

Royal Commission into Institutional Responses to Child Sexual Abuse

Case Study 45

Children with Problematic or Harmful Sexual Behaviours in Schools

SUBMISSIONS OF THE KING'S SCHOOL

16 January 2017

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Introduction

1. These submissions are made on behalf of the following entities and persons:
 - The Council of the King's School incorporated under *The King's School Council Act 1893 (NSW)* (**TKS**)
 - Dr Timothy Hawkes OAM, Headmaster of TKS
 - Dr Andrew Parry, Deputy Headmaster of TKS
 - Mr Andrew Mansfield, Housemaster and teacher at TKS
 - Mr Robert Chandler, Director of Staff at TKS

- Mr Jonathan Wickham, Former Housemaster at TKS

(collectively referred to in these submissions as TKS unless otherwise stated).

2. In his written submissions dated 12 December 2016, Counsel Assisting the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) said the public hearing concerning TKS *‘related to complaints of harmful or problematic sexual behaviour by children at a cadet camp and the school’s response to that incident along with the events which followed it.’*¹
3. Counsel Assisting seeks six findings with respect to TKS.² TKS submits that the ‘available findings’ are not available on the evidence. The following submissions are a response to the proposed findings and matters raised in the written submissions prepared by Counsel Assisting the Royal Commission.

Cadet Camp 2013 and CLC

4. In 2013 CLC was a boarder in Year 10 at TKS.

April 2013

5. From 5-11 April 2013, CLC attended a cadet camp at Singleton with approximately 500 officers, cadets and TKS staff attending the bush site. The cadets slept in makeshift tents referred to as hoochies. CLC shared a hoochie with DFE (a Year 10 day student) and a third boy (a Year 10 boarding student).
6. While there is no dispute that an incident occurred at the cadet camp, there are a range of differing accounts about exactly what occurred. There are no contemporaneous reports or records of the incident. CLC did not disclose the incident to his parents or any of the teaching staff, at the time. CLC did not disclose the subsequent comments, text messages and Facebook posts which he described as derogatory comments.³ On the available evidence, CLC did not disclose the incident to a member of the TKS staff until 13 August 2013.⁴

¹ Submissions of Counsel Assisting the Royal Commission Case Study 45 page 33, paragraph 123.

² Submissions of Counsel Assisting the Royal Commission Case Study 45 page 72: Findings AF 10 – AF15.

³ Exhibit 45-011 paragraphs 23 and 24.

⁴ Exhibit 45-015 paragraphs 7, 39(d) and (e)

7. On 13 August 2013, Mr Andrew Mansfield reported to Dr Andrew Parry and Mr Greg James the following account given by CLC earlier that evening:⁵

On the Corps Camp [CLC] shared a hoochie with 2 other boys [DFE and REDACTED]. [CLC] indicated that one night, DFE masturbated and some of his ejaculate ended up on CLC's sleeping bag. Stories then spread around the Platoon and as a result CLC was called names such as 'cum rag' and 'cum dumpster'.

8. CLC's parents say they were informed about the incident on 13 August 2013 by Mr Mansfield.⁶ CLC's father (EAE) described the incident in the following way:

When we arrived at school we spoke with MANSFIELD who told us that when [CLC] was on cadet camp, another student at the school had masturbated and ejaculated on [CLC] and on his sleeping bag whilst he was in his 'hoochie'. MANSFIELD told us that the behaviour was disgusting and this was the first he had heard of the incident. My understanding was that [CLC] had disclosed this information to MANSFIELD that evening prior to my wife and I attending the school.

9. On 14 August 2013, Dr Parry, Mr Mansfield and Mr James met with the third boy sharing the hoochie.⁷ Dr Parry's typed note of the meeting with the third boy records the boy (referred to as REDACTED) saying:

REDACTED and DFE were in a hootchie lying in hammocks. CLC was in a sleeping bag on the ground below. (All three were under cover of the hutchie (sic))

REDACTED claims that DFE was masturbating. CLC was aware of what DFE was doing and said "what the fuck are you doing"

DFE positioned himself on the hammock so that his ejaculate would land on CLC below.

CLC told boys in his Platoon the following morning of the incident. Boys in the Platoon started calling CLC 'cum rag'.

CLC elected to stay in the hootchie group for the remainder of the Camp.

10. On 15 August 2013 at 11am, Dr Parry met with CLC's parents – EAE and EAG. At the same time, Mr Mansfield and Mr James met privately with CLC to try to get a better understanding on the situation. Mr James handwritten notes⁸ record the following:

On the second night the boys were in their tents, CLC was with [blank] and DFE. CLC was lying on the ground in his sleeping bag and both DFE and the other boy were in hammocks above on either side of CLC. There had been some discussion that night and previously about "bush beats". CLC says he was lying face down in his sleeping bag, coloured red and black.

⁵ Exhibit 45-010, Tab 5, TUD.0020.001.0324_R and see Exhibit 45-015 paragraph 8.

⁶ Exhibit 45-012 paragraph 14.

⁷ Exhibit 45-010, Tab 8, NPF.074.002.0048_R

⁸ Exhibit 45-010, Tab 13, NPF.0019.001.0127_R. See also a statement made by Mr James to the NSW Police on 27 March 2015 at Exhibit 45-010, Tab 60 paragraphs 21 and 24, NPF.0019.001.0112_R

His shoulders and head were outside the bag when at some point a nearby boy called out, "did you just get jizzed on?"

Yesterday he told us he said at one point "that's disgusting". CLC got out of his sleeping bag after a boy said this – noticed a mark, pool of something on his bag – he immediately found some baby wipes and began to try and clean it up.

CLC said a light-torch was on – CLC said there was no additional comments from either DFE or other boys. CLC threw the wipes away and got back into his sleeping bag and went back to sleep.

He said there was no discussion until the next morning when before ... the whole Platoon had word that DFE had masturbated on CLC. The clear impression others had and boys began to make comments to CLC about being a 'cum rag' and 'cum dumpster'. There was no mention of the stain on his sleeping bag as being condensed milk.

CLC has been told recently in an apology yesterday that he was sorry and it was condensed milk that is supplied in the ration packs. There was no intervention from senior boys in the platoon to stop these comments. It now seems apparent that comments have been floating about ever since leading up to the events on Tuesday night and the comment made by another boy. CLC was not sure if DFE was just joking but there seems to have been no attempt from DFE to say it was anything but...

11. Mr Mansfield said Mr James' note was consistent with his recollection.⁹ Mr Mansfield was not challenged on this aspect of his evidence.
12. After meeting with CLC, Mr Mansfield and Mr James returned to the meeting with Dr Parry, EAE and EAG.
13. On the available evidence, prior to the meeting on 15 August 2013, CLC also told his parents that DFE said it was condensed milk.¹⁰
14. Following the meeting, EAE (at 3.09pm) sent an email to Dr Parry, Mr Mansfield and Mr James.¹¹ EAE said:

On the trip home we found out from CLC that the incident Andrew Mansfield mentioned in the meeting, and dealt with in the boarding house between [REDACTED], [REDACTED] and CLC was related to the corp camp incident.

There was also mention of messages to him on Facebook directly relating to the incident. I am investigating. However CLC is very reluctant to show me any messages.

