Royal Commission into Institutional Responses to Child Sexual Abuse

Case Study 45: Sexually harmful behaviours of children within schools

SUBMISSIONS ON BEHALF OF

TRINITY GRAMMAR SCHOOL AND GEORGE MILTON CUJES

Introduction

1. Relevant to Trinity Grammar School ("the School"), the scope and purpose of this Case Study is for the Royal Commission to consider the School's response to allegations of problematic or harmful sexual behaviours by students at the School. The problematic or harmful sexual behaviours by students at the School identified at the public hearing were those of boarders in the School's Boarding House during the first six months of the 2000 school year some aspects of which started to come to light on 11 August 2000.

2. While these submissions will go into more detail below, the School submits that broadly speaking it responded appropriately to the matters that were revealed on and after 11 August 2000 in that:

   a. senior boarders contacted the Boarding Housemaster immediately after there was an incident in the Boarding House at recess on 11 August 2000 involving several boys;

   b. the Boarding Housemaster immediately went to the Boarding House to investigate;

   c. the Boarding Housemaster immediately provided assistance to a boy who was in distress (CLB);

   d. the Boarding Housemaster then took CLB and another boy to the Senior Master so that the matter could be further investigated;

   e. the Senior Master obtained written reports from the two boys and six other boys who were present at the time;
f. the Senior Master contacted the School's senior psychologist, Ms Pearce, who came to counsel the boys and to obtain further information;

g. late on 11 August 2000, the Senior Master and the Boarding Housemaster met with the Head Master and, after briefing him, they decided on appropriate punishments for those who had misbehaved and for support for those who had been the subject of the misbehaviour;

h. after 11 August 2000, Ms Pearce continued to provide support for the boys and to obtain more information and, with the support of the School's other senior psychologist, investigated to the point where she believed that the Department of Community Services (DoCS) should be notified - this included important and detailed statements being obtained from CLA and another boy on 6 September 2000;

i. Ms Pearce compiled her findings and, on 7 September 2000, took them to the Head Master;

j. the Head Master immediately caused a report to be made to DoCS.

3. Counsel Assisting in addressing the response of the School submits that eight findings are available to the Commission. The School and Mr Cujes dispute that proposed findings 3, 4, 6, 7 and 8 are available on the evidence before the Commission. The School also draws the attention of the Commission to the evidence of multiple steps it took shortly after these events to better understand this complex area of behaviour, to set up systems to provide a reporting mechanism for the boys at the School and to educate staff and the boys as to acceptable behaviours.¹ There has been no reference to this material in Counsel Assisting’s submissions and Mr Cujes was not questioned about it. Accordingly, an unfair and unbalanced view of the School’s response is presented.

4. The School and Mr Cujes submit that there is relevant, cogent and persuasive evidence before the Commission to which reference has not been made in the Submissions of Counsel Assisting although that evidence is relevant to both context and the available findings. In particular, Dr O’Brien spoke of the competing obligations to all children involved in any problematic or harmful sexual behaviours at a school: “there is a very complex

¹ Paragraphs 59, 67 - 126 in Statement of Mr Cujes dated 27 September 2016 Exhibit 45-005
balancing act to be had" as well as the need for an organisation such as the School to enquire and respond in a properly informed, non judgmental, sensitive and non-reactive fashion. There is no doubt that appropriate inquiry and investigation was carried out between 11 August and 6 September 2000 by Ms Pearce, a senior member of the School staff who was appropriately equipped with psychological qualifications to sensitively approach and deal with the difficult subject matter in a way that obtained specific details of events, names and places that provided an appropriate basis upon which to report to the authorities.

5. It is easy but unfair to criticise in hindsight and seize upon a period of an asserted “four week delay” in reporting to DoCS behaviours in the Boarding House. The School submits it was appropriate and indeed necessary to further investigate and gain an understanding of what had been happening. This led to the far more detailed, nuanced, corroborative collection of statements and material that were presented to Mr Cujes on 7 September 2000. Whilst this process took almost four weeks due to various reasons clearly articulated in the evidence, it is entirely unfair to refer to this as a “delay”. It is a period within which action was taken, up to and including the day before the statements were presented.

