culturally supportive Health and Wellbeing Centre and at the same time plead a lack of services available at the relevant time.

21. EAL and EAM remain deeply distressed and concerned that Shalom should promote itself as an indigenous school and yet fail in this basic regard. They note that whilst in Townsville following the assault on CLF, they themselves sought out the advice and comfort of Townsville elders.¹³
22. EAL and EAM further note that Ms Sandy Hindmarsh's evidence as set out at paragraph [75], whilst not challenged, was not consistent with the chronology of events, namely that Ms Hindmarsh commenced maternity leave at the end of February 2006, the assault occurred on 23 March 2006, the document produced by Ms Hindmarsh and marked 'Version 3' is dated July 2007 (Ms Hindmarsh states the negotiations took approximately six months to complete). Her evidence in this respect was, it is submitted, fairly imprecise.
23. In relation to the submissions of the Uniting Church on Available Finding 20, EAL and EAM wish to make the following response.
24. EAL and EAM support the submission of Counsel Assisting that insufficient support was provided to CLF until their arrival and refer to their previous submissions in this respect.
25. They note that the Case Management Notes of Ms Bridson do not in fact record any counselling or contact by Ms Bridson with CLF on 30 March 2006. On 31 March 2006 at 11:30am, a conversation was held between Ms Bridson, CLF and Detective Sergeant Ian Taylor. It is apparent that that conversation lasted less than 15 minutes, given that a referral is recorded as having been made to the sexual health at approximately 11:45am.¹⁴ Ms Bridson's evidence was that the Case Management Notes represented the extent of her involvement with CLF during that period and she explained that she was on study leave for periods of time and not present at the school.¹⁵ Aside from 29 March 2006 when CLF is recorded as having spent the day at the Health and Wellbeing Centre, EAL and EAM submit that it is properly open on the evidence to find that insufficient support was provided.
26. EAL and EAM are troubled by the impression promoted by the Uniting Church that they disrupted proper investigative process (see paragraphs [69], [79] and [80]). As was demonstrated by their evidence, they were supportive of CLF making a complaint to the police, were distressed by the impression they received from Mr Shirley and Shalom that they were being discouraged from pursuing charges, and were motivated to assist her in taking her complaint

¹³ Transcript of EAL, C22654:41-43 (Day C223).

¹⁴ Ex 45-050 Shalom Tender Bundle, Tab 23: Health and Wellbeing Centre – Case Management Notes for 22 March to 30 March 2006 – CLF, SCC.006.001.0028_R.

¹⁵ Transcript of A Bridson, C22714:18-29 (C223).

through the court process over a number of years.¹⁶ It is submitted that this is inconsistent with the suggestion by the Uniting Church that they did want CLF to make a statement to police. To the extent that they were uncomfortable with CLF making a statement to the police before their arrival in Townsville, it is submitted that this was entirely explicable given CLF's young age, the fact that EAL and EAM were hundreds of kilometres away, and what might be generalised as less than positive experience of Indigenous people with police in regional Queensland. In short, EAL and EAM had reason to insist on culturally appropriate support for CLF through the investigation process. Shalom, as an indigenous school should have been sensitive to this. EAL gave evidence that when they took CLF to the police in Townsville, she asked for a female officer or a female indigenous liaison officer to be present.¹⁷ This was a matter that was a priority to her. Had they been provided with some reassurance as to the manner in which a statement would be taken, or the support that would be given to CLF during that process, there is no reason to think that they would have sought to delay CLF's police interview.

27. EAL and EAM note that the concerns expressed by CLF on 31 March 2006 of in relation to a medical examination are a natural response for a 14 year-old girl, who had recently been sexually assaulted by multiple perpetrators. This is far from showing that CLF (who had submitted to numerous medical interventions in the previous six weeks) was relatively free of concerns about the police process. CLF's anxiety at the prospect of a police officer or medical officer performing an invasive procedure reinforces the need to provide culturally appropriate support to her at this juncture. It must be borne in mind that the police officer with whom CLF was speaking on 31 March 2006 was male.