CLC also mentioned over lunch that he felt harassed by the incident "24/7".

⁹ Exhibit 45-015 paragraph 14.

¹⁰ Exhibit 45-010, Tab 18, NPF.0019.001.0133_R

¹¹ Exhibit 45-010, Tab 10, TKS.0003.002.1399_R

CLC is gradually disclosing pieces of information. I will let you know about any additional information that we hear so that all can have a clearer picture.'

15. The reference to the '*incident Andrew Mansfield mentioned in the meeting*' was to an incident in May 2013. Later that afternoon, Mr Mansfield located an email from CLC to him on 14 May 2013 about a stink bomb. His email also records how Mr Mansfield addressed the matter and then reported to Dr Parry. Mr Mansfield's email records that he had seen the long SMS exchange between CLC and another boy. Mr Mansfield's email makes no reference to the cadet camp.¹²
16. On 16 August 2013, Dr Parry and Mr James met with another boy who was in the hoochie next to CLC, DFE and the third boy. The other boy's account was recorded in handwritten notes prepared by Dr Parry¹³ and later typed.¹⁴ The other boy heard CLC saying '*yuk*' in a loud voice. He heard the third boy ask DFE '*did you actually do it*' and DFE said '*yes*'.
17. On 16 August 2013, Dr Parry and Mr James met with the third boy for a second time. The third boy's account was recorded in handwritten notes prepared by Dr Parry¹⁵ and later typed.¹⁶ The third boy's account was not entirely consistent with his account two days before. The third boy recalled '*CLC asked if DFE was masturbating. DFE said he wasn't. DFE then started laughing*'. The third boy said he believed DFE was masturbating and ejaculated on CLC's sleeping bag. He also said he did not see DFE doing it.
18. On 19 August 2013, Mr Mansfield and Mr James met with CLC again. Mr James' note records that he tried to seek further clarification about the events that occurred on Corps Camp. Mr James noted that CLC's account had '*shifted a little bit*'. However, Mr James records '*Either way, it needs to be stressed again that DFE has left a clear impression that he has actually masturbated on CLC or simulated that he had done so.*'¹⁷

¹² Exhibit 45-010, Tab 12 NPF.0019.001.0126_R

¹³ Exhibit 45-010, Tab 15, NPF.0019.005.0103_R

¹⁴ Exhibit 45-010, Tab 16, NPF.0019.005.0131_R

¹⁵ Exhibit 45-010, Tab 15, NPF.0019.005.0107_R ff

¹⁶ Exhibit 45-010, Tab 17 NPF.0019.005.0132_R

¹⁷ Exhibit 45-010, Tab 19, NPF.0019.001.0134_R and Tab 20, NPF.0019.001.0136_R

19. On 22 August 2013, Dr Parry and Mr Rob Chandler, Director of Staff met with DFE. Mr Chandler's note of the meeting records DFE was asked to '*describe the events of the evening*'.¹⁸ The note records:
- DFE said he thought it would be funny to pour condensed milk on CLC's sleeping bag. Dr Parry asked what they had been talking about. DFE said they were talking "about sexual things but I can't remember what". When asked to try to remember, DFE said "Yeah, we were talking about masturbation. I was 'making noises' with my hands. I squirted condensed milk on CLC's sleeping bag. He said, 'Don't tell me you did that'. He thought I masturbated on him.'*
20. Dr Parry was not cross-examined about this record or his interview with DFE. In his evidence, Dr Parry said that following his interview with DFE he did not know whether in fact DFE has masturbated on CLC.¹⁹
21. On 26 August 2013, DFE wrote a letter of apology. In that letter he referred to a '*reckless prank*'.²⁰
22. A year later and well after CLC had left TKS, CLC was interviewed by Detective Sergeant Munro on 22 September 2014. Detective Sergeant Munro's handwritten note of the interview records few details about the incident in April 2013.²¹ His note records CLC saying '*DFE lied to me and told me it was condensed milk.*' There is no evidence from CLC to explain how or why his view had changed from what he had been told by DFE and believed on 15 August 2013.
23. In his statement to the Royal Commission dated 14 October 2016²² CLC described the incident in the following terms:
- [18] During the night I woke up to hear REDACTED saying, "Did you really do that? That's disgusting". I also heard DFE laughing. Initially I didn't know what happened but then I rolled over and saw that DFE had ejaculated on my sleeping bag. I immediately grabbed something to try and wipe it off.*
- [19] I do not remember saying anything to DFE. I may have called him an idiot or a dickhead.*
- ...

¹⁸ Exhibit 45-010, Tab 23, NPF.074.002.0051_R and see Exhibit 45-066 paragraph 5.

¹⁹ Exhibit 45-016 paragraph 21.

²⁰ Exhibit 45-010, Tab 32, NPF.0019.005.0124_R

²¹ Exhibit 45-010, Tab 55, NPF.0019.001.0246_R ff

²² Exhibit 45-011

24. In summary, TKS submits that the evidence remains unclear as to precisely what occurred at the cadet camp in April 2013. However, it is open to the Royal Commission to find that as at April 2013, CLC believed that DFE had ejaculated on CLC's sleeping bag.

Did CLC disclose the incident to Mr Mansfield in May 2013?

25. There is now a dispute as to whether CLC reported the incident to Mr Mansfield in May 2013. In his statement to the Royal Commission, CLC claims he told Mr Mansfield about the incident at the camp in May 2013.²³ Mr Mansfield denies this claim.²⁴
26. At paragraph 203 of his submissions Counsel Assisting submits that it is unnecessary to resolve the conflict between Mr Mansfield and CLC. Mr Mansfield and TKS submit that the Royal Commission should make a finding that CLC did not notify or report the incident in May 2013. This finding is clearly open on the available evidence:
- a. neither CLC nor any other student reported the cadet camp incident at the time. There is no record of any student, other than CLC, reporting the incident;
 - b. in his oral evidence, CLC agreed that in his email to Mr Mansfield dated 14 May 2013 he made no reference²⁵ to the cadet camp, DFE or being described as 'cum rag' or 'cum dumpster';
 - c. in his oral evidence CLC had no recollection of how he came to speak to Mr Mansfield in May 2013;²⁶
 - d. in his oral evidence, Mr Mansfield agreed that had spoken with CLC on 14 May 2013 and had seen text messages. When asked whether the text messages made a reference to 'cum rag', Mr Mansfield said he did not recall the phrase in the

²³ Exhibit 45-011 paragraph 29

²⁴ Exhibit 45-015 paragraphs 7, 39(d) and (e)

²⁵ Transcript 21938 lines 29 – 40.