6. The best way to assess the evidence is to look at the contemporaneous records and statements. Counsel Assisting made the submission that statements made closer to the time such as the police statements were likely to be more reliable than statements made about 16 years after the event. The School accepts that this is correct. However, Counsel Assisting does not apply that principle consistently. For example, Counsel Assisting prefers Mr Green’s oral testimony at the public hearing to what was said in Mr Green’s police statement and other documents prepared in 2000 close to the time of these events.

---

2 Transcript of W O’Brien 21665:34-35; see also 21667:38 to 21669:19
3 CLA’s handwritten report dated 6 September 2000 -Tab 16 of Exhibit 45-002 TGS Tender Bundle and the handwritten report of REDACTED also dated 6 September 2000, Tab 17
4 Submissions of Counsel Assisting paragraphs 55 and 65
The School's response to Counsel Assisting's Available Findings

Available finding (AF3): Mr Green made a report to Mr Cujes on 11 August 2000 which included giving to Mr Cujes to read CLB's incident report and informing Mr Cujes that CLB was alleging that there had been simulated rape or that a dildo had been shoved up boys' bottoms on multiple occasions.

7. Mr Green's oral evidence given at the Commission was not consistent with the statement he provided to the Police in 2000. Mr Green did not provide a statement to the Commission and chose to rely on his police statement which should be, properly considered, the more reliable statement of events than Mr Green's oral evidence about them over 16 years later. Mr Green himself acknowledged that his recollection of conversations after 16 years was not good. 5

8. The School accepts that Mr Green attended Mr Cujes' office in the afternoon of 11 August 2000 and that Mr Green took some "Incident Forms" with him (these were handwritten accounts by various students). Mr Green says in his police statement signed on 18 October 2000:

"I then went to the Headmasters (sic) office to explain to him what had taken place and took with me all the boys' completed incident reports". 6

9. It is unclear which reports this particular action involved. Mr Green does not ever specify which of the reports he took to his meeting with Mr Cujes. The Incident Forms in the TGS Tender Bundle (Exhibit 45-002) which were prepared on 11 August 2000 7 clearly were not confined to CLB's account 8 but were a collection of Incident Forms completed by a number of students describing an incident that had occurred in the Year 10 dormitory at recess that day. 9

10. In Mr Green's police statement, he noted that Mr Scott had gathered together five other boys (CLA, DFC, DFD and two others) who were said to have been involved in the incident

---

5 Transcript of P C Green 21791:41-44
6 Exhibit 45-002 TGS Tender Bundle Tab 52 Paragraph 18
7 Exhibit 45-002 TGS Tender Bundle Tabs 2 to 13
8 Exhibit 45-002 TGS Tender Bundle Tab 8
9 Exhibit 45-002 TGS Tender Bundle Tabs 2, 5, 6, 7, 8, 9, 10, 11, 12 and 13
at recess\textsuperscript{10}. Those boys also completed incident forms before 1:30pm on 11 August 2000. A number of these incident forms refer exclusively to an event that occurred that morning in the nature of a "rumble" that was in retaliation for a prank the night before.\textsuperscript{11}

11. DFB's incident form\textsuperscript{12}, whilst not dated, refers to an "incident this morning" and therefore appears to have been prepared on 11 August 2000.\textsuperscript{13} It is unclear whether this is one of the statements taken to the Head Master by Mr Green on 11 August 2000. There is also a statement behind Tab 4 of the TGS Tender Bundle (Exhibit 45-002) which is not dated and is not confined to what happened on the morning of 11 August 2000 but it is unclear from the evidence whether or not it was in existence when Mr Green met with Mr Cujes.

12. Mr Green does not specify in his police statement which of the statements were completed at the time he met with Mr Cujes. Although he states that Ms Pearce had drawn his attention to the added paragraph in the statement by CLB, he does not state that he discussed this additional information with Mr Cujes. Mr Green described what happened at his meeting with Mr Cujes in his police statement as follows:

Paragraph 19:

"The Headmaster had a quick read of the incident reports and we discussed the situation including possible punishment to the boys who were involved in the incident involving REDACTED and CLB. We decided that the boys who had bullied REDACTED would be given a boarding house punishment whilst the boys that had bullied CLB would be suspended from the boarding house."