28. It is further submitted that the evidence on the question of how proactive Shalom was in engaging the police is inconclusive. For example, there is evidence before the Royal Commission that the police were initially notified by Child Safety on 29 March 2006, and that the conversation between police and CLF on 31 March 2006 came about when Detective Sergeant Ian Taylor was attending the school in relation to another matter and spoke to the school counsellor where he learnt about CLF's complaint.¹⁸ Detective Sergeant Taylor had previously indicated to Ms Bridson a view that CLF 'may be being pressured into making a statement'.¹⁹ That view, although starkly at odds with Bridson's post-interview notation that 'CLF wishes to make a complaint',²⁰ appears to reflect the information that had been provided to police on 29

¹⁶ Transcript of EAL, C22654:34-45, C22654:20-39 and C22655:18-C22656:4 (Day C223); Transcript of EAM, C22667:46-C22668:9, C22669:45-C22670:5 and C22671:38-C22672:32 (Day C223).

¹⁷ Transcript of EAL, C22654:20-23 (Day C223).

¹⁸ Ex 45-050 Shalom Tender Bundle, Tab 53: Police Statement of Ian Taylor, QLD.0137.001.2891_R.

¹⁹ Ex 45-050 Shalom Tender Bundle, Tab 23: Health and Wellbeing Centre – Case Management Notes for 22 March to 30 March 2006 – CLF, SCC.006.001.0028_R.

²⁰ Ex 45-050 Shalom Tender Bundle, Tab 23: Health and Wellbeing Centre – Case Management Notes for 22 March to 30 March 2006 – CLF, SCC.006.001.0028_R.

March 2006 (that CLF had at that time made 'nil complaints', and that the report was in neutral terms that she 'had sex or oral intercourse with four different boys around the same time').²¹

29. In relation to the submissions of the Uniting Church on Available Finding 21, EAL and EAM again rely upon their previous submissions. They acknowledge that Ms Bridson met with them outside of school hours at the Iris Clay Hostel. However, they do not accept what is said at paragraph [78] of the submissions of the Uniting Church. CLF was a student at Shalom for a period of approximately nine weeks. During that period she was the victim of a serious sexual assault. There is no evidence of any contact from Shalom following her departure. Basic human decency suggests that where a student of a school experiences such an assault, on school grounds, by other students of the school, there would be some follow-up contact made, and support offered. As was discussed in their previous submissions, EAM contacted the Uniting Church following their return home. He received no reply. To the extent that it was necessary to identify 'what support services could have been provided to them', this could have been done by contacting them. That did not occur.
30. In response to the suggested amendment of the Uniting Church to Available Finding 22, EAL and EAM acknowledge that some students at Shalom would have presented with complex needs requiring additional support or posing additional challenges. The evidence is that there was a relatively high incidence of substance misuse, sexual activity (including inappropriate sexualised behaviour), and mental health issues within the Shalom student population.²² However, any school has a basic duty of care to provide a safe environment for its students. Moreover, Shalom was well aware of the issues presented by its students, and in particular its boarding students; it was also well aware of the resourcing deficiencies which impacted on student welfare and student safety.²³ EAL and EAM submit that the fact that Shalom is an independent school, and an indigenous school, does not mean that a lower standard of care was permissible.
31. The Uniting Church relies upon the evidence of Ms Bridson summarised at paragraph [92]. Whilst EAL and EAM commend Shalom for any improvements, they note that the majority of matters described by Ms Bridson only occurred in the last few years.

²¹ Ex 45-050 Shalom Tender Bundle, Tab 20: CREWS (Queensland Police records) entry – notice from Jenny Perkins (CSO) in relation to an incident reported by the Principal of Shalom College, QLD.0137.001.0988_R.

²² See, eg., Congress Community Development Education Unit - Innovative Service Model for Health Interventions in Indigenous Schools - Final Report, STAT.1127.001.0019 (Annexure C to Ex 45-072, Statement of Shayne Francis Blackman, STAT.1127.001.0001_R), at 0034-0044.

²³ See, eg., Review – Boarding Services – Shalom Christian College – November 2010, SCC.209.002.001 (Annexure J to Ex 45-071, Statement of Stephen Lloyd Thompson, STAT.1139.001.0001_R), at 007-013.