²⁶ Transcript 21938 lines 42 – 45.

messages. He did agree it was ‘possible’.²⁷ When asked whether he remembered CLC telling him about what had occurred to him at the cadet camp in April 2013, during the conversation in May 2013 Mr Mansfield’s evidence was clear. He said ‘*CLC did not tell me what had occurred on the camp that year. He said he was ‘sure about that’;*²⁸

- e. Mr Mansfield’s recollection in August 2013 and when giving his evidence to the Royal Commission was that he was not aware of the cadet camp incident or DFE’s conduct until CLC’s disclosure in August 2013. His evidence should be accepted;
- f. Mr Mansfield’s evidence was that he was confident that had there been a disclosure in May 2013, he would have acted on the matter immediately and undoubtedly in a similar way to the way he responded in August 2013;
- g. EAE and EAG were unaware of any incident at the cadet camp or any related text messages or Facebook posts about the camp prior to 13 August 2013;
- h. neither CLC, EAE nor EAG ever alleged that CLC had disclosed or reported DFE’s conduct at the cadet camp in May 2013 in any of the meetings, correspondence or conversations with TKS between 15 August 2013 and 11 October 2013. It is of note that during the covert tape recording of a meeting with Dr Hawkes, where a range of topics were discussed, EAE and EAG make no allegation or mention that CLC had disclosed the cadet camp incident to Mr Mansfield in May 2013;
- i. at no time when Dr Hawkes raised his concern about CLC’s failure to raise these matters at any earlier stage than 13 August 2013, did either EAE or EAG say that the matter had been reported to Mr Mansfield in May. None of the ensuing correspondence between Dr Hawkes and the parents ever refers to the complaint having been raised and failed to be acted on in May;

²⁷ Transcript 22011 lines 26 – 38.

²⁸ Transcript 22011 lines 40 – 46.

- j. having regard to TKS's response when the matter was notified to it on 13 August 2013, it is implausible that had CLC made the allegations with respect to DFE in May 2013, Mr Mansfield or TKS would have ignored it or done nothing;
- k. in a statement provided to the NSW Police dated 17 March 2015, EAE makes no allegation that CLC disclosed the incident at the cadet camp in May 2013;²⁹
- l. at no time prior to CLC and EAE providing statements to the Royal Commission in October 2016 have either of them notified TKS of the allegation that CLC disclosed the cadet camp incident in May 2013;
- m. EAE's statement (Exhibit 45-012) was confused and inconsistent as to the alleged disclosure by CLC in May 2013:
 - i. at paragraph 14, EAE said it was his understanding that CLC disclosed the incident to Mr Mansfield on 13 August 2013;
 - ii. at paragraph 19, EAE claims CLC told him on 15 August that CLC told Mr Mansfield '*about the assault on cadet camp*' on an unidentified date. EAE also claimed that he informed Dr Parry of the disclosure by email. However, the email which is reproduced at paragraph 14 above is not consistent with the claim. The email makes no reference to CLC telling his father that he had told Mr Mansfield about the assault on the cadet camp. The email does not advise Dr Parry of this claim. To the extent that paragraph 182 of Counsel Assisting's Submissions relies on this aspect of EAE's evidence, TKS submits that EAE's claims are not supported by his email, being the contemporaneous record;
 - iii. at paragraph 27, EAE says that CLC '*has since disclosed he told Mr Mansfield about the assault*'. In his statement, EAE did not identify when he had the conversation with CLC;

²⁹ Exhibit 45-010 Tab 58, NPF.0019.001.0015_R ff

- n. when cross-examined about paragraph 27 of his statement, EAE conceded that CLC may have told him about the alleged disclosure to Mr Mansfield ‘*months after*’. He agreed that CLC may not have told him about this until after CLC was withdrawn from TKS. EAE’s clarification means that paragraph 19 of his statement (and paragraph 182 of Counsel Assisting’s Submissions) should be rejected;³⁰ and
 - o. it is not necessary for these submissions to address a number of significant inconsistencies between EAE’s recollection and the contemporaneous records about the dates of meetings or the conversations had at the meetings, suffice to say that EAE’s recollection is not reliable.
27. In the circumstances, TKS submits that it is not satisfactory to leave the conflict about the alleged prior disclosure of the incident at the cadet camp unresolved. It is a significant matter relevant to TKS’s response when the allegation was eventually raised by CLC. By leaving the matter unresolved, it may inadvertently result in an inference that Mr Mansfield failed to act in May 2013. On the state of the evidence there should be no adverse finding that Mr Mansfield failed to act in May 2013.

Findings sought by Counsel Assisting the Royal Commission

Finding AF 10

28. Counsel Assisting seeks the following finding:

Dr Parry failed to follow the advice of Senior Constable Paterson to make a report of the assault on CLC to the police.

29. It is respectfully submitted that the finding is not available on the evidence for the following reasons.
30. As at 22 August 2013, Dr Parry was unclear as to exactly what had occurred at the cadet camp in April 2013. Dr Parry had received information from CLC, DFE, the third boy and another boy. Neither CLC nor the third boy saw DFE masturbate or

³⁰ Transcript 21960 lines 39 - 46

ejaculate. However, both CLC and the third boy believed DFE had done it. On 15 August 2013, CLC said DFE told him it was condensed milk. On 22 August 2013, DFE told Dr Parry it was condensed milk.

31. Dr Parry was clear that whether it was ejaculate or condensed milk, DFE had left CLC and the third boy with the impression that DFE has ejaculated on CLC's sleeping bag. Notwithstanding DFE's denial, Mr Chandler advised Dr Parry he should report the matter to the NSW Police.³¹ Paragraph 226 of Counsel Assisting's submissions acknowledges Dr Parry's evidence that Dr Parry informed Dr Hawkes that he would report the incident to an officer at the Castle Hill Police Station, Senior Constable Robert Paterson.
32. Together, Dr Parry and Mr Chandler contacted Senior Constable Paterson, the Youth Liaison Officer at Castle Hill Police Station. The Youth Liaison Officer was *inter alia* a point of contact if issues arose in a school that might occasion the involvement or intervention of the police.³²
33. In the circumstances, it was appropriate for Dr Parry to contact Senior Constable Paterson. There is no suggestion in the evidence or Counsel Assisting's Submissions that it was inappropriate for Dr Parry to contact Senior Constable Paterson or that there was an alternate or preferable police officer to contact. There is no suggestion that the timing of the phone call or contact by way of a phone call was inappropriate.
34. Dr Parry said that his purpose in contacting Senior Constable Paterson was to report the matter. He said that he wanted to inform Constable Paterson and that is what he did.³³
35. Dr Parry said he sought advice from Senior Constable Paterson because he said '*I hadn't come across something like this before*'.³⁴
36. In a statement given to the NSW Police on 18 March 2015, Dr Parry said:³⁵

³¹ Exhibit 45-066 paragraph 8.

³² Transcript 22422 lines 22 – 35 – Detective Sgt Munro accepted this was a fair assumption.

³³ Transcript 22064 line 34.

³⁴ Exhibit 45-010, Tab 59, page 3 paragraph 10, NPF.0019.001.0005_R

³⁵ Exhibit 45-010, Tab 59, page 3 paragraph 10, NPF.0019.001.0005_R ff

I sought advice from Rob Paterson as I phoned him at Castle Hill Police Station. He is the local youth liaison officer for our school. I told him what I knew about the incident at the cadet camp, where it was alleged that one boy masturbated and ejaculated on another boy. I explained that the perpetrator had said he had squirted condensed milk on the boy, pretending to do it. I rang him to get some advice and to tell him what happened. ...