13. There is nothing in his description that establishes that Mr Cujes read CLB's incident report or whether he read all of the other reports, or what parts of any of the other reports. Nothing is said about discussing the content of CLB's report. At the public hearing, Mr Green was asked the following:

"To your observation did that include Mr Cujes reading CLB's incident report?"

Answer:

\textsuperscript{10} Exhibit 45-002 TGS Tender Bundle Tab 52 Paragraph 16
\textsuperscript{11} Exhibit 45-002 TGS Tender Bundle Tabs 2, 5, 6, 7, 12 and 13
\textsuperscript{12} Exhibit 45-002 TGS Tender Bundle Tab 3
\textsuperscript{13} Exhibit 45-002 TGS Tender Bundle Tab 52 Paragraph 18
"The practice over the years is that I take these reports to the headmaster and we sit and we talk about them. Mr Cujes will at times focus, read as he listens to me as I give an account. He had them there with him. Whether he read every one of the statements I do not know." 14

Mr Green did not directly answer the question but, in his indirect answer, revealed that Counsel Assisting had no basis for asserting that Mr Cujes had in fact read CLB's statement.

14. The evidence simply does not establish:

   a. which incident reports were handed to Mr Cujes; or

   b. which of the incidents reports were read by Mr Cujes; or

   c. which parts of which reports were read by Mr Cujes.

15. The assertion in Counsel Assisting's submission in paragraph 64 that the description Mr Green gave in his evidence to the Commission was consistent with the description he gave in his statement to the police is not accurate. In his police statement, Mr Green said that he took with him "all the boys' completed incident reports" 15 (without specifying which reports were completed by the time Mr Green went to the Head Master's office) and that the Head Master had a "quick read" of the incident reports 16, without identifying which ones or whether certain reports were read at all. This is very different from saying that Mr Green "gave Mr Cujes CLB's incident report to read". It is just not clear on the evidence that is what occurred. At its highest, all the evidence establishes is that an unknown number of reports were handed to Mr Cujes, that they may have included CLB's report and that Mr Cujes may have read parts of some of them. The assertion made in paragraph 64 in the final sentence of Counsel Assisting's submissions that "Relevantly, Mr Green's police statement included that he showed the incident reports to Mr Cujes and that he told him about the incident" does not assist because what is meant by "the incident" remains unexplained and undefined in Counsel Assisting's submissions.

14 Transcript of P C Green 21767:44 to 21768:3
15 Exhibit 45-002 TGS Tender Bundle Tab 52 paragraph 18
16 Exhibit 45-002 TGS Tender Bundle Tab 52 paragraph 19
16. Mr Green's police statement says nothing about Mr Green discussing CLB's incident form with Mr Cujes, let alone the content of the additional paragraph in CLB's report. Rather, Mr Green simply notes that action was taken to determine an appropriate punishment for boys who had "bullied" CLB and another boy.

17. At the public hearing, Mr Green was pressed on whether he discussed with Mr Cujes the allegations that CLB had made in his incident form that there had been simulated rape or that a dildo had been shoved up boys' bottoms on multiple occasions. Mr Green replied that they did have that discussion. Mr Green was also asked whether he had told Mr Cujes what Ms Pearce had told him about CLB's allegation that he had been subjected to incidents of a sexual nature "about 50 times this year". Mr Green said he could not recall whether he told Mr Cujes that although he believed it was likely that he did so. Mr Cujes denies that this is an accurate reflection of the conversation. It is submitted that Mr Green's recollection of the conversation is mistaken and the recollection of Mr Cujes should be preferred.

18. In paragraph 21 of Mr Green's police statement, he describes having explained to CLB's relative that there had been some "bullying". He did not disclose that there had been any sexual aspect to the bullying. This tends to suggest, combined with the content of paragraph 19 of his police statement, that he did not disclose to or discuss with Mr Cujes anything regarding the second part of CLB's statement or discuss with Mr Cujes a sexual aspect to the bullying.