SUBMISSIONS OF MR CHRISTOPHER SHIRLEY

32. In response to the submissions of Mr Shirley at paragraphs [2] – [3] and repeated at [21] – [22], EAL and EAM submit that the Royal Commission should not shy away from making appropriate findings and criticisms, even where they may have serious consequences. EAL and EAM further note that the criticisms which are open on the evidence are not made merely with the benefit of hindsight. At the time, they themselves were critical of the response of the school, and were vocal in that respect.
33. In response to paragraph [13], they refer to their previous submissions that the manner in which the police initially received the complaint was suggestive of a consensual sexual encounter, and that CLF was not to be believed as a complainant.²⁴ Police were informed that there had been ‘nil complaints’ by CLF. This was not consistent with the description of a non-consensual assault by CLF on both 28 March 2006 (to boarding staff) and 29 March 2006 (to Ms Bridson).²⁵ The evidence is that Mr Shirley was aware at least of the description provided to boarding staff when he contacted the Child Safety Office and the Juvenile Aid Bureau.
34. In relation to paragraph [14] the evidence of Mr Shirley referred to is not consistent with the documentary evidence before the Royal Commission. The police records of the contact from the school on 29 March 2006 indicate that Mr Shirley was informed that if ‘the child wants to proceed with a complaint that this office is to be contacted and arrangements made for her to attend re 93A’.²⁶ This is not consistent with a situation where police were issuing warrants and conducting a search of the school. Rather the police record indicates that the boys had already been spoken to (presumably by school staff) and ‘denied any sexual contact with CLF’.²⁷
35. In response to paragraph [15], there is no other evidence supporting the assertion that CLF was returned to Crystal Creek Campus on 30 March 2006. Nor is it consistent with the fact she was present at the school on 31 March when she met with Ms Bridson and Detective Sergeant Taylor.
36. In response to paragraph [19], EAL and EAM have largely addressed these issues in their previous submissions. The propositions in sub-paragraph (b)

²⁴ Ex 45-050 Shalom Tender Bundle, Tab 20: CREWS (Queensland Police records) entry – notice from Jenny Perkins (CSO) in relation to an incident reported by the Principal of Shalom College, QLD.0137.001.0988_R.

²⁵ Ex 45-050 Shalom Tender Bundle, Tab 18: File note of meeting between CLF, Chris Adebahr and Gwen Johnson, SCC.045.002.006_R; Ex 45-050 Shalom Tender Bundle, Tab 22: Health and Wellbeing Centre Record of Interview – CLF, SCC.006.001.0036_R.

²⁶ Ex 45-050 Shalom Tender Bundle, Tab 20: CREWS (Queensland Police records) entry – notice from Jenny Perkins (CSO) in relation to an incident reported by the Principal of Shalom College, QLD.0137.001.0988_R.

²⁷ Ex 45-050 Shalom Tender Bundle, Tab 20: CREWS (Queensland Police records) entry – notice from Jenny Perkins (CSO) in relation to an incident reported by the Principal of Shalom College, QLD.0137.001.0988_R.

appear difficult to maintain in the face of the November 2010 review of boarding services at Shalom.²⁸

37. In relation to paragraphs [27] – [31] of Mr Shirley’s submissions, EAL and EAM note and rely upon their previous submissions and the observations made above. There is no ‘lack of documentary records’ on this point. The documentary evidence, in particular the Child Protection Incident Register, explicitly records that no report was made to either the Child Safety Office or the Juvenile Aid Bureau. Available Finding 17 as submitted by Counsel Assisting is clearly open on the basis of that evidence. It is not clear what is meant by references in Mr Shirley’s submissions by ‘errors’ affecting the ‘reliability’ of the Child Protection Register. Mr Shirley, as EAL and EAM have previously submitted, was responsible for ensuring the accuracy of the Register. The Register misstates the nature of the incident on 23 February 2006, but that itself is part of the process failure that occurred following the receipt of Ms Binsiar’s report. It goes to the facts, and not merely to the ‘reliability’ of the evidence of those facts.
38. For the reasons set out at paragraph [9] of the present submissions, there is no evidence to contradict Available Finding 17 in the form submitted by Counsel Assisting. EAL and EAM continue to submit that this finding is open, and that it should be amplified as set out in their previous submissions.

Dr Michael FitzGerald
Counsel for EAL and EAM
6 February 2017

²⁸ Review – Boarding Services – Shalom Christian College – November 2010, SCC.209.002.001 (Annexure J to Ex 45-071, Statement of Stephen Lloyd Thompson, STAT.1139.001.0001_R).