37. Mr Chandler's unchallenged evidence was that Dr Parry told Senior Constable Paterson:³⁶
- a. *there had been an allegation made by a boy that one night at the cadet corp camp another boy in his hoochie had masturbated and ejaculated on his sleeping bag;*
 - b. *the allegation was made some months after the incident; and*
 - c. *he had spoken to the other boy and he denied doing it and said he only pretended and squirted condensed milk on the sleeping bag.*
38. Paragraph 227 of Counsel Assisting's Submissions accepts this account.
39. Dr Parry and Mr Chandler gave evidence that Senior Constable Paterson responded saying:
- a. *it did not make a lot of difference at law whether he had done it or not - the fact he said he did it makes it just as bad as if he actually did it; and*
 - b. *he would send some information to Dr Parry that might clarify things;*³⁷
 - c. *DFE's conduct was an act of indecency.*³⁸
40. The evidence makes it plain that Dr Parry reported the information available to him to Senior Constable Paterson. Based on the evidence, it is open to the Royal Commission to find that Dr Parry did report the matter to the NSW Police. Senior Constable Paterson was a sworn police officer with specific responsibilities for Youth Liaison. The evidence also makes it plain that at that time Dr Parry believed that he had reported the incident to Senior Constable Paterson. After the call, Dr Parry told Dr Hawkes he had reported the matter to the police.³⁹ Dr Parry's evidence to this effect was not challenged.
41. Neither Dr Parry nor Mr Chandler gave evidence that Senior Constable Paterson informed them during the call that Dr Parry needed to report the incident in person, to

³⁶ Exhibit 45-066 paragraph 9.

³⁷ Exhibit 45-066 paragraph 10.

³⁸ Exhibit 45-016 paragraph 44.

³⁹ Exhibit 45-016 paragraph 45.

another police officer or report it formally. Neither Dr Parry nor Mr Chandler gave evidence that Senior Constable Paterson informed them during the call that Dr Parry needed to provide greater detail before action could be taken by the police.

42. As to what constitutes a report to the police, Detective Sergeant Munro said there was no distinction between official and unofficial reports.⁴⁰ Detective Sergeant Munro agreed that there are a variety of ways a matter may be reported to the police.⁴¹ For example, he agreed that allegations made by a community source who may not have first-hand knowledge of the events was sufficient to trigger an investigation.⁴² TKS submits that Dr Parry's conversation with Senior Constable Paterson was a report and it should have been treated as a report by the police.
43. There is no evidence from Senior Constable Paterson. The Royal Commission has no evidence from him to explain what he did with the information provided by Dr Parry and why he did not apparently treat this information as a report, notwithstanding he considered DFE committed an act of indecency. Senior Constable Paterson had sufficient information to form a view that DFE's conduct was an offence. There is no explanation why Senior Constable Paterson failed to record the conversation (no relevant police records were produced of him making any relevant record) and it is not clear why he did not take further action.
44. It is respectfully submitted that paragraph 229 of Counsel Assisting's Submission is not correct to the extent that he submits '*Dr Hawkes agreed that it was something that needed to be reported to police*' if the submission is intended to suggest Dr Hawkes agreed to or understood that TKS needed to make another report or further report when he was advised by Dr Parry that he had spoken to Senior Constable Paterson. When Dr Hawkes' evidence is considered in its proper context,⁴³ Dr Hawkes acknowledged Dr Parry's advice that it was appropriate to inform Senior Constable Paterson because pretending to masturbate and ejaculate was as bad as actually doing it.⁴⁴

⁴⁰ Transcript 22421 lines 12 – 13.

⁴¹ Transcript 22421 lines 19 - 12 – 13.

⁴² Transcript 22412 lines 32 – 35.

⁴³ Transcript 22090 lines 4 – 6.

⁴⁴ Transcript 22089 lines 31 – 39.

Senior Constable Paterson's email

45. There are two emails from Senior Constable Paterson to Dr Parry. One is copied to Mr Chandler on 22 August 2013 at 4.27pm (**Exhibit 45-010, Tab 51**). The other is at 4.28pm (**Exhibit 45-017 and Exhibit 45-010 Tab 22**) which is not copied to Mr Chandler. When printed the emails have different font size and spacing but they otherwise have the same content. The evidence infers that Dr Parry saw the email in an electronic form. There was no evidence that Dr Parry printed the email on 22 August 2013.
46. Paragraph 230 of Counsel Assisting's Submissions set out extracts of Senior Constable Paterson's email but it should be noted the formatting of the email does not make the text as clear as set out in the Submissions. The Royal Commission should have regard to the email document in its entirety and in the form presented either at Exhibit 45-010 Tab 22, Tab 51 or Exhibit 45-017.
47. As to the meaning of the contents of the email and what was intended by its content, Senior Constable Paterson did not give evidence. The Royal Commission does not know whether Senior Constable Paterson intended to give advice in the email or whether he was providing further information as discussed with Dr Parry and Mr Chandler. In an unsworn statement made on 17 September 2014, Senior Constable Paterson claimed that he '*explained*' to Dr Parry '*that police do not provide legal advice, however I could assist in determining the offence*'.⁴⁵ If this statement is true, then it seems to contradict any submission Senior Constable Paterson intended to provide advice of a legal nature in the email. As noted above, Mr Chandler's recollection was that Senior Constable Paterson would '*send some information to Dr Parry that might clarify things*'. Mr Chandler made no reference to Senior Constable Paterson providing further advice or mentioning a need to report the matter further. In the absence of any evidence from Senior Constable Paterson, Mr Chandler's unchallenged evidence should be accepted.
48. Dr Parry agreed he received Senior Constable Paterson's email on 22 August 2013 and he responded at 5.44pm. Dr Parry thanked Senior Constable Paterson.

⁴⁵ Exhibit 45-010 Tab 52 paragraph 5.

49. When Dr Parry was interviewed by Detective Sergeant Munro on 18 March 2015, he said:

Either the same day or the next day after, Rob Paterson sent me an email detailing what we'd discussed. In the email Rob Paterson explained that even if it was the case that DFE pretended to do it (he didn't mention the names in his email as he didn't know them), if the victim believes that he did do it, it is still an offence.

It was at a much later stage that I read the email again and realised that Rob Paterson said in his email that I should be reporting the matter to some other Police. I thought the email was just confirming what we'd spoken about.

It was never my intention to conceal anything.

50. In his oral evidence, Dr Parry conceded he did not read Senior Constable Paterson's email on 22 August 2013 'carefully enough'.⁴⁶ This aspect of Dr Parry's evidence was not subject to any further challenge by Counsel Assisting.⁴⁷ It was never suggested that Dr Parry's evidence was untruthful. At paragraph 234 of Counsel Assisting's Submissions, Counsel Assisting accepts Dr Parry did not read the email carefully in that he did not finish reading the last part of the email. Dr Parry's evidence that on 22 August 2013 he did not read the email carefully and specifically, that he did not read the references to reporting the incident, should be accepted.

51. As to paragraph 234 of Counsel Assisting's Submissions, TKS notes that part of the submission paraphrases Senior Constable Paterson's email. However, the paraphrase is not correct or accurate. The relevant part of the email states:

A minor assault should be reported to police, so this should be reported (to avoid any possible action under S316 of the Crimes Act under Conceal Serious Indictable Offence, and potentially avoid civil action.

TKS submits the Royal Commission should have regard to the text of the email rather than the paraphrase as it appears in Counsel Assisting's Submissions.