19. Whilst Mr Green gave evidence in October 2016 that what he regarded he was being told was "inappropriate rumbling, sexualised behaviour", his document being a report he prepared no later than three months after 11 August 2000 makes no reference to any concern about sexualised behaviour.

20. The evidence of Mr Cujes has been consistent on the issue of what he had been told on 11 August by Mr Green. In his police statement signed on 20 October 2000, Mr Cujes says:

---

17 Transcript of P C Green 21769:22-39  
18 Transcript of P C Green 21770:8-12  
19 Transcript of M Cujes 21851:42-44; 21853:3-6; 21856:17-21; 21857:23-27; 21857:44 to 21858:2  
20 Transcript of P C Green 21765:34-37  
21 Exhibit 45-002 TGS Tender Bundle Tab 76  
22 Exhibit 45-002 TGS Tender Bundle Tab 55
Paragraph 4:

"On 11 August 2000 I was approached by the Senior Master Mr Peter Green who informed me of investigations into an incident in the boarding house undertaken by himself and the Senior Boarding House Master, Robert Scott".

Paragraph 5:

"It is general practice for students involved in an incident to complete an incident report giving their version of what took place. I don’t recall whether I read any incident reports on this particular incident".

Paragraph 6:

"I can recall that the boys’ names involved in the incident were CLA, REDACTED and CLB. Mr Green and I agreed that suspension was an appropriate option given the circumstances as we knew them. The matter was then to be followed up by the Boarding House Master in relation to the suspension of the boys from the boarding house and the Counsellor Kate Pearce."

21. Mr Cujes has maintained a consistent position regarding these events and that is that he relied on his Senior Master, Mr Green, to discuss with him and implement appropriate punishments for what Mr Cujes considered to be, based on what he had been told, a dorm rumble that got out of hand and that Ms Pearce, the school’s senior psychologist, was to continue to interact with the boys and investigate the events.23

22. Mr Cujes in his Statement prepared for the Commission dated 27 September 201624 stated the following:

Paragraph 13:

"The clear impression I gained from my discussion with both the Senior Master and the Boarding Housemaster was that, whilst this was a serious matter of indiscipline, the behaviour was a “dorm rumble” that got out of hand. We felt it was necessary to send a clear message to the boys that such behaviour was not acceptable. Hence the decision

---

23 Paragraph 6 of Mr Cujes’ police statement Exhibit 45-002 TGS Tender Bundle Tab 55; paragraph 14 in Statement of Mr Cujes dated 27 September 2016 Exhibit 45-005; Transcript of M Cujes 21842:28-41
24 Exhibit 45-005
to suspend CLA, DFC and DFD from the Boarding House until the evening of Monday 14th August 2000. At this stage there was no suggestion of either of the two senior staff or Kate Pearce that the matter was reportable. I do not recollect seeing the Incident Forms of CLB and REDACTED and believe I did not read them at this time. I accepted the assessment and recommendations of my senior staff and counsellor."

23. Further supporting the conclusion that Mr Green did not tell Mr Cujes on 11 August 2000 that CLB was alleging that there had been simulated rape or use of a dildo was that Mr Green described to Ms Pearce what happened when he spoke to her on 21 August 2000 as "It was just a bit of initiation stuff." He did not deny that he had had that conversation. Mr Green's focus was clearly upon what the boys had done at recess on 11 August 2000. The evidence points to him telling Mr Cujes about that behaviour and nothing more.