Action taken after receipt of Senior Constable Paterson's email

52. On 23 August 2013, EAE wrote to Dr Parry⁴⁸ stating:

We are aware that the relevant authorities have been informed of the incident at the Corp camp in April this year. We are aware that authorities may wish to speak with CLC.

⁴⁶ Transcript 22067 lines 8 – 17. See also Exhibit 45-016 paragraphs 43, 46, 47

⁴⁷ Transcript 22068 lines 5 – 9 and 22070 lines 16 to 22071 line 40.

⁴⁸ Exhibit 45-010, Tab 28, TKS.0003.002.1404_R

CLC was asleep at the time of the alleged incident.

He is traumatised by the harassment and bullying he had been subject to since April.

He does not wish to make any statement to the police and does not want to give any statement in proceedings.

His mother and I support this stance.

Nor does he wish to make any further statement to school other than on a privileged basis for the purpose of the school. Any statement made by him to date is on a confidential basis.

...

53. On 23 August 2013, EAE made it clear that CLC did not wish to give a statement to the police. EAE and EAG supported CLC's 'stance'. This aspect of the evidence was not explored by Counsel Assisting. EAE makes no reference to the 'stance' in his evidence and the 'stance' appears to be at odds with CLC and EAE's position in September 2014 (when CLC was interviewed by police) and March 2015 (when EAE made a statement to police).⁴⁹ However TKS submits that this aspect of the evidence is relevant to what further steps should have been taken after being informed by CLC's parents of CLC's wishes.
54. On 23 August 2013, DFE was suspended for '*committing an act of indecency at cadet camp*'. Dr Parry's posted a notice to this effect.⁵⁰ The description reflected the information he received from Senior Constable Paterson the day before. DFE did not return to TKS following the interim suspension.

Detective Sergeant Munro's evidence

55. TKS respectfully submits paragraph 246 of Counsel Assisting's Submissions seeks to paraphrase Detective Sergeant Munro's evidence and in so doing does not accurately reflect the evidence he gave to the Royal Commission.

⁴⁹ It should be noted that EAE's statement to the police made on 17 March 2015 about this email is not consistent with the contents of his email and the 'stance' at the time – see Exhibit 45-010, Tab 58 page 3 paragraph 11 NPF.0019.001.0017_R. By this time, EAE had been in dispute with TKS about unpaid fees and was motivated to make a statement because of a previous Royal Commission hearing - see Exhibit 45-010, Tab 58 page 7 paragraph 23, NPF.0019.001.0021_R

⁵⁰ Exhibit 45-010, Tab 24, TKS.0003.002.0883_R

56. As to the allegations that Dr Parry failed to report the matter to the police in addition to his conversation with Senior Constable Paterson, Detective Sergeant Munro was asked about reporting in cross-examination. He said Dr Parry would not have been able to report the incident to JIRT or a specialist unit within NSW Police in relation to child sexual abuse.⁵¹ Detective Sergeant Munro agreed that his criticism was not directed to a failure to attend a police station to report or to report to a different police officer.⁵²
57. Detective Sergeant Munro's oral evidence revealed that he was critical of three things - Dr Parry not taking up the offer that the police attend the school⁵³ or calling Senior Constable Paterson back or providing police sufficient information.⁵⁴ In this regard, Detective Sergeant Munro's criticism are based on an interpretation of Senior Constable Paterson's email and a preconceived view that TKS was seeking to conceal the incident (based on an unidentified 'community source'). It appears that Detective Sergeant Munro may have also relied on paragraphs 6 and 7 of Senior Constable Paterson's statement dated 17 September 2014 (**Exhibit 45-010 Tab 52**). It is respectfully submitted that this aspect of Senior Constable Paterson's statement is wrong and these paragraphs refer to a different matter at a different time. At no stage during the call on 22 August 2013, did Senior Constable Paterson offer to organise a '*car crew to attend the school so they can investigate the matter*'. Senior Constable Paterson's email makes no reference to such an 'offer' to send a crew to investigate the matter.
58. As to Detective Sergeant Munro's criticisms, the Royal Commission should not accept the criticisms as sound for the following reasons:
- a. he assumes that Dr Parry read Senior Constable Paterson's email on 22 August 2013, which is contrary to Dr Parry's evidence. However, Dr Parry told him in an interview that he had not read the email as advising him to report the incident further;

⁵¹ Transcript 22424 lines 9 - 46.

⁵² Transcript 22424 lines 9 - 46.

⁵³ Transcript 22425 lines 16 - 18.

⁵⁴ Transcript 22425 lines 18 - 24.

- b. Senior Constable Paterson's email did not advise Dr Parry that he should arrange for the police to attend the school. When the email is read in its proper context, Senior Constable Paterson referred to the victims being contacted for statements and the victims being counselled. Following the reference to the victim/s, he said *'If you would like police to attend, I can speak to the Supervisor on duty so that it is followed up as discussed.'*;
 - c. he appears to have been unaware of EAE's and CLC's 'stance' at 23 August 2013 that CLC did not want to make a statement to the police;
 - d. Senior Constable Paterson's email did not advise Dr Parry that he should call Senior Constable Paterson or provide further information; and
 - e. there is no evidence that Dr Parry withheld any information during the phone call or was reluctant to disclose to Senior Constable Paterson the available information.
59. Detective Sergeant Munro's evidence does not support the finding proposed by Counsel Assisting.

Senior Constable Paterson's evidence

60. TKS notes that Counsel Assisting has appropriately not sought to rely on any aspect of Senior Constable Paterson's account in any way challenging the veracity of Dr Parry's recollection. TKS objected to the admission of Senior Constable Paterson's unsworn statement being admitted into evidence.
61. To the extent that any aspect of Dr Parry's and Mr Chandler's evidence is inconsistent with Senior Constable Paterson's email dated 15 September 2014 (**Exhibit 45-010 Tab 51**) and/or statement dated 17 September 2014 (**Exhibit 45-010 Tab 52**), TKS submits that Dr Parry's and Mr Chandler's evidence should be preferred. Senior Constable Paterson was not called to give evidence and the TKS witnesses had no opportunity to test the claims made in Senior Constable Paterson's statement dated 17 September 2014.

Available finding

62. In summary, the proposed finding rests on an assumption that Dr Parry read and understood Senior Constable Paterson's email on 22 August 2013 and that at that time, Dr Parry knew he should act on advice and make a report to the police. There is no evidence to support this proposed finding, having regard to Dr Parry's evidence that he believed he had reported the incident to the police when he spoke to Senior Constable Paterson on 22 August 2013; his evidence about misreading Senior Constable Paterson's later email; and not reading the email again until September 2014 when queried by Dr Hawkes.⁵⁵
63. The proposed finding is not supported by Detective Sergeant Munro's evidence about 'reporting' and CLC's stance that he would not give a statement to the police.
64. Having regard to the evidence, the only possible adverse finding that could be made about Dr Parry is a failure to read Senior Constable Paterson's email carefully on 22 August 2013.

Finding AF 11

65. Counsel Assisting seeks the following finding:

Dr Hawkes had access to the email from Senior Constable Paterson dated 22 August 2013 which stated that the CLC cadet camp incident needed to be reported to police and that it might be a criminal offence not to report the matter to police, and no report was made to the police.