24. Also supporting that position is that none of Ms Pearce, Mr Mayne (the other psychologist at the School's high school campus) or Mr Green saw the need to report these matters to DoCS on 11 August 2000. Whilst in hindsight, Ms Pearce said in her evidence that she wished she had reported it then, the reality is, as supported by her in her statement and in her oral evidence to the Commission, Ms Pearce formed the view that the allegations made by CLB about events in the boarding house needed further evaluation and investigation, and that it was recognised by her and Mr Mayne that having heard the general nature of these incidents they were conscious of the need not to interview the boys and to instead have them write down their own accounts of these incidents. After speaking to CLA and another boy and receiving their written accounts dated 6 September 2000, Mr Mayne and Ms Pearce concluded that the Head Master should be shown the documentation Ms Pearce had gathered.
25. When Ms Pearce did put together the material that in her view needed to be submitted to DoCS and attached it to her letter to DoCS officer Paul Sweeney\(^{32}\), there is no suggestion that she sent any of the 11 August 2000 statements to DoCS as disclosing or describing matters that were reportable and requiring them to investigate. The proper inference to draw therefore is that she did not view them in the same way as the material in the statements she obtained after 11 August 2000 and leading up to 6 September 2000.

26. Examination of the contemporaneous records of Ms Pearce provides a better understanding of the event in 2000 than her 2016 account which has, in the School’s submission, been overlaid with blame and emotionally loaded recollections. In her statement made to the police on 11 October 2000\(^{33}\), Ms Pearce outlines the series of steps she took in pursuit of investigation of behaviours in the Boarding House. In paragraph 8 of her police statement, she states whilst receiving an account of wider events from CLB on the 11 August 2000, “I was shocked about what I was hearing but I wanted to be sure of the exact nature of the incidents CLB was referring to”. Her police statement then goes on to outline her investigative interviews and why she paused between 18 and 24 August 2000 (Paragraph 14) and that on 29 August 2000 she had to fly to Queensland due to her mother’s ill health and subsequent death.

27. It was not until 5 September 2000 that she spoke with CLA. Clearly what he provided was critical to her investigation and her decision that this behaviour needed reporting to DoCS. She said in paragraph 18 that she “encouraged CLA to tell his mum and dad during the holidays because I was concerned about his emotional well-being. I explained to CLA that the matters we had discussed were very serious and that I would be legally obliged to inform the Head Master and that he would be required under the law to inform the Department of Community Services.” She does not say that she said the same to any of the other boys she interviewed in the period from 11 August 2000 to that time.

28. Ms Pearce referred at paragraph 21 to interviewing another boy on 6 September 2000 who provided her with a “very concise statement”. Then she collected the copies of the statements she had collected over those weeks and wrote a covering letter to the Head Master attaching copies of the statements. That covering letter dated 7 September 2000 commences with these words: “Dear Mr Cujes, I am sorry to have not been able to bring this

\(^{32}\) Exhibit 45-002 TGS Tender Bundle Tab 19 and annexure S to Statement of Mr Cujes (Exhibit 45-005)

\(^{33}\) Exhibit 45-002 TGS Tender Bundle Tab 34
matter to your attention until this morning. The boys' examinations, my absence last week where my mother was ill and because of her death last Friday have prevented me from doing so.  

This provides a clear context that she spent some time on these important issues but was not able to complete what she needed to do until 7 September 2000. In further support of the fact that the first time Mr Cujes became aware of the allegations of sexual abuse was 7 September 2000 is Ms Pearce's evidence of her perception of Mr Cujes' response at the meeting of 7 September 2000 when she provided the documents attached to her report that he was "shocked and distressed" and that she believed that this was the first time he had seen the material. She also confirmed that she had never discussed it with him until that date. The School submits that the nature of the behaviour set out in the statements that Ms Pearce presented to Mr Cujes on 7 September 2000 was new to Mr Cujes and he had not been previously made aware that this was behaviour occurring in the Boarding House.

29. The evidence is clear that, as soon as Mr Cujes read the material in Ms Pearce's 7 September 2000 report, he immediately caused a report to be made to DoCS. This indicates that Mr Cujes recognised the need to report as soon as he had reasonable grounds to suspect that a child under the age of 16 had been sexually assaulted and that, if he had been made aware of the information in Ms Pearce's 7 September 2000 report on 11 August 2000 in the discussions held on that day, he would have reported to DoCS then. It would be patently unsafe, unfair and incorrect to make AF 3 or the findings proposed in paragraphs 68 and 113 of the Submissions.