66. It is respectfully submitted that the finding is not available on the evidence for the following reasons.
67. First, the finding relies on a paraphrase of Senior Constable Paterson's email – '*that the CLC cadet camp incident needed to be reported to police and that it might be a criminal offence not to report the matter to police*'. A review of the text of the email shows the paraphrase is not accurate. There is no evidence from Senior Constable Paterson that this is what he meant to convey and/or that Dr Hawkes should have read the email as a

⁵⁵ Exhibit 45-016 paragraph 46.

warning that the failure to report 'CLC cadet camp incident' might involve him committing a criminal offence.

68. Secondly, the proposed finding that Dr Hawkes had 'access to the email' being the email sent by Senior Constable Paterson to Dr Parry *or* to Dr Parry and Mr Chandler is not clear. The evidence shows there was no email between Senior Constable Paterson and Dr Hawkes. Rather, at 5.44pm on 22 August 2013 Dr Parry copied Dr Hawkes into his email response to Senior Constable Paterson's email.⁵⁶ It is not clear what is meant by Dr Hawkes having 'access' to the email or when it is alleged he had 'access' to the email. The finding appears to be based on a question put to Dr Parry where Counsel Assisting asserts that Dr Hawkes had access to a copy of Senior Counsel Paterson's email.⁵⁷
69. Thirdly, TKS notes that no allegation is made or finding sought that Dr Hawkes read the email on 22 or 23 August 2013. However, the finding appears to be premised on an assumption that he did. Such an assumption is not supported by the evidence that makes it very clear that Dr Hawkes did not read the email on 22 or 23 August 2013. Dr Hawkes' evidence about the email was:
- a. he did not remember receiving it;⁵⁸
 - b. he had no recall of seeing it;⁵⁹
 - c. he cannot recall reading it;⁶⁰
 - d. when asked '*you don't dispute you received it, you just don't have a recollection of doing so*', Dr Hawkes responded '*correct*'.⁶¹ When asked the question a second time, Dr Hawkes said '*I don't dispute that and I can neither confirm nor deny it*'.⁶²
70. Fourthly, the contention that '*no report was made to the police*' is not supported by the available evidence. As noted above, Dr Parry believed he had reported the incident to

⁵⁶ Exhibit 45-017.

⁵⁷ Transcript 22071 lines 7 – 11.

⁵⁸ Transcript 22090 lines 40 – 44.

⁵⁹ Transcript 22090 lines 40 – 44.

⁶⁰ Transcript 22090 lines 40 – 44 and 22091 lines 19 - 21

⁶¹ Transcript 22090 lines 46 – 22091 line 2

⁶² Transcript 22091 lines 23 - 26

Senior Constable Paterson in a telephone call. Dr Parry told Dr Hawkes that he had reported the incident to Senior Constable Paterson. It is not correct to seek a finding that ‘no report’ was made to the police. It appears that Counsel Assisting is seeking a finding that no further or additional report was made, on the assumption that Senior Constable Paterson’s email should be read as advising the matter to be reported again. Even then, it is not clear on what basis Counsel Assisting seeks to make an adverse finding with respect to Dr Hawkes reporting to the police.

71. In summary, the tenor of Counsel Assisting’s Submission is that Dr Hawkes should have read the email copied to him on 22 August or at least by 23 August 2013. In so doing Dr Hawkes (who was not privy to the call with Senior Constable Paterson) should have understood that a further report should be made, thereby recognising that Dr Parry’s advice to him that Dr Parry had reported was either false or wrong. The tenor of the submission is that because there was a discussion about the incident on 23 August 2013 (even though Dr Parry did not recall any of the participants having the email with them⁶³ or any discussion about reporting⁶⁴) that Dr Hawkes should have known what to report and the nature of the reporting required. It is respectfully submitted that this theory is not supported by the available evidence and a finding in the terms proposed would be unsound.
72. At its highest, the only adverse finding that could be made is that Dr Hawkes did not read Dr Parry’s email response to Senior Constable Paterson dated 22 August 2013 at 5.44pm and the email chain which included Senior Constable Paterson’s email at 4.27pm or 4.28pm.

Finding AF 12

73. Counsel Assisting seeks the following finding:

The failure to report the CLC camp incident to police, contrary to written advice from the police that the matter should be reported, was a catastrophic failure by King’s.

74. This finding is not available on the evidence.

⁶³ Transcript 22070 line 46 – 22071 line 1

⁶⁴ Transcript 22071 lines 3 – 40.

75. This finding appears to be based on the evidence addressed for proposed findings 10 and 11. The matters set out above are relied on with respect to this proposed finding.
76. Again, the proposed finding is based on an interpretation of Senior Constable Paterson's email in circumstances where Senior Constable Paterson did not give evidence.
77. Again, the proposed finding overlooks the evidence that Dr Parry believed he reported the matter on 22 August 2013. There was no failure to make *any* report.
78. Counsel Assisting's Submissions referring to 'catastrophic failure' is language used only by Counsel Assisting. The expression does not appear in any statements, including that of Detective Sergeant Munro. It is respectfully submitted that rhetorical flourishes in the course of cross-examination should not be used as a basis for factual findings. The expression 'catastrophic' in this context is misplaced and exaggerated. This finding should be rejected in its entirety.

Finding AF 13

79. Counsel Assisting seeks the following finding:

As of 2013, a bullying culture existed at King's both inside the boarding houses and in the school more generally.

80. This finding appears to be based on paragraphs 250 – 255 of Counsel Assisting's Submissions.
81. TKS submits that the finding is not available on the evidence.
82. First, the only evidence referred to in paragraphs 250 – 255 of Counsel Assisting's Submissions concerns treatment of CLC. TKS submits that the treatment of one student cannot serve as evidence of a 'bullying culture' existing at the school – both in the boarding houses generally and the school generally.
83. Secondly, the proposed finding appears to be based on a change to the Wi-Fi networks in September 2013 referring to CLC in a derogatory manner. Two students were responsible. These students were punished.
84. With respect to paragraph 253 of Counsel Assisting's Submissions and the reference to Dr Parry accepting that the renaming of the networks identifying CLC was '*something*

that would have been available to every boy in the school if they had logged on their computer' should be considered in context and also by reference to Mr John Taylor's evidence. Paragraphs 253 and 254 of Counsel Assisting's Submissions appears to overlook Dr Parry's exchange with Justice McClellan - Dr Parry was asked whether the network was '*visible to every boy in the school*'. Dr Parry said his technical knowledge of how it was or where it was available was not sufficient.⁶⁵ TKS provided a statement from Mr Taylor (Exhibit 45-068). Mr Taylor was employed by TKS in the position of Systems Administrator since June 2009. Since April 2016, he held the position of Acting Director of ICT. Mr Taylor's evidence was informed by his relevant technical knowledge of how the TKS systems operated. In his statement (paragraph 9) he said an ad hoc network such as those set up by the two students would not be available to all boys or the whole school. Mr Taylor explained that based on the network operations it could not be visible to all boys or the whole school.