Available finding (AF 4): Mr Cujes did not take steps to investigate the allegations made by CLB in his incident report and the allegations made by CLB to Mr Green on 11 August 2000 or report the matter to police.

30. First, there is no safe basis upon which to conclude that the incident report of CLB was read by Mr Cujes on 11 August 2000 or at any time until after a report had been made to DoCS and, through it, the police. For that reason alone, this is an inappropriate finding to make.

34 Exhibit 45-002 TGS Tender Bundle Tab 18
35 Transcript of K Lumsdaine 21716:1
36 Transcript of K Lumsdaine 21716:8-16
37 Transcript of K Lumsdaine 21706:7-23
38 Mr Green's police statement paragraph 29; Ms Pearce's police statement paragraph 22; Mr Cujes' police statement paragraph 22
31. Second, Mr Cujes explained in both his Statement to the Commission\(^39\) and in his evidence that his expectation and his perception of what was to occur was for the matter to be further pursued by his senior staff and for his Senior Psychologist, Kate Pearce, to continue to support the boys and investigate the events. He stated in his evidence that he did not inquire directly of Ms Pearce about what was happening because he “knew that counselling takes its own time. I also suspected that it would take a little more time to come back with any type of report and the report in essence, came back in the other form, where Ms Pearce reporting in September about matters which completely shocked and dumbfounded me”\(^40\).

32. This is entirely consistent with the records and the police statement of Ms Pearce\(^41\). She described on 7 September 2000 that there was a meeting called by the Head Master attended by Mr Cujes, Mr Green, Mr Scott, Mr Mayne and Ms Pearce. She described that “after a brief discussion of the contents of the boys' statements and various plans for the safety and protection of the boarders, the Head Master asked Mr Mayne to contact the Department of Community Services regarding a notification”. The next day a letter was prepared and forwarded to DoCS with the new detailed material, followed by police involvement and then shortly after that, prosecution and within a short time frame, determination of the criminal aspects of the behaviours.

Available finding (AF 6): Despite having knowledge of CLB’s allegations on 11 August 2000, Mr Scott did not conduct a proper investigation into those allegations or make any notification to the Department of Family and Community Services.

Available finding (AF 7): Despite having knowledge of CLB’s allegations on 11 August 2000, Mr Green did not conduct a proper investigation into those allegations or make any notification to the Department of Family and Community Services.

33. In response to AF 6 and AF 7, the School states that both AF 6 and AF 7 are unfair as they imply that Mr Scott and Mr Green each had an obligation to personally conduct an investigation. It is clear that Ms Pearce was carrying out a detailed, sensitive and appropriate investigation during which she found out a great deal of important information. This was prepared in an appropriate detailed firsthand account format and provided to the Head Master some 4 weeks later (with a hiatus of a couple of weeks due to school exams.

\(^{39}\) Exhibit 45-005
\(^{40}\) Transcript of M Cujes 21862:47-21863:18
\(^{41}\) Paragraph 22
and a death in the family of Ms Pearce). It was then, at his behest, forwarded immediately to DoCS for formal reporting, guidance and investigation.

34. Ms Pearce says that she refrained from commenting in her police statement on her perception that Mr Scott and Mr Green did not want the matter investigated because of concern for their position at the School. The School says that this was her impression, nothing more, and does not change the fact that she completed the investigation. The School further submits that part of the reason the investigation brought detailed information to light was that the work that Mr Scott said had begun to try to assist in changing the culture in the Boarding House of "not telling" was, with his efforts, actually changing. It is clear that a number of boys did come forward and confirmed in detail what had happened.

35. Another significant reason why AF 6 and AF 7 ought not to be made is that it assumes that there was a mandatory reporting obligation that was activated by material available on 11 August 2000. Section 22(3) of the Children (Care and Protection) Act 1987 applied at this time. It required all the relevant people (Mr Cujes, Mr Green, Mr Scott, Mr Mayne and Ms Pearce) to notify DoCS if they had reasonable grounds to suspect that a child under the age of 16 had been sexually assaulted. The School submits there was not sufficient clarity surrounding what had occurred to activate this reporting requirement.