85. Thirdly, with respect to paragraph 255 of Counsel Assisting's Submissions, the submission fails to address the context. At Transcript 22036 – 22038 shows Mr Mansfield was asked a series of questions about the treatment of CLC and a perceived issue about boys speaking up or reporting when they witnessed conduct of the kind experienced by CLC. The context was the treatment of CLC. The questions concerning the culture was not so much a culture of bullying but a culture of non-reporting. Likewise, Dr Parry's evidence at Transcript 22052 lines 22 – 24 does no more than agree to a general proposition which was put without any context. Even then, the question made no reference to bullying and made no distinction between the boarding houses and the school generally.
86. As to the culture of TKS in 2013 and more specifically TKS's policies and practices to address bullying, these have not been addressed in Counsel Assisting's Submissions. There was a significant amount of unchallenged evidence before the Royal Commission directed to this issue. Having regard to the following unchallenged evidence, it is not open to the Royal Commission to make the finding sought.
87. Dr Hawkes addressed the issue in some detail in Exhibit 45-018, paragraphs 67 – 98. Those paragraphs will not be reproduced in these submissions but TKS invites the

⁶⁵ Transcript 22052 lines 34 – 38.

Royal Commission to accept this unchallenged evidence in its entirety. In summary, Dr Hawkes spoke to:

- a. the TKS Mission Statement states that the school aims to promote kindness and empathy, an abhorrence of bullying and the promotion of ethical and just behaviour;
- b. a whole school approach making the welfare of students central to the mission and purpose of the school. The whole school approach includes:
 - i. having in place appropriate policies that are well known and understood which set expectations about standards of behaviour and provide a mechanism for raising issues;
 - ii. education of students and parents;
 - iii. active supervision;
 - iv. staff training;
 - v. having in place appropriate support networks; and
 - vi. monitoring
- c. his commitment and one of his central aims was to tackle bullying. He used assembly talks, chapel talks, articles in fortnightly news-letters, the policies promoted in school diaries and on the school's internet and intranet, the curriculum, staff and senior students modelling appropriate behaviour and signage to help create a school culture where abuse of any kind is not tolerated;
- d. the bullying policy introduced in 1999. Within the definition of bullying this policy also deals with sexual harassment, unwanted sexual touching, inappropriate joking, and reinforces that exposure and unlawful sexual advances are totally unacceptable;
- e. he said the bullying policy is put into the school diary which is given to every student. Constant reinforcement of the policy is made in assembly talks, chapel talks, newsletters etc. The bullying policy is also on the TKS intranet

and the parental portal (an online resource that allows members of the school community to access school information);

- f. the bullying policy sets out what a student should do if he is bullied;
- g. he explained that TKS undertakes confidential surveys annually to identify problem behaviour which may impact on the wellbeing of students. These annual ‘*Wellbeing Surveys*’, have been undertaken for over a decade by students in Years 7 – 10 students. This initiative has been successful in identifying potential bullying behaviour at an early stage and in revealing any students who might be in need of counselling as victims. Once identified, both potential bullies and their victims are contacted and counselled by a School Counsellor or Year Co-ordinator;
- h. he explained the bullying policy is enforced through appropriate disciplinary action including suspension and expulsion. TKS' Student Suspension and Expulsion Policy describes the procedure that will be followed when suspending or expelling a student; and
- i. he explained TKS focuses on training boarding staff in anti-bullying measures.

88. In summary, it is accepted that CLC was bullied following the incident at the Cadet Camp in April 2013 and following the disclosure on 13 August 2013 up until he left TKS in mid-October 2013. The bullying of CLC was unacceptable and wrong. However, the treatment of CLC and the available evidence does not support the proposed finding.

Finding AF 14

89. Counsel Assisting seeks the following finding:

The measures taken by King's to address the bullying of CLC in the period after 13 August 2013 were ineffective.

90. It is submitted that the available finding may be more accurately expressed as follows:

The measures taken by King's to prevent bullying of CLC between 18 August 2013 and 16 October 2013 were ineffective.

91. On 13 August 2013, CLC returned to his home and remained there until he returned to TKS on 18 August 2013.
92. On 14 August 2013, Mr Mansfield contacted CLC's parents to arrange a meeting with them the following day. In the course of that meeting he offered the services of the TKS counsellors to CLC.
93. Mr Mansfield then spoke to various boys in the boarding house that evening on 15 August.
94. A range of measures were put in place by Mr Mansfield to ensure the welfare and care of CLC on his return. Mr Mansfield said:⁶⁶

I also put in place a range of support measures for CLC as follows:

- (a) I met with CLC's room mate and a reliable Year 10 student to ask them to keep an eye out for CLC and be a helping hand for CLC;*
- (b) I met with the House Captains who said they were not aware of the situation prior to 13 August 2013 and asked them to keep an eye out for CLC on his return and stamp out any comments being made by other boys;*
- (c) I spoke with all staff (Duty Staff and matron) to advise them of the situation and asked them to keep an eye out for CLC;*
- (d) I had daily contact with CLC initially following his return to the house to check on how he was getting on with other boys; and*
- (e) CLC was provided with the option of time out in the health centre.*

On 16 August 2013 I sent an email to Mr James outlining some of the support measures referred to above. Document TUD.0020.001.0333_R is a copy of this email.

On 9 October 2013 I prepared a summary of my involvement in this matter which also sets out my communication with EAE and EAG and the support measures referred to above. Document TKS.003.002.1407_R is a copy of this report.

95. When CLC returned to the boarding house, he kept Mr Mansfield apprised of any issues arising.⁶⁷

⁶⁶ Exhibit 45-015 paragraphs 30 – 32.

⁶⁷ See for example Exhibit 45-010, Tab 24, TUD.0020.001.0338_R

96. Mr Mansfield was asked about a number of events following CLC's return and he said he would have investigated the events.⁶⁸ Mr Mansfield also described the systems in the boarding house to monitor bullying.⁶⁹ It was clear from Mr Mansfield's evidence that he turned his mind to prevention of bullying and actively sought to implement a range of measures.
97. In addition to Mr Mansfield's measures in the boarding house, a range of other measures were also taken by TKS to address other incidents of bullying of CLC. When bullying occurred, it was acted on. The students involved were required to write essays. The perpetrators' parents were advised and some were suspended.
98. In the particular circumstances, TKS did take measures to prevent further bullying of CLC. However, it is accepted that some measures did not prevent every incident of bullying of CLC. Dr Hawkes said '*I candidly admit that [the steps] were not effective.*'⁷⁰

Finding AF 15

99. Counsel Assisting seeks the following finding:

King's did not adequately address EAG and EAE's concerns about the school's response to the bullying of CLC.

100. This finding is based on paragraphs 257 – 272 of Counsel Assisting's Submissions. As those paragraphs make plain, Dr Hawkes accepted that CLC was subjected to unconscionable bullying. However, as noted in paragraph 258, Dr Hawkes held the view that TKS had taken strong, principled and immediate action when they became aware of the bullying. As noted at paragraph 271, Dr Hawkes agreed that the steps taken by TKS were not effective to deal with the problem in this case.
101. As to TKS addressing EAG and EAE's concerns about TKS's response, it is necessary to identify the particular 'concerns' and how it is contended that those concerns were not adequately addressed.

⁶⁸ Transcript 22029 lines 40 – 41.

⁶⁹ Transcript 22030 line 34 – 22031 line 14.

⁷⁰ Transcript 22372 line 12.

102. It appears the concerns are those set out in an undated letter/email to Dr Hawkes reproduced at Exhibit 45-010, Tab 38 at NPF.0019.001.0024_R. These are the issues which EAE and EAG sought to discuss with Dr Hawkes. Dr Hawkes agreed to meet with EAE and EAG on 10 October 2013 to discuss their concerns. CLC was withdrawn from TKS on 16 October 2013. Thereafter, the evidence discloses an ongoing exchange of correspondence between Dr Hawkes and EAE in which the concerns continued to be addressed. This correspondence also raised EAE and EAG's failure to pay outstanding school fees.
103. Counsel Assisting's Submissions do not explain how the concerns were not adequately addressed. If he means that the measures taken by TKS were not effective to prevent every incident of bullying of CLC, that was conceded by Dr Hawkes and AF Finding 14 covers the finding. TKS has assumed that proposed finding 15 seeks to raise a different issue but it is not clear how it is alleged the concerns were not adequately addressed. TKS submits that Counsel Assisting's Submissions appear to be directed to EAE and EAG's dissatisfaction and their perception of the events. In this respect, the proposed finding may be more accurately expressed as follows:
- EAE and EAG were not satisfied with TKS's response to the bullying of CLC after he returned to TKS on 18 August 2013.*

Historical incidents of alleged sexual abuse

104. Paragraphs 276 – 279 of Counsel Assisting's Submissions extract Dr Hawkes, Mr Mansfield and Dr Parry's responses to a range of general questions. These paragraphs do not address the context in which each of them responded to propositions put to them. TKS submits that these paragraphs do not support any finding of '*historical culture of bullying and problematic or harmful sexual behaviour at King's*' as the heading to these paragraphs suggest.
105. Paragraphs 124 – 165 of Counsel Assisting's Submissions address the evidence of two former students of TKS (CLG and Mr John Williams) and historical incidents of alleged sexual abuse in the 1960s and 1970s. While there are no findings sought with respect to CLG and/or Mr Williams, TKS makes the following submissions relevant to the historical allegations.

106. Dr Hawkes gave evidence about how allegations of past sexual abuse have been addressed.⁷¹ Dr Hawkes explained there were few instances where allegations of sexual abuse in the past have been raised with TKS. Dr Hawkes' evidence about the historical allegations was not challenged. Dr Hawkes said:

[112] There have been four allegations that I have had to deal with about historical child to child sexual abuse during my period as Headmaster. These allegations were about conduct that occurred prior to my appointment as Headmaster (eg conduct in the 60s or 70s). Some of the allegations have been difficult to deal with, particularly when there are no records and the witnesses have passed away.

[113] Generally, TKS becomes aware of these historical claims if a former student contacts TKS to raise a concern.

[114] These historical matters are always taken seriously. I generally meet with the victim (and their legal representative if applicable) to give them an opportunity to tell me about their experiences. My response is guided by the tenor of the meeting and, if appropriate, I will express regret for the hurt the person is suffering from the alleged incident. I also confirm that TKS will co-operate with any police investigation if the victim has already reported, or intends to report, the matter to the police.

[115] TKS will investigate the allegation to the extent possible and seek to offer the victim empathy and pastoral support where appropriate. If TKS finds that the allegation is substantiated and TKS determines it has a liability in respect of the claim, the school will work with the victim to identify appropriate redress measures.

CLG

107. Paragraphs 124 to 140 of Counsel Assisting's Submissions summarise CLG's Statement.⁷²
108. Prior to 19 October 2016 Dr Hawkes was not aware of CLG's allegations of sexual abuse when he was a student of TKS.⁷³
109. TKS acknowledges CLG was a student between 1972 and 1977.
110. Mr Jonathan Wickham provided a statement to the Royal Commission dated 26 October 2016.⁷⁴ Mr Wickham was not called to give evidence.
111. Mr Wickham said between 1974 and 1981 he was Housemaster of the house where CLG boarded. Mr Wickham said he was not aware of any allegations concerning the

⁷¹ Exhibit 45-018 paragraphs 112 – 115.

⁷² Exhibit 45-013

⁷³ Exhibit 45-019 paragraphs 25 – 29.

⁷⁴ Exhibit 45-067

treatment of CLG until 19 October 2016 when he received a telephone call from the Solicitor Assisting the Royal Commission.

112. Mr Wickham said he had read CLG's student file. He said there were no allegations of abuse recorded in the file.
113. Mr Wickham denied he knew that CLG was being mentally and physically assaulted by older boys. He said at no stage did CLG seek his help or inform him of any abuse. If he had done so Mr Wickham said he would have taken action to assist CLG, including appropriate actions against those others involved.

John Williams

114. Paragraphs 141 to 165 summarises Mr Williams' Statement.⁷⁵
115. Counsel Assisting has not referred to Dr Hawkes' evidence about his engagement with Mr Williams.⁷⁶ Dr Hawkes denied saying to Mr Williams that TKS did not have any money to help Mr Williams as suggested at paragraph 160 of Counsel Assisting's submissions. Dr Hawkes denied expressing concern about the effect on TKS's image.

Other matters

116. The CLC incident highlights the difficulties presented to schools where allegations of child to child sexual abuse occur and the allegations are not reported for a period of time.
117. TKS would welcome the Royal Commission's advice as to a best practice approach to addressing such conduct. In particular, where the line is to be drawn between undertaking investigations to enable a school to respond immediately and protect the children involved but at the same time meet their obligations to accord natural justice to an alleged perpetrator, who may face the most serious sanctions for his conduct.

⁷⁵ Exhibit 45-014

⁷⁶ Exhibit 45-019; T22380 lines 15 to T 22392 line 22

118. TKS submits that in all actions concerning children the best interests of the child shall be a primary consideration. The best interests guiding principle must apply to all children involved.
119. TKS submits that schools would be assisted by the Royal Commission making recommendations on:
- a. when to report alleged child to child sexual conduct;
 - b. what, if any, investigation a school should undertake;
 - c. how does the school preserve the rights of the victim;
 - d. how does the school preserve the rights of an alleged perpetrator, given a presumption of innocence and a right not to incriminate one's self;
 - e. when and how to involve parents of a victim, perpetrator and witnesses;
 - f. what to do during a police investigation to provide appropriate care and access to education for all children concerned;
 - g. when should a school apply its usual disciplinary procedures, which may be a contractual obligation owed to the parents of both victim and perpetrator; and
 - h. the need for relevant resources to be provided by government agencies such as police and child protection agencies.
120. The matters addressed at paragraphs 290 – 291 of Counsel Assisting's Submissions reflect the view of the NSW Police but those views do not address the day to day management of a school and the need for schools to act quickly to address conduct and behaviour. The approach described by Detective Sergeant Munro will not be possible or practical in every case. TKS also refers to evidence given by Dr Wendy Peters (Exhibit 45-001) at the commencement of the Case Study 45 which suggests that addressing the problematic and harmful through the binary lens of the criminal law may not be appropriate.

Oral hearing

121. TKS does not seek an oral hearing with respect to these submissions or the matters raised in the public hearing.

Kate Eastman SC

Counsel for TKS parties

16 January 2017