36. As experienced and senior psychologists at the School, neither Mr Mayne nor Ms Pearce saw the need to report to DoCS on 11 August 2000. Counsel Assisting is quite properly not submitting that they ought to have done so. The proper action to take was to further inquire and investigate and that is what was done. Although Ms Pearce believes now (with the benefit of hindsight) that she should have called the police at once, it was quite reasonable at that time not to do so given that all she had were allegations from CLB and some broader references to behaviours involving other students. Ms Pearce found out more on 14 August 2000 but continued her inquiries after a hiatus for the exam period finishing with the material she obtained from CLA and another boy on 6 September 2000.

---

42 Transcript of R Scott 21797:17-23; 21798:34-37 and 43-44; 21799:6-10; 21799:39-47; 21811:19-23
43 Transcript of K Lumsdaine 21706:3-5
44 Transcript of K Lumsdaine 21707:19-22
45 Transcript of K Lumsdaine 21707:34-46
Available finding (AF 8): Mr Cujes was present at the Council meeting on 19 February 2001 and did not inform the Council that he, Mr Green and Mr Scott were all aware of the allegations made by CLB from 11 August 2000. The effect of Mr Cujes not disclosing that information to the Council is that the Council was misled as to the adequacy of the response of Mr Cujes, Mr Green and Mr Scott to the incident in the boarding house on 11 August 2000.

37. The School submits this proposed finding is not available on the evidence.

38. First, the allegation that Mr Cujes misled the School Council about any matter was not put to Mr Cujes at all so the proposed finding is procedurally unfair, generally unfair and should not be made.

39. Second, as outlined above, there is no evidence upon which a finding could be made that Mr Cujes was “aware of the allegations made by CLB from 11 August” at all. The evidence of Ms Pearce indicates (see her police statement) that CLB made a number of allegations orally to her that were not recorded in any statement. There is no evidence that can support a finding that Mr Cujes read CLB’s report and it is disputed by Mr Cujes that all of its contents were in fact conveyed to him by Mr Green. What information comprises the “information not disclosed” referred to in the second sentence of AF 8 is not clear nor is it clear that the information was not in fact disclosed in that or some other Council meeting. There was no evidence from Mr Scott, Mr Green or Mr Cujes or any of the other School Councillors as to whether this material was covered at previous meetings or at the meeting(s) referred to in AF 8.

40. Third, between 8 September 2000 and 19 February 2001 the material before the Commission suggests that there were at least 10 School Council meetings and School Council Executive meetings. Mr Mills said in his evidence that his independent recollection of what took place at these meetings was not clear.

41. The submissions of Counsel Assisting are confused as to the meeting at which it is alleged certain things were raised, discussed and decided. The Council met on 13 and 19 February 2001. Contrary to what Counsel Assisting submits at paragraph 102, the quoted resolution was not passed at the meeting on 19 February 2001 but at the meeting on 13 February 2001.

46 Mr Mills’ Statement dated 28 October 2016 Exhibit 45-054; Transcript of J E Mills 22804:10-11, 22-24 and 36; 22807:2, 21, 26-27, 29-32,
47 See paragraphs 102, 106 and 118
February 2001.\textsuperscript{48} The Minutes of the 13 February 2001 meeting were amended by the Council when it met on 19 February 2001 as noted in the Minutes of that later meeting.

42. Fourth, the questioning of Mr Mills was made up of unclear propositions not supported by the evidence. This was both an inadequate and unfair way to raise the matter proposed to be the subject of this finding. There were insufficient context, documents or records to allow this finding to be made. Mr Mills was a member of the School Council for 38 years and chair for 29 years so to question him in 2016 regarding possible events raised or not raised at a meeting 16 years before is not a legitimate way to establish any specific proposition.

43. In his statement of 28 October 2016, Mr Mills said (Para 3.11) that, at the Council meeting on 13 February 2001, “There was considerable debate and discussion after hearing the responses of the staff members, reviewing the process of the investigation, the advice of its lawyers and the planned response to the events.” To the extent that the discussion concerned its lawyer’s advice, there is no clarity about what this advice was, what issues it covered or its contents. Mr Ford was not at this meeting although he was at the meeting on 19 February 2001.\textsuperscript{49} There is an entry in the minutes\textsuperscript{50} referring to “considerable deliberation”. It is completely unfair to expect Mr Mills 16 years after events to recollect detail of what was or was not covered in the discussion that led to the vote of confidence in the Head Master recorded in the minutes.

**Evidence of the School’s Response relevant to the Terms of Reference that was not referred to in the submissions of Counsel Assisting**

44. Focusing on perceived inadequacies of action in the weeks between 11 August and 7 September 2000 is not a fair representation of the School’s response. There is ample material in the TGS Tender Bundle, Statements and Transcripts that would allow the Commission to find that:

a. the School responded in the way outlined in paragraph 2 of these submissions;

\textsuperscript{48} Transcript of J E Mills 22807:38-41
\textsuperscript{49} Exhibit 45-002 TGS Tender Bundle Tab 99
\textsuperscript{50} Exhibit 45-002 TGS Tender Bundle Tab 97
b. having reported to DoCS, the School fully co-operated with the police, JIT and DoCS on and from 7 September 2000;51

c. in the days and months that followed 7 September 2000, the Head Master:

i. ensured that both the boys who had been subjected to the harmful behaviour and the boys whose behaviour had been harmful were provided with pastoral care and support;52

ii. took measures to review how the School had handled the situation;53

iii. instigated measures to improve how the School would handle similar situations should they arise again in future;54

iv. co-operated with external agencies such as the NSW Ombudsman and the Board of Studies Teaching and Educational Standards of NSW.55

Conclusion

45. The situation at the School in August 2000 is a good example of the complexity that can occur in schools where students behave in problematic or harmful sexual ways towards one another. As Dr O’Brien said, “there is a very complex balancing act to be had”.56 She also agreed that the headmaster of a school where there has been an incident or incidents of harmful sexual behaviours or sexually abusive behaviours is in a very difficult position with competing concerns and interests to manage and balance.57 Ms Mulkerin, Deputy Director of the North Cluster, FACs, echoed these difficulties.58

46. The School accepts that it, through its staff, did not act perfectly in response to the events that occurred on 11 August 2000. The Head Master has acknowledged that the School

---

51 Paragraphs 25 - 32, 34 in Statement of Mr Cujes dated 27 September 2016 Exhibit 45-005; paragraphs 9, 20, 24, 25, 41, 47, 56, 59, 60, 66 - 69 in Statement of Ms Mulkerin dated 19 October 2016 Exhibit 45-006
52 This was a course endorsed by Dr O’Brien who said “I would confirm that it’s my expectation that pastoral care be provided to both children.” (Transcript of W O’Brien 21670:4-5). See also paragraphs 37, 51 - 56 in Statement of Mr Cujes dated 27 September 2016 Exhibit 45-005
53 Paragraphs 44 - 50 in Statement of Mr Cujes dated 27 September 2016 Exhibit 45-005
54 Paragraphs 59, 67 - 126 in Statement of Mr Cujes dated 27 September 2016 Exhibit 45-005
55 See paragraph 66 and 67 of Deidre Mulkerin’s Statement – Exhibit 45-006; paragraphs 64, 65 in Statement of Mr Cujes dated 27 September 2016 Exhibit 45-005
56 Transcript of W O’Brien 21655:34-35
57 Transcript of W O’Brien 21667:38-46
58 Transcript of D Mulkerin 21919:6-29; 21920:15-21
could have and should have done more. In this regard, Dr O'Brien agreed strongly that teachers needed training even today, let alone in 2000.

47. The School submits that it has, since the events of 2000, taken up the opportunity presented by those events to learn and act on how best to deal with this complex issue.

16 January 2017

Julia Lonergan SC

David Ford, Emil Ford Lawyers

---

59 Transcript of M Cujes 21870:29-30
60 Transcript of W O'Brien 21663:37-46; 21671:23-30
61 Transcript of W O'Brien 21672:1-3